

September 6, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: ADA and Bennett Drug Plan

There is a possibility that a conflict may arise with regard to the drug provision language under Title I of the ADA and a zero tolerance policy in maintaining a Drug-Free Workplace under Bill Bennett's Drug Plan.

Title I of the ADA is intended to make clear that an individual who is an alcoholic or current or past user of drugs -- illegal or legal --- can be held to the same standards of job performance and behavior as other individuals, even if the unsatisfactory performance or behavior is related to the drug use or alcoholism. At the same time, and consistent with the Rehabilitation Act of 1973, it is intended that rehabilitated alcoholics and drug users will be protected under this law.

The language in the ADA will make clear that an employer may subject job applicants and employees to drug urine analysis or other testing to determine the unlawful use of drugs or the presence of alcohol, and can refuse to hire job applicants and can discipline or discharge employees who are found to be using illegal drugs or alcohol, without being charged with discrimination.

In a recent meeting with the Administration and Senate staff on ADA strategy -- the fact that Bill Bennett has yet to agree to ADA's drug provisions was raised. There is a possibility of an amendment that would further tighten this language should it prove inconsistent with the Drug-Free Workplace initiative in the Bennett Drug Plan.

The Administration would not confirm that there is a problem but did want to alert staff that there may be further changes made to this language to include zero tolerance policy in maintaining a drug-free workplace consistent with the Bennett plan.

1 shall not pose a direct threat to the health or safety of
2 other individuals in the workplace.

3 (c) ~~DRUG ADDICTS AND ALCOHOLICS.—A covered~~
4 ~~entity—~~

5 (1) ~~may prohibit the use of alcohol or illegal~~
6 ~~drugs at the workplace by all employees;~~

7 (2) ~~may require that employees not be under the~~
8 ~~influence of alcohol or illegal drugs at the work-~~
9 ~~place;~~

10 (3) ~~may require that employees conform their~~
11 ~~behavior to requirements established pursuant to the~~
12 ~~Drug-Free Workplace Act (41 U.S.C. 701 et seq.)~~
13 ~~and that transportation employees meet requirements~~
14 ~~established by the Department of Transportation;~~
15 ~~and~~

16 (4) ~~may hold a drug user or alcoholic to the~~
17 ~~same qualification standards for employment or job~~
18 ~~performance and behavior to which it holds other in-~~
19 ~~dividuals, even if any unsatisfactory performance or~~
20 ~~behavior is related to the drug use or alcoholism of~~
21 ~~such individual.~~

22 (d) ~~RELIGIOUS ENTITIES.—~~

23 (1) ~~IN GENERAL.—This title shall not prohibit a~~
24 ~~religious corporation, association, educational insti-~~
25 ~~tution, or society from giving preference in employ-~~

1 more calendar weeks in the current or preced-
2 ing year, and any agent of such person.

3 (B) EXCEPTIONS.—The term “employer”
4 does not include—

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

8 (ii) a bona fide private membership
9 club (other than a labor organization) that
10 is exempt from taxation under section
11 501(c) of the Internal Revenue Code of
12 1986.

13 ~~(5) ILLEGAL DRUG.—The term “illegal drug”~~
14 ~~means a controlled substance, as defined in sched-~~
15 ~~ules I and II of section 202 of the Controlled Sub-~~
16 ~~stances Act (21 U.S.C. 812), the possession or distri-~~
17 ~~bution of which is unlawful under such Act.~~

18 (6) PERSON, ETC.—The terms “person”, “labor
19 organization”, “employment agency”, “commerce”,
20 and “industry affecting commerce”, shall have the
21 same meaning given such terms in section 701 of the
22 Civil Rights Act of 1964 (42 U.S.C. 2000e).

23 (7) QUALIFIED INDIVIDUAL WITH A DISABILITY.—The
24 term “qualified individual with a disability” means
25 an individual with a disability who, with or without

March 12, 1991

TO: Senator Dole
FROM: Mo West
SUBJECT: Sen. D'Amato Disability Support

The American with Disabilities Act (P.L. 101-336) is the most significant piece of civil rights legislation to be passed by Congress since the 1964 Civil Rights Act. The comprehensive and sweeping provisions of ADA will ensure that 43 million Americans with disabilities have access to the mainstream of society.

Although ADA appears to place the onus on small businesses for its implementation, this new law will actually benefit the business community. Businesses will not only have an increased pool of potential employees, but qualified persons with disabilities will become tax-payers and consumers.

Senator D'Amato has displayed consistent support for both the disability and business communities. He has been an instrumental advocate for building a solid partnership between these two important constituencies. Senator D'Amato was supportive of ADA and the establishment of safeguards for small business. He supported the technical assistance amendment to ADA, as well as the \$5,000 ADA Tax Credit.

Furthermore, Senator D'Amato is a member of the Senate Bi-partisan Disability Working Group. He was appointed by Senate Leadership to serve as an important link in the development of sound legislative initiatives in the areas of education, employment, health care, civil rights and small business. Senator D'Amato continues to be a very vocal member, displaying steadfast support for formulating legislative incentives to address the concerns of the business and transportation industries.

February 22, 1991

TO: Senator Dole
FROM: Mo West
SUBJECT: Disability Newsletter

I thought you might be interested in glancing through the attached newsletter which mentions you and Sen. Harkin on it's cover as leaders regarding disability issues in Congress. It has a wide readership throughout the U.S.

from Washington



Senators Tom Harkin (IA) and Robert Dole (KS) are expected to take a leadership role in the U.S. Senate on disability issues in 1991.



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The 101st Congress in Review

by Allan I. Bergman
Patricia Brady
Christopher Button
Bob Griss
Michael Morris
Bob Williams

As we take time to reflect on the past two years of public policy debate in the United States Congress, people with disabilities and their families and advocates will be able to look back at their many accomplishments that didn't get the major headlines of the press—not John Tower's nomination, Oliver North's trial, the Savings & Loan scandal, the Keating Five, Iraq's invasions of Kuwait and so many more. For us, the 101st Congress will go down in history for passage of The Americans With Disabilities Act (P.L. 101-336), signed by President Bush on July 26, 1990. This landmark civil rights legislation sets the tone in public policy for the remainder of the twentieth century. It declares that all persons with disabilities are citizens of the United States of America.

The new anti-discrimination provisions in employment, public transportation, public accommodation, public services and telecommunications will be implemented through regulations currently being developed by the Equal Employment Opportunity Commission, the U.S. Department of Justice and the Federal Communications Commission. The law and regulations will create wide vistas of new opportunities for American citizens with disabilities to have choices and to learn, live, work, play and participate in inclusive community life.

In this, the final issue of *Word From Washington* in 1990, we are providing you an overview of the major decisions of the 101st Session of Congress and trust it will serve as a convenient reference to you for your local and state advocacy agendas. As appropriate, we are providing you with suggested advocacy implementation activities at the end of each article on a major piece of legislation.

Winners of the 101st Congress

THE AMERICANS WITH DISABILITIES ACT (ADA, P.L. 101-336) The Americans with Disabilities Act (ADA), signed into law by President Bush on July 26, 1990, prohibits discrimination based on disabilities in the areas of employment, public services, transportation, public accommodations and telecommunications. This law will affect the lives of more than 43 million Americans by requiring all affected entities to provide "reasonable accommodation" to persons with disabilities.

Employers, employment agencies, labor organizations and joint labor management committees will be prohibited from discrimination against any qualified individual with a disability with regard to job application procedures: hiring, advancement or discharge; employee compensation; job training; and other terms, conditions or privileges of employment.

Discrimination on the basis of disabilities is prohibited in all programs, activities and services provided or made

available by state and local governments regardless of whether or not those entities receive federal financial assistance.

Businesses that provide services to the general public, as well as public and private entities that provide public transportation services are prohibited from discriminating on the basis of disability and must provide full and equal enjoyment of goods, services, facilities, privileges, advantages and accommodations to individuals with disabilities.

Commercial facilities and places of public accommodations, including but not limited to places of lodging, restaurants, theaters and concert halls, banks, barber shops, museums and libraries, nursery schools and day care centers, and offices of accountants, lawyers, and health care providers, are required to be made accessible for people with disabilities.

Telephone services offered to the general public must include interstate and intrastate telecommunications relay services so that these services provide individuals with disabilities access to communications equivalent to those provided to individuals able to use voice telephone systems.

Private individuals, the Equal Employment Opportunity Commission, and the Department of Justice have authority to bring actions in court to enforce compliance with the mandates of ADA.

IMPLEMENTATION ACTIVITIES:

- Obtain a copy of P.L. 101-336 and House Report 101-596 from your U.S. Senator or Congressperson.
- Submit your concerns on ADA regulations to the appropriate federal agency and monitor the regulatory process:
 - (a) Title I, *Employment Discrimination*, by the Equal Employment Opportunity Commission (EEOC), 1801 L Street, NW, Washington, DC 20507. Tel: (202)-663-4264;
 - (b) Titles II & III, *Public Services and Public Accommodation* by the U.S. Department of Justice, Civil Rights Division, Coordination and Review Section, P.O. Box 66118, Washington, DC 20035-6118. Tel: (202) 514-0301 (voice), (202) 514-0381 (TDD) and (202) 514-0383 (TDD);
 - (c) Title IV, *Telecommunications*, by the Federal Communications Commission (FCC), 1919 M Street, NW, Washington, DC 20554. Tel: (202) 632-7108.
- Develop local and state coalitions and begin working with the private sector on "win-win" implementation of the ADA.
- Conduct information and education programs for persons with disabilities and their families to know their rights.

DEVELOPMENTAL DISABILITIES ASSISTANCE AND BILL OF RIGHTS ACT OF 1990 (P.L. 101-496)

On October 31, 1990, President Bush signed into law the 1990 amendments to the Developmental Disabilities Assistance and Bill of Rights Act, which was first enacted in 1970. This legislation authorizes the Governors' Planning Councils on Developmental Disabilities in each state, the State Protection & Advocacy System, the University Affiliated Programs and Programs of National Significance administered by the Administration on Developmental Disabilities within the Department of Health & Human Services.

Among the major amendments to the law are the following—

- Adds the goals of "interdependence", "community acceptance", and "inclusion" to the Purposes Section of the law to further refine the goals of "independence", "productivity" and "integration" enacted in 1984 as the goals of services for all people with developmental disabilities.
- Replaces and expands the State plan priority area of "case management" to "System Coordination and Community Education" with a focus on eliminating barriers to access, enhancing systems design and individual, family and citizen involvement.
- Requires the State Developmental Disabilities Planning Councils to build upon their 1990 reports (as required in the 1987 Developmental Disabilities Act Amendments promoted by UCPA) of unserved and underserved people in relation to services and supports in future State plans and priorities by:
 - (a) including a "Summary of Actions Taken" in regard to 1990 Report results;
 - (b) requiring an analysis of the special and common needs of all subpopulations of persons with developmental disabilities;
 - (c) requiring the use of information in the 1990 report in its decisionmaking process about priority areas as well as selection of activities to conduct to create system change; and
 - (d) requiring that 65 percent of each State's allotment used for priority areas include activities to implement the recommendations made in the 1990 Report including those which address unserved and underserved populations;
 - (e) requiring an assessment, update and progress report on meeting the needs of unserved and underserved people in the 3-year plan.
- Mandates the annual statement of objectives by the Protection & Advocacy System in each State.
- Expands the ability of the Protection & Advocacy System to access records in selected situations of potential harm.
- Requires the establishment of a community advisory committee at every University Affiliated Program.
- Expands the University Affiliated Program training initiatives to include assistive technology and positive behavior management.
- Establishes criteria for training at University Affiliated Program's including value-based and competency-based components.

IMPLEMENTATION ACTIVITIES:

- Obtain and review a copy of your State Developmental Disabilities Council's 1990 report.
- Attend meetings of your State Council to assure that its members and staff know your issues.
- Monitor the development of annual priorities and activities to assure the inclusion of persons with developmental disabilities attributable to physical impairments.
- Obtain and review the annual statement of objectives from your State Protection and Advocacy System.
- Attend annual public meetings of your State Protection and Advocacy System to influence its priorities.
- Contact your University Affiliated Program regarding membership on its Community Advisory Committee.

- Encourage your University Affiliated Program to pursue a training grant in assistive technology.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA, P.L. 101-476) On October 30th, 1990, the President signed into law the reauthorization of discretionary programs of what since 1975 was named The Education of All Handicapped Children Act. Included in the reauthorization are several substantive amendments which will significantly improve supports and services to students with disabilities. Of particular interest for students with cerebral palsy and other severe disabilities are the following amendments:

Transition Mandated in IEPs

- A definition of transition services was added:

"(A) coordinated set of activities for a student, designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the students preferences and interests, and shall include instruction, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation."
- Provisions were added to require inclusion of a statement of needed transition services for students within the Individualized Education Program (IEP), beginning no later than age 16 and, when appropriate, beginning no later than age 14 or younger.
- A new competitive grant authority was created for joint applications by state education agencies and state rehabilitation agencies to provide transition services.

Assistive Technology

- Assistive technology is now defined and included throughout the Act to assure that students in need of assistive technology services receive them from trained personnel.

Waiver of State Sovereign Immunity

- Congress reversed the *Dellmuth v. Muth* (1989) decision by including a new section (Section 604) which clarifies Congressional intent that States are not immune under the Eleventh Amendment from suit in federal court for violation of the Individuals with Disabilities Education Act.

Minority Provisions

- A priority was established to train minority personnel. Grant applications are required now to include in their applications a detailed description of strategies that will be used to recruit and train members of minority groups.
- Priority will be given to minority students for receipt of fellowships or traineeships.
- Parent training centers are now required to include minority parents and professionals on the boards of these centers and their programs.

Terminology

- Terminology was changed to people-first language. "(H)andicapped children" is replaced with "children with disabilities" throughout.
- The name of the Act is changed from the Education of the Handicapped Act (EHA) to the Individuals with Disabilities Education Act (IDEA).

IMPLEMENTATION ACTIVITIES:

- Obtain a copy of P.L. 101-476 from your U.S. Senator or Congressperson.
- Inform parents of students receiving publicly financed special education services (Kindergarten through Grade 12) regarding the new mandate for transition services to be included in the IEP and the definition of transition services.
- Encourage your state education and rehabilitation agencies to jointly apply for competitive grant funds when they become available later this year; be sure that persons with disabilities and parents are included in such projects.
- Inform parents of students receiving publicly-funded special education services for the requirement for assistive technology to be included as part of the IEP as defined in Office of Special Education Director Judy Schrag's policy letter of August 10, 1990 (see WfW, Sept./Oct. 1990).

NATIONAL AFFORDABLE HOUSING ACT (P.L. 101-625) On November 28, 1990, President Bush signed into law the Cranston-Gonzales National Affordable Housing Act (NAHA), now P.L. 101-625. This major omnibus housing legislation has the potential to positively impact the lives of persons with disabilities. The legislation makes some potentially substantive modifications to the present Section 202 Program and includes other provisions to improve both the quantity and quality of available housing options. However, as with any new legislation, this will only be as successful as it is implemented and funded.

Understanding the purposes of the NAHA can do much to increase the availability of affordable housing options for persons with disabilities if those with an interest in acquiring and/or developing housing become familiar with the major components of the law. These purposes relate to home ownership; the retention of presently available affordable dwelling units for low-income families; the extension and strengthening of partnerships at all levels of government and in the private sector; including for-profit and non-profit organizations in the production and operation of housing; the expansion and improvement of federal housing assistance; and an increased supply of supportive housing which meets the needs of so-called "special populations" to live with both dignity and independence.

Title VIII of the Act completely separates the old Section 202 program for persons who are elderly (over 62 years of age) from that for people with disabilities and names it "Supportive Housing for Persons with Disabilities." A major change in the Section 202 program provides to non-profits a capital advance rather than a loan for the purchase of existing properties or new construction of group homes, independent living complexes or apartments. A non-profit could apply for funds for the purchase of condominiums or cooperatives and also receive rental assistance payments for the residents. The law requires that the program support housing options which provide "opportunities for optimal independent living and facilitate . . . participation in the community at large," and limits group homes to no more than eight persons. As long as the property remained available for low income persons with disabilities, the non-profit will not be expected to repay the advance. Existing projects with a Section 202 fund reservation are eligible for a conversion of their loan funds to a capital advance, based upon HUD approval, although the new program of "supportive housing" will not be effective until October 1, 1991.

An article in the January/February 1991 *Word From Washington* will detail the specific requirements of NAHA and how best UCPA and other advocates can influence its implementation through the regulatory process.

IMPLEMENTATION ACTIVITIES:

- Obtain a copy of P.L. 101-625 and the Conference Report from your U.S. Senator or Congressperson.
- Carefully study all of the provisions in Title VIII.
- Review any pending HUD 202 loan commitments for projects not yet begun and consider applying for a cash advance instead.
- Monitor the federal regulatory process for the National Affordable Housing Act as administered by HUD.
- Discuss the "Supportive Housing for Persons with Disabilities" provisions for 1991-1992 with people with disabilities, family members, and persons in the private sector for possible collaborative applications under the new law.

CHILDREN WITH DISABILITIES TEMPORARY CARE REAUTHORIZATION ACT OF 1989 (P.L. 101-127) Originally enacted as Title II of the Children's Justice and Assistance Act of 1986 (P.L. 99-401), this legislation was first funded at \$4.7 million in FY 1988 as the Temporary Child Care for Handicapped Children and Crisis Nurseries Act. The original policy of the legislation was based on the data that children with disabilities have been shown statistically to be at high risk of "child abuse or parental neglect."

Testimony at the hearings, conducted in April 1989 by the House Subcommittee on Select Education shifted the emphasis to the value of respite care for families with a child with a disability. Amendments to the legislation in 1989 (P.L. 101-127) extends the program through September 30, 1991; requires the States competing for the grant funds to provide interagency coordination and the development of a State plan across all State agencies receiving selected federal funds; requires States to document parental satisfaction with the service; and raises the authorization level to \$20 million per year. The program received \$11 million for FY 1991.

IMPLEMENTATION ACTIVITIES:

- Obtain a copy of P.L. 101-127 from your U.S. Senator or Congressperson.
- Contact your Governor's Office to determine the name of the designated State agency and contact person for the Children With Disabilities Temporary Care Reauthorization Act of 1989.
- If your State already has received one or more competitive grants, contact the provider(s) to determine the scope of the project.

- Obtain copies of the State plan and parental satisfaction survey form and data.
- Encourage your State agency and Governor to support reauthorization of the Act this year (see page 14 of this issue of WfW.)

TELEVISION DECODER CIRCUITRY ACT (P.L. 101-431) The Television Decoder Circuitry Act sponsored by Senator Tom Harkin (IA) requires televisions with screens of 13 inches or larger to have built-in decoder circuitry for the display of closed-captioned television transmission by July 1, 1993. Built in decoder circuitry will dramatically reduce the cost of the decoder for audiences that need to receive closed-captioned television. Mass production of the decoders will cost an estimated three to five dollars per television.

The law will assure that people wanting to see captions on programs that provide them can do so by merely flipping a switch on their sets. The potential audience for closed-captioned programming for individuals with communication disabilities is estimated to be more than 24 million.

EPSDT IMPROVEMENTS (P.L. 101-239) Expansions to the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program were passed by Congress as part of OBRA'89. OBRA'89 amended Section 1902(a)(43) and 1905 (A)(4)(B) and created Section 1905(r) of the Social Security Act which sets forth the requirements for the program. Under what is now a "federal" rather than a state/federal EPSDT benefit, a State must provide physical, developmental, vision, hearing and dental screening services at intervals which meet reasonable standards of medical and dental practice. States also must provide medically necessary screening, vision, hearing, and dental services regardless of whether such services coincide with their established periodicity schedules for these services. Most importantly, the Act requires that any service which States are permitted to cover under federal Medicaid policy that is necessary to treat or ameliorate a defect, physical and mental illness, or a condition identified by a screen, **must** be provided to EPSDT participants regardless of whether the services or item is otherwise included in the State's Medicaid plan, and do so without any arbitrary standards to limit amount, scope and duration of a service. This program is of phenomenal importance to expand federal funding for a wide range of services to children with disabilities eligible for Medicaid, including therapies, eyeglasses, hearing aids, wheelchairs, nursing services, augmentative communication devices, and so many more.

In April, 1990, HCFA published a State Medicaid Manual Issuance to implement the new provision for the EPSDT program. The amendments went into effect on April 1, 1990.

Because of the significant role which Medicaid EPSDT funding can play in the implementation of early intervention and preschool services, Congress addressed this issue in the Labor, Health & Human Services, Education Appropriations bill report for FY 1991. The Appropriations Committee, (in Senate Report 101-516) directed the Departments of Education and Health & Human Services "to develop a joint policy statement containing consistent

information and uniform procedures to enable Medicaid, Part B and Part H agencies and health care providers to work together in helping children, infants and toddlers with disabilities to obtain the full benefits of Federal Programs."

IMPLEMENTATION ACTIVITIES:

- Obtain a copy of the OBRA '89 amendments to EPSDT by calling Jenifer Simpson @ (800) USA-5UCP or (202) 842-1266.
- Meet with families, advocates and providers at the local level to plan strategies for working together for full implementation of the EPSDT mandated entitlements.
- Arrange to meet with your State's Medicaid Director and staff to determine the status of implementation of these amendments.
- Obtain a copy of the State Medicaid plan or manual for EPSDT.
- Disseminate information widely on this important service and financing program for infants, toddlers, preschoolers and children to age 19 and their families.

LIMITED SSDI WORK INCENTIVE (P.L. 101-239) Early in the 101st Congress, a limited work incentive program for people with disabilities who receive Social Security Disability Insurance became law as part of the OBRA'89.

The provision allows SSDI recipients with disabilities who return to work to purchase Medicare insurance coverage after they have exhausted their trial work period (12 months) and the extended period of eligibility (36 months).

The law also requires Medicaid to pay the premium for SSDI recipients earning less than 200 percent of poverty (\$11,960 annually in 1989). For those earning between 150 and 200 percent of the poverty line, states could require the individuals to pay part of the premium. For SSDI recipients earning over 200 percent of poverty, the individuals would pay the entire premium. The work incentive, which went into effect April 1, 1990, will assist some individuals who receive SSDI in returning to gainful employment while retaining health insurance.

CARL D. PERKINS VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION ACT (P.L. 101-392) On September 25th, 1990, President Bush signed P.L. 101-392 authorizing amendments to the Carl D. Perkins Vocational Education Act. These amendments established a new system of distributing funds for secondary vocational education programs. They do not maintain the set-asides which existed previously for special populations including a former ten percent set-aside for persons with disabilities. Instead, the amendments stipulate that individuals who are members of special populations must be provided with equal access to recruitment, enrollment, and placement activities, as well as equal access to the full range of vocational education programs available to individuals who are not members of special populations. Voca-

tional education must be provided to individuals with disabilities in the least restrictive environment, and must, where appropriate, be included as part of the individualized education plan (IEP).

IMPLEMENTATION ACTIVITIES:

- Obtain a copy of P.L. 101-392 from your U.S. Senator or Congressperson.
- Contact your State board for vocational education to determine the dates and locations for the public hearings to discuss the State's three-year plan required by the law.
- Review the draft state plan to determine the adequacy of the required state assurance statements for "equal access" in all areas for people with disabilities.
- Contact local education agencies and postsecondary institutions to assure their plans call for the inclusion of students with disabilities and the availability of supportive services for students with disabilities.

NATIONAL AND COMMUNITY SERVICE ACT OF 1990, P.L. 101-610 The National and Community Service Act of 1990 was approved in the last days of the 1990 session of Congress. Action on the legislation, which comes after years of efforts by advocates for National Service, authorizes a variety of national and community service learning programs. The measure, introduced by Senators Edward Kennedy (MA) and Orrin Hatch (UT), and Congressman Augustus Hawkins (CA), was passed in the Senate by a 75 to 21 vote on October 16, and in the House, by a 235 to 186 margin on October 24. It was signed by President Bush on November 16, 1990.

The Act authorizes \$287 million for its various grant programs over the next three years: \$62 million for 1991, \$105 million for 1992 and \$120 million for 1993. Funds for 1991 have been authorized as follows: \$54 million for Kindergarten through 12th grade Service Learning Programs and Post-Secondary Education Innovative Projects for Community Service, \$2 million for the Commission on National and Community Service (including four regional clearinghouses), \$5 million for the President's Points of Light Foundation and \$1 million for the Youthbuild program. Each of the programs will experience an increase in the funding over the next three years, with the exception of the Commission on National and Community Service.

In signing the Act, the President said, "There can be no nobler goal than to strengthen the American ethic of community service and to help translate this ethic into meaningful action."

IMPLEMENTATION ACTIVITIES:

- Obtain a copy of P.L. 101-610 from your U.S. Senator or Congressperson.
- Determine if your state or local education agency or post-secondary education agencies plan to apply for these new community service funds. Encourage them to do so.
- Be sure that any local or state efforts include both community service to students with disabilities and participation by persons with disabilities with the necessary supportive services.

OMNIBUS BUDGET RECONCILIATION ACT OF 1990 (OBRA) P.L. 101-508 Congress completed work on the five-year budget package on October 27th and President Bush signed the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) on November 5th, as P.L. 101-508. The sweeping measure proposes to reduce the projected deficit by \$496.2 billion over five years. The voluminous law contains many provisions impacting people with disabilities and their families. It also includes many changes in the Gramm-Rudman deficit reduction process which will impact appropriations for the next five years. The following items represent several major legislative changes in OBRA.

MEDICAID

Improvements in Child Health

Phased-in mandatory coverage of children up to 100 percent of poverty level. Under current law, States are required to cover children up to age 6 in families with incomes under 133 percent of the Federal poverty level and have the option to expand income eligibility to 185 percent of poverty level. States are permitted to cover children born after September 30, 1983 up to 7 years old (or 8 at State's option) in families with incomes below a State-established income level which may be as high as 100 percent of the Federal poverty level. The new law now requires States to cover children up to age 19 up to 100 percent of poverty level by the year 2003, beginning at age 7 on July 1, 1991.

Mandatory continuation of benefits throughout pregnancy or first year of life. The new law will require all States to continue eligibility for pregnant women until the end of the second full month beginning after the end of pregnancy, except in the case of a woman who has been provided ambulatory care during a presumptive eligibility period and then determined to be ineligible. The law also provides that infants born to women who are eligible for Medicaid remain eligible until their first birthdays.

Previously, States had the option of continuing coverage for a pregnant woman through the end of the second full month beginning after the end of pregnancy, even if the woman would otherwise become ineligible during that period. The child is eligible for Medicaid as long as the woman remains eligible.

Mandatory use of outreach locations other than welfare offices. Under current law, States determined the sites at which applications for Medicaid would be accepted. The new provision requires States to accept and begin processing applications by pregnant women and children under 18 at locations other than welfare offices, such as clinics, hospitals, neighborhood health centers, etc.

IMPLEMENTATION ACTIVITIES:

- Contact your State Medicaid agency to determine the status of implementation of the new mandates and options for eligibility expansion for children.
- Disseminate the information on mandated expansion widely at the local and state level, especially to providers of services to children from low-income families or children on or eligible for SSI benefits.

- Determine which centers, clinics and agencies in your community could fulfill the function of outreach and assist that agency (ies) in becoming a state-approved Medicaid outreach application center.

COMMUNITY SUPPORTED LIVING ARRANGEMENTS SERVICES (CSLA, P.L. 101-508) The OBRA of 1990, Section 4712, established a new limited option under the Medicaid program to permit from two to eight States to provide "community supported living arrangements services" The purpose of the program is to assist eligible persons in the activities of daily living necessary to permit them to live in the community. The service is limited to individuals with developmental disabilities without regard to whether such individuals are at risk of institutionalization. This requirement represents a major Medicaid policy change by no longer linking the receipt of Medicaid funds for community living to institutional admission criteria and standards.

