

MEMORANDUM

Da: February 17, 1995
Fr: Alec Vachon
Re: Affirmative Action and Disabled

Kerry raised the issue whether or not the disabled should be included in any discussion of affirmative action. I would be very interested in reaction to such remarks, but you should be aware:

1. Disabled don't get much affirmative action--for example, disabled are generally not included in Federal and state contract preferences and Small Business Administration 8(a) programs. There is a requirement that Federal contractors--and the Federal Government--practice affirmative action for the disabled, but it is ignored.
2. ADA does not include any affirmative action. In fact, statistical evidence used to prove discrimination against women and blacks--i.e., fewer blacks or women are employed by a business than live in a surrounding community--has not been used in ADA employment discrimination cases. Probably never will be--too hard to collect good numbers.
3. The proposed California ballot initiative on eliminating affirmative action does not include the disabled.
4. People think differently about the disabled than women or minorities--perhaps more worthy of special, public help.

On the other hand, if we believe that disabled only want equal treatment, not special treatment, then including them in the affirmative action debate is consistent with that message.

original faxed 2/17 for
NH Parafung Book

cc: Dan -
Sherk -
Stennis -

MEMORANDUM TO SENATOR DOLE

DA: February 15, 1995

FR: Alec Vachon *KV*

RE: UPDATE ON ADA & STATE AND LOCAL GOVERNMENTS

As I wrote you (memo attached), working to fix some reported problems with ADA. Again, this project is proactive--as far as I know, you have not received any requests to change ADA, nor have contacts with state & local government associations yielded any requests. For example, Mayor Victor Ashe of Knoxville, currently President of the U.S. Conference of Mayors, has been vocal about the costs of curb cuts, but has not asked the Conference to work on this matter.

I am working also to keep the heat down. As you know, disability issues are emotionally and politically charged--for example, during the unfunded mandates debate Chairman Goodling felt obliged to issue a letter of support for ADA (attached).

EXTENDING THE DEADLINE FOR CURB CUTS

OK * Curb cuts are a large, unique capital expense--and the single biggest complaint of local governments. Attached is a draft letter to the Justice Department to amend the regs to extend the deadline--working proposal is 5 more years for curbs cuts in heavily traveled areas; 10 years in other places. All four other ADA co-sponsors, Harkin, Hatch, Kennedy, and McCain are willing to sign this letter.

* I met with Justice officials this morning--they are ready to act when they get the letter.

* To drum up support, on Friday I will meet with the National Association of Counties, the National Association of Towns and Townships, and the National League of Cities--next week, U.S. Conference of Mayors and perhaps NGA.

* This letter should be ready to go after these meetings.

SIMPLIFY REGULATORY BURDEN--BUILDING CODES

OK * Attached is another letter to Justice--asking it to certify the three model building codes upon which virtually all 15,000 state and local building codes are based. State and local governments will not have to apply for approval of their codes--automatic as long as they use a model code. This suggestion came from a building code inspector in Overland Park, Tim Ryan, who you met with last year.

JUSTICE TO MEET WITH STATE AND LOCAL GOVERNMENTS ASSOCIATIONS

* Justice has agreed to meet with state & local government associations to improve technical assistance--will discuss this with the state and local government associations.

*cc: Dan
Shelton
Dennis*

FRIST HEARINGS ON ADA IMPLEMENTATION

- * Frist, as new Chairman of the Subcommittee on Disability Policy, is interested in holding hearings in July on ADA (ADA anniversary). Any problems with ADA might be raised in these hearings as well.

THOMAS E. PETRI, WISCONSIN
MARGE ROUCHEMA, NEW JERSEY
STEVE GUNDERSON, WISCONSIN
HARRIS W. FAWELL, ILLINOIS
CASS BALLENGER, NORTH CAROLINA
BILL E. BARRETT, NEBRASKA
RANDY "DUKE" CUNNINGHAM, CALIFORNIA
PETER HOEHLSTRA, MICHIGAN
BUCK McKEON, CALIFORNIA
MIKE CASTLE, DELAWARE
IAN MEYERS, KANSAS
JIM TALENT, MISSOURI
SAM JOHNSON, TEXAS
JIM GREENWOOD, PENNSYLVANIA
TIM HUTCHINSON, ARKANSAS
JOE KNOXENBERG, MICHIGAN
FRANK BIGGS, CALIFORNIA
LINDSEY GRAHAM, SOUTH CAROLINA
DAVE WELDON, FLORIDA
DAVID FUNDESBURK, NORTH CAROLINA
MARK SOUNDER, INDIANA
DAVID MCMINTOSH, INDIANA
CHARLIE NORWOOD, GEORGIA

COMMITTEE ON ECONOMIC AND
EDUCATIONAL OPPORTUNITIES
U.S. HOUSE OF REPRESENTATIVES
2181 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

UNFUNDED MANDATES ALERT!
IDEA and ADA Are PROTECTED Under H.R. 5.

WILLIAM L. CLAY, MISSOURI
GEORGE MILLER, CALIFORNIA
DALE E. KILDEE, MICHIGAN
PAT WILLIAMS, MONTANA
MATTHEW G. MARTINEZ, CALIFORNIA
MAJOR R. OWENS, NEW YORK
TOM SAWYER, OHIO
DONALD M. PAYNE, NEW JERSEY
PATSY T. MINK, HAWAII
ROBERT E. ANDREWS, NEW JERSEY
JACK REED, RHODE ISLAND
TIM ROEMER, INDIANA
ELIOT L. ENGEL, NEW YORK
XAVIER BECERRA, CALIFORNIA
ROBERT C. SCOTT, VIRGINIA
GENE GREEN, TEXAS
LYNN WOOLSEY, CALIFORNIA
CARLOS ROMERO-BARCELO, PUERTO RICO
MEL REYNOLDS, ILLINOIS

MAJORITY--(202) 225-4527

MINORITY--(202) 225-3725

January 19, 1995

Dear Colleague:

As the House prepares to consider H.R. 5, the Unfunded Mandate Reform Act of 1995, I would like to clarify the bill's effect on the Individuals with Disabilities Education Act (IDEA) and the Americans with Disabilities Act (ADA).

In recent weeks, you probably have received urgent phone calls from constituents asking you to resist the alleged repeal of the IDEA, which provides for special education and early intervention services for infants and toddlers and children with disabilities.

These phone calls are the result of a fax and mail alert originated by a disability advocacy organization in late December. The alert alleged that the Unfunded Mandates legislation under consideration by the House and Senate would force the repeal of IDEA. Apparently, the group developed and distributed the alert a few days AFTER my staff conducted an outreach meeting specifically to explain that the unfunded mandate legislation includes provisions that would PROTECT both IDEA and the ADA from coverage as an unfunded mandate!

Since there continues to be confusion about the effect of H.R. 5, let me clarify exactly how IDEA and the ADA are protected under the bill.

Exemption of IDEA:

Under Section 301, "Legislative Mandate Accountability and Reform," there is a definition of the term Federal Intergovernmental Mandate. The definition would NOT apply to voluntary, non-entitlement Federal programs, and therefore, does NOT include IDEA.

As a condition of receiving funds under IDEA, States must agree to comply with the requirements of the law. Although the cost of providing special education far exceeds the limited federal funds provided, in a legal sense, participation in IDEA by States is voluntary. In addition, funds for the IDEA State grant program are provided through annual appropriations made on a discretionary basis. Thus, IDEA is not an entitlement program. For these reasons, IDEA does not meet the definition of an intergovernmental mandate in this legislation.

Exemption of ADA:

Sec. 4 of H.R. 5 says that the bill will not apply to "any provision in a Federal statute or a proposed or final Federal regulation, that-- (1) enforces constitutional rights of individuals; (2) establishes or enforces any statutory rights that prohibit discrimination on the basis of race, religion, gender, national origin, or handicapped or disability status.

This provision was specifically drafted to exempt the Americans with Disabilities Act and other federal legislation related to protecting civil rights from coverage under the bill.

I hope that this statement clarifies any misimpression that has arisen with regard to the issue of H.R. 5's effect on IDEA and ADA. If you have further questions about this issue, please call Hans Meeder (225-6558) of the Committee on Economic and Educational Opportunities.

Sincerely,



BILL GOODLING
Chairman

MEMORANDUM TO SENATOR DOLE

Date: January 30, 1995

From: Alec Vachon *AV*

RE: UPDATE/ADA AND STATE AND LOCAL GOVERNMENTS--
WHAT ARE THE PROBLEMS? HOW CAN YOU HELP?

- * As you know, I have contacted state & local government associations, asking questions like: How is ADA going? What kind of help do you need? Groups contacted: National Assn. of Counties, National Assn. of Towns, National Conference of State Legislatures, National Governors Assn., National League of Cities, and U.S. Conference of Mayors.
- * Have also spoken to key ADA co-sponsors: Kennedy, Hatch, Harkin, and McCain.

GOOD AND BAD NEWS--AND SOME SURPRISING ANSWERS

- * Everyone has heard of ADA, and most communities have begun to move. Incidentally, no one call ADA an "unfunded mandate"--U.S. Conference of Mayors: "ADA got tagged as an unfunded mandate because it showed up on top of an undoable agenda--ADA last one through." But staffer noted, "On a personal basis, ADA is a good thing. Should have been done a longtime ago."
- * Generally pleased with ADA regs. The National Assn. of Towns called them a "model of flexibility."
- * Problems:
 1. Biggest single capital expense is curb cuts--and deadline for compliance passed on Thursday, 1/26.
 2. Getting fast, definitive answers from the Justice Department. Complain ADA regs are not detailed enough.

AM EXPLORING THREE ACTIONS--FINAL OPTIONS NEXT WEEK

- * CURB CUTS--Drafting letter to Justice w/ADA co-sponsors to extend deadline 5-10 years. Kennedy & Harkin support this action--Harkin says disability groups will not oppose.
- * PROCESS FOR QUICK ANSWERS AND SOLVING FUTURE PROBLEMS. Letter to Tony Coelho at President's Committee asking him to set up regular meeting of state & local government associations, Justice, and disability groups to get kinks worked out. President's Committee affiliates in most states are the state agency for ADA implementation.
- * SIMPLIFY REGULATORY BURDEN. Example: Rather than each jurisdiction apply for ADA certification of building code, Justice would certify model codes--jurisdictions would be deemed in compliance unless vary from model codes.