Definition of Community Supported Living Arrangements Services The law defines "community supported living arrangements services" to mean one or more of the following services designed to assist an individual in activities of daily living necessary to permit such individual to live in the individual's own home, family home, or rental unit. Services may include **personal assistance**; training and habilitation services necessary to assist the individuals in achieving increased community integration, independence, and productivity; 24-hour emergency assistance; **assistive technology and adaptive equipment to help overcome the effects of impairments**; support services necessary to aid an individual to participate in community activities; and other non-excluded services as approved by the Secretary. Excluded services are room and board, and the cost of prevocational, vocational, and supported employment services.

Definition of Developmentally Disabled Individual "Developmentally disabled individual" is defined to mean an individual defined by the Secretary within the term "mental retardation and related conditions" as set forth in regulations in effect on July 1, 1990. In addition, the individual must reside in his or her own home or in the family home, apartment, or other rental unit in which no more than three other individuals receiving these services reside.

Participating States The Secretary is required to develop criteria for the review of applications from States requesting funds to provide community supported living arrangement services. During the first 5 years of the program, no less than two and not more than eight States are allowed to participate in this program.

Quality Assurance States participating in the delivery of Community Supported Living Arrangements are required to establish and maintain a quality assurance program. The quality assurance program must require that providers of service be certified and surveyed using standards that include minimum qualifications and training requirements for staff, financial operating standards, and a consumer grievance process. Monitoring boards are to be

established consisting of providers, family members, consumers, and neighbors. Reporting procedures are required to make information available to the public. The health and well being of each recipient of service is to be monitored, and services are to be provided according to an individual support plan. The Medicaid State plan amendment adding community supported living arrangements services must be reviewed by the State Developmental Disabilities Planning Council and by the State Protection & Advocacy System. Public hearings are to be held prior to implementation of the new services.

Maintenance of Effort States providing community supported living arrangements services must maintain current levels of spending for such services to be eligible for participation.

Waiver of Medicaid Requirements Most Medicaid services are required to be comparable throughout the State with respect to the amount, duration and scope of services available to eligible individuals. Under the new limited option, the Secretary is allowed to waive certain Medicaid requirements as needed to carry out the authorized services, and requirements regarding the availability of services statewide.

Minimum Protections The Secretary is required to publish interim regulations by July 1, 1991 and final regulations by October 1, 1992 to protect the health, safety and welfare of individuals receiving community supported living arrangements services. Regulations, through methods other than reliance on State licensure or State quality assurance programs, must include the following assurances:

- persons receiving services must be protected from neglect, physical and sexual abuse and financial exploitation;
- providers of community supported living arrangements services must not hire or otherwise use as caregivers individuals who have been convicted of child or client abuse, neglect or mistreatment, or convicted of a felony involving physical harm, and providers must take all reasonable steps to obtain this information;
- individuals or entities delivering these services must not be "unjustly enriched" as a result of abusive financial arrangements; and
- individuals or entities delivering these services to clients, or relatives of such individuals, may not be the beneficiaries of the life insurance policies purchased by, or on behalf of, such clients.

If providers or services are found out of compliance with the above requirements, the Secretary is to impose a civil money penalty not to exceed \$10,000 for each day of non-compliance.

Limitations of Expenditures \$5 million for FY 1991, \$10 million for FY 1992, \$20 million for FY 1993, \$30 million for FY 1994, \$35 million for FY 1995 and such sums as provided by Congress thereafter.

Effective The option is effective in approved States on or after July 1, 1991, or 30 days after the publication of interim regulations.

IMPLEMENTATION ACTIVITIES:

- Contact your State Mental Retardation/Developmental Disabilities director to determine if he/she intends to apply for this

- new Medicaid limited option for Community Supported Living Arrangements (CSLA). Encourage him/her to do so.
- Monitor the regulatory process by the Health Care Financing Administration and provide public comments at the appropriate time.
 - Be prepared to contact your Governor and Congressional delegation if your State applies and is denied its application. Medicaid state plan options must be available to all states to expand CSLA.

OTHER MEDICAID AMENDMENTS

- Among the numerous technical amendments to Medicaid law within OBRA '90 are the following which impact Medicaid Home and Community Based Waivers (H-CB), Nursing Home Reform and other Community Services:
- Prohibiting the Secretary of the Department of Health & Human Services from limiting the number of hours of respite services (e.g., 30 hours per month) a State may offer under a Medicaid H-CB Waiver.
 - Clarifying Congressional intent that the exclusion of payments for room and board *not* be applied to payments made for the share of rent or food attributable to staff.
 - Requiring that expenditure estimates under Section 1915(d) waivers be adjusted to account for the costs of implementing nursing home reform enacted in OBRA '87.
 - Permitting states to adjust their utilization and expenditure estimates to reflect the implementation of the preadmission screening and resident review program (PASARR) under nursing home reform.
 - Substituting the phrase "specialized services" for "active treatment" for nursing homes that continue to provide services to people with mental retardation and related conditions and mental illness who are determined through PASARR screening to require "specialized services."
 - Codifying the current regulatory definition of Medicaid state optional "rehabilitation services" as "medical or remedial services provided in a facility, home, or other setting, for the maximum reduction of physical or mental disability and restoration of the individual to the best possible functional level."
 - Changing the definition of Medicaid state optional "personal care services" to allow such services *outside* of the home for recipients in the State of Minnesota from 1991-1994 and for all Medicaid recipients in the other forty-nine states in 1995 and thereafter.
 - Creating a new limited state option for states to develop home and community based services for "frail elderly" persons. Similar in nature to the new CSLA for people with developmental disabilities, Congress appropriated \$580 million over five years for this initiative compared to \$100 million over five years for CSLA.

SUPPLEMENTAL SECURITY INCOME IMPROVEMENTS

Elimination of Age Limit on Section 1619 Eligibility To be eligible for the Medicaid-only benefit under the section 1619 work incentive provision, individuals must be under 65 years old. The new law eliminates this age limit and is effective November 5, 1990.

Treatment of impairment-related work expenses Impairment-related work expenses will be considered and deducted from income in determining eligibility and re-eligibility for SSI and state supplements. Previously, these expenses were considered only for people who were already eligible. This provision will take effect on March 5, 1991.

Treatment of Royalties and Honoraria as Earned Income Any royalty which is earned in connection with the publication of an individual's work, or any honorarium which is received for services rendered, would be treated as earned income for purposes of SSI eligibility and benefit determination. This would mean that income from these sources would be disregarded to the same extent that income from other types of earnings is disregarded (i.e., the first \$65 of monthly earnings plus 50 percent of additional earnings).

Previously, royalties received were considered unearned income under the SSI program unless they were from self-employment in a royalty-related trade or business. Honoraria were also considered unearned income. After the first \$20 of unearned income in a month is disregarded, this results in a dollar-for-dollar loss of SSI benefits.

Evaluation of a Child's Disability by Qualified Specialist Present law does not require that a pediatrician or other qualified specialist be involved in the evaluation of a child's disability for purposes of determining SSI eligibility.

The new law requires the Secretary of HHS to make reasonable efforts to ensure that a qualified pediatrician or other specialist in a field of medicine appropriate to the disability of the child evaluate the child's disability. The provision takes effect on May 5, 1991.

Reimbursement for Vocational Rehabilitation Services Under current law, the Secretary of HHS is required to refer individuals with disabilities receiving SSI to State vocational rehabilitation agencies and is authorized to reimburse these agencies for the reasonable and necessary costs of the services from the Social Security Trust Fund. Reimbursement was not allowable for services provided in months for which individuals were not receiving cash benefits but were eligible for Medicaid because they were in section 1619(b) "special status," were in "suspended benefits status," or were receiving Federally administered State supplementary payments but not Federal SSI benefits.

The new provision authorizes reimbursement for vocational rehabilitation services provided in months for which individuals were in "special status" under section 1619(b), were "in suspended benefit status," or were receiving Federally administered State supplemental payments. The provision took effect November 5, 1990 and applies to claims for reimbursement pending on or after that date.

Expansion of Presumptive Eligibility Time Period Under current law, SSA can presume eligibility for up to 3 months while processing applications for SSI on the basis of disability or blindness. The new provision extends the period of presumptive eligibility from 3 to 6 months. The provision is effective on May 5, 1991.

Continuing Disability and Blindness Reviews SSI recipients can participate in the work incentive provision of section 1619 by earning amounts up to the level at which benefits cease (\$857 per month for single persons). Even if they are no longer eligible for cash benefits, they can continue to receive Medicaid.

Previously, participants in the work incentive program were subject to continuing disability or blindness review at certain times often more than once a year. The new law limits continuing disability reviews to no more than once every 12 months. The provision became effective on Nov. 5, 1990.

Trusts and Information to Zebley Class While provisions regarding contributions and trusts for SSI beneficiaries did not pass, the law requires the Secretary of Health & Human Services to inform the family of a child who is awarded a retroactive payment as the result of the decision of the Supreme Court in *Sullivan v. Zebley* that the family may be able to place the payment in a trust for the benefit of a child.

Additionally, Conferees recognized how important it is for families to understand how different forms of income, resources and in-kind support are treated under the SSI program and therefore asked that hearings on the issue be held in the 102nd Congress.

OTHER SOCIAL SECURITY IMPROVEMENTS

Telephone Service Centers Demonstration Projects OBRA '90 authorized three demonstration projects in not less than three telephone service centers requiring that a written receipt be provided to the callers of SSA's toll-free telephone number who request information about potential or current eligibility or entitlement to benefits. The project must begin no later than May 5, 1991.

Social Security Notices The law requires that Social Security notices on or after July 1, 1991, be written in clear and simple language, and in the case of notices from field offices, contain the address and telephone number of the local office which services the individual. If the notice is not produced in the field office, it would have to contain the address of the field office serving the individual and a telephone number through which that office can be reached.

Telephone Access The law calls for the restoration of telephone access to local Social Security offices to the level generally available on September 30, 1989, and requires the Secretary to request the publication of telephone numbers and addresses of local offices which maintain direct telephone access by May 5, 1991. SSA will report by January 1993, on the impact of the provision and a plan to use new technologies to enhance access to SSA, including local offices. The General Accounting Office will report on the level of telephone access to local offices not later than March 5, 1991 and June 5, 1991.

Improvement in Earnings and Benefit Statements Beginning October 1, 1999, SSA will send each year to all workers covered under Social Security a statement concerning earnings and potential benefits. Current law requires statements to be sent every two years beginning October 1999.

Trial Work Period During Rolling 5-year Period for All Disabled Beneficiaries This provision provides that a disabled beneficiary will exhaust a 9-month trial work period if he/she performs services in 9 months in a rolling 60-month period, i.e., within any period of 60 consecutive months. The provision repeals the provision which precludes a re-entitled disabled worker from being eligible for a Trial Work Period.

Continuation of Benefits on Account of Participation in a Non-State Vocational Rehabilitation (VR) Program This provision extends to SSDI and SSI beneficiaries who medically recover while participating in an approved non-State VR program the same benefit continuation rights as those who medically recover while participating in a State VR program until completion of the rehabilitation program.

Auxiliary Benefits Codifies current SSA policy that provides for suspension of benefits to auxiliary beneficiaries when the disabled worker's benefits are suspended because he/she is engaging in substantial gainful activity during the 36-month "extended period of eligibility" that follows the trial work period.

Vocational Rehabilitation Demonstration Projects Requires the Secretary to conduct demonstration projects, which would run for 3 years in at least three states, to assess the advantages and disadvantages of permitting disabled beneficiaries to select a qualified rehabilitation provider, either public or private, to furnish them with services enabling them to engage in substantial gainful activity and to leave the disability rolls.

Recovery of OASDI Overpayments by Means of Reductions in Tax Refunds Permits SSA to recover overpayments from former beneficiaries by means of offsetting income tax refunds under the same authority applicable to other Federal programs.

Notice Requirements The law requires SSA to use clear and simple language in all of its Social Security and SSI notices. SSA must include the local office phone number and address in notices generated by local offices and in notices generated by SSA central offices, must include the same information regarding the local office serving the persons. This provision is effective July 1, 1991.

IMPLEMENTATION ACTIVITIES:

- The OBRA '90 contains numerous other Social Security and SSI provisions. Please contact Jenifer Simpson at (800) USA-5UCP or (202) 842-1266 if you would like a copy of the Social Security Administration's Legislative Bulletin which covers all OBRA '90 provisions.

CHILD CARE

Child Care and Development Block Grant (P.L. 101-508) OBRA '90 authorized a new child care block grant to increase the availability, affordability, and quality of child care. The provision provides financial assistance to low-income, working families to help them find and afford quality child care services for their children. It also contains a provision to enhance the quality and increase the supply of child care available to all parents, including those who receive no financial assistance under the block grant program.

The new law authorizes \$750 million for fiscal year 1991, \$825 million for fiscal year 1992 and \$925 million for 1993.

Child Care Services and Activities Each State must use 75 percent of block grant funds for direct assistance to parents for child care services, to increase the supply and to improve the quality of child care. Block grant funds may only be used by the states for child care services and for activities which directly improve the availability and quality of care for families assisted under the Act.

Twenty-five percent of block grant funds are reserved for quality improvements, early childhood education and latchkey programs. States must use no less than 20 percent of the reserved funds for quality improvement activities. These may include: grants or loans to help providers meet state or local standards; support for resource and referral programs; activities to improve enforcement of state standards and licensing requirements; training and technical assistance; and improvement of salaries for child care providers.

Of the 25 percent of the block grant funds reserved by each State, not less than 75 percent of this reserve shall be allocated to early childhood development and before- and afterschool child care activities.

A State may assign responsibility for the administration of early childhood development and latchkey programs to an agency other than the lead agency, such as an agency that has experience in administration of existing education or preschool programs.

Eligibility Eligible families for child care are those who earn less than 75 percent of the state median income and who have children under age 13. The amount would be based on a sliding fee scale established by the State. Providers are to receive payment at rates which would ensure equal access to services comparable to those provided to children whose care is not publicly subsidized.

Parental Rights Parents will have complete discretion to choose from a wide range of child care arrangements, including care by relatives, churches, synagogues, family providers, centers, schools, and employers. States must offer eligible parents certificates to help to pay for child care of their choice.

Parental choice and involvement are further enhanced through provisions for unlimited parental access to the child during the day and at the child care setting. States must offer consumer education to parents to help them select child care, establish parental complaint procedures and maintain records of substantial parental complaints.

State Plan To receive funds, a State must submit a plan that includes: designation of a lead agency; local consultation regarding development of the plan; coordination with existing programs; use of funds for child care services, including early childhood education and before and after school care, and for activities related to quality and availability; supplement not supplant language; priority for very low income children and children with special needs; and use of a sliding fee scale.

Health and Safety Requirements The State plan must describe minimum health and safety requirements established by the State for all providers and ensure compliance with these requirements. These health and safety requirements include the prevention and control of infectious diseases, premises safety, and minimum health and safety training requirements appropriate to the provider setting.

Licensing and Reporting Requirements All eligible providers will be licensed, regulated, or registered prior to payment and must comply with applicable state and local licensing and regulatory requirements.

The state will conduct a one-time review of licensing and regulatory requirements.

States must report annually to the Secretary of Health and Human Services on such matters as the use of funds, number of children in care, participating providers, caregiver salaries, public-private child care partnership activities, actions to improve availability and quality of care, and state standards.

States that lower standards must provide rationale for this action.

IMPLEMENTATION ACTIVITIES:

- Contact your Governor's Office to determine the name of the State agency and a contact person in that agency who will be responsible for developing and implementing the Child Care and Development Block Grant.
- Advocate for a planning process which includes an advisory committee consisting of families and providers including families with a child with disabilities. This committee should also comment on State standards (current or future) to be sure they include relevant items for children with disabilities.
- Encourage the State to conduct public hearings on the plan.
- Advocate for the plan to include training and technical assistance to generic day care providers to provide "reasonable accommodation" for the inclusion of children with disabilities, as required by the Americans With Disabilities Act.
- Disseminate information to families with low incomes about the availability of the new law as well as the new earned income tax credits described below.

NEW ENTITLEMENT FOR CHILD CARE Federal matching is currently available to States on an entitlement basis to provide child care for AFDC parents who are participating in the JOBS program, and to provide child care for a period of 12 months after the family loses eligibility for AFDC as a result of increased hours of, or increased income from, employment.

Under the new law, States will receive a total of \$300 million per year (\$1.5 billion over five years) beginning in fiscal year 1991 to provide child care to families who need such care in order to work and would otherwise be at risk of becoming dependent on AFDC. Child care providers receiving funds would have to be licensed, regulated or registered, except that no requirements would apply to care provided solely to family members.

In addition \$50 million per year, beginning in fiscal year 1992, has been authorized (but not yet appropriated) to improve State standards, monitor compliance with standards, and provide training to providers. **Half of these funds would be used for training.**

TAX CREDITS FOR LOW-INCOME FAMILIES

Present Law Certain individuals who maintain a home for one or more children are allowed an advance refundable tax credit based on the taxpayer's earned income. In 1990, the Earned Income Tax Credit is equal to 14 percent of the first \$6,810 of earned income. The credit is phased out at a rate of 10 percent of the amount of income eligible for the credit increase with inflation. The Earned Income Tax Credit is not adjusted by reason of family size or the fact that a child is under age one.

Basic Credit Beginning in 1991 the Earned Income Tax Credit increases to a projected maximum in 1994 of \$1,852 for a family with one child and \$2,013 for a family with two or more children, compared with \$1,127 under current law for all family sizes.

Supplemental Credit for Newborns The law provides an additional credit to low-income families with a child under age one, beginning in 1991. The projected maximum credit for newborns would be \$355 in 1991. Eligible families could claim this credit or the dependent care tax credit, but not both. This credit is available for taxable years beginning after December 31, 1991.

Earned Income Tax Credit for Health Insurance Premiums—Present Law Expenses for medical care, including health insurance premiums, are deductible to taxpayers who itemize deductions to the extent the expenses exceed 7.5 percent of adjusted gross income (AGI). Health insurance provided by an employer is excludable from gross income. Self-employed individuals are entitled to deduct only 25 percent of the amount of health insurance expenditures. Present law does not provide a credit for the cost of health insurance.

The new law creates a health tax credit for out-of-pocket costs for health insurance premiums paid for with after-tax dollars including the health insurance premiums of children. The health tax credit is refundable regardless of one's tax contributions but does not cover copayments, deductibles or out-of-pocket medical expenses. The maximum amount of the tax credit is calculated based on a percentage of earned income (up to the maximum amount of creditable earned income in effect for the Earned Income Tax Credit.) For 1991, the maximum health credit is projected to be \$426. The amount of expenses available to be considered by the taxpayer for purposes of the medical expense deduction is reduced dollar-for-dollar by the amount of the allowable tax credit.

LIMITATION IN CHARITABLE DEDUCTIONS FOR HIGH INCOME

Individuals with adjusted gross incomes of \$100,000 or more have a 3 percent floor of their combined deductions for state and local taxes, mortgage interest payment, and charitable contributions. This only applies to income above \$100,000. If a person or couple have an adjusted gross income of \$150,000, they will not be able to claim the first \$1,500 of deductions (3 percent of \$50,000) of income that is above the baseline figure of \$100,000.

The baseline figure of \$100,000 is "indexed to inflation."

GIFTS OF APPRECIATED PROPERTY For 1991, people will be able to get the full market value deduction for gifts of books, manuscripts, works of art and other "tangible property" but not including stock and real estate.

IMPLEMENTATION ACTIVITIES:

- This one year tax deduction for the full market value of books, manuscripts, works of art and other "tangible property", except stocks and real estate, can be very useful to local UCP affiliates and other nonprofit corporations in soliciting donor gifts either for program use or for resale in a fundraising auction, drawing or other special event.

ADA TAX CREDIT FOR SMALL BUSINESS An eligible small business may elect to take a general business credit of up to \$5,000 annually for eligible access expenditures to comply with the requirements of the ADA. The amount which may be taken as a credit is 50 percent of the amount exceeding \$250 but less than \$10,250 per tax year. The credit is effective as of November 5, 1990.

Eligible Small Business The term "eligible small business" means either a business with gross receipts of \$1 million for the taxable year or 30 or fewer full-time (30 hours a week for 20 or more weeks a year) employees.

Eligible Access Expenditure The term "eligible access expenditure" means reasonable expenditures to comply with the ADA.

Expenditures include:

- a) removing architectural, communication, physical, or transportation barriers which prevent a business from being accessible to, or usable by, individuals with disabilities;
- b) providing qualified interpreters or other effective methods of making orally delivered materials available to individuals with hearing impairments;
- c) providing qualified readers, taped texts, and other effective methods of making visually delivered materials available to individuals with visual impairments;
- d) acquiring or modifying equipment or devices for individuals with disabilities; or
- e) providing other similar services, modifications, materials or equipment.

New Construction Facilities first placed in service after November 5, 1990 are not covered by the Act.

Standards The "eligible access expenditures" must concur with the standards of the Architectural and Transportation Barriers Compliance Board and regulations set forth by the Secretary.

Reduction in the allowable tax credit for Architectural and Transportation Barrier Removal Expenses This current tax credit for the removal of architectural and transportation barriers to individuals with disabilities and elderly individuals is reduced from \$35,000 to \$15,000.

IMPLEMENTATION ACTIVITIES:

- Develop a fact sheet on the ADA tax credit for small businesses. Since most employers are small businesses, this credit is a great asset in securing jobs for people with severe disabilities under the provisions of the ADA.
- Disseminate this information to persons with disabilities, family members, board members, local businesses and other interested parties.
- Link the ADA tax credit with the reauthorization of the Targeted Job Tax Credit as a marketing strategy to develop collaborative relationships with small businesses by assisting them in the employment of people with disabilities.

TARGETED JOB TAX CREDIT OBRA '90 extended for one year the Targeted Job Tax Credit (TJTC) to October 1991. TJTC is a critically important incentive for encouraging employers to hire people with disabilities and other eligible persons. Under TJTC, employers can claim a tax credit of 40 percent of the first \$6,000 of qualified wages per eligible employee, with a maximum credit of \$2,400 per employee during the first year of employment. Because the program has previously received numerous annual extensions which serve only to erode employer confidence, it is expected that both the House and Senate will seek a three-year extension of the program in the 102nd Congress.

AUGUSTUS F. HAWKINS HUMAN SERVICES REAUTHORIZATION ACT OF 1990 (P.L. 101-501) This legislation, more commonly referred to as the "HEAD START" reauthorization bill, was signed by President Bush on November 3, 1990. In addition to reauthorizing the Head Start program and authorizing increased funding from \$2.39 billion in FY 1991 (which was appropriated) to reach full funding of \$7.6 billion in FY 1994, this legislation reauthorized several other programs and created several new ones, all of which have potential impact on children with disabilities and their families. Within the Head Start Reauthorization are the following:

- Funding Set Aside for Quality Enhancement.

Each year in which the appropriations exceed the prior year's appropriation, adjusted for inflation, the Secretary of Health & Human Services (HHS) is required to set aside a portion of the increased funds to improve Head Start program quality. In FY 1991 the set-aside is ten percent of appropriated funds and goes to twenty-five percent in subsequent years. At least fifty percent of the set-aside funds must be used to increase salaries and/or benefits for Head Start staff for improving staff recruitment and retention. The other fifty percent of the set-aside may be used for any of the following: (a) to pay transportation costs for Head Start students; (b) to hire additional staff; (c) to purchase non-employee insurance to maintain or expand Head Start services; (d) to supplement other funds provided for staff training; and (e) to make non-structural and minor structural changes and to acquire and install equipment needed to expand the availability of quality of Head Start programs.

The law requires the Secretary of HHS to distribute eighty percent of the set-aside funds in FY 1991 and FY 1992 to states based on a formula basis and to local grantees based on child count. The remaining twenty percent is for use at the Secretary's discretion. In subsequent years, all of the set-aside funds are to be distributed to the States on the current Head Start formula; however, local grantee distribution is at the Secretary's discretion.

- Full-Day, Full-Year Services.

The law clarifies that services may be provided to eligible children on a full-day basis and throughout the year.

- Parent-Child Centers.

The law creates a new early childhood intervention program within Head Start agencies called "Parent Child Centers." The purpose of the Centers is to enhance the

development of children under age 3 (minimum age for Head Start) by providing social, health and educational services to low-income families with children under three. The program may be center-based, home-based, or a combination, but may not detract from services funded to core Head Start enrollees. In FY 1991 the set-aside for this new program is \$30 million which increases to \$33.7 million in FY 1994.

- Head Start Transition Project.

This new initiative sets aside \$20 million for each fiscal year (1991-1994) for grants to Head Start agencies to develop and operate programs to assist low-income elementary school students from Kindergarten through Grade 3 with priority going to children entering their first year of school. The focus of the programs is to assist families obtain such supportive services as health care, immunization and mental health services, and nutrition and social services etc.

- Studies/Report.

The law requires a number of longitudinal studies and status reports to be provided to Congress on the Head Start program.

Within P.L. 101-501 is the Claude Pepper Young Americans Act of 1990. This legislation creates in statute the Administration on Children, Youth and Families within the Department of Health & Human Services. The law also establishes an eighteen-member federal Council on Children, Youth and Families to review and evaluate federal policies and programs affecting children and youth. The Council is required to report annually to the President, Health & Human Services Secretary, Commissioner of Adults, Children, Youth & Families and to Congress with funding and recommendations regarding ways to reduce duplication and enhance coordination of services. This legislation also creates:

- National Center of Family Resources and Support Programs with an authorization level of \$2.3 million in FY 1991. This center is to serve as a national information and data clearinghouse and as a source of training, technical assistance, and material development for family resource and support programs.

- White House Conference on Children, Youth and Families by requiring the President to convene such a conference in 1993 to develop recommendations for further action in the field.

Other programs reauthorized in P.L. 101-501 are: The Community Food and Nutrition Program; The Community Services Block Grant Program (CSBG); Follow Through; The Low-Income Home Energy Assistance Program; Comprehensive Child Development Centers and several others.

IMPLEMENTATION ACTIVITIES:

- Obtain a copy of P.L. 101-501 from your U.S. Senator or Congressperson. The Head Start program is one of President Bush's top domestic priorities and is expected to continue or receive significant increases in appropriations.

- Contact your local and state Head Start agencies to advocate for the inclusion of funding for training and technical assistance in meeting the needs of children with disabilities and their families as well as funding for structural changes and equipment to accommodate youngsters with disabilities in

their programs as part of their plans for using set-aside funds to improve program quality. **Head Start is required to have an enrollment of at least ten percent of children with disabilities.**

- Contact your local and state Head Start agencies to encourage their application for new Parent-Child Center funding and to advocate for the inclusion of services and supports (in coordination with the State's Interagency Coordinating Council planning for implementation of Part H of P.L. 99-457), for infants and toddlers with disabilities and their families.

- Continue to work with your local and state Head Start agencies in the expansion and enhancement of their programs and the inclusion of quality services for children with disabilities and their families.

DISAPPOINTMENTS OF THE 101ST CONGRESS

CIVIL RIGHTS ACT OF 1990 The Civil Rights Act of 1990 won approval in the U.S. House and Senate in 1990; however, the President vetoed the bill. Congress failed to override the Presidential veto by one vote.

The legislation is designed to restore civil rights employment protections under the 1964 Civil Rights Act and Section 1981 of the 1866 Civil Rights law, which were weakened by several Supreme Court decisions issued in 1989. The 1990 legislation would also strengthen Title VII of the 1964 Act by providing both compensatory and punitive damages for those who have been intentionally discriminated against on the basis of not only race but for reasons of gender, religion, ethnic origins or disability as well.

The 1990 bill also had implications under the Americans with Disabilities Act. To ensure equal treatment in the resolution of discrimination cases against all protected "classes" of individuals, the ADA stipulates that persons who have been discriminated against on the basis of disability shall have all the rights and remedies available to them as found in the 1990 Civil Rights Act. The civil rights community will seek to gain passage of similar legislation in the 102nd Congress.

FAMILY MEDICAL LEAVE ACT (FMLA) In July 1990, the 101st Congress sustained President Bush's veto of a bill that would require employers to grant unpaid leave to workers caring for newborn children or sick relatives. The House vote, 232-195, fell 54 short of the two-thirds necessary to override the veto.

This legislation would have protected jobs for workers who take up to 12 weeks of unpaid leave to care for a newborn, adopted or ill child. It also would have covered time off for personal medical emergencies, including caring for family members.