(2/13/95B)

[Date]

The Honorable Janet F. Reno
Attorney General
U.S. Department of Justice
Constitution Avenue & 10th Street, N.W.
Washington, D.C. 20530

Dear Madam Attorney General:

As the principal Senate co-sponsors of the Americans with Disabilities Act (P.L. 101-336) ("ADA"), we are writing to request the U.S. Department of Justice extend the time period for installation of curb ramps by public entities under 28 C.F.R. 35.150. As you may know, it was our intent to carefully craft ADA to include fair and balanced provisions and specific safeguards for state and local governments regarding costs. We are concerned that curb cuts are a unique, significant capital expense, and that our intent would be more properly fulfilled over a longer time period.

Currently, we understand that public entities were required to have completed all necessary curb cuts by January 26, 1996 ("effective date"). We believe that the Department should have separate time periods for at least two classes or tiers of curb cuts, provided public entities have a written transition plan with specific milestones for completing all curbs cuts within the extended time period. Tier I cuts are ones that serve state and local government offices, transportation, places of public accommodation, other places of employment, other heavily traveled routes, and private homes of persons with disabilities, and should be completed no later than 5 years after the effective date. Tier II serve residential and other non-commercial areas where pedestrian walkways exist, and a public entity should be given 10 years from the effective date to install the necessary curb ramps.

We urge you to adopt this modification as soon as possible. If you have any questions or if we can be otherwise helpful, please contact Bobby Silverstein of Senator Harkin's staff at 224-6265, or Alexander Vachon of Senator Dole's staff at 224-8959.

Sincerely yours,

(2/13/95B)

[Date]

The Honorable Janet F. Reno
Attorney General
U.S. Department of Justice
Constitution Avenue & 10 Street, N.W.
Washington, D.C. 20530

Dear Madam Attorney General:

As the principal Senate co-sponsors of the Americans with Disabilities Act (P.L. 101-336) ("ADA"), we are writing to ask you to implement a change in the procedure for deeming that state and local building codes comply with the regulations under ADA. We believe the procedure proposed below would ease the regulatory burden on both the Justice Department and on state and local governments, and improve accessibility without resort to enforcement through complaints.

Currently, under the regulations governing Title III of ADA (see 28 C.F.R. 36.607 et seq.), the Justice Department will issue a "certificate of equivalency" upon request that a state or local building code meets or exceeds the requirements of ADA. Under statute, such certification constitutes rebuttable evidence that a code meets the requirements of ADA. However, Justice will not certify -- although it will informally review -- any of the three model codes upon which virtually all 15,000 state and local building codes are based. Those model codes are prepared by Building Officials & Code Administrators (BOCA), International Conference of Building Officials (ICBO), and Southern Building Code Congress International (SBCCI).

We urge the Justice Department to first certify or otherwise approve model codes, which we believe it has current authority to do, and then allow all state and local codes that adopt such codes as equivalent. State and local government would only have to submit for certification any variances from the model codes.

We urge you to adopt this modification as soon as possible. If you have any questions or if we can be otherwise helpful, please contact Alexander Vachon of Senator Dole's staff at 224-8959, or Bobby Silverstein of Senator Harkin's staff at 224-6265.

Sincerely yours,

MEMORANDUM TO SENATOR DOLE

Date: January 30, 1995
From: Alec Vachon *AV*
RE: UPDATE/ADA AND STATE AND LOCAL GOVERNMENTS--
WHAT ARE THE PROBLEMS? HOW CAN YOU HELP?

- * As you know, I have contacted state & local government associations, asking questions like: How is ADA going? What kind of help do you need? Groups contacted: National Assn. of Counties, National Assn. of Towns, National Conference of State Legislatures, National Governors Assn., National League of Cities, and U.S. Conference of Mayors.
- * Have also spoken to key ADA co-sponsors: Kennedy, Hatch, Harkin, and McCain.

GOOD AND BAD NEWS--AND SOME SURPRISING ANSWERS

- * Everyone has heard of ADA, and most communities have begun to move. Incidentally, no one call ADA an "unfunded mandate"--U.S. Conference of Mayors: "ADA got tagged as an unfunded mandate because it showed up on top of an undoable agenda--ADA last one through." But staffer noted, "On a personal basis, ADA is a good thing. Should have been done a longtime ago."
- * Generally pleased with ADA regs. The National Assn. of Towns called them a "model of flexibility."
- * Problems:
 1. Biggest single capital expense is curb cuts--and deadline for compliance passed on Thursday, 1/26.
 2. Getting fast, definitive answers from the Justice Department. Complain ADA regs are not detailed enough.

AM EXPLORING THREE ACTIONS--FINAL OPTIONS NEXT WEEK

- * CURB CUTS--Drafting letter to Justice w/ADA co-sponsors to extend deadline 5-10 years. Kennedy & Harkin support this action--Harkin says disability groups will not oppose.
- * PROCESS FOR QUICK ANSWERS AND SOLVING FUTURE PROBLEMS. Letter to Tony Coelho at President's Committee asking him to set up regular meeting of state & local government associations, Justice, and disability groups to get kinks worked out. President's Committee affiliates in most states are the state agency for ADA implementation.
- * SIMPLIFY REGULATORY BURDEN. Example: Rather than each jurisdiction apply for ADA certification of building code, Justice would certify model codes--jurisdictions would be deemed in compliance unless vary from model codes.

Also included 2/11/95 memo

MEMORANDUM

Date: December 27, 1994
To: Senator Dole
From: Alec Vachon *AV*
RE: BIG ADA MILESTONE COMING UP--JANUARY 26, 1995

* By January 26, 1995, state and local governments are supposed to have completed all architectural and structural changes to make their services accessible that they had identified in their transition plans (which were to have been completed by June 1992). (All non-structural changes were to have been made by March 26, 1992.) As you know, for most State & local governments ADA makes few new requirements over the accessibility mandate of section 504 of the Rehabilitation Act--so the past 5 years since ADA was passed have been an additional "grace period" for making State & local government services accessible on top of the 14 years since the 504 regs became effective in 1977.

* We should expect a lot of media attention on ADA as this date approaches--ATTACHED ARE THREE AP WIRE STORIES ON STATE AND LOCAL GOVERNMENT ADA COMPLIANCE--FROM MASSACHUSETTS, MICHIGAN, AND WASHINGTON STATE. The articles are actually good--KEY POINTS:

--Compliance is uneven across the country--a lot has been done, but quite a bit remains. [No surprise.]

--ADA is a program or service accessibility law, not one that mandates complete architectural accessibility. State or local government don't have to make their buildings accessible--if they can figure out another way to provide services to their disabled citizens.

(KANSAS EXAMPLE: In Scott County, the county commissioners moved the courtroom from an inaccessible second floor to the accessible first floor, and then moved many county offices to the second floor. There is a buzzer on the first floor, and when pressed a clerk comes downstairs to take care of any business on the second floor for anyone who can't make it upstairs.)

--Curb cuts are probably the biggest single expense faced by most cities and towns.

AP 12-26-94 00:58 EST 79 Lines. Copyright 1994. All rights reserved.

MANY CITIES SLOW IN REMOVING BARRIERS FOR DISABLED<

By JONATHAN YENKIN Associated Press Writer

BOSTON (AP) Almost five years after Congress passed a sweeping law to open government's doors to the disabled, many public buildings still don't have elevators, modified bathroom stalls or doorways wide enough for wheelchairs.

And most cities won't have the mandated improvements in place by next month's deadline.

There's no city or town on the face of this Earth that's going to be 100 percent fully in compliance," says Lowell Haynes, a planner for Newton, Mass., which has a schedule of projects going into 1997.

The 1990 Americans with Disabilities Act has been hailed as the most significant civil rights legislation since the 1964 law prohibiting racial discrimination.

It bans discrimination against the disabled in job opportunities, public accommodations, transportation and telecommunications. About 49 million Americans have disabilities.

Under the law, local governments have until Jan. 26 to make structural changes ensuring that disabled people have access to their services. Governments that miss the deadline can be fined up to \$50,000 for the first violation and \$100,000 for subsequent violations.

Frankly, we've found just in the last two or three months there seems to be a scramble on by cities and towns to get something in the works so they can plead not guilty," said Bob Williams, president of The Access Group, a consulting firm in Woburn, Mass.

Hamilton Brown, an expert on the law for the National Association of Towns and Townships, said many governments haven't evaluated the accessibility of their services a step that was required two years ago.

Of those that have done the evaluations, he estimated only about half have made the necessary structural changes.

In Grand Rapids, Mich., the city expects to comply with the law for its most heavily used public buildings. But other jobs remain, such as curb cuts to make sidewalks accessible to wheelchairs at intersections.

In Massachusetts, a recent legislative report found nearly one-third of the police departments in the state don't comply with the federal law.

The town of Swampscott, north of Boston, was recently ordered to move public meetings out of its historic town hall because people in wheelchairs couldn't get inside the building.

I think there's a long ways to go," said Raymond S. Davis, acting director of the National Council on Disability. From what I'm hearing, cities and towns are late getting into the game.'

Many officials say the cost of refurbishing buildings is prohibitive. The U.S. Conference of Mayors has estimated the law will cost cities more than \$2 billion through 1998.

The Justice Department has sought to allay fears by telling

communities that if they can't alter a building, they can find alternate ways to accommodate people with disabilities.

For example, an agency that is inaccessible on a second-floor can make arrangements to serve disabled people on the ground floor.

But Attorney General Janet Reno has made it clear that the department plans to enforce compliance.

``Too many have taken a wait-and-see attitude to determine whether the Justice Department is serious about forcing compliance,'' Reno said in July. ``I have just one answer: We are serious.''

Some advocates for the disabled say legal action might be needed to prod some communities into action.

``The notice was sent out in 1990, so they have had time,'' Davis said. ``If they are just getting started in the last few months, it tells me they are not going to do anything until they are forced.''

The Justice Department's toll-free number for advice on the act is: 1-800-514-0301 or (TDD) 1-800-514-0383. Its hours are 10 a.m. to 6 p.m. EST Monday through Friday, except Thursdays, 1 p.m. to 6 p.m. Spanish language information is available.

AP 12-26-94 03:33 EST 97 Lines. Copyright 1994. All rights reserved.

MICHIGAN MAKING PROGRESS IN COMPLYING WITH DISABLED ACCESS LAW<
By BRIAN S. AKRE Associated Press Writer

School officials in Boyne City didn't have the money to make the small town's 68-year-old gymnasium accessible to the disabled. So they decided to close it next month, angering many residents who use it.