MEDICAID HOME AND COMMUNITY QUALITY SERVICES ACT OF 1989 Although Senator Lloyd Bentsen (TX), Chairman of the Senate Finance Committee, promised Senator John Chafee (RI), sponsor of S.384, the Medicaid Home and Community Quality Services Act of 1989, that the Committee would mark up the bill during 1990. As the summer came to an end, it became

increasingly apparent that this legislation would only be considered—if at all—during the omnibus budget reconciliation process in the fall.

S. 384, a vastly different piece of legislation from Senator's Chafee's earlier bills, and one strongly endorsed by UCPA with two technical amendments, proposed to freeze the amount of federal Medicaid matching funds going to States for Medicaid ICF/MR facilities of greater than fifteen persons at the then current level one year after the bill would have been enacted. In exchange, the federal funds that would have been spent on growth in the "large" ICF/MR program in subsequent years would have been redirected to a five year phase-in State/federal Medicaid entitlement for persons with severe disabilities and would have consisted of family support services; community living services of no more than three times average family census size; specialized vocational services including long-term supported employment funding; independent case management services; and a comprehensive state quality assurance program.

Although endorsed by over twenty-five national organizations, S. 384 was primarily opposed by parents of children in large ICF/MR facilities and state employee unions. During September of 1990, concerns about the cost of implementations became the policy issue. That is, the funds for the phased-in five year mandated entitlement would all have to be new federal funds. The estimates for this expenditure ranged from \$1.0 billion over five years to billions over 5 years, neither of which were palatable in a political climate of alleged deficit reduction.

As a result of these issues, advocates worked with the staffs of Senators Chafee and Bentsen to carve out a new initiative consistent with current best practice and values in the field. After much intense debate and redrafting, the Senate Finance Committee was willing to expend only \$100 million over five years which resulted in the new limited State option for Community Supported Living Arrangements (see p. 7 of this issue of W/FW).

ACCESS TO HEALTH CARE Congress repealed the Catastrophic Health Insurance Act of 1988 through Public Law 101-234 under intense resistance from seniors who resented the precedent that improvements in the Medicare benefits would be financed entirely by higher premiums on persons over 65. Although the Catastrophic Health Insurance Act would have filled certain important gaps in Medicare by: (1) expanding hospital and skilled nursing facility benefits; (2) setting a maximum on out-of-pocket expenses; and (3) creating a new outpatient prescription drug benefit, long term home care would have remained uncovered by Medicare. To remedy this problem and to create universal access to health care, Congress created the Pepper Commission to develop a workable plan to address the rapidly growing crisis in health and long term care.

The Pepper Commission (also known as the U.S. Bipartisan Commission on Comprehensive Health Care) developed recommendations for building universal coverage by reforming and extending the job-based private health insurance system and creating an alternative public plan. The job-based health insurance system would consist

of: (1) a "pay or play" employer mandate with tax credits/subsidies for small employers; (2) a federally specified minimum benefit package for preventive and primary care as well as other physician and hospital care (but not for drugs, rehabilitation, durable medical equipment or extended psychiatric care); (3) sliding scale premiums; (4) cost-sharing requirements with limits and managed care for cost containment; and (5) national practice guidelines. In addition, the Pepper Commission recommended health insurance market reforms which would prohibit medical underwriting, rating, and marketing practices by private health insurers which are undermining the integrity of the small group market. The public system for persons who are poor and unemployed and those not in job-based insurance plans would consist of: (1) replacing Medicaid through a system entirely federally funded, severed from the welfare system, with uniform eligibility requirements and benefits among the states, and Medicare reimbursement levels; and (2) expanding public coverage for certain vulnerable groups, such as persons with disabilities, who may need case management for coordinating social and health services. As evidence that the Pepper Commission went as far as it could go in reflecting a current consensus in Congress, the bipartisan commission split 8-7 on its recommendations for phasing in a universal right to health care.

While many in Congress continue to proclaim that there is little support for a fundamental change in health care financing, in the United States health care expenditures increased by \$50 billion each year while 37 million persons remain uninsured. It is inescapable that Congress will notice that private health insurance companies pay for less than one-third of all health care expenditures, while the Federal and State governments pay for over 40 percent of the aggregate cost of health care (another third is paid out-of-pocket by consumers). As Congress seeks to balance the problem of uncontrolled health care costs on the one hand, and barriers to access on the other, the American public has yet to recognize that the right of all Americans to comprehensive health care is ultimately at stake.

Outlook for the 102nd Congress

by Allan I. Bergman

The 102nd Session of Congress is scheduled to convene formally on Thursday January 3, 1991. President Bush will deliver his State Of The Union Address on January 29th, and present his Fiscal Year 1992 budget on February 4th, 1991. As a result of the 1990 election and the retirement of several senior Members of Congress, the membership of a number of Senate and House Committees will be changing. Democratic and Republican Senate and House Members recently elected key leadership for the 102nd Congress with several significant changes.

International issues, including the recent resignation of the Soviet Union's Foreign Minister, Edvard Shevardnadze, the increasing tensions between the United States and Iraq over the Iraqi invasion of Kuwait and the potential for major war, will dominate the early business of the Congress. On the domestic front, the continuing "lull" in the economy will be declared a recession and debate concerning lowering interest rates, statistics reflecting increasing unemployment, stringent standards for credit, the potential insolvency of many commercial banks and the need for the government (taxpayers) to bail out the Federal Deposit Insurance Corporation (as we are doing for the Savings & Loan institutions) will all get substantial attention from Congress.

In spite of all of these major policy issues which will capture the media during 1991 and 1992, Congress will engage in public policy debate and make decisions impacting the lives of American citizens with disabilities and their families for the remainder of the decade. Most of the domestic policy agenda items, however, will be discussed within the context of the budget deficit agreements achieved in the Omnibus Budget Reconciliation Act of 1990 (OBRA '90, P.L. 101-508, see *Word From Washington*, September/October, 1990).

• FY 1992 Budget and Appropriations Process.

The FY 1992 budget and appropriations figures are contained in OBRA '90. Most federal programs impacting children and adults with disabilities and their families (other than Social Security, Medicaid and Medicare) fall into the category of "domestic discretionary." The total funding for domestic discretionary programs can increase only by an annual cost-of-living figure, estimated at five percent. At a practical level, this means that the House and Senate Budget Committees have no responsibilities for the FY '92 budget figures and, more importantly, that the Appropriations Committees have very little ability to make changes. This is so because the new budget process "triggers" a mini-sequestration on actual and projected expenditures rather than on the projected deficit. Moreover, the sequestration process is under the control of the Office of Management and Budget. Therefore if, for example, the Appropriations Committee with jurisdiction for funding Part H of P.L. 99-457 (early intervention for infants, toddlers and their families) wishes to increase the appropriations more than the five percent cost-of-living amount, the Committee literally must "take" the funds from another program under its jurisdiction. The Committee **cannot exceed the five percent total CAP even if it wishes to propose an offsetting source of new revenue.** Because of the redefined budget process, we do not expect to see a budget reconciliation bill since it will be unnecessary. The lack of an OBRA '91 may impact many other areas, including Medicaid expansions, since all such changes have occurred in similar bills since 1980.

• Reauthorization of the Rehabilitation Act.

The Rehabilitation Act will expire on September 30, 1991. Both the Senate Subcommittee on Disability Policy and the House Subcommittee on Select Education expect to hold hearings on this legislation in early spring of 1991. This legislation governs the basic state and federal vocational rehabilitation program in each State,

contains the authority for the National Institute on Disability and Rehabilitation Research, and contains the authority for independent living centers and supported employment. Last authorized in 1986, Congress amended the law to make rehabilitation engineering part of the vocational rehabilitation process and to create supported employment as Title VI (c). During the past five years, people with the most severe disabilities have continued to prove that, with appropriate supports, no one who wants to work is any longer "non-feasible" for employment. UCPA and other national disability organizations have begun discussions regarding the need for major reformulation of the law consistent with the value, best practices and increased empowerment of persons with disabilities to take control of their own lives.

There is also discussion of creating a new Title VIII in the Act, for Personal Assistance Services, in which funds would be authorized for personal assistance from attendants, interpreters or readers to individuals meeting disability and income eligibility standards.

• Reauthorization of Part H, P.L. 99-457.

Part H of P.L. 99-457, early intervention for infants and toddlers with disabilities and their families, will expire on September 30, 1991. The Senate Subcommittee on Disability Policy and the House Subcommittee on Select Education intend to hold hearings in the spring of 1991 on Part H. Although most States have expended significant energy in moving toward a 1991-1992 implementation of a statewide entitlement, few states appear capable of making the resource commitments. The reauthorization process will focus on a number of technical/semantic changes, whether a less intense program should be offered to infants and toddlers labeled "at risk," Medicaid financing issues and future federal funding. Early indications from the Hill suggest that the final implementation timetable will not be changed so that those States which are prepared are rewarded; however, States which cannot make the fifth year commitment may be allowed to continue to apply for and receive federal funds to continue planning.

• Reauthorization of the Children With Disabilities Temporary Care Act.

This legislation, just reauthorized for two years in 1989 (see this issue of *Word From Washington*, page --) will be heard by the Senate Select Subcommittee on Children, Youth and Families and the House Subcommittee on Select Education. In view of the continuing soundness of the many small pilot projects throughout the country funded by this legislation, there is increasing interest to redirect the program from a temporary one to a permanent one. In the latter case, UCPA will urge the expansion of the program from respite care and crisis nurseries to a more comprehensive program of family support for families with a child with a disability. Early discussions with Congressional and Executive agency staff indicate interest in an expansion and reformulation of the program during reauthorization.

• Medicaid Reform.

The 1991 agenda for Medicaid Reform will be significantly different from prior legislation. Because of the adamant opposition of Senator Lloyd Bentsen (TX), Chairman of the Senate Finance Committee, and

Representative Henry Waxman (CA) to the imposition of any cap, freeze or limit on federal Medicaid expenditures for the ICFs/MR program (see this issue of *Word From Washington*, page ---), the strong resistance of the National Governor's Association to new Medicaid mandates, the budget dilemma and the expectation of no budget reconciliation bill in 1991, major Medicaid activities probably will not occur before the summer and fall of 1992. Disability organizations may, however, work in concert with the National Governor's Association to expand the new Medicaid limited state option for Community Supported Living Arrangements (CSLA) from two to eight states to an option for all fifty states. Some disability advocates are suggesting a new, phased-in mandated program building upon CSLA, adding supported employment services (long-term), independent service coordination (case management) services and a comprehensive quality assurance component.

• Civil Rights Act of 1991.

Leading proponents of the Civil Rights Act of 1990 will reintroduce early in 1991 the legislation passed both by the Senate and the House in 1990, with the intent of achieving a two-thirds majority to override an anticipated veto by President Bush.

• Family Medicaid Leave Act (FMLA).

House sponsors plan to reintroduce the FMLA on January 3, 1991, the first day of business for the 102nd Congress. The bill will be identical to the legislation that was passed by a majority bi-partisan effort in May of 1990. This legislation provides for up to twelve weeks of unpaid leave annually to workers who need time to care for a newborn or newly adopted child, for the serious health condition (e.g., disability) of a child, spouse or parent, or to recover from their own serious health conditions. Leaders in the Senate plan to introduce a similar bill on January 23 with two exceptions: the Senate bill equalizes leave rights for federal and private sector employees, and it does not contain an exemption for "key employees."

• Health Care and Insurance.

A number of bills are expected to be introduced throughout 1991 in response to the report of the Pepper Commission and the continuing concern and crisis in health care for all Americans including Americans with disabilities. The 102nd Congress also will consider the Kennedy-Waxman Basic Health Benefits bill, new proposals by the Health Insurance Association of America to reform the health insurance system, and a growing interest in a single payer system, as currently exists in Canada. With the defeat of Representative Douglas Walgren's (PA) bid for reelection to his seventh term, who, in his post as the Chairman of the House Subcommittee on Commerce, Consumer Protection, and Competitiveness, was providing leadership on access to health insurance for persons with disabilities and their families, disability advocates will need to cultivate new advocates in Congress. More importantly, UCPA and the disability community will be working to assure inclusion of our issues in the broader health care debates.

Washington Reports

• Access to Telecommunications.

Title IV of the ADA added a new Section 225 to the Communications Act of 1934, creating a **right to access** to the nation's telecommunications network on behalf of TDD users; however, the legislation does not expressly require access for other persons, such as people with cerebral palsy, who are denied equal access to the telecommunications network. Discussions are underway to introduce legislation to redefine "universal access" in the Telecommunications Act of 1934 as well as legislation to lift the restrictions which now prevent the seven "Baby Bells" from originating information services, manufacturing equipment and related areas since these restrictions are viewed as hindering progress toward an accessible telecommunications network.

UCPA LEGISLATIVE POLICY PROCESS

During the past few weeks, UCPA key volunteers and affiliate executive directors received a survey to rank priorities for the 102nd session of Congress. In addition, these same individuals will receive in-depth surveys on both the reauthorization of the Rehabilitation Act and Part H of P.L. 99-457. All of these data will be analyzed and reported for deliberation by the UCPA's twelve-member national Governmental Activities Committee during their meeting in Washington, D.C., in February 1991. This UCPA committee will develop and adopt a UCPA legislative 'Platform and Priorities' for the 102nd session of Congress which becomes the marching orders for UCPA's Governmental Activities staff. The Platform will be published in the January/February 1991 issue of *Word From Washington*.

WORD FROM WASHINGTON SUBSCRIPTION FORM

- Yes, I want to receive *Word From Washington*. Enclosed is my check for \$55 for one year.
- I am a person with disabilities or the parent of someone with disabilities. Enclosed is my check for \$25 for a one-year subscription to *Word From Washington*.

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Word from Washington

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202.842.1266

Maureen West
SH 141
Washington DC 20510

July 19, 1991

TO: Senator Dole
FROM: Mo West
SUBJECT: ADA Anniversary/Floor Statement

As you know, next week is the first year anniversary of the passage of the ADA. There are a host of activities going on to celebrate its passage. The White House I understand in putting together a Rose Garden ceremony on Friday afternoon. I am preparing talking points for you to have for the various events you will be attending.

Perhaps you might want to speak in morning business on July 26 (date of enactment) about ADA's passage as well as the expediency to which the Federal agencies were able to get the regulations completed and disseminated on time. Not one agency (Justice, EEOC, or the FCC) has neglected to get their regulations out. That's quite impressive given it took over eight years to write the regulations on implementation of Section 504 of the Rehab Act. There are many people who deserve recognition.

Will you speak to these issues if I prepare a floor statement for July 26 (ADA anniversary date)?

Yes No

September 18, 1992

TO: Senator Dole/Clarkson
FROM: Mo West
SUBJECT: Interview for ADA Film

The Woolworth Corp. together with the Beach Center on Disabilities at the University of Kansas are producing a film for CEO's of major U.S. corporations and Fortune 500 companies on "supported employment" and the ADA. The film producers would like to come up to the Capitol on Wednesday, September 23 and interview you on camera about employment of people with disabilities to be incorporated into the film. Lenny Rotman, the film producer would ask you three questions focusing on -- ADA and employment of people with disabilities -- changing attitudes about the employee with a disability -- and providing the necessary support to employers to ensure access to the workforce by people with disabilities.

Should you agree to the interview, I will give you the three questions they will ask with prepared responses. The folks at KU are very hopeful you will take part in the film. The Turnbull family from Lawrence will be spotlighted in the film and their son Jason who has mental retardation and has been working in the Lawrence, KS community through a supported employment program.

Will you agree to be interviewed for the film?

Yes No

Lenny Rotman 617-267-0391

cc: Clarkson & Walt

*4⁰⁰ pm. Wed. Sept. 30
hide away?*

*Journal Graphics / 301-656-4068
303- Gordon*

NORTHERN LIGHT PRODUCTIONS

Motion Pictures

Film & Tape

FAX COVER SHEET

Date: 9/15/92

Time: 1:15PM

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

NAME: MAUREEN WEST

FIRM: OFFICE OF SENATOR ROBERT DOLE

FAX #: 202-224-6721

FROM:

SENDER'S NAME: LENNY ROTMAN

We are transmitting 2 pages (including this cover letter).

If you do not receive all of the pages, please call back FAX sender as soon as possible.

Firm Telephone: (617) 267-0391

FAX Telephone: (617) 267-8957

COMMENTS:

NORTHERN LIGHT
PRODUCTIONS

Motion Pictures

Film & Tape

Maureen West
Office of Senator Robert Dole
Room 141 Hart
Senate Building
Washington, DC 20510

September 15, 1992

Dear Maureen,

Northern Light Productions is presently on contract with the Woolworth Corporation to produce a half hour long film about the employability of people with developmental disabilities.

Our objective is to dispel any myths Chief Executive Officers may have about hiring people with developmental disabilities through information from experts and from examples of successful employment.

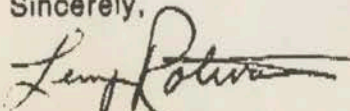
The Woolworth Corporation, will be distributing the program with an information booklet to Corporate America through their network of 6,000 retail outlets.

We would appreciate the opportunity to ask Senator Dole the following questions:

- What is the primary message we need to communicate to employers about hiring people with developmental disabilities?
- What does ADA mean to employers, and how should they be interpreting this new civil rights legislation?
- Can you discuss stigma vs. ability within the context of our subject for a CEO audience?
- What are the means by which employers can become better informed about developmentally disabled people, and the transition of the developmentally disabled to the workplace?

Thank you very much. Look forward to hearing back from you shortly.

Sincerely,



Producer/General Manager

NORTHERN LIGHT
FILM & VIDEO

1000 North 17th Street
Washington, DC 20036

Mr. Mueser
Office of Senator Robert Dole
Room 141 Hart
Senate Building
Washington, DC 20510

September 15, 1992

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Northern Light Productions is presently in contact with the Woolworth Corporation to produce a half hour long film about the employability of people with developmental disabilities.

Our objective is to dispel any myths Chief Executive Officers may have about hiring people with developmental disabilities through information from experts and from examples of successful employment.

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We would appreciate the opportunity to ask Senator Dole the following questions:
-What is the primary message we need to communicate to employers about hiring people with developmental disabilities?

and how should they be

Handwritten notes on a yellow sticky note:
Pat's friend
Name: ~~Pat's friend~~ Netherlands
362-8165
letter to the
09 13 part of
1 Sat Sept 19
DSU WK Hayes
833
456
299

October 26, 1990

TO: Senator Dole
FROM: Maureen West
SUBJECT: Assistance for Disability-Related Expenditures

The recently enacted Americans with Disabilities Act (ADA) will require businesses and other public facilities to make "reasonable accommodations" for persons with disabilities. In some cases this could mean that a business will be required to make expenditures to adapt a job or service to a person with a disability.

A number of legislative initiatives designed to ease the financial burden placed on businesses by ADA were introduced this session. Outlined below are four programs you sponsored that provide financial and/or technical assistance to businesses for disability-related expenditures: EEOC technical assistance, targeted jobs tax credit (TJTC), Pryor-Kohl disability access tax credit, and Section 190 deductions.

Technical Assistance

You authored a technical assistance amendment to ADA that would assist with its implementation. This amendment directs the Equal Employment Opportunity Commission (EEOC) to clarify and answer questions regarding the rights of persons with disabilities and the obligations of businesses under ADA. This technical assistance amendment was also included in the Commerce, Justice, State, and Judiciary Appropriations Bill. The conference agreement includes \$1 million for the implementation of a technical assistance program as authorized by section 506 of ADA.

Targeted Jobs Tax Credit

The targeted jobs tax credit, which aims to increase the employability of disadvantaged youth and persons with disabilities, has been extended for another 15 months. Many businesses in Kansas have successfully utilized this program to employ people with disabilities. The extension will further ease the burden faced by businesses in accommodating persons with disabilities as required by ADA.

Pryor-Kohl Disability Access Tax Credit

The tax credit is designed to assist the small business community with the cost of ADA compliance. The credit applies to any ADA-related expenditures for the accommodation of persons with disabilities. ADA-related expenditures include the following: removal of architectural, transportation, physical, or

communications barriers; procurement or modification of equipment and/or services; translation of materials for the visually or hearing impaired; personal assistant services; technical support and training for business and employee compliance; auxiliary aids and services. The variety of eligible disability related expenditures will enable businesses to more easily accommodate persons with disabilities.

Small businesses are responsible for the first \$250 of expense to accommodate the disabled. Costs above \$250 are eligible for a 50% non-refundable credit, up to \$10,250. Any ADA-disability related expenditure above \$10,250 is eligible for a more restricted deduction of \$15,000. If the entire access tax credit is not used in one year, it can be accumulated and carried forward to subsequent years or carried back to previous tax years.

Only small businesses are eligible to receive tax credit. A small business is defined as any business with less than \$1 million gross receipts or fewer than 30 full time employees qualify for the credit. Eligibility for the tax credit is narrowly defined for several reasons. Small businesses will be called on most often to accommodate and employ persons with disabilities. Small businesses have limited resources and, therefore, require the most technical and financial assistance to comply with ADA. In addition, all other businesses qualify for the \$15,000 deduction.

The access tax credit is revenue neutral. The cost of this new credit, however, is offset by lowering the deduction in Section 190 of the Internal Revenue Code to \$15,000.

Section 190

Section 190 of the Internal Revenue Code, which you authored, provides a \$35,000 deduction for disability related expenditures. A disability related expenditure is defined as the removal of architectural and transportation barriers to the disabled and elderly. Given a number of assumptions related to company size and income, large businesses have tended to benefit more from the Section 190 deduction.

The Pryor-Kohl Disability Access Tax Credit (as described above) lowers the deduction to \$15,000. Justification for this change to the Section 190 deduction is based upon two arguments. First, Section 190 does not focus assistance effectively to small businesses. Small businesses, however, will bear the burden of ADA and will most need help. And second, Section 190 deductions for disability related expenditures apply to only a limited class of expenditures.

Consequently, Section 190 provides a \$15,000 deduction for disability related expenditures.

This document is from the collections at the Dole Archives, University of Kansas
<http://dolearchives.ku.edu>

MARCH FOR AMERICANS WITH DISABILITIES ACT

PER Ms. West Sen. Wole

MEDIA ADVISORY

March 9, 1990

FOR IMMEDIATE RELEASE

For further information

Contact: 3/10 & 3/11

Sharon Mistler/Mary Johnson
(703) 281-5044

Mike Augberger (202) 289-5959

3/12/90

Tari Susan Hartman (703) 525-3268

Mary Johnson (202) 289-5959

LARGEST DISABILITY RIGHTS GATHERING IN HISTORY KICKS OFF WEEK LONG ACTIVITIES IN SUPPORT OF THE AMERICANS WITH DISABILITIES ACT (ADA).

What: Over 1,000 disability rights supporters march for House passage of the Americans with Disabilities Act (HR 2273) - with no weakening amendments.

Who: Disability rights supporters from over 20 states join with key congressional supporters of the ADA. Activities coordinated by American Disabled for Accessible Public Transit (ADAPT).

MONDAY, MARCH 12, 1990

When/Where: 11:00 a.m. - Staging for March Lafayette Park
12:00 p.m. - March from White House to Capitol
1:30 p.m. - Rally at Capitol - West Steps

Why: "Call for action" to support the Americans with Disabilities Act (HR 2273/ S. 933), historic civil rights legislation which seeks to end discrimination against 43 million Americans with disabilities.

The bill, which carries the support of President Bush, was passed overwhelmingly by the Senate and is expected to reach the floor of the House of Representatives this spring.

March 9, 1990

TO: Senator Dole
FROM: Maureen West
SUBJECT: Senate ADA Bill

The Act specifically defines what does constitute discrimination, including various types of intentional and unintentional exclusion; segregation; benefits and services; architectural, transportation, and communication barriers; and failure to make reasonable accommodations.

EMPLOYMENT:

In employment, the ADA will apply to businesses that employ 25 or more employees for the first two years and 15 or more employees thereafter. Employers would have to provide reasonable accommodations for workers with disabilities unless it would pose an undue hardship.

The ADA incorporates many of the standards of discrimination set forth in regulations implementing Section 504 of the Rehabilitation Act, including the obligation to provide reasonable accommodations unless it would pose an undue hardship on the operation of the business.

Persons currently using drugs would not be afforded protections under this legislation and only those persons with AIDS that pose a "direct threat" would be exempted from protection.

PUBLIC SERVICES:

All new public transportation must be accessible unless a transit authority can demonstrate that no lifts are available from qualified manufacturers. A public transit authority must also provide paratransit for those individuals who cannot use mainline accessible transportation unless such supplementary services would pose an undue financial burden on a transit authority.

Transportation compliance becomes effective 18 months after enactment except for the obligation of new public buses to be accessible, which takes effect 30 days after enactment.

PUBLIC ACCOMMODATIONS:

With respect to Public Accommodations (which includes all those engaged in commerce) no individual shall be discriminated by inaccessibility or denial of accommodations to utilize services, facilities, or privileges of any public or private entity.

Public accommodations include: restaurants, hotels, doctor's offices, pharmacies, grocery stores.

Existing facilities must be made accessible if the changes are "readily achievable" i.e., easily accomplishable without much difficulty or expense. Auxiliary aids and services must be provided unless such provision would fundamentally alter the nature of the program or cause an undue burden.

New construction and major renovations must be designed and constructed to be readily accessible and usable by people with disabilities.

Under public accommodations the ADA also prohibits discrimination in public transportation by private transportation companies (i.e. Greyhound, Trailways etc...). This would include the failure to make new over-the-road buses accessible five years after the date of enactment for large providers and six years for small providers. The Office of Technology Assessment Study must complete a study 18 months after enactment in determining the feasibility of this requirement.

For public accommodations discrimination that have become a pattern or practice -- the Attorney General can seek monetary damages and civil penalties of up to \$50,000 for initial violations and \$100,000 for violations thereafter.

Public accommodations requirements become effective 18 months after enactment.

TELECOMMUNICATIONS:

Any telephone services offered to the general public must include interstate and intrastate telecommunication relay services so that services provide deaf individuals to use nonvoice terminal devices (TTD phones)..

March 9, 1990

TO: Senator Dole
FROM: Mo West
SUBJECT: House Update

The House is considering the Senate ADA version. To date, there have been no major substantive changes made to the bill. The four Committees that have jurisdiction over the ADA are

Education and Labor
Energy and Commerce
Judiciary
Public Works and Transportation

Education & Labor has already held a full Committee mark up which passed with only minor technical changes from the Senate version.

The remaining Committees are planning full Committee mark ups in the next two months.

The Small Business Committee recently held a hearing to air their concerns. The House Small Business Committee has no jurisdiction over this legislation.

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March 9, 1990

TO: Senator Dole
FROM: Mo West
SUBJECT: Questions from Good Morning America

I spoke with staff at Good Morning America to get an idea of the questions you could encounter. Forrest Sawyer will probably interview you for approximately 4-5 minutes. Here are the questions and some suggested answers:

Q: "MANY HAVE CALLED THE AMERICANS WITH DISABILITIES ACT (ADA) THE 'EMANCIPATION PROCLAMATION' FOR PEOPLE WITH DISABILITIES. WHAT WILL THIS BILL DO"?

A: The ADA will extend to this largest yet least protected minority the same civil rights protections that have been afforded women and minorities in our society. The ADA is comprehensive legislation requiring equal opportunity for people with disabilities in every segment of society with enforceable standards to prohibit discrimination.

Q: "WHY DO PEOPLE WITH DISABILITIES NEED THIS BILL"?

A: The major obstacles facing people with disabilities are not their specific disabilities but rather the artificial barriers imposed by others. People with disabilities have been excluded from the mainstream of our society from lack of access and imposed attitudinal barriers.

Progress has been made in the last 15 years by mainstreaming education and with last recent passage of the Fair Housing Act guaranteeing fair and accessible housing for people with disabilities. It's time to finish the agenda to provide full access in all aspects of society.

Q: "THE ADA OVERWHELMINGLY PASSED THE SENATE EARLIER THIS YEAR WITH YOUR COSPONSORSHIP AND THE FULL SUPPORT OF THE PRESIDENT. WHY TODAY'S "March on Washington" BY PEOPLE WITH DISABILITIES"?