The move was unnecessary and an example of how local officials often misinterpret the Americans With Disabilities Act, supporters of the federal law say.

The law requires public services and programs to be made accessible to the disabled. That does not always mean physical renovations to buildings where the services are provided.

"Unfortunately, this is one of the least understood provisions of the law," said Patrick Cannon, executive director of the Michigan Commission on Handicapper Concerns.

"A lot of people think the ADA will force school districts and cities to spend millions of dollars they don't have. That's not the case."

Overall, Michigan's municipalities, school districts and the state have made progress in complying the law, Cannon said.

While many public agencies in Michigan will not meet the law's Jan. 26 deadline to make all public buildings and programs accessible, enough headway has been made in most cases to avoid any problems, he said.

Robin Jones, director of the Great Lakes Disability and Business Technical Assistance Center in Chicago, said that after Jan. 26 the disabled will be able to file complaints under the ADA to force access to public services.

"There are no ADA police," she said. "It's going to be an issue of citizens who know their rights and file complaints."

Kalmin Smith, a state Labor Department official who heads the state ADA committee, said federal officials have told him Michigan is far ahead of most other states in meeting the law's requirements.

That is due in part to a state law passed in the mid-1970s that set standards for handicapped access to private and public buildings. In some areas where the standards differ, the state may seek exemptions, Smith said.

In Boyne City, school officials thought they had no choice but to close the middle school's cafeteria-gymnasium building, which has a gym on the second floor.

The cost of installing an outside elevator was estimated at between \$200,000 and \$400,000. The board thought spending that much would be foolish given the building's age. The school district's attorney said that didn't matter, that the law allowed exceptions only if the cost would pose an "undue burden" on the district.

The district has gone to voters four times for a tax increase to pay for a new middle school, which would include a new gym. Each time, the voters said "no."

So the school board recently decided to close the gym on Jan. 26.

"I'm getting all kinds of heat from our community because

the men's basketball league wants to use it," Superintendent Bob Nakoneczny said.

At a meeting last week, Cannon and Jones told the board it could keep the gym open as long as it tried to accommodate the disabled and made efforts to resolve the problem in the long term.

"We want jobs and access to government services," said Cannon, who is blind. "It's not our intention to shut down a school building so others can't use it either."

Nakoneczny said the board probably will reverse its decision at a meeting next month. But no public assemblies will be held there. Middle school basketball games already are being played at another school.

"And that still does not prevent a handicapped individual from filing a complaint because they can't go up there and watch a men's basketball league game," he said.

Eventually, the district will either have to spend money to renovate the 1926 building or tear it down, Nakoneczny said.

Jones, who provides ADA information to agencies throughout the Great Lakes region, said misunderstanding of the law is most common in small towns. The elected officials often serve part-time and have no in-house legal counsel, so it is difficult for them to keep up on legal issues.

Small-town buildings also tend to be older with major access problems, like entrances at the top of stairs, and second-floor meeting rooms, Jones said.

In larger towns, the problem more often is the sheer volume of work required. Grand Rapids, for example, expects to meet the law's requirements for its most used public buildings. But there's a backlog of curb cuts to make sidewalks accessible to wheelchairs at intersections.

Curb cuts will cost Grand Rapids about \$9 million and represent about 90 percent of its ADA expenses, said Ingrid Scott-Weekley, city equal opportunity director.

"There's just no way we can get that done soon. Think of the number of curbs in a city at every intersection it's just extremely costly."

AP 12-27-94 15:26 EST 76 Lines. Copyright 1994. All rights reserved.

GOVERNMENT OFFICES MORE ACCESSIBLE, CRITICS SAY MORE NEEDED<

SPOKANE, Wash. (AP) Government agencies in Washington have spent millions of dollars to comply with a federal law requiring improved access for the handicapped, but critics of the efforts say there is much left to be done.

"We're still far from perfect, but things are getting better," said Spokane County Auditor Bill Donahue, who previously couldn't get his wheelchair into the restrooms near his second-floor office.

Government agencies were required to make their buildings more accessible under the 1990 Americans with Disabilities Act. The deadline for compliance is Jan. 26.

Washington has spent \$9.3 million on improvements to state facilities, including installation of wheelchair ramps, elevators, bathroom remodeling and telephones for the hearing impaired. The two-year budget proposed this month by Gov. Mike Lowry includes another \$9 million for improvements.

The city of Spokane has spent about \$100,000 to comply with the law, Affirmative Action Director Dorothy Webster said. Improvements include new electric doors, assisted listening devices at City Hall and the Opera House and a wheelchair ramp in City Council chambers.

Spokane County has spent about \$205,000 on improved building access, new telephones and signs printed with Braille and raised letters.

The county and city both spent less than officials had expected when the Americans with Disabilities Act passed.

"You'll find that the Washington state (building) code is a little more strict than the ADA codes," said Wes Whaley, director of maintenance for Spokane County buildings.

"This hasn't been as big a shock to our state as it was in some other states," he said.

National disabled-advocate groups have criticized lagging efforts in some areas. In Massachusetts, for example, a legislative report found that one-third of that state's police departments aren't in compliance with the disabilities law.

Local governments in Washington have not reported significant difficulty complying, a spokeswoman for the Governor's Committee on Disability Issues and Employment said.

Wiley Marks, executive director of the Coalition for Responsible Disabled, contended improvements around Spokane were relatively cheap because local agencies haven't done enough.

"If you want a real eye-opener, go with somebody in a wheelchair who needs to get from one side of town to another side," he said. "If they've been doing it for awhile, they know which way to go, and it's not necessarily the shortest route."

The new Spokane Public Library has been criticized for handicap access. The U.S. Department of Education is investigating complaints that parking spaces for the disabled are too far from the library entrance and that the route is too steep for wheelchairs. Library administrators say they've

complied with the disabilities act.

The Department of Education won't release details until its investigation is complete.

Bill Blaine, whose daughter uses a wheelchair, has sent some 50 letters to federal agencies asking them to investigate alleged violations of the disabilities act around Spokane.

"It's almost like the city and the county are trying to avoid compliance," he said.

Some agencies and facilities have sought input from the disabled on their needs. Spokane County's Public Facilities District formed a committee of disabled residents to help design the Spokane Veterans Memorial Arena, which will open next year.

Spokane International Airport took advice from a similar group before deciding on \$5 million in improvements.

Marks said such efforts are a step in the right direction.

"If some of those other organizations were making the same effort, we could work with that," he said.

MEMORANDUM

Date: December 30, 1994
To: Senator Dole
From: Alec Vachon *AV*
Re: PERSPECTIVE/IS ADA AN UNFUNDED MANDATE? WHO SAYS? LIFE WITHOUT 504 AND ADA COULD BE A LOT TOUGHER FOR STATES AND CITIES IF THE COURTS STARTED FINDING CONSTITUTIONAL RIGHTS TO EQUAL ACCESS FOR PEOPLE WITH DISABILITIES. AND CONGRESS PROVIDES SUBSTANTIAL ACCESSIBILITY FUNDS.

OR

WHY ADA AND 504 MIGHT BE CALLED: "THE STATE & LOCAL GOVERNMENT DISABILITY RELIEF AND FLEXIBILITY ACT."

SUMMARY OF KEY POINTS

* Some complain that ADA (and its predecessor, section 504 of the 1973 Rehabilitation Act) is an "unfunded mandate" on State & local governments. As described below, few people seem to realize that ADA and 504 provide real protections to State & local governments from excessive burdens of making accommodations for people with disabilities that Federal courts might otherwise impose under the U.S. Constitution. State & local governments would be well advised to think carefully before asking for any changes in these laws.

* Also, "unfunded" is a bum rap--Congress provides substantial funds for accessibility. The U.S. Conference of Mayors estimates 5-year ADA implementation costs (1993-98) at \$1.4 billion. However, in FY 1994 Congress appropriated \$4.4 billion for Community Development Block Grants (CDBG)--which can be used for ADA purposes. If cities believe ADA is a burden, maybe Congress should earmark the CDBG appropriation for accessibility.

* Both the Kempthorne unfunded mandates bill (S. 993) and CONTRACT WITH AMERICA's unfunded mandate provisions exempt disability rights laws from their provisions--including any future disability rights legislation. DAVID TAYLOR INDICATES THIS EXEMPTION WILL LIKELY TO CONTINUE IN ANY NEW BILLS. (However, the Senate report to Kempthorne called ADA an "unfunded mandate.")

HOW 504 AND ADA PROTECT STATE AND LOCAL GOVERNMENTS

* In the late 1960's and early 1970's, Federal district courts found a constitutional right to education for students with disabilities under the 14th Amendment ("equal protection of the laws") and the 5th Amendment ("due process of law"). Basically, the courts said that no State or local government had to educate any child under the Constitution, but if it chose to provide education, then it must provide it equally to all children, including those with disabilities. (These

decisions were never appealed, so the Supreme Court never ruled on these claims.) By extension, if a state or local government provides a service, then it must be equally available to all citizens, including those disabled.

* Litigation asserting constitutional rights to equal access to State & local government services by disabled persons were generally abandoned as lawyers found it easier to make their cases under Federal disability rights laws (or in some cases, State laws)--section 504 of the 1973 Rehabilitation Act, the 1975 special education law, etc.

* 504 and ADA contain 2 big, big protections for State & local governments:

1. Both 504 AND ADA ARE PROGRAM ACCESSIBILITY LAWS, NOT ARCHITECTURAL ACCESSIBILITY LAWS. State & local governments are only required to make their services accessible, not every public building. In fact, architectural changes in existing buildings are only required where there is no other feasible way of making a service accessible. (Of course, a public meetings must be held in an accessible building.) THIS GIVES STATE & LOCAL GOVERNMENTS TREMENDOUS FLEXIBILITY (WHICH SOME PEOPLE MISINTERPRET AS VAGUENESS.)

(KANSAS EXAMPLE: In Scott County, the commissioners moved the courtroom from the inaccessible second floor to the accessible first floor, so people in wheelchairs could attend court sessions and other public meetings. County offices were moved to the second floor. There is a buzzer on the first floor, and when pressed a clerk comes downstairs to handle any business on the second floor for anyone who can't make it upstairs.)