A: It's a first amendment right and this legislation is important to people with disabilities who are eager for its passage. People with disabilities have joined forces and empowered themselves for change and control of their destiny. Today's March will bring their message to members of the House considering its passage in the upcoming weeks.

Q: "WHY HASN'T THE HOUSE PASSED THIS LEGISLATION YET"?

A: The house is carefully studying the bill and perhaps fine tuning its provisions. Four House Committees have jurisdiction over this bill as opposed to one Committee in the Senate. There are three Committees left to consider this bill but I anticipate we will see passage this year.

A: "IS THERE OPPOSITION TO THE BILL, AND IF SO, WHAT?"

Q: I wouldn't say there is opposition, however, there are legitimate concerns. The vision of a barrier free society can be expensive to small businessmen. Understanding the responsibility of providing reasonable accommodations to ensure full access is what we all want to comprehend and successfully carry out.

I offered an amendment to ADA enabling the responsible Federal agencies to establish a strong government-wide technical assistance program to educate people with disabilities of their new rights and businesses to comprehend the nature of their responsibilities. Small businesses must provide accommodations to employees with disabilities and their businesses must be accessible. The Federal government for 15 years has successfully provided accommodations to disabled employees and full access to buildings and public accommodations -- so there is experience to utilize in meeting ADA requirements.

Q: "WHAT ARE THE FEARS ASSOCIATED WITH THE ADA"?

A: Cost and unnecessary litigation are the areas small businesses fear. This is new legislation and a mandate for change -- education is key to alleviating the fear that exists. The House is considering tax incentives for businesses.

Q: "PROPONENTS OF THE BILL PROMISE SAVINGS FOR TAXPAYERS AND LESS DEPENDENCY ON THE GOVERNMENT DUE TO A WORKFORCE THAT INCLUDES PEOPLE WITH DISABILITIES. -- WHAT WILL THIS BILL MEAN FOR PEOPLE WITH DISABILITIES WHO WANT TO WORK?"

A: ADA is good business and will create opportunities which will enable people with disabilities to become taxpayers instead of tax consumers. Not only is the ADA good for people with disabilities but it's good for employers.

Q: "WHAT WILL THIS BILL MEAN FOR PEOPLE WITH DISABILITIES WHO WANT TO WORK"?

A: Dignity, Independence and Respect. People with disabilities represent an untapped labor pool of talent and expertise for employers in this country.

Q: "WHAT WILL IT MEAN FOR THEIR DAILY LIVES AND WHAT OPPORTUNITIES WILL BE AVAILABLE"?

A: It means people with disabilities will have equal opportunity to participate fully in our society. It means access and integration with their non-disabled peers through the provision of accommodations at the workplace, accessible transportation to and from work and accessible entrance to public places.

Q: "WHAT WOULD BE THE MESSAGE TO YOUR HOUSE COLLEAGUES ON THE IMPORTANCE OF PASSING THIS LEGISLATION"?

A: The Senate is eager to meet the House in conference on the bill. Our society needs the skills and abilities of all people if we are going to maintain a competitive and global market. The ADA will bring this country a stronger inclusive workforce and consumer productivity.

Q: "MANY EMPLOYERS ARE FEARFUL OF EMPLOYING PEOPLE WITH DISABILITIES. HOW WOULD THIS BILL CHANGE THAT AND WHAT MESSAGE CAN YOU SEND TO EMPLOYERS ABOUT EMPLOYEES WITH DISABILITIES?"

A: This legislation calls for a four year phase in providing the necessary accommodations at the worksite or in providing access to their facility. Accommodations do not have to be expensive to be effective and Congress is looking at incentives to assist them with their responsibilities.

The eradication of discrimination in employment of people with disabilities will result in a stronger workforce and lessen dependency on the welfare system. People with disabilities have been saying that their major obstacles are not inherent in their disabilities but rather arise from barriers that have been externally imposed.

Good Morning America would like to close on the importance of the ADA and employing people with disabilities.

March 9, 1990

TO: Senator Dole
FROM: Maureen West
SUBJECT: Senate ADA Bill

The Act specifically defines what does constitute discrimination, including various types of intentional and unintentional exclusion; segregation; benefits and services; architectural, transportation, and communication barriers; and failure to make reasonable accommodations.

EMPLOYMENT:

In employment, the ADA will apply to businesses that employ 25 or more employers for the first two years and 15 or more employers thereafter. Employers would have to provide reasonable accommodations for workers with disabilities unless it would pose an undue hardship.

The ADA incorporates many of the standards of discrimination set forth in regulations implementing Section 504 of the Rehabilitation Act, including the obligation to provide reasonable accommodations unless it would pose an undue hardship on the operation of the business.

Persons currently using drugs would not be afforded protections under this legislation and only those persons with AIDS that pose a "direct threat" would be exempted from protection.

PUBLIC SERVICES:

All new public transportation must be accessible unless a transit authority can demonstrate that no lifts are available from qualified manufacturers. A public transit authority must also provide paratransit for those individuals who cannot use mainline accessible transportation unless such supplementary services would pose an undue financial burden on a transit authority.

Transportation compliance becomes effective 18 months after enactment except for the obligation of new public buses to be accessible, which takes effect 30 days after enactment.

PUBLIC ACCOMMODATIONS:

With respect to Public Accommodations (which includes all those engaged in commerce) no individual shall be discriminated by inaccessibility or denial of accommodations to utilize services, facilities, or privileges of any public or private entity.

Public accommodations include: restaurants, hotels, doctor's offices, pharmacies, grocery stores.

Existing facilities must be made accessible if the changes are "readily achievable" i.e., easily accomplishable without much difficulty or expense. Auxiliary aids and services must be provided unless such provision would fundamentally alter the nature of the program or cause an undue burden.

New construction and major renovations must be designed and constructed to be readily accessible and usable by people with disabilities.

Under public accommodations the ADA also prohibits discrimination in public transportation by private transportation companies (i.e. Greyhound, Trailways etc...). This would include the failure to make new over-the-road buses accessible five years after the date of enactment for large providers and six years for small providers. The Office of Technology Assessment Study must complete a study 18 months after enactment in determining the feasibility of this requirement.

For public accommodations discrimination that have become a pattern or practice -- the Attorney General can seek monetary damages and civil penalties of up to \$50,000 for initial violations and \$100,000 for violations thereafter.

Public accommodations requirements become effective 18 months after enactment.

TELECOMMUNICATIONS:

Any telephone services offered to the general public must include interstate and intrastate telecommunication relay services so that services provide deaf individuals to use nonvoice terminal devices (TTD phones)..

February 19, 1992

TO: Senator Dole
FROM: Mo West
SUBJECT: House Task Force on Disability

The House Republican Policy Committee is instituting a Task Force on Disabilities to serve as a vehicle for information on the implementation of the Americans with Disabilities Act (ADA) to Members and staff. In addition, the Task Force also plans to follow relevant legislative developments relating to disability in areas such as education, rehabilitation, transportation and taxation.

Last year you joined Senator Mitchell in developing a Senate Bipartisan Working Group on Disability which has been successful in keeping various Senate Committee staff apprised of the impact ADA will have on Committee jurisdiction. The Senate Bipartisan Working Group on Disability has held several seminars on various disability issues (e.g. ADA Public Accommodation requirements now in effect) in addition to information dissemination on many other disability issues.

The House Task Force would like to follow the Senate Bipartisan Working Group's lead in this area by holding a breakfast or lunch (the week of February 24 or the first two weeks in March) for House Members interested in joining a House Task Force on Disability. You have been asked to stop by to talk with interested Members and their staff about disability policy.

The House Policy Committee has not yet sent out invitations as they are awaiting your reply and availability to speak. They feel it would draw more interest should you be willing to briefly speak to the audience. I will work with Kerry in drafting talking points for you should you agree.

Will you speak to the House Republican Task Force on Disability at a time convenient with your schedule?

Yes No

BENJAMIN A. GILMAN, NEW YORK
CO-CHAIRMAN

1622 LONGWORTH HOB
(202) 225-0871

JIM RAMSTAD, MINNESOTA
CO-CHAIRMAN



TASK FORCE ON DISABILITIES
HOUSE REPUBLICAN RESEARCH COMMITTEE

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

October 18, 1991

The Honorable Robert Dole
Senate Republican Leader
141 Hart Building
Washington, D.C. 20510

Dear Senator Dole,

We are writing to invite you to join us for an informal breakfast hosted by the Republican Research Committee's newly-formed Task Force on Disabilities.

The primary goal of the Task Force is to serve as a vehicle to gather information on the implementation of the Americans with Disabilities Act. As the ADA was not a cure-all for the problems facing our 43 million Americans with disabilities, the Task Force will also follow relevant legislative developments in areas such as education, rehabilitation, transportation and taxation.

We have become familiar with the Senate Bi-Partisan Working Group and with your legislative efforts; we would therefore greatly enjoy and appreciate hearing your thoughts and insights on where Congressional action might be focused.

As your schedule permits, we would like to host the breakfast on a Wednesday or Thursday morning before we adjourn in November. The breakfast would be open to all House Republican Members and would be held in the Capitol or the Capitol Hill Club.

Please feel free to contact us if you have any questions. Your staff may contact Michele Chouteau of the Research Committee at extension 5-0871 to work out any details.

Thank you, in advance, for your consideration of this invitation. We look forward to seeing you soon.

Sincerely,

A handwritten signature in cursive script that reads "Duncan Hunter".

Duncan Hunter
Chairman
Research Committee

A handwritten signature in cursive script that reads "Jim Ramstad".

Jim Ramstad
Co-chairman
Task Force on
Disabilities

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Jim Ramstad
Co-chairman
Task Force on
Disabilities

Audy

June 3, 1991

TO: Senator Dole
FROM: Mariam
SUBJECT: Appointment Requests

*Hand memo
Paul Hearne*

The House Republican Leadership has formed a new Task Force on Disabilities. Co-chairmen are: Ben Gilman & Jim Ramstad, members are: Duncan Hunter, Curt Weldon, Jim Walsh, Bob Lagomarsino and John Miller. They would like to meet with you and discuss the Dole Foundation, how they can work with and aid the Dole Foundation, etc. They have already met with Paul Hearne. Any time at your convenience would be fine with them.

Contact: Michelle 50871

SCHEDULE MEETING YES _____ NO _____

*Have
met with
Mo & Audrey*

Senator,

Attached is a memo from Paul Hearne & his meeting with the House Republican Task Force on Disabilities. Do you wish to meet with this group at your convenience?

SCHEDULE MEETING YES _____ NO _____



THE DOLE FOUNDATION
FOR EMPLOYMENT OF PEOPLE WITH DISABILITIES

MEMORANDUM

DATE: June 6, 1991
TO: Senator Dole
FROM: Paul G. Hearne
SUBJECT: March 5th Meeting with the Republican National Research Committee

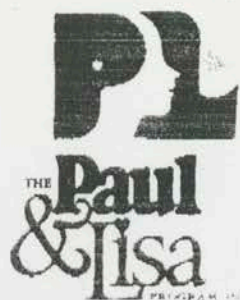
This is the substance of our conversation to the best of my recollection of our meeting on March 5, 1991:

- 1) They were unaware of the issues concerning disability. I spent a great deal of time explaining accessibility, the necessary accommodations, employment, job placement techniques, and types of disabilities in the disability community, and the full capacity of people with disabilities to do full-time competitive work.
- 2) I gave them a brief background of the Rehabilitation Act and the history behind Sections 503 and 504 which promote employment of people with disabilities. I also made them aware of the vocational rehabilitation system and supported the idea that more training is needed to bring disabled people into the marketplace at more highly-skilled levels. There must be a higher level of training so that disabled people can enter the workforce at more than minimal jobs. Those disabled people who are presently employed have a high percentage of under employment because of their disability.
- 3) I talked about the Harris Poll Study done in 1986 which indicates that two-thirds of the disabled population is unemployed while three-fourth of the disabled population wants to work. This shows a need for more employment services for the disabled workforce. Hence, the purpose of The Dole Foundation and how we fit in providing services.
- 4) I then indicated why there was a need for the Americans with Disabilities Act (ADA) since most of the law protecting people with disabilities only covered those who received grants or federal assistance and contracts in excess of \$2,500. The ADA reaches into the private sector and protects people from discrimination. This group was new to the field and needed to be brought up to speed from the beginning.

Page 2
June 6, 1991

- 5) I talked about the targeted jobs tax credit from employment as well as both the tax deduction and tax credits for accommodations and removal of barriers at the workplace. I cited these as excellent examples to promote employment of people with disabilities.
- 6) I also talked about technical assistance and training for employers so that they would know which local resources they could use to find qualified people with disabilities in the local community. I used the Project with Industry program as a good example.

I hope this memorandum is more helpful.



P.O. BOX 348 . WESTBROOK, CONNECTICUT 06498 . TELEPHONE (203) 399-5338

Be a Caring Friend to Children

January 15, 1992

Senator Robert Dole
Washington, D.C.

Dear Senator Dole:

I am writing to request a meeting with you in order to acquaint you with the Paul & Lisa Program, Inc. and our work with young people who are the victims of sexual exploitation.

The Paul & Lisa Program, Inc., is a non-profit organization providing a wide range of services for child sexual exploitation and abuse. The organization delivers services in six categories: (1) streetwork/outreach, (2) transitional living and supportive services, (3) counseling/referral, (4) reuniting children with their families whenever possible, or otherwise facilitating appropriate alternate child placement, (5) preventive education in schools and communities, (6) professional training.

The agency has provided services and referrals to over 3,000 sexually exploited street children and reached over 62,000 individuals with our sexual exploitation preventive program.

In the course of our work we have come across, what we believe, is an on-going effort to recruit youth from Kansas to work on the streets of New York City. We would appreciate an appointment to discuss this information with you.

We certainly admire you and your work concerning the young people of Kansas, and look forward to hearing from you in the near future.

I will be in the Washington, D.C. on February 4 and 5. If these dates are not convenient, I am certainly willing to make a special trip to meet at your convenience.

Sincerely,

Frank N. Barnaba
Frank N. Barnaba
President & Founder

1.16.92 15:58 P. 3
1207998378

To their pimps, teen prostitutes are
"sequined, sedated gold mines."
To Frank Barnaba, each is someone's child

Savior on the Streets

By Mark Stuart Gill

ONE ICY WINTER NIGHT IN 1980, Frank Barnaba sat in a New Haven, Conn., diner on his way home after a business trip. He heard someone weeping in the next booth. It was a girl about the same age as his 17-year-old daughter, Cheryl.

Barnaba's instinct was to pay his bill and leave. As vice president of a water-treatment franchise, he was a busy man. But he remembered what his wife, Audrey, had once said: "Everyone is someone's child."

When he asked if he could help, the girl blurted out a story that would haunt him forever. An honor student from nearby Seymour, Conn., Lisa had rebelled and run away. After living on the streets, she met a man who introduced her to cocaine. When she was addicted, he forced her to work as a prostitute.

This kid should be dreaming about

her prom, not turning tricks, thought Barnaba. *But what can I do?*

"Do whatever you can," said his wife and daughter later that night in his Westbrook, Conn., home. So Barnaba tracked down Lisa whenever he passed through New Haven. It became a common sight: this portly man in a tweed jacket spending long hours with a teen hooker in coffee shops. Barnaba tried to convince her that her life was valuable, that she had the power to take charge of it.

Then, after nearly a year, Lisa called Barnaba. She had mustered enough courage to leave the streets. Barnaba's eyes filled. "Meet me at the diner," he said.

But Lisa didn't show. Hours later, she was found in the city morgue, with enough cocaine in her veins to kill half a dozen men. Police couldn't decide whether it

READERS DIGEST

was suicide or murder. Frank Barnaba vowed that he would do whatever he could to protect other children from Lisa's fate.

"Anyone Can." In Lisa's honor, Barnaba created a nonprofit education and counseling service in Westbrook to fight sexual exploitation of children. Over the years, he has employed doctors, psychologists, priests, police and social workers. But the heart of his work is something far more simple and courageous. Several nights each week, 56-year-old Frank Barnaba wanders New York City streets trying to talk young prostitutes into starting new lives in the suburbs.

Barnaba calls his organization "Paul & Lisa," in tribute to both Lisa and his church in Westbrook, St. Paul's Episcopal, which provided \$1200 to launch the project. Through Paul & Lisa, Barnaba promises to cover the girls' medical and psychiatric expenses until they can support themselves. He also pays their rent and helps find them jobs. Since 1980, Barnaba has rescued 61 young girls from prostitution and brought medical attention and information to almost 60,000 others.

Frank Barnaba had been a withdrawn and troubled young man. Growing up in Brooklyn, N.Y., he had been sexually abused by his mother until he was 16.

In 1953, at 18, he met Audrey and they married two years later. Audrey soon realized her husband was plagued by childhood traumas,

and insisted he get professional help. Barnaba emerged convinced of the resilience of the human spirit. "If I can learn to love myself," Barnaba told his wife, "anyone can."

The first week Paul & Lisa was in operation, Barnaba wandered west of Times Square in Manhattan. The street was teeming with young girls in fish-net stockings. Men in cars cruised by, negotiating for services and pulling the girls in. Many girls were 13 or 14 years old.

How can these creeps get away with this? thought Barnaba as he stepped into the street to try and turn the traffic away. The drivers blared their horns and made as if they'd run him over.

Barnaba kept at it week after week. From research, he knew there were more than one million juvenile prostitutes in U.S. cities and towns. Most are runaways who leave home because of incest or other abuse. Their tragedy is coupled with a staggering drain on society. It costs \$50,000 a year to process one teen-age hooker through arrests and court hearings.

Battle of Wills. In January 1982, Barnaba met Missy.* When he learned she had recently saved a seven-year-old boy and his six-year-old brother from prostitution, he knew there was hope for her.

One evening, a man emerged from a car and approached Missy. Barnaba stepped between them and

*For privacy, names of the girls have been changed.

SAVIOR ON THE STREETS

said. "This is my daughter! How can you buy her body?" The startled customer rushed away, and Missy shrieked at Barnaba. "Get away from me! I'm 22, and I love what I'm doing."

"Baloney," Barnaba replied. "You're 16 at most. Look, I'm going to spoil your business all night if you don't hear me out. We might as well get a cup of coffee."

Minutes later, sitting in a restaurant, Missy began to tell Barnaba about her past. When she was 12, her mother went into a rage and plunged a knife into her back. Missy ran away to Tampa, Fla.,

where she met a man who forced her to streetwalk. Eventually he sold her to her current pimp for \$3500. Now she was making \$1000 to \$1500 a night. Her pimp gave her \$10 a day and kept the rest.

"You gotta get out of this hell," said Barnaba, "or you're not going to live past 30."

For five long years the businessman and the prostitute fought a battle of wills that became infamous in Times Square. Missy carried an umbrella to crack him over the head whenever he interfered. But Barnaba never gave up.

Finally, Missy called him at home and said she was ready to start life anew. Barnaba gunned his blue car in from Westbrook and picked her up at the corner where they had agreed to meet. Not until they reached Connecticut did she talk. "Frank," she said, "I know I've been a pain in the neck. But could I ask a little favor?"

"Sure."

"I've been wearing high heels since I was 13. Could I get sneakers? Maybe pink ones?"

"You can have any color in the the rainbow."

"**They Aren't Kittens.**" After a few successes, Barnaba persuaded local businesses and groups to help finance his work. A lawyer volunteered advice; a



PHOTO
© VINCENT COLABELLA

READER'S DIGEST

printing company prepared brochures for free. Still, Barnaba had to dig into his own meager funds.

Along with the struggle for money came physical danger. One evening Barnaba was searching near a row of posh Central Park South hotels for Bettina, a blond 17-year-old from Long Island. Seeking independence, she had run away to Manhattan, where she met a man who let her stay at his swank Upper East Side apartment.

Once Bettina was fully dependent on the man, he forced her into streetwalking. Gradually he placed her in more and more dangerous situations. Now she wanted more than anything to get off the streets. But her pimp threatened to cut her eyeballs with a razor if she left.

As Barnaba walked the hotel area, Bettina's pimp jumped out of his Mercedes and pushed his face within a few inches of Barnaba's. "If you want to stay alive," he snarled, "don't talk to my kittens."

"They aren't kittens!" Barnaba fired back. "They're little girls you're destroying." Barnaba's fingers searched his coat pocket for the can of mace he had started to carry. His blood froze: all he had in his pocket was a roll of mints.

Suddenly he felt the muzzle of a .45 automatic against his rib cage. The next second Barnaba was roaring at the top of his lungs and knocking the gun from the pimp's hand. It skittered down a sewer hole as the two men locked in a furious struggle. Barnaba finally managed

to break a choke-hold and fling the pimp against the parked car.

At the sound of police sirens, the pimp fled. Barnaba rose, his lip split and pants ripped. A crowd of people in evening dress had stopped to watch the commotion. "I think he's one of those crazy homeless people," a man in a tuxedo said to his wife. But Barnaba barely heard his words—for standing next to the affluent couple was Bettina.

"At first I wondered if Frank was just one more pervert trying to take advantage of me," Bettina says. "But when he risked his life for me, I knew he was genuine."

It took Bettina three years to pull her life together. "Frank made me realize I had to quit blaming the world for the way my life had turned out," she says. "He showed me I had the power to change." Bettina has since married and operates a successful kennel.

Only Way to Cure a Problem. By 1987, as word spread of Barnaba's good deeds, grants were awarded Paul & Lisa by such companies as Aetna Life Insurance, Estée Lauder, Pfizer and Chesebrough-Ponds'-USA. These infusions allowed Barnaba to hire half a dozen workers.

In April 1988, President Ronald Reagan called Barnaba to the White House. "You make me believe that one man can still have an unlimited impact on the world through nothing more than personal grit and stick-to-itiveness," he told Barnaba.

But even the mounting accolades could not entirely alleviate Barnaba's

SWIOR ON THE STREETS

concerns about his own life. Street work had given him high blood pressure. He had passed up lucrative job offers to preserve time for his mission. The Barnabas had mortgaged their house twice. At one point their work for Paul & Lisa had them \$125,000 in debt. It took on average almost two years of persistent contact to get a girl off the streets and \$25,000 to keep her off the first year.

One evening as he pondered all this, the phone rang.

"Hi, Mr. Barnaba. Do you remember me? I was the redhead who always hung out with Missy."

"Nancylee?" said Barnaba in amazement.

"That's not my name now. I've been off the streets for a year. I'm working on a medical degree, and I'm engaged to a wonderful man."

As Barnaba had been giving Missy pamphlets, she had passed them along to the other girls. "When Missy left, I thought if she can do it, I can do it," said Nancylee.

A week later, another juvenile prostitute, Gina, called. When she met Barnaba at age 16, she had been in nine foster homes and had been molested by several of her foster parents. Now, at 18, she had gradu-

ated high school and was training to be a social worker.

"Frank," Gina said, "I learned from you and your wife something they don't teach in school, that the only way to cure a problem is to roll up your sleeves and tackle it. Especially if the problem is yourself."

This is the way you win the war: thought Barnaba. One little battle after another.

TODAY, PAUL & LISA has grown to 12 employees, including several rehabilitated prostitutes like Missy who wanted to help get other teens off the street. Coordinated by its Office for Victims of Crime, the U.S. Justice Department is helping out with a \$400,000 grant. Other major cities are interested in starting their own Paul & Lisa chapters. And Barnaba, despite lacking degrees in social work or psychiatry, is regarded as a national expert on juvenile sexual abuse.

"There's no secret to what I do," he says. "I don't have a fancy 12-step program to gain kids' confidence and reform them. I just have one step: be there for the children and help them take control of their own lives. Ultimately they have to save themselves."

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P.O. BOX 348 . WESTBROOK, CONNECTICUT 06498 . TELEPHONE (203) 399-5338



Be a Caring Friend to Children

FAX TRANSMISSION SHEET

DATE: JANUARY 16, 1992
TO: MAUREEN WEST
FIRM: SENATOR DOLE'S OFFICE
DEPARTMENT:
CITY: WASHINGTON, D.C.
FAX NO: 202-224-8952

FROM: FRANK N. BARNABA
PHONE NUMBER: 203-399-5338
FAX NUMBER: 203-399-5338

COMMENTS OR INSTRUCTIONS: PER YOUR INSTRUCTIONS TO REBECCA HAGELIN I AM SENDING YOU A LETTER REQUESTING AN APPOINTMENT TO SPEAK WITH SENATOR DOLE REGARDING THE PAUL & LISA PROGRAM AND THEIR WORK WITH EXPLOITED STREET CHILDREN FROM KANSAS

NUMBER OF PAGES INCLUDING COVER SHEET: 6

October 26, 1990

TO: Senator Dole
FROM: Maureen West
SUBJECT: Assistance for Disability-Related Expenditures

The recently enacted Americans with Disabilities Act (ADA) will require businesses and other public facilities to make "reasonable accommodations" for persons with disabilities. In some cases this could mean that a business will be required to make expenditures to adapt a job or service to a person with a disability.

A number of legislative initiatives designed to ease the financial burden placed on businesses by ADA were introduced this session. Outlined below are four programs you sponsored that provide financial and/or technical assistance to businesses for disability-related expenditures: EEOC technical assistance, targeted jobs tax credit (TJTC), Pryor-Kohl disability access tax credit, and Section 190 deductions.

Technical Assistance

You authored a technical assistance amendment to ADA that would assist with its implementation. This amendment directs the Equal Employment Opportunity Commission (EEOC) to clarify and answer questions regarding the rights of persons with disabilities and the obligations of businesses under ADA. This technical assistance amendment was also included in the Commerce, Justice, State, and Judiciary Appropriations Bill. The conference agreement includes \$1 million for the implementation of a technical assistance program as authorized by section 506 of ADA.

Targeted Jobs Tax Credit

The targeted jobs tax credit, which aims to increase the employability of disadvantaged youth and persons with disabilities, has been extended for another 15 months. Many businesses in Kansas have successfully utilized this program to employ people with disabilities. The extension will further ease the burden faced by businesses in accommodating persons with disabilities as required by ADA.

Pryor-Kohl Disability Access Tax Credit

The tax credit is designed to assist the small business community with the cost of ADA compliance. The credit applies to any ADA-related expenditures for the accommodation of persons with disabilities. ADA-related expenditures include the following: removal of architectural, transportation, physical, or

communications barriers; procurement or modification of equipment and/or services; translation of materials for the visually or hearing impaired; personal assistant services; technical support and training for business and employee compliance; auxiliary aids and services. The variety of eligible disability related expenditures will enable businesses to more easily accommodate persons with disabilities.

Small businesses are responsible for the first \$250 of expense to accommodate the disabled. Costs above \$250 are eligible for a 50% non-refundable credit, up to \$10,250. Any ADA-disability related expenditure above \$10,250 is eligible for a more restricted deduction of \$15,000. If the entire access tax credit is not used in one year, it can be accumulated and carried forward to subsequent years or carried back to previous tax years.

Only small businesses are eligible to receive tax credit. A small business is defined as any business with less than \$1 million gross receipts or fewer than 30 full time employees qualify for the credit. Eligibility for the tax credit is narrowly defined for several reasons. Small businesses will be called on most often to accommodate and employ persons with disabilities. Small businesses have limited resources and, therefore, require the most technical and financial assistance to comply with ADA. In addition, all other businesses qualify for the \$15,000 deduction.

The access tax credit is revenue neutral. The cost of this new credit, however, is offset by lowering the deduction in Section 190 of the Internal Revenue Code to \$15,000.

Section 190

Section 190 of the Internal Revenue Code, which you authored, provides a \$35,000 deduction for disability related expenditures. A disability related expenditure is defined as the removal of architectural and transportation barriers to the disabled and elderly. Given a number of assumptions related to company size and income, large businesses have tended to benefit more from the Section 190 deduction.

The Pryor-Kohl Disability Access Tax Credit (as described above) lowers the deduction to \$15,000. Justification for this change to the Section 190 deduction is based upon two arguments. First, Section 190 does not focus assistance effectively to small businesses. Small businesses, however, will bear the burden of ADA and will most need help. And second, Section 190 deductions for disability related expenditures apply to only a limited class of expenditures.