2. BOTH LAWS CONTAIN AN "UNDUE BURDEN" DEFENSE. The regs to 504 and ADA specifically exempt any "public entity" from having to take any action that would result in "undue financial and administrative burdens."

WHAT MIGHT HAPPEN IF ADA AND 504 WERE REPEALED? POSSIBLE BAD NEWS FOR STATE & LOCAL GOVERNMENTS.

* People with disabilities would litigate under the U.S. Constitution. It seems inconceivable that any court would not require States or cities to make accessible voting, public meetings, public transportation, etc.

* In fact, Federal courts tend to be unsympathetic about costs of civil rights enforcement--SOME MIGHT REQUIRE STATE & LOCAL GOVERNMENTS TO MAKE THEIR BUILDINGS ARCHITECTURALLY ACCESSIBLE, FAR MORE EXPENSIVE THAN "PROGRAM ACCESSIBILITY." STATES AND CITIES WOULD NOT HAVE AN "UNDUE BURDEN" DEFENSE.

WHAT DOES ADA COST CITIES? WHAT KIND OF FINANCIAL ASSISTANCE DOES CONGRESS PROVIDE?

- * The U.S. Conference of Mayors estimates that total cost of ADA implementation for the five years, 1993-1998, will be \$1.4 billion. The Mayors do not specify how much of these cost are only one time--for building alterations, curb cuts, etc.--but we should assume a big percentage.
- * CONGRESS PROVIDES SUBSTANTIAL FINANCIAL HELP TO PAY FOR ACCESSIBILITY COSTS. The Community Development Block Grant (CDBG) program, created in 1974, has provided over \$29 billion in aid to State & local governments since 1985. This money can be used for a variety of purposes, including removal of architectural barriers and other disability-related activities. Between 1985 and 1992, \$136 million was spent to remove architectural barriers.
- * N.B. ADA costs for the next 5 years are less than one-fourth of the CDBG appropriation of \$4.4 billion in 1994. MAYBE CONGRESS SHOULD EARMARK CDBG MONEY FOR ADA PURPOSES -- AND SEE WHAT STATE & LOCAL GOVERNMENTS SAY.

CONCLUSION: IS ADA REALLY AN UNFUNDED MANDATE?

- * Although ADA does result in financial costs on state & local governments, on the flipside it protects them. Congress would be unable to turn back the clock by passing a 504 or ADA-type law if there had been adverse court decisions establishing more demanding Constitutional claims to accessibility. THIS IS WHY ADA AND 504 MIGHT BE CALLED: "THE STATE & LOCAL GOVERNMENT DISABILITY RELIEF AND FLEXIBILITY ACT."
- * State & local governments would be well advised to be cautious about asking for changes to 504 or ADA. I HAVE HEARD NO SUCH REQUESTS BY STATE OR LOCAL GOVERNMENTS--IN KANSAS OR ELSEWHERE. IN FACT, ACCORDING TO PRESS REPORTS, THE U.S. CONFERENCE OF MAYORS HAS SPECIFICALLY ASKED ADA BE EXCLUDED FROM ANY UNFUNDED MANDATE RELIEF.
- * For private businesses, ADA is an unfunded mandate, and requires defense on other grounds.

ATTACHED ARE TALKING POINTS FOR "FACE THE NATION" FOR JANUARY 1, 1995 ON ADA--THESE HAVE BEEN INCLUDED IN YOUR PRESS BRIEFING BOOK.

MEMORANDUM

Date: December 30, 1994
To: Senator Dole
From: Alec Vachon 
Re: TALKING POINTS FOR "FACE THE NATION" ON ADA

SENATOR, SOME PEOPLE THINK ADA IS A BURDEN TO STATE AND LOCAL GOVERNMENTS, THAT ADA IS AN UNFUNDED MANDATE. WHAT DO YOU HAVE TO SAY TO THAT?


- * Think of this another way--what would happen if ADA were repealed? In the U.S. Constitution, there is something called the 14th Amendment, which says people are entitled to "equal protection of the laws." That means if a State or local government provides any service, then it must make it available on an equal basis to all people, including those with disabilities.
 - * Let's remember what we are talking about here--voting, getting a license, zoning permits, attending public meeting, paying taxes--basic rights and responsibilities.
 - * In my view, ADA protects State and local governments from excessive burdens. All ADA says is that state and local governments have to figure out some way to make their services available. Architectural changes in existing buildings are only required where there is no other way of making a service accessible. Of course, public meetings must be held in an accessible place.
- KANSAS EXAMPLE: In Scott County, the County Commissioners moved the courtroom from the inaccessible second floor to the accessible first floor, so people in wheelchairs could attend court sessions and other public meetings. They then moved county offices to the second floor. There is a buzzer on the first floor, and when pressed a clerk comes down to take care of business for anyone who can't make it upstairs.
- * Also, ADA says if making a service accessible is an undue burden, State and local governments don't have to do it.
 - * If you think ADA is tough, just try the Federal courts. Courts might require full architectural accessibility--and that could be very, very expensive. And forget about an "undue burden" defense.
 - * In fact, you might call ADA "The State and Local Government Disability Flexibility and Relief Act."

- * Also, I take exception to the "unfunded" label. Since 1985, Congress has provided State and local governments with \$29 billion in Community Development Block Grants (CDGB). They have used about \$136 million for handicapped access. They could use more, that is their choice.

- * Also, you should know that there is very little new in ADA that has been required by the Federal government since 1973 as a condition of receiving Federal funds. The Federal government made the commonsense requirement that any program that uses Federal funds should be available to all people, including those with disabilities. Frankly, many State and local governments looked the other way for a long time.

- * One last point--remember, people with disabilities are taxpayers, too. I have not heard anyone say people with disabilities should not have to pay taxes.

MEMORANDUM

Date: December 28, 1994
To: Senator Dole
From: Alec Vachon 
Re: CONVERSATION WITH TONY COELHO

* I heard a rumor that Tony had spoken with Gingrich about ADA--and called Tony. He in fact called Gingrich recently about ADA. They entered Congress together in 1979 and have a longstanding relationship.

* Coelho described his conversation w/Gingrich:

--Coelho reminded Newt that in 1989 he came to him and asked him to designate Republican members to work on ADA. Newt designated Cong. Steve Bartlett (now Mayor of Dallas) and Cong. Steve Gunderson. Coelho appreciated Gingrich's help then, which kept ADA from becoming a partisan issue in the House (and Bush got a lot of credit as a result).

--Coelho was calling to make sure Newt was not going back on their original discussion--not as a threat, but Coelho would have to take this issue on if he were.

--Newt replied that his commitment still stood--that any action on ADA--hearings or whatever--would be bipartisan, and that the disability community would be involved. Newt felt that sometimes the intent of a bill is lost in the regulations or enforcement, and at the very least needed periodic review. Coelho asked Newt if it was okay to pass on the substance of their conversation, and Newt said, "yes."

* Coelho has heard that Rep. Tom DeLay (R-Texas), incoming House majority whip, is very negative about ADA. Incidentally, DeLay announced on December 14th formation of Project Relief, a coalition to advocate reform of the government regulatory process. Project Relief's chairman is Bruce Gates, vice president of the National American Wholesale Grocers' Association.

Memorandum

Date: July 29, 1993

To: Senator Dole

From: Alec Vachon *N*

Re: ADA Article in Today's Washington Post

Comments on the attached article:

1. Correctly points out that 12,000 complaints have been filed with EEOC. What the article does not say is that of the 2,000 complaints resolved so far, 70 percent have been dismissed for lack of jurisdiction (e.g., alleged violation occurred before effective date of law) or because an investigation found no discrimination. If this trend continues, perhaps only 3,600 cases of the 12,000 will be valid. (N.B.: This dismissal rate is about the same as other laws enforced by EEOC, e.g., sex, race, and age discrimination). Also, given that ADA covers 70 percent of the labor force, or 77 million persons, this appears a stunningly low rate of complaints.

2. Column 2, Paragraph 2, quotes a labor lawyer who states that one of the biggest surprises is that most people filing complaints are current employees. This is only a surprise to people who have not thought about the principle causes of joblessness among people with disabilities -- which are a lack of job skills and education. ADA is no remedy for these problems.

But a real surprise may be that the SSDI trust fund will be a beneficiary of ADA. According to a 1987 study I conducted, if employers generally made accommodations (as ADA now requires) between 20 and 40 percent of people who would have otherwise left the labor force because of disability will remain in it. Fewer exits from the labor force, fewer applications for SSDI.

3. The final comment of the article is appropriately optimistic -- that it is becoming more acceptable to have a disability. Moreover, whatever ADA does or does not do for people with disabilities, ADA has moved policy thinking about people with disabilities to a new level of visibility.

Lastly, I am finishing an ADA anniversary statement for you, which should still be timely for next week. In order to provide a historical perspective on this and other projects, I have been cataloging and analyzing your record on disability since 1969.

109

U.S. NAVY PHOTO

Volcanic Hyperbole

When it comes to questions of scientific fact, printing "both sides" of an issue can be seriously misleading. Unless the reader is an expert in the field being discussed, he or she has no basis to judge the qualifications or validity of the facts presented.

This is the case with respect to the recent letter by Robert Braunohler [July 1] asserting the significance of volcanic eruptions as a source of chlorine in the stratosphere. This evidence, he argues, calls into question the wisdom of recent efforts to eliminate man-made sources of the chemical.

This assertion, recently popularized by the conservative commentator Rush Limbaugh, is carefully reviewed and dismissed in the June 11 issue of *Science*. The article presents the empirical evidence that has led researchers to conclude that neither the oceans, biomass burning nor volcanoes are significant sources of stratospheric chlorine. Even a noted skeptic of ozone depletion, Fred Singer, refers to the argument over volcanoes as "polemics."

ALAN S. MILLER
Executive Director
Center for Global Change
College Park

total revenue involved billion or \$4 billion a year Boren and other such you believe that a great this—tax increases vs. ey is less than half of a ues or federal spending. would reduce the likely five years from now. It spreads the burden across would pay most are those ty to pay. There is no Boren calls for a "summit," mit—the kind called for in y elected president made a d Congress, which worked o so a final time. No more dging; there'll be another e choice is yes or no. Do r duck?