Consequently, Section 190 provides a \$15,000 deduction for disability related expenditures.

July 17, 1990

TO: Senator Dole
FROM: Mo West
SUBJECT: White House ADA Signing Ceremony

The White House has scheduled a signing ceremony for the ADA on Thursday, July 26 at 10:00 a.m. on the South Lawn. Approximately 3000 invitations have been issued. A Kansas delegation of 70 people with disabilities will be traveling to D.C. for the ceremony.

Will you plan to attend the signing ceremony?

Yes No

*with
all things*

July 24, 1990

TO: Senator Dole
FROM: Mo West
SUBJECT: Kansans in D.C. for White House Ceremony on ADA

Melba Gwaltney
Office of the Governor
Topeka, Ks.

Ray Petty
Independence Inc.
Lawrence, Ks.

Sister Carlene Richards
Lakemary Center
Paola, Ks.

Estelle Murphy
Lakemary Center
Paola, Ks.

Martha Gabehardt
Kansas Commission on Disability
Topeka, Ks.

Michael Lechtner
Kansas Commission on Disability
Topekas, Ks.

Connie Steinert
KS. Dept. of Rehab Services
Topeka, Ks.

Brain Atwell
Ks. Independent Living Center
Hays, Ks.

Yo Bestgen
Kansas Assoc. of Rehab Facilities
Topeka, Ks.

Glen White
Research & Training Center
Lawrence, Ks.

Rud & Ann Turnbull
Univ. of KS.
Lawrence, Ks.

Handwritten notes:
✓
Can we get
them
K
Jed

Debra Herr
The Whole Person
Kansas City, Ks
Shannon Jones
The Whole Person
Kansas City, Ks.

Judy & Richard Buchoski
Kansas City, Ks

Linda Starnes
Kansas City, Ks.

Patty Leary
KS. Commission on Disability
Topeka, Ks.

Dr. Jerry Buckley
Ks. Center for the Deaf
Kansas City, Ks.

Barabara Bradford
Lawrence, Ks.

Michael Knowlen
Lawrence, Ks.

Paula McElwee
Ind. Living
Hays, Ks.

Jim Blume
Dev. Service of N.W. Ks.
Hays, Ks.

Bertha McDonnell
Ks. Epiliepsy Fnd.
Wichita, Ks.

Fred Markham
Lawrence, Ks.

July 24, 1990

TO: Senator Dole
FROM: Mo West
SUBJECT: ADA Celebration

You have been invited to stop by an ADA celebration on the Elipse directly following the White House signing ceremony. There will be a stage for members of Congress to speak to the large crowd of participants. The Elipse will be the site for a day long celebration for those who have traveled from across the country to celebrate its passage. It is being sponsored by the National Independent Living Association.

Do you want to stop by the event for a few minutes to greet the people and say a few words to the crowd?

Yes No

You have also been invited to attend a reception from 5-7 p.m. on Thursday evening in Room 216 of the Hart building. The reception is being hosted by all the disability groups and is in honor of you and other Senators and Representatives who were very involved with the bill. I see on your schedule that you already have a reception with Senator Kennedy that same evening which you agreed to stop by in the Dirksen Building. Perhaps you could stop by the disability reception afterwards? In addition, this will give you a chance to greet a lot of the Kansans who have traveled for the ceremony and will be in attendance. A photographer will also be on hand.

Of the two receptions being held -- the Hart reception on Thursday evening is preferrable.

Will you stop by the disability community's reception on Thursday evening from 5-7 p.m. in 216 Hart?

Yes No

Attached is the list of Kansans who will be in town for the ceremony. You might also like to know that the White House has been extremely accommodating to our office and those Kansans wishing to participate and be ticketed for the event.



Endependence Center of Northern Virginia, Inc.
2111 Wilson Boulevard, Suite 400
Arlington, Virginia 22201

July 24, 1990

Dear Senator,

The Washington area disability community invites you to attend a picnic celebrating the Americans with Disabilities Act.

Please join us on the Ellipse immediately following the White House signing ceremony on the morning of July 26, 1990. The celebration will last from approximately 10:45 a.m. - 4:00 p.m.

Through this event we wish to thank you for your support of this major piece of civil rights legislation. The picnic is also our way of showing appreciation to the many people across this nation who worked for the passage of this bill.

As hundreds of citizens are coming to Washington from all over the country to attend the signing ceremony, many of your constituents will also come to the picnic.

We look forward to seeing you on the Ellipse.

Sincerely,
The Endependence Center of N. Va., Inc.

Please R.S.V.P. to (703) 525-3268

**!!!! VICTORY !!!!
AMERICANS WITH DISABILITIES ACT
COME TO THE CELEBRATION
OUR FIRST INDEPENDENCE DAY
JULY 26, 1990**

HONORING YOU, THE PATRIOTS WHO CONTRIBUTED TO THE PASSAGE OF THE WORLD'S FIRST COMPREHENSIVE CIVIL RIGHTS LAW FOR PEOPLE WITH DISABILITIES BY ANY NATION!

WHEN: July 26, 1990, 10:45 a.m.-4 p.m., beginning immediately following the signing of ADA by President Bush

WHERE: The Ellipse - across the street from the southeast lawn of the White House - follow the music

WHAT: Picnic lunch, drinks, music, balloons - no charge

STARS: Members of Congress and the Administration and the leaders of the disability community.

SPONSORS: The Washington area disability community, the Endependence Center of Northern Virginia, Paralyzed Veterans of America, the Dole Foundation, National Capitol Region of the National Park Service, The National Organization on Disability, and Justin and Yoshiko Dart.

For more information call (703) 525-3268 (V/TDD), (202) 488-7684 (V), (202) 484-1370 (TDD).

July 17, 1990

TO: Senator Dole
FROM: Mo West
SUBJECT: ADA Commission

Sandy Parrino will be in town for the ADA signing ceremony. In my memo to you on the possibility of such a Commission you agreed to meet with her next week.

I checked with Yvonne regarding your schedule and you have an opening at 11:30 a.m. on Thursday morning after the signing ceremony. Will you meet with her at 11:30?

Yes No

I ran the proposal by Russell Redenbaugh and he felt it was a very good idea and one that could compliment the Civil Rights Commission and bring the business community into the playing field on this legislation.

*Yes
Sandy can
ride back
to Capital with us
after ceremony*

July 17, 1990

TO: Senator Dole
FROM: Mo West
SUBJECT: Commission on the Americans With Disabilities Act (ADA)

West
Week

As you know, the National Council on Disability has recommended the establishment of a Commission to oversee the implementation of ADA. They have been bombarded by questions from business groups and the transportation industry about difficulties with the bill.

A Commission could provide a forum for addressing the many problems that are bound to arise as the law is implemented. The Commission could be either by Presidential appointment (like the Reagan AIDS Commission chaired by Admiral Watkins) or by Congressional appointment (like the Children's Commission currently chaired by Sen. Rockefeller). The National Council recommends that you chair the Commission, whether it is Presidential or Congressional.

Attached is a letter you just received from Mrs. Parrino, Chairperson of the National Council. A similar letter and the proposal for the Commission were sent to Governor Sununu suggesting that the Rose Garden signing of ADA would be a good time to announce the Commission.

Mrs. Parrino is eager to meet with you this week. If you believe the Commission has merit, she will work actively to get the support of both the business and disability communities.

I think this Commission could fill a big void and would be a central place for Congress and all other involved with the bill to gather information, air concerns and resolve issues. I imagine the Small Business Administration and small businesses would be interested in such a Commission also.

Will you meet with Mrs. Parrino this week?

YES

NO

July 17, 1990

TO: Senator Dole
FROM: Mo West
SUBJECT: Commission on the Americans With Disabilities Act (ADA)

West
Week

As you know, the National Council on Disability has recommended the establishment of a Commission to oversee the implementation of ADA. They have been bombarded by questions from business groups and the transportation industry about difficulties with the bill.

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I think this Commission could fill a big void and would be a central place for Congress and all other involved with the bill to gather information, air concerns and resolve issues. I imagine the Small Business Administration and small businesses would be interested in such a Commission also.

Will you meet with Mrs. Parrino this week?

YES

NO

July 12, 1990

TO: Senator Dole
FROM: Mo West
SUBJECT: ADA CONFERENCE

The Senate and House conferees met this morning for approximately an hour and agreed to accept the Hatch language as a substitute to the Chapman amendment. The conferees also agreed to accept the Ford language on Senate Congressional coverage. The Hatch language was agreed to by a vote of 14-6. I understand that a vote is scheduled for this afternoon in the House after debate that is tentatively scheduled to begin around 3:00 p.m. -- nothing definitive at this point though.

I have attached a draft statement for final passage of the ADA conference report. Perhaps you might like to make changes or add ideas which I will incorporate. In addition, I will make a list of Members and staff that should be thanked for the work

STATEMENT ON FINAL PASSAGE
OF THE
AMERICANS WITH DISABILITIES ACT

SENATOR BOB DOLE

JULY 12, 1990

2

MR. PRESIDENT, I RISE
TODAY IN SUPPORT OF FINAL
PASSAGE OF THE CONFERENCE
REPORT ON THE AMERICANS
WITH DISABILITIES ACT.

I HAVE SUPPORTED THE
ADA BECAUSE I BELIEVE IT IS A
JUST AND FAIR BILL WHICH WILL
BRING EQUALITY TO THE LIVES

OF ALL AMERICANS WITH
DISABILITIES. OUR MESSAGE TO
AMERICA TODAY IS THAT
INEQUALITY AND PREDJUDICE
WILL NO LONGER BE TOLERATED.
OUR MESSAGE TO PEOPLE WITH
DISABILITIES IS THAT 'YOUR TIME
HAS COME.'

THE AMERICANS WITH
DISABILITIES ACT WILL EMPOWER
43 MILLION AMERICANS WITH

DISABILITIES TO EXERCISE THEIR
RIGHTS AND PARTICIPATE IN THE
MAINSTREAM OF AMERICAN LIFE.
THE AMERICANS WITH
DISABILITIES ACT WILL ENRICH
OUR NATION BY SUPPORTING
THE TALENTS, SKILLS AND
ABILITIES OF A MINORITY GROUP
WHICH HAS UP UNTIL NOW BEEN
ON THE SIDELINES. UNDER THE
ADA, WE ARE ALL WINNERS.

I AM OPTIMISTIC THAT THIS LEGISLATION WILL SET AN IMPORTANT TONE AS WE ENTER A NEW DECADE. JUST AS WE HAVE SEEN THE WALLS GO DOWN IN EASTERN EUROPE, WE ARE NOW WITNESSING SOME OF OUR OWN WALLS CRUMBLING—
—THE WALLS OF PREJUDICE, ISOLATION, DISCRIMINATION AND SEGREGATION. WE HAVE

PAID DEARLY FOR OUR POLICIES
OF THE PAST ——

DISCRIMINATION COSTS BOTH IN
HUMAN TERMS AND FINANCIAL
TERMS. KEEPING PEOPLE WITH
DISABILITIES OUT OF THE
WORKFORCE AND DEPENDENT
ON GOVERNMENT SUBSIDIES IS
A POLICY OF THE PAST.

LET'S CONSIDER WHAT THIS
LEGISLATION WILL YIELD IN

TERMS OF OPPORTUNITIES FOR
PERSONS WITH DISABILITIES. IN
TERMS OF EMPLOYMENT —— IT
WILL OFFER ACCESSIBLE
ENVIRONMENTS AND
REASONABLE ACCOMODATIONS
TO EMPOWER PERSONS WITH
DISABILITIES TO UTILIZE THEIR
FULL POTENTIAL IN
STRENGTHENING THE
WORKFORCE.

TRANSPORTATION IS THE
CRITICAL LINK TO EMPLOYMENT.
THIS BILL WILL RESULT IN
ACCESSIBLE PUBLIC
TRANSPORTATION TO AND FROM
THE WORK SITE.

LIVING INDEPENDENTLY AND
WITH DIGNITY MEANS
OPPORTUNITY TO PARTICIPATE
FULLY IN EVERY ACTIVITY OF
DAILY LIFE, BE IT GOING TO

THE MOVIES, DINING IN A
RESTAURANT, CHEERING AT A
BASEBALL GAME,
COMMUNICATING BY PHONE OR
GOING TO THE DOCTOR. THE
ADA OFFERS SUCH OPPORTUNITY
TO PERSONS WITH DISABILITIES.

THE TOUGH BUT FAIR
ENFORCEMENT REMEDIES OF
ADA, WHICH PARALLEL THE CIVIL
RIGHTS ACT OF 1964, ARE

TIME—TESTED INCENTIVES FOR
COMPLIANCE AND
DISINCENTIVES FOR
DISCRIMINATION. THE
TECHNICAL ASSISTANCE EFFORTS
MANDATED IN ADA WILL
SUPPORT TWO EFFORTS CRITICAL
TO THE MISSION OF ADA: 1)
THEY WILL INFORM PERSONS
WITH DISABILITIES ABOUT THEIR
RIGHTS UNDER THE LAW AND 2)

PROVIDE THE NECESSARY
SUPPORT TO BUSINESS AND
INDUSTRY AS THEY UNDERTAKE
THE IMPORTANT JOB OF
IMPLEMENTING THE LAW.

WE HAVE INCLUDED IN
THIS LEGISLATION ALL PEOPLE
WITH ALL DISABILITIES, NO
MATTER HOW MISUNDERSTOOD
BECAUSE THAT'S WHAT THIS BILL
IS ABOUT —— REPLACING

MISUNDERSTANDING WITH
UNDERSTANDING. WE HAVE NOT
SAID THAT YOU HAVE TO
EMPLOY A PERSON IN A JOB
THEY REALLY CANNOT DO, OR
IN A SETTING WHERE THEY WILL
POSE A DANGER TO THE HEALTH
OR SAFETY OF OTHER PEOPLE.
WHAT WE HAVE SAID IS THAT
THESE DECISIONS MUST BE MADE
ABOUT INDIVIDUALS, NOT

GROUPS AND MUST BE BASED
ON FACTS, NOT FEARS.

WE HAVE HAD A PATCH
WORK QUILT UP UNTIL NOW —
— AN INCONSISTENT AND
PIECEMEAL APPROACH TO
DISABILITY POLICY. TODAY WE
MOVE TO EMBRACE THE MOST
COMPREHENSIVE CIVIL RIGHTS
LEGISLATION OUR NATION HAS
EVER SEEN. TODAY WE MOVE

TO PUT OLD STEREOTYPES AND
ATTITUDES BEHIND US —— WHERE
THEY BELONG.

NO INDIVIDUAL IN AMERICA
IS MORE COMMITTED TO EQUAL
OPPORTUNITY THAN PRESIDENT
BUSH. HIS UNFLAGGING
SUPPORT OF THE ADA AND HIS
CONTINUED EAGERNESS TO SIGN
THIS LEGISLATION INTO LAW
ARE EVIDENCE OF UNPARALLELED

LEADERSHIP IN THE WHITE HOUSE
ON BEHALF OF PERSONS WITH
DISABILITIES. WE ARE PROUD
THAT WE HAVE REACHED THIS
JUNCTURE, AND CONFIDENTLY
SEND THIS LEGISLATION TO THE
PRESIDENT'S DESK.

IN 1964 THIS BODY
DECLARED DISCRIMINATION
ILLEGAL AND LAID A SOLID
CIVIL RIGHTS FOUNDATION FOR

OUR NATION. TODAY WE BUILD
UPON THAT FOUNDATION WITH
THIS LANDMARK LEGISLATION
PROVIDING CIVIL RIGHTS
PROTECTIONS FOR THE 43
MILLION AMERICANS WITH
DISABILITIES. I AM PROUD OF
THIS BILL, AND I LOOK
FORWARD TO IT BECOMING THE
LAW OF THE LAND.

done on this bill.

February 19, 1990

TO: Senator Dole
FROM: Mo West
SUBJECT: House hearing on ADA

The House Committee on Small Business will hold a hearing on Thursday, Feb. 22 to discuss the Americans with Disabilities Act. The hearing is serving as a forum to discuss issues relating to:

a small business phase-in under public accommodations
possible tax incentives for small businesses
further clarification of definitions under the Act
approaches to encourage greater utilization of people with disabilities in the workplace

The Small Business Committee has no jurisdiction over the ADA, however, both the small business and disability communities have asked for this hearing.

Representatives Hoyer and Bennett are expected to testify as well as James Turner, Acting Assistant Attorney General of Civil Rights at the Department of Justice.

The Small Business Community will be represented by

U.S. Chamber of Commerce
NFIB
Nat'l Small Business United

Those representing the Disability Community include:

Lex Friedan - Nat'l Council on Disability
Arlene Mayerson - Disability & Ed. Defense Fund

I will keep you informed of the issues discussed.

September 2, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: ADA Definitions

The term **"readily achievable"** means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include:

the overall size of the covered entity with respect to number of employees, number and type of facilities, and the size of the budget;

the type of operation of the covered entity, including the composition and structure of the entity; and

the nature and cost of the action needed.

The term **"undue hardship"** means an action requiring significant difficulty or expense i.e. an action that is unduly costly, extensive, substantial, disruptive, or that will fundamentally alter the nature of the program. In determining whether a particular accommodation would impose an undue hardship on the operation of the covered entity's business i.e., require significant difficulty or expense, factors to be considered include:

the overall size of the business of the covered entity with respect to number of employees, number and type of facilities and size of the budget;

the type of operation maintains by the covered entity, including the composition and structure of the entity's workforce;

the nature and cost of the accommodation needed.

The term **"reasonable accommodation"** includes illustrations of accommodations that may be required in appropriate circumstances in making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and in assuring job restructuring, parttime or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

The term **"auxiliary aids and services"** includes:

qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

acquisition or modification of equipment or devices; and
other similar devices and actions.

The term **"readily accessible"** means the ability of individuals with disabilities, including individuals with wheelchairs, to enter into and exit and safely and effectively use a vehicle utilized for public transportation.



HALLMARK CARDS INCORPORATED
1615 L Street, N.W., Suite 1220, Washington, D.C. 20036
(202) 659-0946

November 2, 1989

Ms. Maureen West
Office of Senator Dole
Hart Senate Office Building
Washington, DC 20510

Dear Maureen:

The following are questions I have
regarding the Disability Act:

- 1) What is the definition of "reasonable accommodations" as it applies to existing facilities, i.e. hotels, retail, restaurants, parking, green/open space (parks) and offices?
- 2) What degree of "renovation" triggers compliance with these bills?
- 3) What is the definition of "providing a service"? Could they include such activities as dentist, doctor, travel agent, bank, attorney, accounting, etc.?
- 4) How do the proposed requirements impact existing Kansas City, Missouri's Building Codes?

Thank you very much for your help!

Sincerely,

Barbara Burchett

May 12, 1990

TO: Senator Dole
FROM: Mo West
SUBJECT: ADA Update

The House Rules Committee has scheduled the last mark up of ADA in the House this Tuesday at 10:15 a.m. in H-312 of the Capitol. House members and staff are working over the weekend to draft one bill which Rep. Hoyer will introduce on Monday. The Hoyer bill will marry all the various titles of the ADA that have been changed through House committee action this year.

The House bill thus far has only minor technical changes from the Senate passed version. The area that appears to be most controversial at this time are the remedy provisions in the bill.

The remedies in the Senate ADA include administrative remedies and private remedies comparable to those in Titles II and VII of the Civil Rights Act of 1964. Attorney's fees are available; punitive damages are not.

The Civil Rights Act of 1990 which Senator Kennedy and Rep. Hawkins have introduced will amend the Civil Rights Act of 1964 to include compensatory and punitive damages and the right to jury trials under the Act.

The disability community want "parallel" remedies to those found in the Civil Rights Act of 1964 and will push for language in the House ADA to assure that whatever remedies are changed in the Civil Rights Act will also apply to ADA.

I am certain that this argument will be fought on the House floor. After the Rules Committee marks up the Hoyer bill on Tuesday the House has scheduled a vote on Wednesday on ADA. Should it pass next week without radical changes from the Senate version the hope will be to avoid a conference by having the Senate accept the House passed version and send it to the President for enactment.

I will keep you apprised of the changes the bill encounters on the floor of the House which will determine if a conference is needed or not.

ADA FACT SHEET

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Wide-Ranging Bill to Broaden Access For Handicapped Clears House Panel

By ALBERT R. KARR

Staff Reporter of THE WALL STREET JOURNAL
WASHINGTON—The House Judiciary Committee approved a wide-ranging bill that would open up access for handicapped people to employment and public accommodations.

The panel voted 32-3 for the bill, clearing the way for a vote by the full House, possibly this month. Three other House committees—Labor and Education, Public Works and Transportation, and Interstate and Foreign Commerce—all have given their green lights to various provisions of the legislation. The Senate approved a similar bill late last year.

However, a significant stumbling block has been created, related to the issue of whether to allow an expansion of the legal remedies available to disabled people who are discriminated against as job seekers or holders. Groups representing the disabled want those remedies to include compensatory and punitive damages and the right to jury trials, the same remedies that are among those provided by a major civil-rights bill pending in Congress.

The civil-rights bill would overturn several recent Supreme Court decisions, which tended to rein in some legal gains made over the years by plaintiffs in sex- and race-discrimination cases.

But the Bush administration, congressional Republicans and business groups want the disability bill limited to the same legal remedies provided by existing civil-rights law. These remedies were part of a compromise on the disability bill reached by all parties last year, when the Senate was considering the measure. They would

include collecting back pay for hiring or job discrimination and court injunctions to require hiring, promotion or job reinstatement.

During the House Judiciary Committee's consideration of the bill yesterday, an amendment offered by Rep. James Sensenbrenner (R., Wis.) to limit the employment remedies to the current civil-rights act was defeated on a voice vote.

Attorney General Dick Thornburgh said in a March letter to Rep. Steny Hoyer (D., Md.) and others in the House that the administration would support such a "clarifying amendment," and continue its vigorous backing for the disability bill with that change. But Mr. Thornburgh expressed administration opposition to an expansion of the employment remedies, calling the remedies provision in the compromise Senate bill "a very critical element."

In return for that compromise, he said the administration had agreed to "broad coverage" under the disability bill's public-accommodations provisions, by including such establishments as grocery stores, retail stores, doctors' and lawyers' offices and drugstores, all "necessary for people with disabilities to be truly in the mainstream."

Such coverage is broader than Title II of the Civil Rights Act of 1964, the attorney general said, which essentially prohibits race discrimination in hotels, motels, restaurants, gasoline stations and places of public entertainment.

Disability groups say the expanded remedies are vital to give the handicapped "parallel" rights to those that the civil-rights bill would provide for other groups. But G. John Tysse, vice president and general counsel of the Labor Policy Association, a group of personnel executives for large corporations, said the legal remedies in the measure, if tied to the civil-rights bill, would mean a "litigation nightmare."

"All the negotiation we did last summer is out the window. Until this is fixed, we've got major problems with the bill," Mr. Tysse said.

A Justice Department spokeswoman said that the department is "disappointed" with the defeat of the Sensenbrenner amendment, but that the administration still supports the thrust of the bill—addressing the "special needs and rights of the disabled."

President Bush, in fact, told a meeting of the President's Committee on Employment of People with Disabilities here yesterday that disabled people have waited long enough for equality, and urged the House to pass the disability bill. His remarks were made before the Judiciary Committee's action on the measure.

Besides banning discrimination against disabled people in employment and in access to public buildings, the legislation would prohibit discrimination against the handicapped in transportation access. This would include making Amtrak and commuter-rail service accessible, along with new mass-transit and intercity buses and subway trains, rebuilt mass-transit vehicles, and new transit stations and facilities. Special door-to-door buses or vans and other such services must be made available to many handicapped people.

Telecommunications services would also have to be provided, allowing deaf people to send or receive messages using computer keyboards and screens.

World Bank Loans to Poland

WASHINGTON—The World Bank approved two loans totaling \$153 million to Poland for transport-sector projects.

World Bank officials said a \$145 million credit will help finance equipment needed to modernize the country's state-run railway system. A second loan, for \$8 million, will be used to improve Poland's administration of highways, rail lines and other transport facilities.

May 2, 1990

TO: Senator Dole
FROM: Mo West
SUBJECT: House mark up of ADA

The House Judiciary Committee today reported out the ADA bill by a vote of 32-3. There were no substantial changes made to the bill except a few technical clarifications.

The House Rules Committee is expected to mark up the bill in the next two weeks before the ADA bill is considered by the House of Representatives. The Rules Committee I understand will essentially join together the various titles under the bill that have been refined throughout the legislative process.

I have attached an ADA fact sheet of the bill which represents both Senate and House refinements thus far.

What
are differences

ADA FACT SHEET

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

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

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

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

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

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

ADA FACT SHEET

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

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

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

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

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

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

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

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

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

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

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

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

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

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

May 24, 1990

TO: Senator Dole
FROM: Mo West
SUBJECT: Senate/House ADA Differences

The Americans with Disabilities Act passed the House by a vote of 403-20. Four of the eight scheduled amendments passed during House floor debate. The only substantial and controversial change made to the House bill was Rep. Chapman's "Food Handlers" amendment.

Rep. Chapman's AIDS amendment to the employment title of the ADA specifies that it is not a violation of the Act for any employer to refuse to assign any employee with an infectious or communicable disease of public health significance (AIDS) to a job involving food handling, provided that the employer shall make a reasonable accommodation which offers an alternative employment opportunity for which the employee would sustain no economic loss. -- (The amendment does not take into account whether the individual poses a "direct threat" to the health or safety of others, thereby, discriminating against people with AIDS who pose no direct threat to others in food handling).

The Senate version specified that any person with a contagious disease who poses a "direct threat" to the health and safety of others may be fired or reassigned.

The Senate version is consistent with current statutes regarding people with AIDS and other contagious diseases, as well as, recent Supreme Court decisions. The Chapman amendment is based on unfounded fears and misperceptions about AIDS which only perpetuates discrimination. As you will note from the attached letter from Secretary Sullivan opposing the Chapman amendment -- AIDS cannot be transmitted during the preparation or serving of food or beverages and is inconsistent with anti-discrimination protections for people with AIDS and the intent of the Americans with Disabilities Act.

With regard to the public transportation provisions of the Act the House passed version specified that key transportation stations must be made accessible within 30 years with two thirds of the key stations accessible in 20 years. The Senate version required all key stations be made accessible within 20 years.

A House-Senate compromise was made during House Public Works & Transportation Committee action on the private transportation provisions of the Act. The Senate version required that within 6 years all new private buses be made "readily accessible and useable" to people with disabilities. In addition, the Senate

bill also mandated a study by OTA to be completed within 3 years to look at the most cost effective means of compliance. The compromise will mandate access but not require lifts. Instead regulations will define what constitutes access after reviewing the recommendations of the OTA study. The study's purpose has been changed to look at alternative means of providing access.

With respect to enforcement, the House amendment clarifies that the Attorney General may not seek damages on behalf of an aggrieved party and a person can bring suit for injunctive relief only if he or she is being subject to discrimination or has reasonable grounds for believing that he or she is about to be subject to discrimination because the covered entity is about to construct a new building in an inaccessible manner.

Finally, the House amendment changes the time frame under which a small business may be sued for violations under the public accommodations title. The House amendment retains the provisions delaying the effective date for 18 months. However, the House amendment specifies that with the exception of violations of provisions pertaining to making alterations and new construction "readily accessible to" and usable by people with disabilities, civil actions may not be brought against businesses that employ 25 or fewer employees and have gross receipts of \$1,000,000 or less during the first 6 months after the effective date. Additionally, no civil actions may be brought against businesses that employ 10 or fewer employees and have gross receipts of \$500,000 or less during the first year after the effective date.

The House only made one technical change to the telecommunications title of the Act which stipulates that every common carrier must still ensure that relay services are provided unless a state has already enacted legislation providing relay services.

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The House only made one technical change to the telecommunications title of the Act which stipulates that every common carrier must still ensure that relay services are provided unless a state has already enacted legislation providing relay services.

March 7, 1990

TO: Senator Dole
FROM: Mo West
SUBJECT: Deaf Awareness Week

Senator Kasten recently authored a resolution designating Deaf Awareness Week as March 11-17. Because the Senate will be in recess next week Senator Kasten would like to play this up tomorrow morning after the chaplain and a deaf chaplain give morning prayer. He has requested making an opening statement on this issue following the morning prayer and prior to Leadership time.

I have been working with Senator Mitchell's staff, Liz Green and the Senate Sergeant at Arms should you agree to this. In addition, there will be 100 students from Gallaudet University in the Gallery to observe this and a deaf interpreter on the Senate floor to interpret Senator Kasten's statement and other members wishing to speak on the three year anniversary of Gallaudet's student protest calling for a Deaf President.

Senator Mitchell's staff has agreed to work with us in accommodating Senator Kasten's request to speak before Leader time should you agree.

I am preparing a statement for you to comment on the historic events at Gallaudet as well as passage of your resolution to close caption Senate proceedings.

Senators McCain and Harkin are planning to speak on this issue also.

Do you agree to let Senator Kasten make a statement on Deaf Awareness Week before you and Senator Mitchell speak?

Yes No

Would you like to make a few remarks on this issue as well?

Yes No

May 17, 1990

TO: Senator Dole
FROM: Mo West
SUBJECT: ADA Update

The House today is considering the ADA bill which Rep. Hoyer has reintroduced as H.R. 4807 reflecting the changes made between the Senate bill and the various House Committee mark ups. The House Rules Committee met for two days to draft the Hoyer bill incorporating the changes and setting the course for floor debate.

There are 8 amendments being considered with a specified time allotment per amendment worked out by the Rules Committee. The House has scheduled general debate on the bill for 2 hours and will then proceed to 5 of the 8 amendments today and finish up with the last three on Tuesday.

I have attached the eight amendments being considered and will follow today's action on the bill and update you.

May 12, 1990

TO: Senator Dole
FROM: Mo West
SUBJECT: ADA Update

The House Rules Committee has scheduled the last mark up of ADA in the House this Tuesday at 10:15 a.m. in H-312 of the Capitol. House members and staff are working over the weekend to draft one bill which Rep. Hoyer will introduce on Monday. The Hoyer bill will marry all the various titles of the ADA that have been changed through House committee action this year.

The House bill thus far has only minor technical changes from the Senate passed version. The area that appears to be most controversial at this time are the remedy provisions in the bill.

The remedies in the Senate ADA include administrative remedies and private remedies comparable to those in Titles II and VII of the Civil Rights Act of 1964. Attorney's fees are available; punitive damages are not.

The Civil Rights Act of 1990 which Senator Kennedy and Rep. Hawkins have introduced will amend the Civil Rights Act of 1964 to include compensatory and punitive damages and the right to jury trials under the Act.

The disability community want "parallel" remedies to those found in the Civil Rights Act of 1964 and will push for language in the House ADA to assure that whatever remedies are changed in the Civil Rights Act will also apply to ADA.

I am certain that this argument will be fought on the House floor. After the Rules Committee marks up the Hoyer bill on Tuesday the House has scheduled a vote on Wednesday on ADA. Should it pass next week without radical changes from the Senate version the hope will be to avoid a conference by having the Senate accept the House passed version and send it to the President for enactment.

I will keep you apprised of the changes the bill encounters on the floor of the House which will determine if a conference is needed or not.

BOB DOLE
KANSAS

United States Senate

OFFICE OF THE REPUBLICAN LEADER

WASHINGTON, DC 20510-7020

Chris.

Memos I've
submitted to Senator
Dole thus far on ADA
to add to the
file.

☺

Thanks!

Mo

May 15, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Meeting with Disability Groups

Several key disability advocates have asked to meet with you to talk about the ADA. It would be wise to meet with a select few to hear their concerns and interest in eliciting your support for the ADA. Because of your statements to work in a bipartisan manner and to continue to learn more about this legislation -- a brief meeting with key disability advocates in the next week would tone down your viewed opposition on the bill.

The advocates that would like to meet with your are:

Pat Wright -Disability Rights Education Defense Fund

Dave Kaposi- Paralyzed Veterans Association

A meeting with these individuals (representative of the disability community) to hear out concerns will support your position to hear from all parties impacted by this legislation in addition to weighing in White House recommendations on the ADA.

Will you meet with them next week?

Yes ___ No ___



May 15, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: ADA Update

The National Council on Independent Living (NCIL) is a grass roots organization (with members who are predominantly physically disabled) which represents the independent living movement and disability issues in general. Approximately 1500 disabled individuals attending the conference will make their way to the Hill today and tomorrow in mass to generate support for the ADA bill and attend the last day of scheduled hearings on the ADA.

After the NCIL congressional reception this evening, participants of the conference will march to the White House for a candle light vigil to elicit support from the Administration, which has yet to comment on the legislation.

The groups that have stopped by have not been militant but rather have stated their support for the bill. There were approximately 15 delegates from Kansas that stopped by to convey their support for the ADA. I continue to reiterate your intent to hear out all parties impacted by this legislation and your consideration of White House recommendations on this issue.

I believe it would be wise to talk with key players in the disability community to hear out their concerns and to convey your intent to work in a bipartisan manner.

Marca Bristow, President of NCIL, will be in town until Tuesday evening and would like to talk to you about the bill. Marca was rehabilitated at the National Rehabilitation Institute in Chicago and has spearheaded the independent living movement. She is well respected and not militant however representative of the NCIL population. A meeting to hear out her concerns would be helpful given the intensity of the ADA this week.

Will you meet with Marca to hear her concerns?

Yes No

May 12, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Appointment re ADA

Sandy Parrino, Chairperson of the National Council on Disabilities would like to see you this afternoon to briefly discuss the Americans with Disabilities Act. She has met with White House officials of the Economic Advisory Council this morning and would like a follow up meeting with you.

The National Council on Disability is an independent Federal agency comprised of members appointed by the President. The Council is charged with making disability policy recommendations to the President and Congress. The original ADA bill emanated from the National Council on Disabilities under her tenure. I believe it would be wise to hear her concerns and your intent to work with the White House on this legislation.

Will you meet with her this afternoon?

Yes _____ No _____

yes
Mo West

called Maureen 3:00 pm
Joyce

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05/12/89 14:45 202 453 4240 NCD

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89 FRI 14:17 1 1 R R

Maurice West

Dear Senator Harkin,

On behalf of the National Council on Disability, I want to convey and reemphasize our long-standing and profound support for your efforts and those of other distinguished Members of Congress, who have sincerely committed themselves, as you have, to insuring, through forthright legislative action, that people with disabilities in the United States will be protected from discrimination on the basis of disability by the full force and measure of the law.

As the Council stated in *Toward Independence*, its February 1986 report to the Congress and the President, "Congress should enact a comprehensive law requiring equal opportunity for individuals with disabilities, with broad coverage and setting clear, consistent, and enforceable standards prohibiting discrimination on the basis of handicap." The Council continues to believe that this is absolutely and without question the highest priority for action by Congress and the President which exists in the area of disability policy today.

The Council understands that introduction of this important legislation is only the first step in the process of achieving our goal of insuring equal opportunity and protection against discrimination for 43 million people with disabilities in the United States.

Ultimate passage and successful implementation of this legislation depend on broad-based agreement and support from many sectors. Disability policy is not, nor should it be, a partisan issue or concern. It must be a principal concern of public officials at all levels and of all ideologies.

While we are most anxious to see early passage of legislation like that recommended by the Council and introduced by you and Senator Weicker last year, our own experience in developing complex policy recommendations indicates that process plays an important and necessary role in educating interested parties and in building consensus-oriented support.

We know that consensus-building and educating can be a relatively painstaking process. However, we believe that the likelihood of adoption and successful implementation of this measure will be enhanced by such a process. Thus, we urge you to take whatever steps are necessary to insure consideration of the legitimate concerns of all parties as you move toward passage of this vital legislation.

As you know, the President has expressed his support in principle for comprehensive protection against discrimination of people with disabilities. We join the President in pledging our support for this principle. We look forward to working with the Congress and the Administration to establish, unequivocally, comprehensive equal rights for persons with disabilities in our great nation.

Sincerely,

Sanjiv S. Parrino

May 10, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: ADA Hearing

AT 10:00 you are scheduled to testify at the second day of hearings on the Americans with Disabilities Act. The hearings are being held at the Subcommittee level and Senator Harkin will chair.

The Americans with Disabilities Act was introduced yesterday by Senators Harkin, Kennedy and Durenberger. Seven additional Republicans have joined as original cosponsors (McCain, Jeffords, Chaffee, Stevens, Cohen, Packwood, & Boschwitz). An identical bill was introduced by Rep. Coehlo in the House yesterday.

Testimony at today's hearing will focus on employment and communications. Witnesses include self-advocates, the disability agencies, NFIB, private schools and AT&T. (see attached witness list).

I have also asked that Nancy Jones, chief counsel with the American Law Division join us for counsel should any technical question be asked and there need to be clarification on an issue.

SUBCOMMITTEE ON THE HANDICAPPED
HEARING ON THE AMERICANS WITH DISABILITIES ACT OF 1989
MAY 10, 1989

PANEL I-CONSUMERS
FRANK BOWE
Hofstra University
111 Mason Hall
Hempsted, NY 11550

Perry Tillman III
4616 LaFon Drive
New Orleans, LA 70126

Ken Tice
Advocating Change Together
2025 Nicollet Avenue South
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Minneapolis, MN 55404

Lisa Carl
4022 No. 19th St.
Tacoma, Washington 98406

INDUSTRY

The Honorable Neil F. Hartigan
Attorney General of the State of Illinois
100 West Randolph St
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Barrier Free Environments
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(AT&T)

Robert Yaeger
Direct Connect
MN Relay Service
419 N. Robert St
Suite 300
St. Paul, MN 55101

May 10, 1989

TO: Senator Dole

FROM: Mo West

SUBJECT: The Americans with Disabilities Act

DATE OF INTRODUCTION:

The Americans with Disabilities Act (ADA) was introduced Tuesday, May 9, 1989 in conjunction with the first day of ADA hearings.

PURPOSE OF THE ADA:

The purpose of the legislation is to prohibit discrimination on the "basis of disability", in the areas of -- employment, public accommodation, transportation, communication, State and local governments.

Title V of the Rehabilitation Act of 1973 contains section 504 which prohibits discrimination on the basis of a disability to any entity that is a recipient of Federal aid. It also covers Federal contractors specifically in the area of employment provided directly by Federal agencies (section 501). These sections provide that a covered entity may not discriminate against an individual with a disability unless the disability renders the individual unqualified for the position or program in question.

In the evaluation of the individual's qualifications, the entity must evaluate whether the disability can be reasonably accommodated without undue hardship.

The ADA would not amend Title V of the Rehabilitation Act, but extend prohibitions against discrimination on the basis of disability to the private sector. The rights and remedies in the ADA would exist independently of Title V of the Rehabilitation Act and there would be no preemption.

ACTION AND ACTIVITIES IN THE LAST CONGRESS:

In May, 1987, Chairman Major Owens of the Subcommittee on Select Education, appointed Justin Dart to chair a Task Force on the Rights and Empowerment of People with Disabilities. This task force had as its central purpose, the identification of the full range and magnitude of discrimination faced by people with disabilities and to develop grassroots support for legislation to overcome such discrimination.

Mr. Dart, a longtime disability rights advocatet held hearings in every state, most territories, and in Puerto Rico. Over 9,000 persons gave oral and written testimony on examples of discrimination and the need for comprehensive anti discrimination legislation for people with disabilities. As a result, broad-based grassroots support for this legislation has been established.

The concept of the ADA emanated by the National Council on Disability, an independent federal agency charged with providing recommendations to the President and Congress on disability policy. In addition, President Reagan's Commission on AIDS recommended that such protections, as those offered in section 504 be made available to persons with AIDS.

CONCERNS WITH LAST YEAR'S BILL:

Reactions to the ADA in the last Congress from the private sector and the Executive Branch were few and limited, though substantive. The principle reason for this reaction was that everyone was aware that passage was not the intent of the sponsors during the 100th Congress.

Concerns about cost were aimed at architectural and transportation accessibility but most specifically at employment accommodation.

First, there was concern that a covered entity (employer) would have to be on the verge on bankruptcy before it would be relieved from the duty to accommodate.

Second, employers are familiar with section 503 of the Rehabilitation Act and Title VII of the Civil Rights Act of 1964, both of which address employment, yet they were concerned that the ADA would create a third set of independent standards.

Third, disability defined in the bill, was so broadly construed that even minor limitations (e.g. acne or left handedness) might force accommodation or result in a charge of discrimination.

Fourth, the bill would have allowed an individual who was discriminated against on the basis of handicap or thought he/she was about to be discriminated against, to pursue private cause of action.

A fifth major area of concern was that persons with AIDS would also be covered by the ADA. The Supreme Court, the Department of Justice, and President Reagan's Commission on AIDS have concurred that such persons are covered under section 504, if they can be reasonably accommodated without posing a direct threat to the health and safety of others.

May 10, 1989

TO: Senator Dole
FROM: Maureen West
SUBJECT: Harkin ADA Bill

The Americans with Disabilities Act was introduced yesterday with 8 Republican cosponsors (Durenberger, Jeffords, McCain, Chaffee, Stevens, Cohen, Packwood, Boschwitz).

The Americans With Disabilities Act is an omnibus civil rights statute that prohibits discrimination against individuals with disabilities in private sector employment; all public services; public accommodations; transportation; telecommunications; and State and Local governments.

The ADA extends civil rights protections to people with disabilities beyond section 504 of the Rehabilitation Act of 1973 (the anti-discrimination statute for disabled persons) by requiring the private sector and state and local governments to comply with current civil rights statutes afforded women and minorities.

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

The Act specifically defines what does constitute discrimination, including various types of intentional and unintentional exclusion; segregation; benefits and services; architectural, transportation, and communication barriers; failure 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 qualification standards necessary and substantially related to the ability to perform or participate in the essential components of a job or activity.

The ADA incorporates by reference the enforcement provisions under title VII of the Civil Rights Act of 1964 and section 1981 of the Civil Rights Act of 1981 for employment -- and other applicable enforcement provisions in Title VIII of the Civil Rights Act of 1964 and Section 505 of the Rehabilitation Act of 1973.

May 7, 1989

NOTE TO: SHEILA BURKE
SUBJECT: AMERICANS WITH DISABILITIES ACT (ADA)
HARKIN
FROM: JOE FAHA *Joe*

As you know Maureen West has kept me informed on the content and politics surrounding the ADA. As to the content, there are still problems with the legislation which I have discussed with Moe. But it seems to me that the politics of the situation is driving the discussion and not the content.

Harkin wants the bill as a trophy that he can display in his upcoming campaign against Mr. Tauke. I am not sure that it is a trophy that will make a difference in the election but I understand that Mr. Tauke does and so it is an issue.

On the other side it seems that the disability groups have mounted a campaign for this bill that exceeds what they did for the Civil Rights Restoration Act. The number of phone calls and letters/telegrams that the Senator has received far exceed what he received on the Restoration Act. I also understand that the Kansas Office has been taken over and that there is a possibility of that happening again. That did not happen with the Restoration Act.

I also understand from Moe that the White House has significantly been involved in the bill spending time communicating with Harkin's staff and Pat Wright who is a major player in the lobbying efforts to pass the bill. As I understand it, Pat knows about the Iowa race issue from Gray. I also understand that the White House has yet to indicate to Pat or to Harkin's staff that they have some problems with the bill and that they are pulling back on a promise to testify on the bill.

I have not been immediately involved but I am concerned for the Senator. The push for the legislation among the disabled is such that if the Senator is perceived as objecting to the measure purely for the Iowa race that Harkin will get his trophy anyway and will be able to pin on Senator Dole that he is willing to compromise principle for politics.

I am also concerned that the White House may be leaving the Senator out there to work this on his own and they will come in later to mediate or compromise the situation.

Needless to say the potential loss of a previously ^{strong} constituency who saw the Senator waiver on the Civil

Rights Restoration Act and now being perceived as an abstacle to the ADA is very real. The last piece of legislation that the Senator marshalled through the Senate of importance to disability groups was several years ago.

If the Senator cannot support the legislation because of some of the provisions which he has problems with and can show through substantive testimony which demonstrates a strong committment to disability issues then I think he can make it through this experience with respect to the disability groups. If, however, the sole perceived reason is the Iowa race, his credibility will not be worth very much among a group that has traditionally been very important to him.

May 5, 1989

DRAFT WITNESS LIST
HEARING ON THE AMERICANS WITH DISABILITIES ACT OF 1989
May 9, 1989

PANEL 1

Dr. I King Jordan
President, Gallaudet College
Washington, D.C.

Justin Dart
Chairman
Congressional Task Force on the Rights and Empowerment
of Americans with Disabilities
Washington, D.C.

PANEL 2

Administration

PANEL 3

Mary Disapio
Wall Street Financial Analyst
New York, New York

Joe Danowsky
Attorney
New York, New York

Two other witnesses

PANEL 4

Jay Rochlin
Executive Director
President's Council on Employment
of People with Disabilities
Washington, D.C.

Edward Berkowitz
Professor of History and Public Policy,
George Washington University
Washington, D.C.

Zack Fasman
Attorney
Paul, Hastings, Janofsky and Walker
(representing Chamber of Commerce)
Washington, D.C.

Lawrence Lorber
Attorney
Kelley, Drye, and Warren
(representing American Society of Personnel Administrators)
Washington, D.C.

Arlene Mayerson
Disability Rights Education and Defense Fund
Berkeley, California

May 5, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Disability Community Support

The Americans with Disabilities Act is comprehensive landmark civil rights legislation that establishes a national mandate to end discrimination against people with disabilities. The Act will parallel in scope the civil rights statutes provided racial and ethnic minorities, women and older persons -- extending anti-discrimination statutes and creating enforceable standards to deal with discrimination against people with disabilities in employment, transportation, public accommodations, communications, and State and local governments.

Federal legislation barring discrimination against individuals with handicaps exists under Section 504 of the Rehabilitation Act of 1973 but is limited to those entities receiving federal financial assistance. The ADA would provide broader coverage since it would apply to the private sector. It is also more specific in its statutory requirements.

Senator Harkin plans to introduce the Americans with Disabilities Act next Monday prior to next week's hearings. Approximately, 70 disability groups and the Leadership Conference on Civil Rights support the Americans with Disabilities Act.

The ADA extends civil rights protections to people with disabilities by requiring the private sector to come into compliance with current civil rights statutes afforded women and minorities. The problems are that in some instances, the required compliance would exceed those afforded other minorities.

The Act covers employers engaged in commerce who have 15 or more employees.

The Act specifically defines what constitutes discrimination, including various types of intentional and unintentional exclusion; segregation; benefits and services; architectural, transportation, and communication barriers; failure to make reasonable accommodations; and discriminatory qualifications and performance standards.

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

The ADA incorporates by reference the enforcement provisions under Title VII of the Civil Rights Act of 1964 and section 1981 of the Civil Rights Act for employment -- and other applicable enforcement provisions in Title VIII of the Civil Rights Act of 1968 and Section 505 of the Rehabilitation Act of 1973.

TASK FORCE ON THE RIGHTS AND EMPOWERMENT OF AMERICANS WITH DISABILITIES

907 6th Street, S.W., Suite 516C, Washington, D.C. 20024
(202) 488-7684 Voice (202) 484-1370 TDD

Appointed by Congressman Major R. Owens, Chairman, House Subcommittee on Select Education

MEMBERS

Justin Dart
Chairperson

Elizabeth Boggs, Ph.D.
Co-Chairperson

Lex Frieden
Coordinator

Elmer Bartels
Wade Blank
David Bodenstein
Frank Bowe, Ph.D.
Marca Bristo
Dale Brown
Philip B. Calkins, Ph.D.
David M. Capozzi, Esq.
Julie Clay
Susan Daniels, Ph.D.
James DeJong
Eliot Dober
Don Galloway
Keith Gann
James Havel
I. King Jordan, Ph.D.
Paul Marchand
Connie Martinez
Celane McWhorter
Oral Miller
Gary Olsen
Sandra S. Parrino
Ed Roberts
Joseph Rogers
Liz Savage
William A. Spencer, M.D.
Marilyn Price Spivack
Ann Vinup
Sylvia Walker, Ed.D.
Patrisha Wright
Tony Young

VOLUNTEER STAFF

Douglas Burleigh, Ph.D.
Marcia Lee Nelson
Gwyneth Rochlin

SUBCOMMITTEE LIAISONS

Maria Cuprill
Robert Tate
Patricia Laird

Dear Mr. [Name],

I am pleased to hear that you are interested in the work of the Task Force on the Rights and Empowerment of Americans with Disabilities. We are currently seeking individuals who are interested in the work of the Task Force on the Rights and Empowerment of Americans with Disabilities. We are currently seeking individuals who are interested in the work of the Task Force on the Rights and Empowerment of Americans with Disabilities.

The Task Force on the Rights and Empowerment of Americans with Disabilities is a bipartisan, bicameral commission that was established by the House of Representatives in 1990. The Task Force is currently conducting a study on the barriers to employment for people with disabilities. We are currently seeking individuals who are interested in the work of the Task Force on the Rights and Empowerment of Americans with Disabilities.

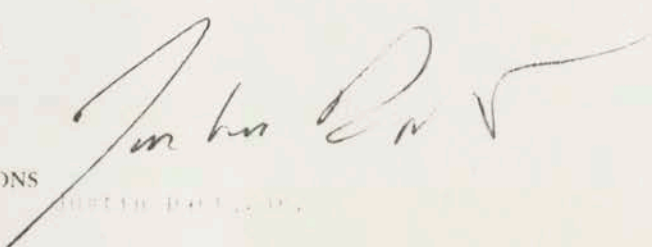
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I hope forward to working with you and your staff for the passage and implementation of the Americans with Disabilities Act, and to help you and your staff for the passage and implementation of the Americans with Disabilities Act, and to help you and your staff for the passage and implementation of the Americans with Disabilities Act.

Sincerely,
[Signature]



JUSTIN DART, JR.

907 6TH STREET, S.W., APT. 516C
WASHINGTON, D.C. 20024
202-488-7684 (H)

April 14, 1989

Honorable George Bush
President
The White House
Washington, DC 20500

Dear President Bush:

I congratulate you on your endorsement of the Americans with Disabilities Act. You are the first President of the United States to take a public stand for our civil rights. But we still face opposition which, although often well meaning, is based on traditional assumptions and misinformation. We need your continued leadership for justice now.

As an example of problem attitudes, the Justice Department has just filed an appeal brief in which they seem to oppose a keystone provision of ADA that requires all new components of federally supported public transportation systems to be accessible to people with disabilities. Their brief seems to assert that special transit systems for people with disabilities will be more efficient to accomplish mainstreaming.

Although there was a time when I have made similar arguments, I have come to see that approach as reminiscent of assertions that separate schools could result in equality.

Special transit for people with very severe disabilities is a necessary supplement to accessible public transit. However, sole reliance on special, segregated transit to provide door-to-door service for millions of people, will be more "efficient" than accessible public transit only if most of those people remain unemployed recipients of social welfare who don't go anywhere except to hospitals.

It is estimated that the proportion of our population with disabilities, presently about 15%, will double within the next 20-30 years. To perpetuate status quo attitudes and practices of segregation will guarantee ever increasing millions of unproductive, dependent, second class citizens, and lead us inevitably toward the economic and moral disasters of massive, paternalistic, welfare bureaucracies.

America must begin now to create communities in which all systems of productivity and social intercourse are equally accessible to all people. But this can never be accomplished until we overcome the insidious assumption that people with disabilities are less than fully human. This nation must make a firm, enforceable statement of law that our 43 million citizens with disabilities will have equal opportunities to fulfill their potential, everywhere, every day, in every way. The Americans with Disabilities Act is that historic statement of equality.

Mr. President, we need your vigorous public support for ADA as reintroduced in the current session of Congress. It has been revised to accommodate the legitimate concerns of public and private sector leaders. It has virtually unanimous support by every major segment of the disability community. It is a landmark statement of human rights, which will, at long last, keep the promise of "liberty and justice for all" to the nation's last large oppressed minority.

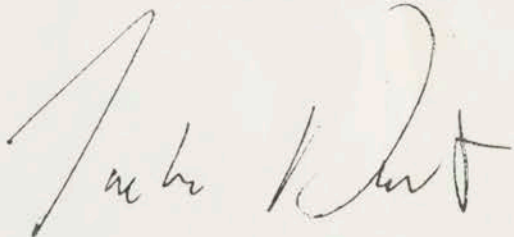
I enclose a picture taken on June 22, 1987, the evening before my father was awarded the Freedom Medal by President Reagan. Standing beside you is my younger brother, Peter, a graduate engineer, a top Air Force jet pilot, an outstanding family man, respected in his community. He contracted the most serious form of polio many years ago while in the Air Force, and some years later suffered a severe head injury. He fought back from these disabilities to walk, as you see him, with canes. He struggled valiantly to overcome traditional attitudes and barriers and to become active in his profession. Shortly after this picture was taken he began to experience normal post-polio and head injury effects for his age - modest deterioration of strength, breathing, vision and memory. It became apparent that he needed to use a wheel chair - as I have done for 40 years - and perhaps give up driving. His family pushed him to do these things, and to have necessary medical advice, but he resisted. On January 24th last year, faced with the presence of the wheel chair and the imminence of a medical consultation that might lead to other lifestyle adjustments, he told his son, "I would rather be dead than dependent." On the morning of January 29, he was found dead in his bed. The coroner found no evidence of dramatic illness that would cause death - "He simply stopped breathing." It is my impression that certain obvious hypotheses were discretely unmentioned.

I know in my heart that my brother is dead years before his time because of his unwillingness to face the massive discrimination that society visits on persons, like wheel chair users, who call to mind certain stereotyped perceptions of disability. He is the

third member of my family to meet this fate in recent years, and thousands of other families have experienced similar tragedies. My beloved daughter Betsy, who has three lovely children, was deserted late in 1987 by her husband, a few days after she was diagnosed as having MS. I have met personally hundreds of individuals with impairments who are forced to live in situations of segregation, poverty and physical and psychological deprivation to which we would not knowingly subject animals.

Mr. President, these things must not happen to our grandchildren. We must not allow this great nation to become terminally stricken with the cancer of welfare dependency. All of us who are associated with the Americans with Disabilities Act have a profound responsibility to millions in future generations. I pray every day that I, and that each one of us, can reach into the depths of our souls, and somehow find the courage to act with such responsibility for the sacred values of democracy and of human life that our grandchildren, and their children after them, will be proud to speak our names.

Yours for equal access to the American dream,

A handwritten signature in cursive script, appearing to read "Justin Dart". The signature is written in dark ink on a light-colored paper.

Justin Dart



Consortium for Citizens with Disabilities

For further information contact:

Liz Savage, EFA 459-3700
Dave Capozzi, PVA 872-1300
Tom Sheridan, AAC 293-2886

May 1, 1989

The Honorable Robert Dole
U.S. Senate
Washington, D.C. 20510

Dear Senator Dole:

Discrimination is a daily experience for individuals who have disabilities. Last year you recognized the importance of this problem by co-sponsoring the Americans with Disabilities Act. The Consortium for Citizens with Disabilities and other national organizations that advocate for the rights of America's 43 million citizens with disabilities would like you to become an original co-sponsor of the Americans with Disabilities Act of 1989.

This bill will afford civil rights protections to all individuals in this country who have disabilities. It is intended to provide people with disabilities, America's largest minority, the same federal civil rights protections that are enjoyed by other minorities.

As President Bush has stated, "Disabled people do not have the same civil rights protections as women and minorities . . . I am going to do whatever it takes to make sure the disabled are included in the mainstream. For too long they've been left out. But they're not going to be left out anymore." The Americans with Disabilities Act is a significant step toward achieving this goal.

We appreciated your leadership in the 100th Congress. We urge you to once again affirm your commitment to our nation's citizens with disabilities by co-sponsoring the Americans with Disabilities Act of 1989. Please contact Bob Silverstein at the Subcommittee on the Handicapped (4-6265) if you wish to co-sponsor this legislation. Thank you.