Aid?

tackle the problems as en stymied by interminations and turf battles that plan languishing in the ucrats.

to business as usual with ations bill. As the admin: House has sent to the rat chops away at what is equest. The bill's huge t, Israel and Egypt—alst of the administration's afely pass through Conbudget constraints. But a aid as a result. To make lly inviolable items, proorest of the poor—the nal Development Associ:nt Fund for Africa—had t the House-passed bill. in the world's poorest urden of cuts in order to tional Fund for Ireland, key and—unkindest of an elephant conservation. tion?

Act

e. It would still be against l employee to use any influence" to affect the lor could a covered emreceive a political contrite. The Senate bill would members of the senior nployees in certain sensitions from running for party offices or taking on ampaigns. That's okay. employees who wish to do ivate citizens, and on their rt in the political process. rt anything. The latitude it to run for even partisan nate would forbid, but the nferrees should adopt the es in this debate exagger-effect that the legislation ublicans and some of the imagine a world in which group or through their eful. But federal employate and divide in politics y other citizens do. All the in.

'Sanctions Against Croatia'

In his column "Sanctions Against Croatia" [op-ed, July 16], Stephen S. Rosenfeld's assertions that not only should U.S. foreign aid be denied to the Republic of Croatia but that sanctions also should be imposed are based on a false depiction of Croatian policies toward the Republic of Bosnia and Herzegovina. The suggested sanctions against Croatia would punish a state that was a victim of armed aggression and would benefit and encourage the better-armed Serbian forces.

In response to Mr. Rosenfeld's unsubstantiated accusation that Croatia has conspired with Serbia to carve up Bosnia, I wish to stress that, while the world community conducted a cynical, hands-off policy toward Bosnia, Croatia did more to defend Bosnia's sovereignty and to accommodate refugees from that state than all the other countries of the world combined. The Croatian government encouraged ethnic Croat residents of Bosnia to join the Muslims in voting for the independence of Bosnia and Herzegovina, thereby giving them the needed majority. In his most recent letter to U.N. Secretary General Boutros Boutros-Ghali, Croatian President Franjo Tudjman again stressed that Bosnia and Herzegovina must remain a single state.

Since the beginning of the crisis, Croatia has conducted a realistic policy toward Bosnia. Based on existing circumstances, we have supported various solutions for our neighboring state, including a confederation of republics within the former Yugoslavia, the European Community-proposed Cutilero plan, a political and military alliance between Croatia and Bosnia, a U.N. protectorate, the Vance-Owen plan and, at present, a confederal or federal option for the

internal restructuring of Bosnia. The main problem has been that the Muslim side has refused each option only to accept it some six months later when the circumstances had changed and the option was no longer viable.

The Croatian government supports any solution that is acceptable to all three constituent nations of Bosnia and Herzegovina. It is, therefore, unjust to blame Croatia for the ineffective policy of the world community, which has forced Croatia to undertake measures to prevent the conquest of all of Bosnia and Herzegovina by Serbian forces and to defend the interests of the ethnic Croatian inhabitants there, who form the smallest of the three constituent nations.

We wish to reach a solution that will stop the exodus of Croats from Bosnia and offer a constitutional arrangement guaranteeing parity for the Croats in the Bosnian government and preserving local government control by Croats of regions in which they form a majority. Further, we would like to see the demilitarization of Bosnia and its establishment as a buffer state between Croatia and Serbia, having wide international guarantees for its security. Such an arrangement will form a defense against any pretensions by either the Serbs or the Muslims to the Croatian coastline.

I wish to emphasize that not only is there no case for the imposition of sanctions against Croatia but that such measures will only force the Croatian government to use military means to regain its occupied territory in order to resettle its displaced population and reestablish its economic viability necessary for the accommodation of the mostly Muslim refugees from Bosnia. Therefore, imposition of

conduct. This is no substantial improvement over the previous policy. Euphemistic sound bites such as "don't ask, don't tell" notwithstanding, the policy remains "found out, thrown out."

As a gay man with friends who have been kicked out of the military, not for being bad soldiers but for being gay, and knowing others who have had to lead lives of secrecy to stay in, I would far rather see the president do as he originally promised and lift the ban completely, even at the risk of being overturned by Congress. This is not just because he promised it but because it's the right thing to do. Anything less is a betrayal of the millions of gay people who believed him and supported him in the 1992 election. As he acknowledged himself, this is a decision that will please no one. It provides fuel to his opponents and makes many of his supporters wonder why we should ever trust him again.

JOHN BOGGAN
Washington

sanctions will not lead to peace but to a widening of the conflict.

MARIO NOBILO
Ambassador
Permanent Mission of the Republic of Croatia
To the United Nations
New York

Something is deeply wrong with Mr. Rosenfeld's reasoning. Indeed something is deeply wrong with the entire perception of the Croat-Muslim "conflict." If Mr. Rosenfeld had tried to pick up a pen and a map and had marked on it, on the basis of the daily news, the towns conquered by the Muslim army (Travnik, Fojnica, Konjic, Jablanica, Bugojno, parts of Mostar) since the start of the Muslim offensive on about April 1, he would have noticed that the Croats have been expelled from about half the territory that the international community had considered Croatian, as expressed by the Vance-Owen plan.

If Mr. Rosenfeld's call for sanctions against Croatia succeeds, this would be indeed a unique case of being punished for having yielded to a superior enemy.

The world community, Mr. Rosenfeld included, has done nothing to stop the Serb aggression against Slovenia, Croatia and Bosnia-Herzegovina. It is time to wash our hands and clean our conscience. The recipe Mr. Rosenfeld suggests is a well-tried one: Blame the victim, and forget it.

VLADIMIR P. GOSS
Hillsborough, N.C.

Deficit Dream

For those who refer to the budget package as a \$500 billion deficit reduction bill. Stop! This package has no chance of achieving this much in deficit reduction.

The revenue projections are, of course, never going to happen, and spending will be higher than projected. Everyone knows this, yet the references to \$500 billion never cease. If this bill passes, the deficit will, at best, remain about the same, and most likely it will increase.

President Clinton insists that this package must be the largest deficit reduction package in history, larger than the 1990 \$480 billion package. What \$480 billion package? Revenue projections were grossly overstated, and spend-

ing projections were fantasy. Deficits have increased since then. Forget the baseline deficit figure. The only baseline deficit figure that means anything is zero, as in a balanced budget mandated by an amendment that forces lawmakers to use figures based in reality.

It is outrageous to put a dollar figure on a package that is based on the assumption that not a single American will change his behavior after this bill becomes law. The only solace is that this bill will not be a \$290 billion tax increase, because certainly revenues will come nowhere near that.

KENNETH J. FORTUNE
Washington

The Washington Post

EUGENE MEYER, 1875-1969
PHILIP L. GRAHAM, 1915-1963

DONALD E. GRAHAM
Publisher

LEONARD DOWNIE JR. Executive Editor
ROBERT G. KAISER Managing Editor
MEG GREENFIELD Editorial Page Editor
STEPHEN S. ROSENFELD Deputy Edt'l Page Editor

THOMAS H. FERGUSON
President and General Manager
VICE PRESIDENTS

BENJAMIN C. BRADLEE At Large
MICHAEL CLURMAN Production
F. J. HAVLICEK Industrial Rels./Environment
BOISFEUILLET JONES JR. Counsel
ELIZABETH ST. J. LOKER Systems and Engineering
THEODORE C. LUTZ Business Manager
VINCENT E. REED Communications
MARGARET SCOTT SCHIFF Controller/Pers./Admin.

Published by The Washington Post Company

KATHARINE GRAHAM
Chairman of the Board
DONALD E. GRAHAM
President and Chief Executive Officer
ALAN G. SPOON
Executive Vice President and Chief Operating Officer

1150 15th St. NW • Washington, D.C. 20071 • (202) 334-6000

lost

R

ir policies in light of what
ans might do next. In
ackers, who are in their
g the people of Sarajevo,
r they wish to add Ameri-
ts.

into combat, even on a
ways a grave decision for
er in chief, and it is a
e for this president. He
rumbled by the death and
ncertain about its impact
ial interest and wary of
er engagement.

ver for U.N. peace-keep-
et the principal criteria
wn for a military role: a
ission undertaken under
full consultation with the
will also be full consulta-
the American people as
up the "safe areas" for
e United States can
ating position and save
demonstrate that it has
e Balkan agony.

en it. It is now essential-
se of about a nickel a
eed a couple of extra
meet and to marshal the
objectives of cutting the
noring the social deficit
. The pennies are insig-
cost of the gasoline to
ountry has fallen in real
976 to less than \$4.25
have to drive the most
n they not afford to give
total revenue involved
lion or \$4 billion a year
Boren and other such
ou believe that a great
this—tax increases vs.
ey is less than half of a
es or federal spending.
would reduce the likely
ive years from now. It is
reads the burden across
ould pay most are those
y to pay. There is no
oren calls for a "summit,"
nit—the kind called for in
elected president made a
Congress, which worked
so a final time. No more
ing; there'll be another
choice is yes or no. Do
luck?

lid?

ackle the problems as
n stymied by intermina-
aws and turf battles that

Herblock is recuperating from surgery.

LETTERS TO THE EDITOR

Henry Hyde's Hard Choice

It is flattering to be the subject of one of Richard Cohen's recent columns [op-ed, July 20]—even if he takes me to task for illogic in adding rape and incest as exceptions to the Hyde amendment forbidding the use of federal funds to pay for abortions. Until now, the sole exception has been when the life of the mother would be endangered if the fetus were carried to term.

Mr. Cohen is quite on the mark. If one believes (as I do) that the unborn child in the womb is an innocent member of the human family, the fact that his or her conception was the result of a crime should not result in execution by abortion of that defenseless, innocent pre-born life.

As a matter of fact, the Supreme Court, in *Coker v. Georgia* (1976), in striking down a Georgia statute providing capital punishment for a rapist, said: "We have concluded that a sentence of

death is grossly disproportionate and excessive punishment for the crime of rape, and therefore forbidden by the Eighth Amendment as cruel and unusual punishment." It's sad and ironic that the innocent pre-born child of a rapist enjoys no such protection.

But as Oliver Wendell Holmes famously said, the "life of the law has not been logic, but experience." Those responsible for counting votes convinced me that without the rape and incest exceptions we could not prevail. Because only about one percent of abortions are performed because of rape and incest, I was faced with the awful judgment of trying to save the 99 percent at the expense of the one percent.

Because the purpose of the pro-life movement is to save as many pre-born children as possible, I chose to do what was possible. So, yes, Mr. Cohen, I suppose that decision makes

me pro-choice, but my choice was for life, not extermination.

HENRY J. HYDE
U.S. Representative (R-Ill.)
Washington

The President's Mail

The negative publicity about the way President Clinton responds to his mail ["Volunteer's Retort Spoils President's Polite Brushoff," Federal Page, July 15] misses the point. I am part of a group of volunteers at the Leisure World retirement community who help answer the president's mail. Of course, no volunteer should write his or her own opinions in replies to the mail. All of the volunteers are told that this is the rule, and we follow it. We work hard to answer the mail—regardless of what we think about the letter writer's opinion or the president's policies.

The real story is the record increase in the number of people who are exercising their democratic right to let the president know how they feel. I think it's wonderful that so many people think that their opinions count and that we have a president who wants to reply to every person who writes to him.

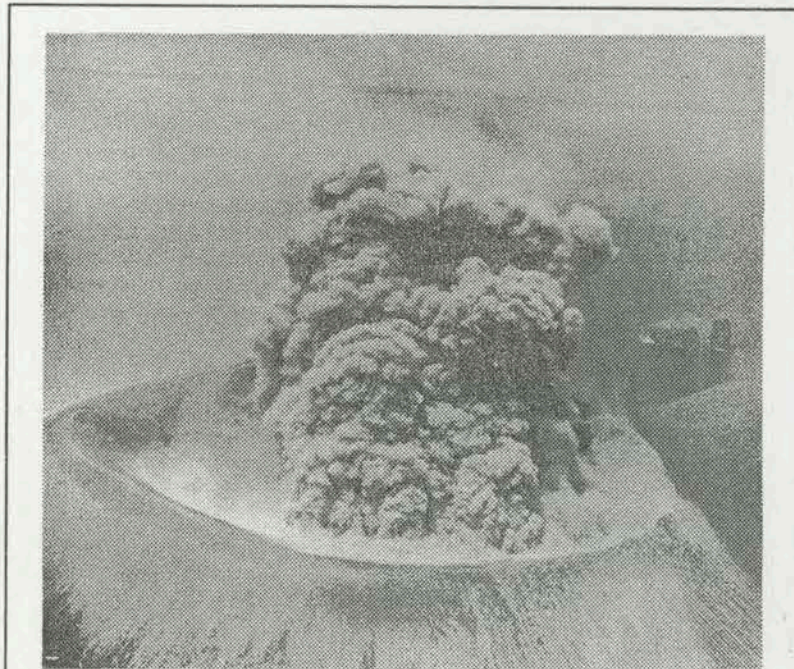
MILDRED JASCHIK
Silver Spring

A Policy That Pleases No One

The headline "President Opens Military to Gays" [front page, July 20] is misleading at best and untrue at worst. Substituting "homosexual conduct" for "homosexuality" as the standard for expulsion is meaningless when "conduct" is defined so broadly that an acknowledgment of being gay, whether public or private, is considered such conduct. This is no substantial improvement over the previous policy. Euphemistic sound bites such as "don't ask, don't tell" notwithstanding, the policy remains "found out, thrown out."

As a gay man with friends who have been kicked out of the military, not for being bad soldiers but for being gay, and knowing others who have had to lead lives of secrecy to stay in, I would far rather see the president do as he originally promised and lift the ban completely, even at the risk of being overturned by Congress. This is not just because he promised it but because it's the right thing to do. Anything less is a betrayal of the millions of gay people who believed him and supported him in the 1992 election. As he acknowledged himself, this is a decision that will please no one. It provides fuel to his opponents and makes many of his supporters wonder why we should ever trust him again.

JOHN BOGGAN
Washington



U.S. NAVY PHOTO

Volcanic Hyperbole

When it comes to questions of scientific fact, printing "both sides" of an issue can be seriously misleading. Unless the reader is an expert in the field being discussed, he or she has no basis to judge the qualifications or validity of the facts presented.

This is the case with respect to the recent letter by Robert Braunschweiler [July 1] asserting the significance of volcanic eruptions as a source of chlorine in the stratosphere. This evidence, he argues, calls into question the wisdom of recent efforts to eliminate man-made sources of the chemical.

This assertion, recently popularized by the conservative commentator Rush Limbaugh, is carefully reviewed and dismissed in the June 11 issue of *Science*. The article presents the empirical evidence that has led researchers to conclude that neither the oceans, biomass burning nor volcanoes are significant sources of stratospheric chlorine. Even a noted skeptic of ozone depletion, Fred Singer, refers to the argument over volcanoes as "polemics."

ALAN S. MILLER
Executive Director
Center for Global Change
College Park

'Sanctions Against Croatia'

In his column "Sanctions Against Croatia" [op-ed, July 16] Stephen S.

internal restructuring of Bosnia. The main problem has been that the Mus-

sanctions will not lead to peace but to a widening of the conflict.

not those like him, who cheerfully suggest doing less. They are the sanctimonious ones who say they'd love to vote for this deficit reduction plan except that it doesn't do *more*.

The current chief practitioner of this ploy is Sen. David Boren, but he is hardly the only member of the school. The great problem with the president's proposal, he said again the other day, was that "it does not do enough." You hear the same argument from others, and you wonder where they all were the past 12 years as the deficit widened, the national debt quadrupled and interest on the debt rose to a seventh of the budget, crowding out much else. Were these incipient heroes not in Congress all that while? And now that they have the opportunity to begin to reverse that crippling course, their claim is that the reversal is incomplete. What transparency.

The budget conference is hung up on the issue of an energy tax. The president proposed a strong one; Mr. Boren and others from energy

have gained the most. Can they not afford to give back a dime? Nor is the total revenue involved that great—some \$3 billion or \$4 billion a year over five years. Mr. Boren and other such preachers would have you believe that a great principle is at stake in this—tax increases vs. spending cuts. The money is less than half of a percent of federal revenues or federal spending.

The president's plan would reduce the likely deficit some 40 percent five years from now. It is balanced in the way it spreads the burden across the society; those who would pay most are those with the greatest ability to pay. There is no alternative in play. Mr. Boren calls for a "summit," but there has been a summit—the kind called for in the Constitution. A newly elected president made a proposal to a new elected Congress, which worked its will and now must do so a final time. No more backing or filling or dodging; there'll be another chance another year. The choice is yes or no. Do the Democrats govern or duck?

Who Will Aid Foreign Aid?

THIS WAS supposed to be the year in which America's foreign aid program experienced the comprehensive restructuring long sought by supporters and opponents alike. It was also to be the year in which a new administration committed to sustainable economic development and the eradication of poverty would provide leadership in targeting aid money on poorer nations that are taking the right measures to raise living standards. Unfortunately, the opportunity for achieving both ends is fading fast. If the moment is lost, the Clinton administration will have itself to blame.

The time was ripe for addressing the host of aid reform issues when the House Foreign Affairs Committee considered the foreign assistance authorizing legislation earlier this year. Chairman Lee Hamilton and his Republican counterpart, Benjamin Gilman, had produced a first-rate reform package four years ago and were eagerly awaiting an administration that had a genuine interest in fixing foreign aid. But the Clinton administration was unprepared to engage the House in a serious discussion, despite earlier pledges to have a restructuring plan ready for Congress in the spring. The Senate Foreign Relations Committee is faced with a similar

dilemma; it's ready to tackle the problems as well. But the Hill has been stymied by interminable executive branch reviews and turf battles that have left the reform plan languishing in the in-boxes of senior bureaucrats.

Meanwhile, it's close to business as usual with the foreign aid appropriations bill. As the administration meanders, the House has sent to the Senate a spending bill that chops away at what is already a tight aid request. The bill's huge engines—aid to Russia, Israel and Egypt—almost guarantee that most of the administration's money requests will safely pass through Congress in spite of overall budget constraints. But a terrible price is being paid as a result. To make room for these politically inviolable items, programs that serve the poorest of the poor—the World Bank's International Development Association, AID's Development Fund for Africa—had to take serious hits in the House-passed bill. What's worse, people in the world's poorest nations must bear the burden of cuts in order to fund aid to the International Fund for Ireland, Portugal, Greece, Turkey and—unkindest of all—\$7 million for African elephant conservation. Where is the administration?

Yes, Ease the Hatch Act

THE HATCH Act was passed in 1939, in part in response to reports that Democrats were extorting campaign funds and votes from holders of scarce Depression-era government jobs. The authors could simply have barred the pressuring of federal employees for political purposes, but as an insurance policy went beyond that: The statute also bars most participation of federal employees in partisan campaigns. The Supreme Court has upheld these terms as not being a violation of the First Amendment on grounds that Congress also has a legitimate interest in seeing to creation of a politically neutral civil service.

There nonetheless have been repeated efforts on the part of federal employee unions, civil liberties groups and others to have the restrictions eased. In 1976 such legislation was passed but successfully vetoed by President Ford. The same thing happened in 1990, when a bill was vetoed by President Bush and an effort to override failed by two votes in the Senate. Now, however, Congress seems headed toward passage of a bill again, and President Clinton has indicated he will sign it.

Our sense is that it's the right thing to do if done carefully. There are lots of protections now in place in the country that didn't exist a half-century ago; the risk of a politicized federal civil service marching in some kind of lockstep seems

to us to be pretty remote. It would still be against the law for a covered employee to use any "official authority or influence" to affect the result of an election. Nor could a covered employee either solicit or receive a political contribution from a subordinate. The Senate bill would also continue to bar members of the senior executive service and employees in certain sensitive agencies and positions from running for partisan offices, holding party offices or taking on active roles in political campaigns. That's okay.

But otherwise, federal employees who wish to do so ought to be free as private citizens, and on their own time, to take full part in the political process. They're not going to hurt anything. The latitude ought to include the right to run for even partisan local office, which the Senate would forbid, but the House would not; the conferees should adopt the House position. Both sides in this debate exaggerate the likely practical effect that the legislation will have. Resisting Republicans and some of the measure's sponsors alike imagine a world in which federal employees as a group or through their unions will be more powerful. But federal employees are likely to participate and divide in politics pretty much the same way other citizens do. All the more reason to let them in.