Sincerely,

May 1, 1989
Page 2

ACLD, An Association for Children and Adults with
Learning Disabilities
AIDS Action Council
Alexander Graham Bell Association for the Deaf
American Academy of Child and Adolescent Psychiatry
American Academy of Otolaryngology Head and Neck Surgery
American Association for Counseling and Development
American Association of the Deaf-Blind
American Association on Mental Retardation
American Association of University Affiliated Programs
American Civil Liberties Union
American Deafness and Rehabilitation Association
American Diabetes Association
American Foundation for the Blind
American Psychological Association
American Speech-Language-Hearing Association
Association for Education and Rehabilitation of the Blind
and Visually Impaired
Association for the Education of Rehabilitation
Facility Personnel
Association for Retarded Citizens of the United States
Autism Society of America
Child Welfare League of America
Conference of Educational Administrators Serving the Deaf
Convention of American Instructors of the Deaf
Council for Exceptional Children
Deafness Research Foundation
Disabled But Able to Vote
Disability Rights Education and Defense Fund
Epilepsy Foundation of America
Episcopal Awareness Center on Handicapped
Gallaudet University Alumni Association
Gazette International Networking Institute
International Association of Parents of the Deaf
International Polio Network
International Ventilator Users Network
Lambda Legal Defense and Education Fund
Leadership Conference on Civil Rights
Mental Health Law Project
National Alliance for the Mentally Ill
National Association for Music Therapy
National Association of the Deaf
National Association of Developmental Disabilities Councils
National Association of Private Residential Resources
National Association of Protection and Advocacy Systems
National Association of Rehabilitation Facilities
National Association of Rehabilitation Professionals in the
Private Sector
National Association of State Mental Retardation
Program Directors
National Coalition for Cancer Survivorship
National Council of Community Mental Health Centers

May 1, 1989
Page 3

National Council on Independent Living
National Council on Rehabilitation Education
National Down Syndrome Congress
National Easter Seal Society
National Fraternal Society of the Deaf
National Handicapped Sports and Recreation Association
National Head Injury Foundation
National Mental Health Association
National Multiple Sclerosis Society
National Organization for Rare Disorders
National Organization on Disability
National Recreation and Park Association
National Rehabilitation Association
National Spinal Cord Injury Association
Paralyzed Veterans of America
People First International
Self Help for Hard of Hearing People, Inc.
Spina Bifida Association of America
Telecommunications for the Deaf, Inc.
The Association for Persons with Severe Handicaps
Tourette Syndrome Association
United Cerebral Palsy Associations, Inc.
World Institute on Disability

May 5, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Summary of Harkin ADA

The Americans with Disabilities Act of 1989 (ADA) is an omnibus civil rights statute that prohibits discrimination against individuals with disabilities in private sector employment; all public services; public accommodations; transportation; and telecommunications.

Several key terms such as "disability", "auxiliary aids and services", and "reasonable accommodations" are specifically defined. These definitions are comparable to the definitions used for the purposes of section 503 of the Rehabilitation Act of 1973 (which requires government contractors to take affirmative action to hire individuals with disabilities) and section 504 of the Rehabilitation Act of 1973 (which prohibits discrimination against persons with disabilities by recipients of Federal financial assistance).

Title I sets out the general forms of discrimination prohibited by the Act. These general prohibitions are comparable to the prohibitions included in section 504.

Title II specifies that an employer, employer agency, labor organization, or joint labor-management committee may not discriminate against any qualified individual with a disability in regard to any item, condition or privilege of employment. The ADA incorporates by reference the enforcement provisions under title VII of the Civil Rights Act of 1964. The ADA also incorporates by reference section 1981 of the Civil Rights Act for acts of intentional discrimination.

Title III specifies that no individual shall be discriminated against by a State agency or political subdivision of of a State or board, commission, or other instrumentality of a State and political subdivision. Title III also includes specific actions applicable to public transportation provided by public transit authorities considered discriminatory. The enforcement provisions in section 505 of the Rehabilitation Act of 1973 are also incorporated under this title.

Title IV specifies that no individual shall be discriminated against in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation operated by a private entity on the basis of a disability. Also included are specific prohibitions of discrimination in public transportation services provided by private entities. Finally title IV incorporates the applicable enforcement provisions in title VIII of the Civil Rights Act of 1968.

Title V specifies that telephone services offered to the general public must include interstate and intrastate telecommunications relay services so that such services provide individuals who use nonvoice terminal devices because of disabilities with opportunities for communications that are equal to those provided to individuals able to use voice telephone services. Title V incorporates by reference applicable enforcement provisions in title VIII of the Civil Rights Act of 1968 and the Communications Act of 1934.

Title VI includes miscellaneous provisions, such as a construction clause explaining the relationship between the provisions in the ADA and the provisions on other Federal and State laws; a prohibition against retaliation; a statement that States are not immune from actions in Federal court for a violation of the ADA; a directive to the Architectural and Transportation Barriers Compliance Board to issue guidelines; and authority to award attorney's fees.

May 5, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Major Statutory Language Problems with ADA

There are many unknown concerns yet to be voiced and potential land mines yet to be uncovered regarding this legislation. However, there are a few areas which we can identify already that need to be addressed. The disability community, as you are aware, is extremely emotional about this legislation. They have worked to refine this bill from last year's version. Too much is still unclear as to what impact this legislation will have on the regulatory process and the economy in general. Cost estimates are still to be determined.

Concerns raised thus far with the Harkin bill include the ramifications this legislation will have on the private sector, specifically the small business community who must come into compliance with mandated civil rights statutes to assure full accessibility and accommodations for people with disabilities.

The major concern is the exemption clause of 15 or less employers. The fact that reasonable accommodations will need to be made to assure a discrimination free-workplace or public accommodation has many small businesses very apprehensive, because it will cost to make the environment barrier free. While there is language in the bill that would eliminate a business or entity from going bankrupt in meeting mandated standards -- the 15 or less clause will need to be phased in to assure adequate time to comply and prepare for the restructuring this legislation will force on businesses.

Some of the language throughout the bill is too broad and must be further defined and clarified. For example: -

(1) 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" on the basis of a disability. This is a hard point to prove; how does one know that he/she is about to be discriminated against in employment? The business community fears that forced litigation and frivolous lawsuits will result from this language, which includes compensatory damages for pain and suffering, always difficult to measure.

(2) Use of failure standard in employment -- An individual with a disability, can pursue a private cause of action in several titles (II and III primarily which are employment and transportation related) if a covered entity fails to provide or accommodate a discrimination-free environment. Language in the bill incorporates "failure" and thus, would encourage increased litigation for those who unintentionally discriminated. Inserting language such as "refusal" will give a party the option of correcting unintentional discrimination.

(3) Transit Authorities will have problems with the timelines and costs in bringing into compliance accessible transportation, however, no retrofitting will be required and accessible transportation is necessary for people with disabilities who want to live and work in their community.

(4) Use of different remedies in different titles -- Each title uses differing combinations of remedies and procedures in cases of private causes of action. Consistency among remedies may be necessary because of the accommodations that are to be made.

(5) Burden of proof -- Under this bill burden of proof is placed on the defendant, while most laws place burden of proof on the plaintiff. The approach should be consistent.

May 4, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Statutory Language with ADA

The following legal questions need to be raised:

1. How have the Court's interpreted the phrase "... regarded as having an impairment" in the definition of an individual with disability in section 504 of the Rehabilitation Act?

If the Court's are split on this, we may have a basis for excluding or limiting this phrase in the ADA.

2. How have the Court's interpreted the the phrase "... believe one is about to be discriminated against?"

Legal staff at CRS has indicated it is a new concept; therefore, if that is the case, it should be deleted, because can one measure or ascertain "about to be" it is just plain too vague.

3. How many civil rights statutes allow for a private cause of action in cases of both intentional and unintentional discrimination, and how many limit cases to those involving only intentional discrimination?

If most laws allow for a cause of action only in cases of intentional discrimination, the argument can be made for limiting the private cause of action to similar cases in the ADA or at least selected titles in ADA.

4. Most civil rights statutes place the burden of proof on the plaintiff, why should ADA place this burden on the defendant?

If most laws place the burden of proof on the plaintiff, the argument for similar provision in the ADA could be made. This is not the case.

More research will need to be done on the remedies and procedures under each title of the ADA and the implications of such remedies.

April 28, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Speaking Engagements

You have been asked by the National Council on Independent Living (NCIL) to speak at their annual conference (which is in conjunction with the ADA hearings) on May 13. It will take place at the Hyatt in Bethesda with approximately 500 people with disabilities in attendance. This organization represents the national voice of the independent living movement and people with disabilities generally. They are a strong and sometimes militant advocacy organization with grassroots backing for the Americans with Disabilities Act. The audience would like to hear more about ADA and its progression through Congress. I believe this would be a prime opportunity to validate your interest and intention to be a key player with this legislation.

Will you speak at their conference?

Yes _____ No _____

you do it

Jo Ann Molnar, from the Foundry United Methodist Church phoned to invite you to speak at the Sunday morning "Christian's Connection Class" on May 14. You have been asked to speak (for approx. 15 minutes) on "Faith and Coping with a Disability." Members of the Church who have a disability will be in attendance and take part in the class as well.

Will you speak to the class?

Yes _____ No _____

not here

Council on Independent Living
Peoria St., Suite 201
Chicago, Illinois 60607
312-1006 (Voice/TTY/TDD)

NOT JUST RESPONDING TO CHANGE,
BUT LEADING IT

Maureen

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April 25, 1989

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The Honorable Robert Dole
Hart Building, Room 141
Washington, D.C. 20510

Dear Senator Dole:

The National Council on Independent Living in conjunction with the Research and Training Center on Independent Living at the University of Kansas and the ILRU Research and Training Center on Independent Living are holding their Annual Conference on Independent Living from May 13 through the 16th at the Hyatt Bethesda Hotel in Bethesda, Maryland. We respectfully request your presence as a Keynote Speaker on Saturday morning, May 13, from 9:15 a.m. to 10:00 a.m. We would appreciate your comments on any disability topic, but we are most interested in your perspective on the Americans With Disabilities Act and how to effectively advocate for its passage.

Please contact Bonnie O'Day at the Endependence Center, Inc., Janaf Office Building, Suite 601, Norfolk, Virginia 23502, (804) 461-8007 if you have any questions or need additional information.

Sincerely,

Bonnie O'Day

Bonnie O'Day, Chair
Legislative Civil Rights Subcommittee

BLO:cjc

cc: Sue Elkins
Maggie Shreve

April 28, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: ADA Hearings

Senators Hatch and Kennedy have scheduled the mornings of May 9, 10, and the 16th for hearings on the Americans with Disabilities Act. The hearings are to be balanced with representation from the disability community, small business and the Administration. I will share with you a copy of the witness list when it becomes available.

The Administration will not have an official stance on a bill (for approx. 3 months) until affected Agencies concerned with the legislation have time to study its impact and OMB has done a cost analysis. I was informed that there is to be a Rose Garden Ceremony in a few weeks with the President and interested Congressional leaders, encouraging bi-partisan efforts on civil rights for the disabled. President Bush will also recommend that an appropriate analysis be completed in developing sound policy recommendations for this legislation.

I recommend that you stop by the hearings and make a statement indicating your intent to be a major player with this legislation and your support for the basic concept of enhanced civil rights; you may also use this opportunity to clarify your own position.

Do you want to stop by the ADA hearings?

Yes No

April 19, 1989

TO: Senator Dole
FROM: Maureen West
SUBJECT: ADA Strategy

As you requested I spoke with Senator Grassley regarding the Americans with Disabilities Act (ADA). He seemed to indicate that he would consider cosponsoring a Hatch bill but preferred a Dole bill as he informed Iowans of his interest in your legislation.

OVERVIEW OF THE LEGISLATION:

The Americans with Disabilities Act is comprehensive landmark civil rights legislation that establishes a national mandate to end discrimination against people with disabilities. The Act will parallel in scope the civil rights statutes provided racial and ethnic minorities, women and older persons -- extending anti-discrimination statutes and creating enforceable standards to deal with discrimination against people with disabilities in employment, transportation, public accommodations, communications, and State and local governments.

Federal legislation barring discrimination against individuals with handicaps exists under Section 504 of the Rehabilitation Act of 1973 but is limited to those entities receiving federal financial assistance. The ADA would provide broader coverage since it would apply to the private sector. It is also more specific in its statutory requirements.

POLITICAL PROBLEMS:

President Bush repeatedly expressed his support for the ADA during the campaign. However, now the White House wants more time to study the bill, because affected agencies (Department of Labor, Department of Transportation, Federal Communications Commission and the Department of Commerce) are very concerned about its cost, regulatory impact, and the effect on the economy and small business. Extension of anti-discrimination statutes with enforceable remedies may result in increased litigation against those not in compliance with mandated standards.

The disability community is prepared to stage protests and react militantly should the Administration not support this legislation. If you introduce a bill before the Administration acts, the disability community will perceive you as actively undermining their efforts to secure Administration support, as well as backing from other Congressional Republicans.

PREVIOUS DOLE POSITION:

You cosponsored the original version of the ADA in the last Congress (which was much broader than the current Harkin version). However, at that time, the bill was introduced as a symbolic gesture and was not pushed by its sponsors. In addition, you did a floor statement indicating that while you supported the broad objectives of the bill, you had a number of concerns about the impact of specific provisions.

RECOMMENDATIONS:

The legislation Senator Harkin intends to introduce could be highly controversial with the business sector and many conservative advocacy groups. Too much is still unknown about this legislation, and I am certain the major land mines that are hidden in the bill will surface in the course of hearings. Three days of balanced hearings are scheduled in May.

Should the Committee report a bill, you would still be well positioned to introduce your own version of the legislation, since, given the Committee's liberal composition, it is virtually certain that there will be insufficient support to pass the bill on the floor.

OPTIONS:

- Introduce a Bill now and take political risks.
- Introduce a refined bill after input from hearings.
- Wait until a compromise may be necessary on the Senate floor.

April 17, 1989

TO: Senator Dole
FROM: Maureen West
SUBJECT: Americans with Disabilities Act

The Americans with Disabilities Act originated with a proposal from the National Council on Disabilities 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 handicaps, the existing law is limited to programs or activities receiving federal financial assistance, executive agencies, or the U.S. Postal Service. The Americans with Disabilities Act seeks to parallel in scope the civil rights protections provided racial and ethnic minorities, women and older persons, but frames to combat the forms of discrimination people with disabilities face on a daily basis: inaccessible housing, transportation, and communication; denial of reasonable accomodation; and rampant prejudice. If enacted this legislation would go far to remove unfair and discriminatory barriers against people with disabilities This, in turn, should result in significant Federal budget savings as limited transportation access is an impediment to the large numbers of people with disabilities who want to work but cannot due to inaccessible transportation to employment. The bill would provide broader coverage than section 504 since it would cover the private sector as well. Last year's bill (which Senator Weicker introduced) has changed substantially in the current draft proposals both Senators Harkin and Hatch together or individually may introduce.

OVERVIEW OF THE LEGISLATION

Findings and Purposes:

The purpose of the Act is to provide a clear and comprehensive national mandate to end discrimination against people with disabilities; provide protection against discrimination comparable to that afforded to minorities and others; and provide enforceable standards addressing discrimination against people with disabilities.

Definitions:

The "term" definition is defined to mean, with respect to an individual -- a physical or mental impairment that substantially limits one or more of the major life activities of such an individual, a record of such an impairment, or being regarded as having such an impairment. This definition is the same definition used for purposes of section 504 of the Rehabilitation Act of 1973.

Title I: General Prohibitions Against Discrimination:

Title I sets out the general forms of discrimination prohibited by the Act. It is considered discriminatory to subject an individual, directly or indirectly, on the basis of a disability, to any of the following:

- (1) denying the opportunity to participate in or benefit from an opportunity;
- (2) affording an opportunity that is not equal to that afforded others;
- (3) providing an opportunity that is less effective than that provided to others;
- (4) providing an individual or class of individuals with an opportunity that is different or separate, unless such action is necessary to provide the individuals with an opportunity that is as effective as that provided to others;
- (5) aiding or perpetuating discrimination by providing significant assistance to others that discriminate;
- (6) denying an opportunity to participate as a member of boards or commissions; and
- (7) otherwise limiting an individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others.

For the purposes of this Act, for an aid, benefit, or service to be equally effective, an entity must afford an individual with a disability equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement in the most integrated setting appropriate to the individual's need.

Further an entity may not directly or indirectly use criteria or methods of administration that have the effect of subjecting an individual to discrimination on the basis of disability or perpetuate discrimination by others who are subject to common administrative control or are agencies of the same State. Nor can an entity discriminate against an individual or entity because of the association of that individual with another individual with a disability.

Title I also sets out several defenses to allegations of discrimination. It is not considered discrimination to exclude or deny opportunities to an individual with a disability for reasons entirely unrelated to his or her disability. Further, it is not discrimination to exclude or deny opportunities to an individual based on the application of qualification standards or other criteria that are shown by a covered entity to be both necessary and substantially related to the ability of the individual to perform or participate or take advantage of an opportunity and such participation cannot be accomplished by applicable reasonable accommodations, modifications, or the provision of auxiliary aids or services.

Qualifications standards may include requiring that the current use of alcohol or drugs by an alcohol or drug abuser not pose a direct threat to property or the safety of others in the workplace or program; and requiring that an individual with a currently contagious disease or infection not pose a direct threat to the health and safety of other individuals in the workplace or program. These defenses are comparable to the defenses currently available under section 504 of the Rehabilitation Act of 1973.

Title II Employment:

The provisions in title II of the Act use or incorporate by reference many of the definitions in title VII of the Civil Rights Act of 1964 (employee, employer, Commission, person, labor organization, employment agency, joint labor management committee, commerce, industry affecting commerce). The scope of the bill is identical i.e., only employers who have 15 or more employees are covered.

A "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. This definition is comparable to the definition used for purposes of section 504.

Using the section 504 legal framework as the model, the bill specifies that no entity covered by the Act shall discriminate against any qualified individual with a disability in regard to application procedures, the hiring or discharge of employees and all terms, conditions and privileges of employment.

Thus, discrimination includes, for example, the failure by a covered entity to make reasonable accommodations to the known limitations of a qualified individual with a disability unless such entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business. Discrimination also includes the denial of employment opportunities because a qualified individual with a disability needs a reasonable accommodation.

The definition of the term "reasonable accommodation" included in the bill is comparable to the definition in the section 504 framework. The term includes: making existing facilities accessible, job restructuring, part-time and modified work schedules, reassignment, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations and training materials, adoption or modification of procedures or protocols, the provision of qualified readers and interpreters, and other similar accommodations.

Discrimination also includes the imposition or application of qualification standards and other criteria that identify or limit a qualified individual with a disability unless such standards or criteria can be shown by such entity to be necessary and substantially related to the ability of an individual to perform the essential functions of the particular employment position.

Consistent with title VII of the Civil Rights Act of 1964, every covered entity must post notices in an accessible format describing the applicable provisions of this Act. The Commission is also directed to promulgate regulations within 180 days in an accessible format.

The bill incorporates by reference the remedies and procedures set out in section 706, 709, and 710 of title VII of the Civil Rights Act of 1964. The bill also incorporates the remedies and procedures available under section 1981 of the Civil Rights Act of 1964. The bill also incorporates the remedies and procedures available under section 1981 of the Civil Rights Act of 1964 for acts of intentional discrimination.

Title III: Public Services

Section 504 only applies to entities receiving Federal financial assistance. Title III of the bill makes all activities of State and local governments subject to the types of prohibitions against discrimination against a qualified individual with a disability included in section 504 (nondiscrimination) and section 505 (the enforcement procedures).

A "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies and practices, or the removal of architectural, communication, and transportation barriers or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a State or agency or political subdivision of a State or board, or other instrumentality of a State and political subdivision.

Title III also specifies the actions applicable to public transportation (not including air travel) provided by public entities that are considered discriminatory. The term "public transportation" means transportation by bus or rail, or by any other conveyance (other than air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis).

1. New fixed route buses of any size and rail vehicles for which a solicitation is made later than 30 days after the date of enactment of this Act must be readily accessible to and usable by individuals with disabilities. No retrofitting of existing buses is required.
2. Used vehicles purchased or leased after the date of enactment need not be accessible but a demonstrated good faith effort to locate a used accessible vehicle must be made.
3. Vehicles that are re-manufactured so as to extend their usable life for five years or more must, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities.
4. In those communities with fixed route transportation, there must also be a paratransit system to serve those individuals with disabilities who cannot use the fixed route public transportation and to other individuals associated with such individuals in accordance with service criteria established by the Secretary of Transportation.
5. Communities that operate a demand responsive system that is used to provide public transportation for the general public (nondisabled and disabled) must purchase new buses for which a solicitation is made in 30 days after the date of enactment of the Act that are accessible unless the system can demonstrate that the system, when viewed in its entirety, provides a level of service equivalent to that provided to the general public; in which case all newly purchased vehicles need not be accessible.
6. All new facilities used to provide public transportation services must be readily accessible to and usable by individuals with disabilities.
7. When alterations are made to existing facilities one year after the date of enactment that affect or could affect the usability of the facility, the alterations, the path of travel to the altered area, the bathrooms, telephones, and drinking fountains serving the remodeled area must be, to the maximum extent feasible, readily accessible to and usable by individuals with disabilities.

8. A mass transportation program or activity, when viewed in its entirety, must be readily accessible to and usable by individuals with disabilities. All stations in intercity rail systems and key stations in rapid rail, commuter rail systems must be readily accessible as soon as practicable but in no event later than 3 years after the date of enactment of this Act except that the time limit may be extended by the Secretary of Transportation up to 20 years for extraordinary expensive structural changes to, or replacement of, existing facilities necessary to achieve accessibility.

9. Intercity, light rail, rapid, and commuter rail systems must have at least one car per train that is accessible as soon as practicable to recipients of Federal financial assistance. The Secretary of the Department of Transportation is also directed to issue regulations in an accessible format that includes standards which are consistent with minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board.

Title IV: Public Accommodations and Services Operated by Private Entities

Title IV specifies that no individual shall be discriminated against in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, on the basis of disability.

The term "public accommodation" means privately operated establishments that are used by the general public as customers, clients, or visitors or that are potential places of employment and whose operations affect commerce. Examples of public accommodations include: auditoriums, theaters, restaurants, shopping centers, hotels, terminals used for public transportation, office buildings and recreation facilities.

Examples of discrimination include the following:

The imposition or application of eligibility criteria that identify or limit an individual with a disability.

A failure to make reasonable modifications in rules and policies and procedures when necessary to afford meaningful opportunity unless the entity can demonstrate that the modifications would fundamentally alter the nature of the program.

A failure to provide auxiliary aids and services unless the entity can demonstrate that such services would result in undue burden. Auxiliary aids and services include: qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments; qualified readers, taped texts or other effective methods of making visual impairments; acquisitions or modification of equipment or devices; and other similar services and actions.

A failure to remove architectural and communication barriers that are structural in nature in existing facilities and transportation barriers in existing vehicles where such removal is readily achievable; and, where the entity can demonstrate that such removal is not readily achievable, a failure to provide alternative methods.

With respect to a facility that is altered one year after the effective date of the Act, the failure to make the alterations in a manner that, to the maximum extent feasible, the altered portion, the path of travel, to the altered area, and the bathrooms, telephones, and drinking fountains serving the remodeled area where readily accessible to and usable by individuals with disabilities.

A failure to make facilities designed and constructed later than 30 months after the date of enactment readily accessible to and accessible by individuals with disabilities except where an entity can demonstrate that it is structurally impracticable to do so in accordance with standards set forth or incorporated by reference in regulations.

A failure by a public accomodation to provide a level of transportation services to individuals with disabilities equivalent to that provided for the general public and a refusal to purchase or lease vehicles that carry in excess of 12 passengers for which solicitations are made later than 30 days after the date of enactment which are readily accessible to and usable by individuals with disabilities.

The bill also includes a specific section prohibiting discrimination in public transportation services (other than air travel) provided by private entities. In general, no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of public transportation services provided by a privately operated entity that is primarily engaged in the business of transporting people (but not in the principal business of providing air transportation) and whose operations affect commerce.

Examples of discrimination include:

the imposition or application of eligibility criteria, that identify or limit an individual with a disability.

a failure to make reasonable modifications to criteria, provide auxiliary aids and services, and remove barriers consistent with the standards set out above;

new vehicles (other than automobiles) purchased 30 days after the date of enactment must be made accessible, new taxicabs are not required to be made Taxicab companies are liable, however, if their drivers refuse to pick up an individual with a disability.

The bill incorporates by reference the provisions in the Fair Housing Act, as recently amended, authorizing enforcement by private persons in court (section 813) and enforcement by the Attorney General (section 814 (a)). Regulations must be issued in

an accessible format by the Attorney General and by the Secretary of Transportation, consistent with the provisions applicable to public agencies under title .

Title V: Communications

Title V specifies that it is considered discrimination for a common carrier that offers telephone services to the general public to fail to provide, within one year after the date of enactment of this Act, interstate and intrastate telecommunication relay services so that such services provide individuals who use non-voice terminals devices because of their disabilities opportunities for communications that are equal to those provided to persons able to use voice telephone services. Nothing in this title is to be constructed to discourage or impair the developed of improved or future technology designed to improve access to telecommunications services for individuals with disabilities.

The Federal Communications Commission is directed to issue regulations establishing minimum standards and guidelines for telecommunications relay services. With respect to enforcement, the bill incorporates by reference the provisions in the Fair Housing Act, as recently amended, authorizing enforcement by private persons in court (section 813) and enforcement by the General Attorney General (section 814 (a)). Further, the Federal Communications Commission is authorized to use enforcement provisions generally applicable to it for remedying violations of the Communications Act of 1934.

Title VI: Miscellaneous Provisions

Title VI explains the relationship between section 504 and this Act; this Act and State laws that provide greater protections; and the relationship among the various titles of the Act. Title VI also includes an anti-retaliation provision; directs the Architectural and Transportation Barriers Compliance Board to issue minimum guidelines; and makes it clear that States are immune under the 11th Amendment for violations of the Act.

With respect to attorney's fees, the bill specifies that any action or administrative proceeding commenced under the Act, the court, or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including expert witness fees, and costs.

MEMORANDUM

April 15, 1989

TO: Senator Dole

FR: Judy Brotman



W.W.

I attended several disability-related functions recently where a great deal of concern was expressed that you would soon be introducing another version of the American's With ~~Dis~~ Disabilities Act.

*W.W. was introduced
Oles
Brotman*

While I strongly concur with your belief that ADA as written is not passable, the disability community has not as yet come to this reality. They view your desire to introduce your own legislation as partisan and also as undercutting their efforts.

My suggestion would be to wait for the hearings to be held and let others take the heat for gutting the bill of some of its' more controversial provisions. In fact, I'd further suggest that you go on record by writing Senator Harkin requesting hearings at the earliest possible date.

ADA has some similar involvements on an emotional level as the Civil Rights Restoration Act. ~~You were~~ strongly criticized for your actions on the restoration act; I believe that could happen again.

March 10, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Americans with Disabilities Act

Senator Harkin will soon introduce a revised version of the Americans with Disabilities Act (ADA). You were an original cosponsor of last year's bill introduced by Senators Weicker and Harkin, which emanated from the National Council on Disability after several years of constructing the legislation. The disability community will look for your support again this year.

Senator Harkin shared a copy of the draft bill with Senator Hatch and it is my understanding that Senator Harkin approached Senator Hatch last November to ascertain whether he would like to be the chief Republican sponsor. To date, their staff are discussing the draft version. A final draft of the bill is not yet available, however, I have been in contact with many of the disability groups and was assured a copy of the draft legislation from staff of the Subcommittee on the Handicapped next week.

President Bush and Vice-President Quayle on numerous occasions expressed support for "Federal legislation that gives people with disabilities the same protections that is now enjoyed by women and minorities." President Bush has pledged a commitment that his Administration will oppose discrimination of the past that has kept too many people with disabilities out of the American mainstream. He has been on record in support of accessibility of new facilities and vehicles for people with disabilities. Statements to this effect were included in the President's first debate, his acceptance speech, as well as his address to the joint Members of Congress.