Volcanic Hy

When it comes to scientific fact, p sides" of an issue c misleading. Unless an expert in the f cussed, he or she l judge the qualificati of the facts present

This is the case v the recent letter by ohler [July 1] assert cance of volcanic e source of chlorine sphere. This eviden calls into question t recent efforts to e made sources of the

In his column "San Croatia" [op-ed, July 1] Rosenfeld's assertions should U.S. foreign aid b Republic of Croatia but also should be imposed : false depiction of Croati ward the Republic of B zegovina. The sugges against Croatia would j that was a victim of arm and would benefit and better-armed Serbian for

In response to Mr. R substantiated accusation has conspired with Serb Bosnia, I wish to stress : world community condu hands-off policy toward I did more to defend Bosn ty and to accommodate that state than all the o of the world combined. government encouraged residents of Bosnia to joi in voting for the indeper nia and Herzegovina, t them the needed majorit recent letter to U.N. Sec al Boutros Boutros-Gl President Franjo Tu stressed that Bosnia and must remain a single stat

Since the beginning Croatia has conducted a cy toward Bosnia. Base circumstances, we hav various solutions for ou state, including a con republics within the for via, the European proposed Cutiliero plan, military alliance between Bosnia, a U.N. prote Vance-Owen plan and, confederal or federal o

For those who refer : package as a \$500 billion d bill. Stop! This package ha achieving this much in defu

The revenue projections never going to happen, au be higher than project knows this, yet the refer billion never cease. If this deficit will, at best, rem same, and most likely it wil

President Clinton insi package must be the larg duction package in histor the 1990 \$480 billion p \$480 billion package? Re tions were grossly overstat

The Washington Post

AN INDEPENDENT NEWSPAPER

'Our Part'

PRESIDENT CLINTON had promised to protect besieged United Nations peacekeepers in Bosnia, if asked, and so he could not possibly say no when the request came. French ground troops have been under hostile Serb fire at Sarajevo, one of six U.N.-designated "safe areas" for Muslims, and American aircraft assigned to NATO now will be dispatched to defend them. Some important particulars of planning and consultation evidently remain to be done, but it is expected that the United States will start providing air cover in Sarajevo within the next several days. This is not the solution to every problem of American policy in the Balkans, but it is a right and necessary thing to do.

Mr. Clinton said yesterday that he didn't know whether American intervention would be enough to deter aggression, save Sarajevo and bring the parties to the table—actually, they're already at the table—but that we in the United States would do "our part." It has never been entirely clear just what he considered "our part" to be, and is not now. In any event, the evidence of the past few days is that it may be a somewhat changeable and flexible thing. The entry of American forces into battle, under whatever terms, is bound to be an event in the Yugoslav wars. It compels all the local

parties to recalculate their policies in light of what they think the Americans might do next. In particular, the Serb attackers, who are in their second year of murdering the people of Sarajevo, must now decide whether they wish to add Americans to their list of targets.

To send Americans into combat, even on a restricted mission, is always a grave decision for an American commander in chief, and it is a particularly delicate one for this president. He must deal with a public numbed by the death and suffering in Bosnia but uncertain about its impact on the American national interest and wary of being drawn into a deeper engagement.

The dispatch of air cover for U.N. peacekeepers, however, does meet the principal criteria that Mr. Clinton laid down for a military role: a limited and purposeful mission undertaken under U.N. resolutions and in full consultation with the allies; presumably there will also be full consultation with Congress and the American people as well. By helping to firm up the "safe areas" for Bosnia's Muslims, the United States can strengthen their negotiating position and save lives. Most of all, it can demonstrate that it has not turned its back on the Balkan agony.

Budget Time

"THE SHAKIES rule the day." That's how Sen. John Breaux was quoted as describing the budget situation yesterday. No one understands better than he; it was Mr. Breaux who suggested only a few days ago that the budget conferees solve their problem of how to reduce the deficit while minimizing both tax increases and spending cuts by . . . doing less deficit reduction. But Mr. Breaux, to judge by his performance so far, will be the good soldier in the end. The worst of the wavering Democrats are not those like him, who cheerfully suggest doing less. They are the sanctimonious ones who say they'd love to vote for this deficit reduction plan except that it doesn't do *more*.

The current chief practitioner of this ploy is Sen. David Boren, but he is hardly the only member of the school. The great problem with the president's proposal, he said again the other day, was that "it does not do enough." You hear the same argument from others, and you wonder where they all were the past 12 years as the deficit widened, the national debt quadrupled and interest on the debt rose to a seventh of the budget, crowding out much else. Were these incipient heroes not in Congress all that while? And now that they have the opportunity to begin to reverse that crippling course, their claim is that the reversal is incomplete. What transparency.

The budget conference is hung up on the issue of an energy tax. The president proposed a strong one; Mr. Boren and others from energy

states were able to weaken it. It is now essentially a gasoline tax increase of about a nickel a gallon. The conferees need a couple of extra pennies a gallon both to meet and to marshal the votes for the president's objectives of cutting the budget deficit without ignoring the social deficit over the next five years. The pennies are insignificant; the estimated cost of the gasoline to drive 100 miles in this country has fallen in real terms from \$8.65 in 1976 to less than \$4.25 today. The people who have to drive the most have gained the most; can they not afford to give back a dime? Nor is the total revenue involved that great—some \$3 billion or \$4 billion a year over five years. Mr. Boren and other such preachers would have you believe that a great principle is at stake in this—tax increases vs. spending cuts. The money is less than half of a percent of federal revenues or federal spending.

The president's plan would reduce the likely deficit some 40 percent five years from now. It is balanced in the way it spreads the burden across the society; those who would pay most are those with the greatest ability to pay. There is no alternative in play. Mr. Boren calls for a "summit," but there has been a summit—the kind called for in the Constitution. A newly elected president made a proposal to a new elected Congress, which worked its will and now must do so a final time. No more backing or filling or dodging; there'll be another chance another year. The choice is yes or no. Do the Democrats govern or duck?

Who Will Aid Foreign Aid?

THIS WAS supposed to be the year in which America's foreign aid program experi-

dilemma; it's ready to tackle the problems as well. But the Hill has been stymied by intermina-

LET

It is flattering to be the one of Richard Cohen's columns [op-ed, July 20]—takes me to task for illog rape and incest as excep Hyde amendment forbid of federal funds to pay fo Until now, the sole ex been when the life of would be endangered i were carried to term.

Mr. Cohen is quite on one believes (as I do) tha child in the womb is member of the human fa that his or her concept result of a crime should execution by abortion of f less, innocent pre-born li

As a matter of fact, Court, in *Coker v. Georg* striking down a Georgia s ing capital punishment for "We have concluded that



Volcanic Hy

When it comes to scientific fact, pr sides" of an issue car misleading. Unless t an expert in the fie cussed, he or she ha judge the qualificati of the facts presentec

This is the case wi the recent letter by R ohler [July 1] assertin cance of volcanic er source of chlorine in sphere. This evidenc calls into question th recent efforts to eli made sources of the c

do anything until you get caught short, but we're seeing widespread violations," said David Marlin, who heads a local advocacy group that is scouring nearly 200 restaurants, movie theaters, libraries and retail stores to find possible infractions.

The most wide-ranging legislation ever drafted for persons with disabilities, the statute guarantees equal employment and other rights to the 43 million Americans who are deaf, blind, use wheelchairs or are otherwise physically or mentally impaired. The law was passed in 1990.

Unlike other civil rights measures,

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

"One of the biggest surprises is that in approximately 80 percent of the cases filed so far, it is a current employee who is charging discrimination," said Michael D. Esposito, a labor lawyer who represents large national employers.

Generally, employment claims have been filed by individuals who had a prior disability and are now exercising their right to file a lawsuit, or who became disabled and are suing employers who do not accommodate their needs, Esposito said.

Legal experts say hundreds of cases will have to be heard if employers get a sense of what workers have legitimate grounds for legal action.

Often, companies can accommodate disabled employees with extra expense, said Joe Sell, a member of the Washington Lawyers Committee for Civil Rights Under Law who is investigating more than 30 cases of alleged discrimination against the disabled. For instance, he said, one client has a disorder that affects his attention span and has asked

Last month, a jury found that a Chicago security firm violated the

New Accommodations, if Not Attitudes

While Barriers May Be Fewer, Everyday Activities Remain Difficult

Passengers aboard Metro's A-12 bus to Landover press up against their windows, peering out with a mixture of irritation and curiosity at a woman in a wheelchair trying to make her way through the door of the vehicle.

It is annoying to Dolly King that people stare, that some drivers can barely operate the bus's electronic lift and that she sometimes must wait more than 35 minutes before a bus arrives that is accessible to her and others in wheelchairs.

For all the good that is meant to come from the Americans with Disabilities Act, there is plenty to change before the world will seem substantially different to King. There is now a grab bar in the restroom of the local McDonald's that wasn't there before, and King notices that the Hecht's store at Landover Mall now displays a wheelchair sign to let the disabled know that sales clerks will offer assistance to those who need it.

But one law can't make people think differently, or erase the injustices of everyday life.

"Slowly, attitudes are changing, but you still get gawkers," said King, whose cerebral palsy keeps her in a wheelchair and limits the use of her hands. "People will call us 'retards' or say to me, 'Do you need help, little girl?'"

At 31, King says she can take care of herself. She doesn't want anything special from a new law, only enough to enable her to live a life on her terms.

If someone is going to achieve that, it is King. At a time when the unemployment rate for the disabled exceeds 60 percent, King has found a job taking credit card orders for Ticketmaster.

With the same telephone set and computer terminal used by every other operator, King types in information from callers, hunting and pecking on the keyboard with the forefinger of her right hand.

The Americans with Disabilities Act requires that companies make accommodations for disabled workers who need them, but the only special arrangement King needs is a little metal stand that helps her thumb through seating charts at local entertainment complexes.

In some ways, work is the easy part. She gets there on a van provided by a local chapter of United Cerebral Palsy. Getting to the store and maneuvering in a restaurant are much harder.



BY MARY LOU FOY—THE WASHINGTON POST

Dolly King sometimes has a long wait before lift-equipped Metrobus arrives.

Traveling from King's Landover apartment to the New Carrollton Mall takes about 10 minutes by car. Not a driver, King goes to the bus stop about a block from her home, rides the bus to the subway, takes the subway to New Carrollton, and travels up a long, windy hill and across four lanes of traffic to the mall.

Because not all buses have a mechanical lift to hoist wheelchair users on board—and because the lifts often don't work when the bus does arrive—the trip to the mall can easily take 90 minutes, as it did one recent afternoon.