Justin Dart, a longtime disability rights advocate and a favored of this Administration to serve as the President's liaison with the disability community, is currently Chairperson of the Task Force on Rights and Empowerment of Americans with Disabilities. He is strongly opposed to the proliferation of bills similar to ADA and has to date, generated nationwide support for a bipartisan ADA bill.

You should be very wary of committing yourself to introducing your own version, as no one knows what Senators Harkin and Hatch will agree upon at this point. Should Senator Hatch refrain from joining Senator Harkin, because of differences which prevent him from sponsoring the bill at this time, you may want to consider joining Senator Harkin as an original sponsor?

It is my experience, that Senator Hatch hasn't always wanted to join in on disability legislation from its inception but rather will render his support at a later time. For example, Senator Hatch may not believe that retrofitting a number of new buses is legally required for mainstreaming to be a reality, whereas, Justin Dart and the disability community often think accessible buses are bottom line standards. Key disability advocates have approached me as to whether you would join Senator Harkin as an original cosponsor, given the principles the disability community has agreed to in this bill, as well as President Bush's vocal support of an ADA bill.

The momentum from the perspective of the disability community will be behind the Harkin bill and President Bush has made a point of embracing the concerns of the disabled and barring discrimination against persons with disabilities as previously explained.

My initial reaction at this point is to hold off on introducing your own bill and wait out the reaction to the draft bill. I would like to discuss perceptions of the draft legislation with the disability groups not yet privy to the bill as well as the National Council on Disability. In addition, the Administration will by then officially have commented on the bill.

I have reiterated your support for a civil rights bill for people with disabilities and shared with concerned groups your interest in seeing a draft bill before making a decision on supporting the ADA. I suggest you wait to see what compromise Senators Harkin and Hatch can agree upon and remain committed to a comprehensive civil rights bill for persons with disabilities.

I have attached a summary of the Americans with Disabilities Act and delineated draft revisions made to the original ADA bill from last Congress. I was informed today by key disability groups of the revisions made.

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.

DRAFT TRANSPORTATION LEGISLATIVE LANGUAGE

1. All new vehicles or rolling stock that are purchased, leased, or otherwise acquired after the date of enactment shall be readily accessible to and useable by persons with physical or mental impairments, including wheelchair users.
2. Paratransit or other specialized transportation services must meet DOT service criteria and shall be provided in addition to other forms of transportation for those persons with physical or mental impairments who cannot use accessible fixed route transit. Paratransit or other specialized transportation services should allow for the integration of nondisabled persons who are associated with physical or mental impairments who cannot use accessible fixed route transit.
3. All new construction of transit and related facilities including bus stops, platforms, rail stations and intermodal transfer points should be readily accessible to and useable by persons with physical or mental impairments, including wheelchair users.
4. All substantial future modifications of transit and related facilities including bus stops, platforms, rail stations and intermodal transfer points should be readily accessible to and useable by persons with physical or mental impairments, including wheelchair users. (SHOULD BE MADE CONSISTENT WITH PUBLIC ACCOMODATION STANDARDS).
5. Certain commuter rail vehicles, facilities, and related equipment have extended life spans and, therefore, key stations should be made accessible within (x years) and all other existing stations should be made accessible in (x+++). (within x years one car per train shall be accessible to and useable by persons with physical or mental impairments, including wheelchair users). (MAY HAVE TO BE MADE CONSISTENT WITH PUBLIC ACCOMMODATION STANDARDS).
6. Within xx days after enactment, the Department of Transportation shall develop and implement standards for the design, manufacture, use and maintenance of public transit vehicles, equipment and facilities to ensure that they are accessible to and useable by persons with physical or mental impairments, including wheelchair users.
7. Entities engaged in the business of providing taxi service for hire shall not discriminate on the basis of handicap in the delivery of that service.
8. For taxi service, a comparable level of accessible service shall be provided for those that can't use the nonaccessible taxis. To the extent that a taxi service is the only method of public transit in an area, then the system must have program accessibility.

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- o A prohibition such as that in the Fair Housing Amendments Act of discrimination against people because they associate with or have a relationship with a person with a physical or mental impairment (See 1988 ADA, Sec.5(a)(5)).
- o A prohibition of discriminatory qualifications standards, selection criteria, or eligibility requirements (See 1988 ADA Sec. 5(a)(4)).
- o A statutory requirement of reasonable accommodation (See 1988 ADA, Sec. 5(a)(3)).
- o A statement of what is not discriminatory (1988 ADA, Sec. 5(b)), including
 - differential treatment wholly unrelated to physical or mental impairment
 - legitimate application of necessary criteria substantially related to the essential components of the programs, activity, or opportunity.
- o Requirements regarding the elimination of communication barriers.
- o A statement of limitations on duties of barrier removal and reasonable accommodation based on a standard that such removals or accommodations do not have to be made if they would fundamentally alter the nature of the program, activity, facility, or business at issue, or in manifestly exceptional cases in which they would be impossible or prohibitively expensive.
 - in such cases there is still a duty to make lesser changes or accommodations to enable participation by a person with a physical or mental impairment (See 1988 ADA, Sec. 7(a)(2)).

FEDERAL BUREAU OF INVESTIGATION, DEPARTMENT OF JUSTICE

EMPLOYMENT PRINCIPLES

1. The prohibition against discrimination on the basis of handicap should apply to all employers in the United States who employ 15 or more employees.
2. Discrimination should be prohibited against an individual because of his or her handicap. The term "handicap" should be as broad as it is under Section 504. (That is, it should cover individuals with a physical or mental impairment that substantially limits a major life activity, individuals with a record of such an impairment and individuals who are simply regarded as having such an impairment.)
3. The prohibited employment discrimination must include both direct and indirect actions (e.g., actions taken through contracting or actions that have the ultimate effect of discrimination on the basis of handicap.)
4. An employer must have the affirmative obligation of providing "reasonable accommodations", as required by Section 504, that will enable the person with handicaps to participate in the job.
5. If an employer uses qualification standards or tests that identify or disadvantage persons with handicaps, the employer must show that the standards or tests are substantially related to the individual's ability to perform essential components of the job and that such performance cannot be accomplished through a reasonable accommodation.
6. Prohibited employment discrimination must include adverse actions taken because of an individual's relationship to or association with a person with handicaps.

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PUBLIC SERVICES

1. It shall be guaranteed that any handicapped person have full access to all services provided by cities and counties.
2. All cities and counties should have to meet the same legal obligation required under Section 504.

September 6, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: ADA Definitions

The term "**readily achievable**" means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include:

the overall size of the covered entity with respect to number of employees, number and type of facilities, and the size of the budget;

the type of operation of the covered entity, including the composition and structure of the entity; and

the nature and cost of the action needed.

The term "**undue hardship**" means an action requiring significant difficulty or expense i.e. an action that is unduly costly, extensive, substantial, disruptive, or that will fundamentally alter the nature of the program. In determining whether a particular accommodation would impose an undue hardship on the operation of the covered entity's business i.e., require significant difficulty or expense, factors to be considered include:

the overall size of the business of the covered entity with respect to number of employees, number and type of facilities and size of the budget;

the type of operation maintained by the covered entity, including the composition and structure of the entity's workforce;

the nature and cost of the accommodation needed.

The term "**reasonable accommodation**" includes illustrations of accommodations that may be required in appropriate circumstances in making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and in assuring job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

The term **"auxiliary aids and services"** includes:

qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

acquisition or modification of equipment or devices; and

other similar devices and actions.

The term **"readily accessible"** means the ability of individuals with disabilities, including individuals with wheelchairs, to enter into and exit and safely and effectively use a vehicle utilized for public transportation.

July 31, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Disability Appointments

The Administration has recently appointed several individuals to positions which will advance opportunities for people with disabilities.

As you are aware Harold Russell has resigned as Chairman of the President's Committee on Employment of People with Disabilities. He has successfully given 24 years of service to this Committee.

Justin Dart has been appointed to replace Harold as the new Chairman of the President's Committee. In addition to his chairmanship he continues to coordinate the "Task Force on the Rights and Empowerment on People with Disabilities" -- which is a grass roots outreach effort for support of the Americans with Disabilities Act.

Judy Brotman has just joined the President's Committee as a political appointee from the Department of Labor.

Gordon Mansfield, formerly with the Paralyzed Veterans Association has been appointed to HUD as the resident expert in implementing the Fair Housing Act requirements with regard to housing for people with disabilities.

I have attached congratulatory remarks from you to send to these individuals.

July 14, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Update on ADA Negotiations

I have been attending all the ADA negotiation meetings between the Administration and Committee on Labor & Human Resources staff. The meetings have been long and progress is being made in bringing this legislation in line with 504 regs.

Both the Administration and Senate staff have circulated alternative language, however, no final agreement has been made on the language yet.

The areas that will be difficult in reaching compromise continue to be -- scope of public accommodations -- remedies -- and transportation issues. I will have more detailed memos for you after the weekend as I am comparing possible agreements with the current regulations.

July 18, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Appointment re ADA

Sandy Parrino, Chairperson of the National Council on Disabilities will see you at 11:30 a.m. today after testifying at the House hearings on the ADA. Mrs. Parrino represented the Council in her testimony today and made reference to you and your foresight in developing a much needed technical assistance package to the ADA. She also followed up on your request to talk with Governor Sununu about the ADA. She plans to briefly discuss the Council's involvement with the ADA and encouraging private sector support for this legislation which she hopes to elicit.

She has met with Governor Sununu and Attorney General Thornburgh and is anxious to meet with you as well.

The National Council on Disability is an independent Federal agency comprised of members appointed by the President. The Council is charged with making disability policy recommendations to the President and Congress. The original ADA bill emanated from the National Council on Disabilities under her tenure.

July 17, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Update on ADA Negotiations

I have been attending all the ADA negotiation meetings between the Administration and Committee on Labor & Human Resources staff. The meetings have been long and progress is being made in bringing this legislation in line with the appropriate regulations.

Both the Administration and Senate staff have agreed on minor technical changes during the meetings in addition to both parties circulating alternative language after lengthy discussions on problem areas. However, no final agreement has been made on any of the areas of conflict.

The areas that will be difficult in reaching compromise continue to be -- scope of public accommodations -- remedies -- and transportation issues.

The Administration asked that Title I which sets out the general prohibitions against discrimination be deleted and pertinent sections be folded into the remaining five titles. Senators Harkin and Kennedy were amenable to this request and circulated alternative language to accomplish this goal.

Technical changes made pertain to bringing the ADA in line with current 504 regulations and definitions. As you know the ADA has added new definitions (i.e. "readily achievable" & "auxiliary aids") which need further clarification. The term reasonable accommodation and its relationship to undue hardship (i.e. how much does one have to pay in making accommodations and who bears the cost?) needs to be further defined..

TIMETABLES & EXEMPTION PHASE-IN:

Timetables regarding regulations and the effective date of implementation have not yet been agreed upon. The Administration suggested that the regulations be issued one year after passage and the effective date start two years after enactment. Senators Harkin and Kennedy would not agree to this offer.

The timetables and the effective date will have an impact on the phase-in requirement for small businesses. The Administration has suggested that a small business exemption of 25 or less be phased-in starting at the effective date. The exemption would then return to 15 as is currently in the bill giving small businesses four years to prepare for ADA's mandates.

The Department of Justice is bringing alternative language on the "about to be discriminated" language under the employment title to our next meeting.

SCOPE OF PUBLIC ACCOMMODATIONS:

Title II of the 1964 Civil Rights Act bans discrimination on the basis of race, color, religion, and national origin in public accommodations. The ADA covers the entire private sector, except for private homes and places of lodging of five rooms or less. Coverage includes private schools, including religious schools; churches, synagogues and other religious institutions. The Administration favors coverage of public accommodations as defined in Title II of the 1964 Civil Rights Act. Senators Harkin and Kennedy insist that this legislation retain its mandate in requiring that all new construction be accessible to public accommodations. They will explore various adjustments in requiring renovations to public accommodations. The Administration would like religious entities to be excluded from the scope of public accommodation under Title IV of this bill as this is too much of an intrusion from the Feds and the National Council of Churches is opposed to its inclusion under this bill.

PUBLIC TRANSPORTATION:

Under the ADA all new buses must be 100% accessible. Paratransit or other special transportation services must be provided as a supplement to mainline accessibility for those who can't use the fixed route system. The Administration has agreed to provide 100% new accessible buses but insist on a limited waiver to exempt localities who cannot carry out this mandate for financial reasons or other mitigating circumstances. In addition, the Administration feels that with the provision of 100% new accessible buses the current 3% cap that transportation authorities must spend on disability transportation should be decreased to 2% in light of the costs being spent on 100% accessibility. Senators Harkin and Kennedy want the cap lifted until the transition to 100% accessibility occurs returning to the 3% cap thereafter.

PRIVATE TRANSPORTATION:

Private companies provide the intercity private bus transportation in the country and are generally not subsidized by the federal government. Their services include: regular route, scheduled services between cities, and charter and tour services.

ADA would require that all new private buses and demand responsive vehicles (i.e. airport & hotel vans) be lift equipped. The private transportation companies argue that the cost and need in meeting this mandate need further study. The Administration agrees that a study would be prudent in addition to DOT flexibility in determining when all new buses be made accessible -- this would also include the accessibility of bathrooms on buses if feasible. Senators Harkin and Kennedy want to begin phasing in accessible buses in three years while a study is underway. No agreement has been reached on this issue yet.

REMEDIES:

Remedies were not further discussed at last week's meeting but will resurface. There is some room for negotiation in deleting the controversial 1981 remedy, however, no final agreement was reached.

We all will meet again on Tuesday and discuss alternative language to be disseminated. Staff will also be briefed on Title VI which includes Telecommunications. Senators McCain and Harkin's staff have worked out alternative language with the Administration and the deaf and hearing impaired community.

June 6, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Disability / Business Community Meeting

A meeting between the disability and business community as well as key Senate and Administration staff has been set for this Thursday at 2:00 p.m. in room 430 Dirksen. I informed Boyden of the time and place -- he plans to attend and may bring his assistants Lee Lieberman and Bob Funk.

Sandy Parrino, Chairperson of the National Council On Disability has been invited to attend. She has felt left out of the process with ADA and has voiced her irritation with this -- her attendance may be beneficial given the bill originated at the Council and Mrs. Parrino can do a great deal to generate outside support with the bill should she feel included.

June 9, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Business/Disability Community Meeting

The disability and business community met yesterday -- with Senate staff in attendance and David Sloane from the White House. The meeting lasted approximately an hour and no substantive issues were discussed. The business community wanted to talk principles and relay to the disability community their support for this bill and its goals in addition to their willingness to work with them.

There was nothing in writing from the business community relating to their concerns but it will be available in approx. a week including alternative language. It was agreed that this was the beginning of a series of meetings on the employment provisions of the bill. The business community plans to hold a briefing for Senate staff on their concerns with the disability community wanting to work with them on this.

Susan Miesinger with the American Society of Personnel Administrators (ASPA) will get concerns to me in writing with alternative language -- the disability and business community plan to meet without staff as well to work on problem areas. Both communities want your representation and leadership. I will continue to keep you informed of attempts made to alleviate problem areas.

June 12, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Int'l Very Special Arts Festival

Today through June 18, there be will an Int'l Very Special Arts Festival taking place throughout the District. This is the first of its kind with more than 1,000 disabled participants from 50 countries sharing their artistic achievements and talents. Very Special Arts, as you know, is an international organization dedicated to providing opportunities in the arts for people with mental and physical disabilities.

Festivities have been planned for the entire week. Should you be on the House side this week -- there is an ongoing exhibit being displayed in the Cannon House Office Building Rotunda -- which you may want to stop by and see. The exhibit named "Called to Rise" is a collection of paintings, collages, sculptures, photographs and ceramics -- featuring works by American artists with physical disabilities.

Other activities are planned at Georgetown University, the major museums and the Kennedy Center where all the participants will display their art and take part in concerts, educational symposiums, stage performances and hands-on workshops.

You have furnished braille maps of the Capitol, all the monuments and the metro system for blind individuals and visitors taking part in the Festival.

September 6, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Hatch Amendments to ADA

Senator Hatch is prepared to offer three amendments to the ADA. The concerns that his amendments will address are those that he has held since ADA was introduced and which he reserved the right at Committee mark up to bring to the Floor.

The three problem areas he holds are:

1. **The Administration supported compromise on remedies using the pattern and practice authority given to the Attorney General in the Fair Housing Act Amendments of 1988.** The ADA will give the Attorney General discretionary authority to seek civil penalties in cases involving egregious and willful violations of discrimination. Penalties of up to \$50,000 for a first violation and up to \$100,000 for subsequent violations may be awarded.

Senator Hatch feels this remedy scheme is too burdensome and will offer an amendment to lessen the amount of civil penalty remedies -- he has not yet confirmed a dollar amount.

I would recommend you backing the current language which represents the Administration compromise -- as the civil penalty remedies in the ADA and Fair Housing will provide a strong fiscal incentive for covered entities to avoid discriminatory practices.

2. **The scope of coverage of "public accommodations"** which includes much of the private sector concerns Senator Hatch and others because not only are these entities subject to accessibility requirements concerning new facilities but a wide variety of obligations with respect to existing facilities and general policies and incurred costs in providing access and nondiscriminatory practices.

Title III of ADA includes a small business exemption of 15 for public accommodations in providing nondiscrimination treatment (i.e. putting in a ramp, or providing auxiliary aids & services) and the undertaking of an accommodation which can be costly and represent a fundamental alteration in the covered entity's program. Therefore, Senator Hatch will offer an amendment to institute a small business exemption of 25 employers or less with respect to responsibilities under public accommodations.

During the course of negotiations on the ADA a three tiered approach was examined as a way to deal with retreat from costly responsibilities to small entities in providing nondiscrimination treatment -- a small business exemption of 25 was also examined. However, the issue will remain the same -- that being -- people with disabilities will be excluded from participation in and access to activities of daily living that everyone else take for granted if public accommodations and more important access are not available to them. If the independent living movement is to be a reality people with disabilities need access to all aspects of society (i.e. grocery stores, dry cleaners, movie theaters and the like).

I would recommend keeping the small business exemption of 15 currently in the ADA and consistent with other civil rights statutes, thus showing your support for the independent living movement and the Administration's compromise in this area in assuring a fully accessible society.

The technical assistance amendment you will offer will strengthen the bill and justify the small business exemption of 15 under the public accommodation section. Its goal of providing education to all covered entities of their responsibilities and how to meet such obligations in implementing nondiscrimination treatment and undertaking accommodations will prevent needless litigation and civil penalties.

There will be costs incurred to small businesses in meeting their nondiscriminatory treatment requirements under this Act. While this should be no reason not to afford disabled citizens their rights -- there should be incentives and assistance for those newly covered entities to facilitate their responsibilities.

A tax exemption for those small entities to include expenditures for accommodations and auxiliary aids and services would take away any punitive sanction the business community may encounter. Expanding Section 190 of the Tax Code to include expenditures for accommodations applicable on an establishment rather than an entire enterprise basis would be a palatable solution appeasing the business community while ensuring a fully accessible society and strong independent living movement.

3. Senator Hatch will offer an amendment addressing the concerns the private transportation industry have held all along with regards to their responsibilities under ADA. The requirement that all small bus companies must purchase or lease all new over-the-road buses with lifts six years after the bill's enactment; and large bus companies must do so beginning five years after enactment remains an unresolved issue.

The ADA requires a three year study to determine whether this requirement, is in effect, feasible. The requirement, however, is not contingent on the results of the study -- it remains in place under this bill even if the study shows that the requirement is excessive.

Senator Hatch's amendment will delete the lift requirements currently in the bill until the study results become available. In addition, he will ask for the study to be completed in eighteen months rather than the three years required in the ADA.

The Administration compromised on the private bus industry's requirement to lift equip their fleet in 5-6 years from the original requirement of mandated lifts after only three years. The Administration supports the ADA private transportation requirements as is. Of the three amendments his transportation concerns have merit. Though the Administration made a compromise on the current language with regard to the private bus industry you may want to strike a compromise between the Administration and Senator Hatch's concerns.

September 6, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Meeting with Fred Currey

Fred Currey, CEO of Greyhound, Inc. has asked to meet with you this Thursday at 3:00 to discuss transportation provisions in the ADA that will affect the private bus industry.

The ADA requires that all small bus companies must purchase or lease all NEW over-the-road buses with lifts after the bill's enactment; large companies must do so beginning five years after enactment.

The bill also calls for a three year study to determine whether this requirement is feasible. The requirement is not contingent on the results of the study -- it remains in place under this bill even if the study shows that the requirement is excessive.

Unlike state and local government mass transit, which is heavily subsidized by the federal government, private transportation companies receive virtually no federal aid. Private companies provide the intercity bus transportation in the country which include approximately 1000 companies such as Greyhound, Gold Line, East Coast and Peter Pan. These companies may provide over-the-road regular route service or charter and tour service.

The private bus industry contend that the requirement that all buses have wheelchair lifts would accelerate the loss of private, intercity bus service. Representatives from the bus industry state that their lowest annual cost estimate for the bill's requirement of lifts (and if feasible accessible bathrooms), will cause a loss of revenue seats due to lifts and restroom accessibility, in addition to maintenance expenses and training costs. The industry feels this could threaten the private bus industry's viability.

Arguments as to what the actual costs are regarding lifts, loss of revenue seats and the utility of particular lifts is what will be assessed within the study. Therefore, the private bus industry would rather wait until the results of the study indicate what is reasonable with respect to accessibility requirements.

Senator Hatch will offer an amendment that will delete the 5-6 year requirement of lift equipping all new private bus and shorten the study requirement from three years to 18 months. In addition, his amendment will require that private bus companies make reasonable accommodations to the needs of persons with disabilities.

The Administration struck a compromise with current ADA language by moving the time requirements of providing lifts from an original three years to five and six years.

You could offer an amendment which will provide a tax incentive for bus industries in meeting their new financial requirements?

September 6, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: ADA and Bennett Drug Plan

There is a possibility that a conflict may arise with regard to the drug provision language under Title I of the ADA and a zero tolerance policy in maintaining a Drug-Free Workplace under Bill Bennett's Drug Plan.

Title I of the ADA is intended to make clear that an individual who is an alcoholic or current or past user of drugs -- illegal or legal --- can be held to the same standards of job performance and behavior as other individuals, even if the unsatisfactory performance or behavior is related to the drug use or alcoholism. At the same time, and consistent with the Rehabilitation Act of 1973, it is intended that rehabilitated alcoholics and drug users will be protected under this law.

The language in the ADA will make clear that an employer may subject job applicants and employees to drug urine analysis or other testing to determine the unlawful use of drugs or the presence of alcohol, and can refuse to hire job applicants and can discipline or discharge employees who are found to be using illegal drugs or alcohol, without being charged with discrimination.

In a recent meeting with the Administration and Senate staff on ADA strategy -- the fact that Bill Bennett has yet to agree to ADA's drug provisions was raised. There is a possibility of an amendment that would further tighten this language should it prove inconsistent with the Drug-Free Workplace initiative in the Bennett Drug Plan.

The Administration would not confirm that there is a problem but did want to alert staff that there may be further changes made to this language to include zero tolerance policy in maintaining a drug-free workplace consistent with the Bennett plan.

Mo West
See We should
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September 6, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Domenici amendment to ADA

Senator Domenici has indicated that he is prepared with an amendment to the ADA that would clarify that an individual with a disability would be afforded the choice to participate in a service, program or activity.

In addition, he has asked that the Attorney General set forth guidelines to help assure that modifications to accommodate the individual will be appropriate to such individual's disability rather than a separate accommodation which is not appropriate.

This is a rather minor amendment. Directing the Attorney General to set forth guidelines in assuring appropriate accommodations may be served by your technical assistance amendment which will inform newly covered entities of their legal responsibilities.

September 19, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: National Council Report

The National Council on Disability today will issue their report to Congress -- "Education of Students with Disabilities Where Do We Stand?"

The Americans with Disabilities Act as you know emanated from the Council. The bill was presented to Congress in their last report to Congress "Toward Independence". I am certain Chairwoman, Sandy Parrino would like to introduce you today and present you with a copy of their Report.

Perhaps you might like to thank her and the Council's critical role in passing the ADA. In addition, some brief comments on today's Report would be appreciated. For example:

Congress has looked to the National Council in the past for disability policy recommendations and we will look to you once again in strengthening our Nation's educational system in serving students with disabilities.

Your Report today correctly emphasizes the need to encourage greater opportunity and independence in education and the work world for people with disabilities. Greater priorities will need to be emphasized on the transition from school to the workforce. Assessing the educational system for individuals with disabilities and the transition from school to work will build greater independence and integration in society.

The Dole Foundation is working with employers to ease the transition and build a stronger workforce.....

I look forward to reading your Report and working with you in the future to implement the recommendations found in the Report and building on the progress made thus far.

October 7, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: NARF Newsletter

I thought you might like to see a copy of the front page newsletter published by the National Association of Rehabilitation Facilities concerning your technical assistance amendment. I am planning on talking to the disability groups about technical assistance and the inclusion of your tax exemption amendment in budget reconciliation.



Vocational/Developmental
**REHABILITATION
REVIEW**

A weekly analysis of issues for rehabilitation facility professionals

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House Budget Reports Reconciliation Bill

After months of delay in the House Ways and Means Committee, the House Budget Committee has finally reported its FY 1990 reconciliation bill, H.R. 3299. The bill was reported on Wednesday, September 20 and was proceeding directly to the floor for consideration to start the week of September 25.

The reconciliation bill includes recommendations from the House Ways and Means Committee and the House Energy and Commerce Committees, both of which contain numerous amendments of interest to rehabilitation facilities, as reported in previous issues of *Rehabilitation Review*.

The Rules Committee had not issued a complete rule on the bill as it went to the floor. Instead, it authorized six (6) hours of general debate. The exact nature of the final rule, which would set the guidelines as to how various amendments would be handled, was still being hammered out in the Rules Committee. Over sixty (60) major amendments are pending, and various members want to have them allowed for discussion on the House floor. The major ones include amendments to the bill on capital gains, Section 89, child care, and an extension of the Targeted Jobs Tax Credit (TJTC).

The bill includes a two-year extension for the TJTC, however, it does not restore eligibility for 23-24 year-olds.

(Continued on page 4)

Senator Dole Speaks Out On Technical Assistance in the Americans with Disabilities Act (Extracted from the *Congressional Record*)

"While costs alone should not be reason enough to deny the disabled their civil rights, there should be accompanying incentives for small businesses to meet the requirements of the bill. To this end, I will soon introduce an amendment to the Tax Code for the express purpose of ameliorating the financial burden to small businesses complying with the ADA.

This amendment will allow small businesses to deduct their expenditures on such terms as 'auxiliary aids and services' and 'reasonable accommodations' -- all, to some extent, required by the ADA.

Employers, persons with disabilities, and other affected parties must have access to accurate information. As a result I intend to offer an amendment which will enable the responsible Federal agencies to establish a strong governmentwide technical assistance program. Such a program will help to educate the people of the bill.

There are many knowledgeable and qualified experts--such as the Dole Foundation, to assist in this endeavor. Other experts include the President's Committee on Employment of People with Disabilities and the Job Accommodation Network, the National Association of Rehabilitation Facilities, the National Council on Disability and the Disability Rights and Education Defense Fund, to name a few.

Given the comprehensive nature of the ADA, I believe it is our obligation to see that people with disabilities understand their new rights under the bill and that employers and businesses understand the nature of their obligations."

This Week in Review

DOE Publishes Grant Priorities for FY 1990...A notice of grants and transmittal deadlines for the Department of Education for FY 1990.

Volunteer Corporations...Some trends projected by the American Red Cross, in a study titled "Volunteer 2000."

SGA Levels Increase...SSA has proposed a rule to increase the Substantial Gainful Activity level for SSI and SSDI recipients.

Mental Health as a National Priority...Mental illness, one of the more common diseases experienced by mankind.

Twenty-Nine Recommendations for Self Determination...OSERS discusses outcomes and procedures for self-determination for individuals with disabilities.