The vantage of a wheelchair reveals little details about life that some never see. King can see from blocks away whether a Metro bus is new, and consequently whether it has a chair lift. She knows that the clerks at Fashion Bug in the New Carrollton Mall don't mind taking

the time to serve her and actively solicit her business. She knows that Jerry's Subs & Pizza has good sandwiches, but doesn't have a curb cut for wheelchair users.

King also has learned that it's generally better to go to a restaurant she has tried before, avoiding the hard discovery that another place's restroom may be suitable for only the able-bodied.

In the year since implementation of the disability law, King said she has seen more restrooms with wide stalls, more ramps for wheelchairs and more companies willing to hire people with disabilities. What will take longer to change is how the world reacts to someone like her, she said.

"People are still shocked when they hear I have a job, or they treat me like I have more of a disability than I think I do," King said. "You can't legislate attitudes like that."

— Liz Spayd

M a
won't I
THAT N
HELPS KEE



Oscar Welsh is mayor of a small Pennsylvania town not far from Bald Eagle Mountain. He lives eight miles from a nuclear plant that started generating electricity about 10 years ago.

Mayor Welsh is a man who prefers to arrive at his own conclusions.

NUCLE

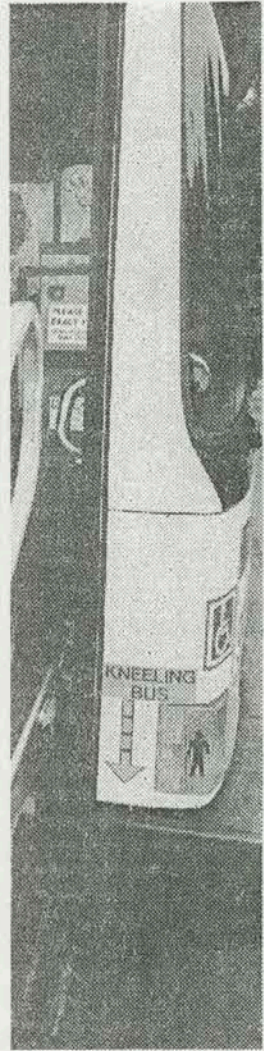
...Education and De-
 "The make-or-break suc-
 A rests on this adminis-
 I think they realize that."
 C has had to handle the
 ad generated by the new
 any new investigators,
 sult, many charges filed
 only now being investi-
 ir, the agency has filed
 ful of lawsuits. But the
 those cases suggest that
 reak the law could face
 enalties.
 h, a jury found that a
 rity firm violated the

...cases will have to be heard before
 employers get a sense of when
 workers have legitimate grounds
 for legal action.
 Often, companies can accommo-
 date disabled employees with little
 extra expense, said Joe Sellers, a
 member of the Washington Law-
 yers Committee for Civil Rights
 Under Law who is investigating
 more than 30 cases of alleged dis-
 crimination against the disabled.
 For instance, he said, one of his
 clients has a disorder that affects
 his attention span and has asked for

This document is from the collections at the Dole Archives, University of Kansas
<http://dolearchives.ku.edu>
 ...Esposito said he agrees with the
 spirit of the law, but is discovering
 many cases of people trying to abuse
 it by bringing dubious charges.
 A woman sued one of his clients,
 saying she needed to start her work-
 day one hour later because her med-
 ication made it difficult for her to
 wake up in the morning. In that case,
 Esposito said, the woman never
 asked the company for the later start
 time before filing her complaint.
 Lawyers for labor and manage-
 ment said they expect the number of
 complaints to increase as various

...those with disabilities are improved,
 advocates said. And slowly, improve-
 ment seems to be occurring.
 Officials at Gallaudet University
 for the deaf said the number of cor-
 porations recruiting on campus has
 tripled since 1990, an increase at-
 tributed largely to the new law.
 "It usually takes a while for any
 civil rights law to have an impact,"
 said Robert Weinstock, who until
 recently oversaw career counseling
 at Gallaudet. "But slowly it's becom-
 ing more acceptable to have a dis-
 ability than it was in the past. I'd say
 we're making progress."

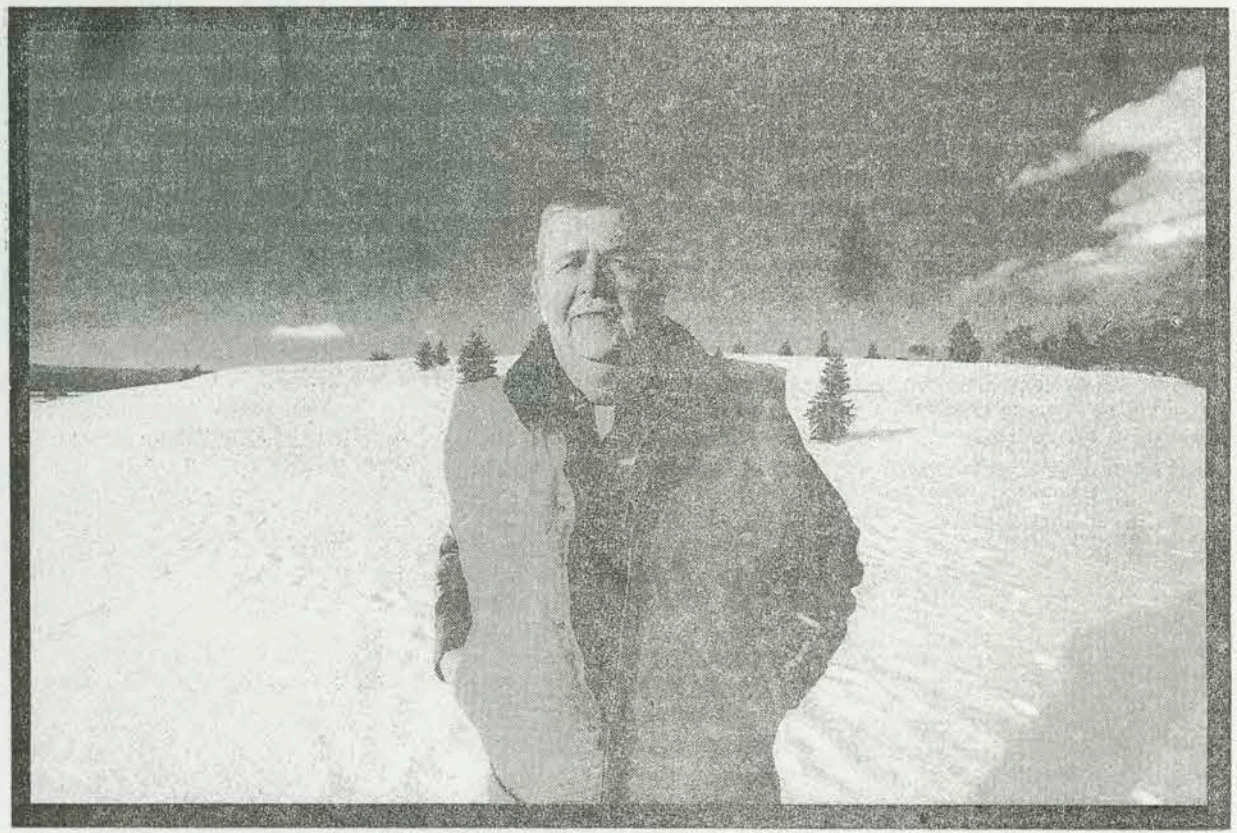
Attitudes
 main Difficult



MARY LOU FOY—THE WASHINGTON POST
 Kneeling Metrobus arrives.

serve her and actively
 business. She knows that
 & Pizza has good sand-
 doesn't have a curb cut
 for users.
 She has learned that it's
 better to go to a restau-
 rant tried before, avoiding
 the discovery that another
 room may be suitable
 for an able-bodied.
 After the implementation
 of the accessibility law, King said she
 found restrooms with wide
 ramps for wheelchairs
 at companies willing to hire
 people with disabilities. What
 will change is how the
 industry reacts to someone
 like her, she said.
 "We're still shocked when
 someone has a job, or they treat
 it as if it were more of a disability
 than I do," King said. "You
 have to have attitudes like that."
 — Liz Spayd

Mayor OSCAR WELSH
 won't hesitate to tell you
 THAT NUCLEAR ENERGY
 HELPS KEEP HIS TOWN *clean.*



Oscar Welsh is mayor of
 a small Pennsylvania town
 not far from Bald Eagle
 Mountain. He lives eight
 miles from a nuclear plant
 that started generating elec-
 tricity about 10 years ago.
 Mayor Welsh is a
 man who prefers to arrive
 at his own conclusions.

"I don't see any reason
 to be afraid of nuclear
 energy," he says. "It's a
 clean, efficient way to
 generate electricity with-
 out polluting the air."
 America has more
 than 100 nuclear plants.
 Because they don't burn
 anything to make electric-

ity, they help protect our
 environment and preserve
 our natural resources for
 future generations. All
 while providing enough
 electricity for 65 million
 homes in the U.S.
 No single energy
 source is the whole
 answer to America's

energy needs. But, as
 Oscar Welsh will tell you,
 nuclear energy is part of
 the answer.
 For more informa-
 tion, write to the U.S.
 Council for Energy
 Awareness, P.O. Box
 66080, Dept. W, Wash-
 ington, D.C. 20035.

NUCLEAR ENERGY MEANS CLEANER AIR

THE FEDERAL PAGE

One Year Later Complaints Alleging Discrimination

A common disability complaint is back injury, say EEOC officials, followed by hearing impairments and vision.

Officials say it is too early to tell how many of the initial complaints from people with bona fide disabilities and how many are merely testing the law. To be legitimate, an individual's impairment must substantially limit him or her in performing "a major life activity," such as hearing, seeing, speaking, breathing, performing manual tasks, caring for oneself, working. But the law is designed to cover a wide range of disabilities—not just the

work law has spawned the disability complaints businesses did not exist. It has left them mystified about the best way to respond to the

Statistics show that most people are aware of the act and are taking some steps to modify their workplaces—installing ramps, handrails, for example—few have addressed disability issues in the workplace.

In a recent survey, the United Disability Association found that 60 percent of businesses had made an effort to comply with the law. A majority declined to say whether they employed people with disabilities or what steps they had taken to improve their workplaces.

Some companies are sitting on the sidelines, waiting to see whether this is the attorney general's effort to enforce the law," said a chief lobbyist for the Rights Education and Development. "The make-or-buy success rests on this administration. I think they realize that." The agency has had to handle the flood generated by the new law and new investigators, and, ultimately, many charges filed only now being investigated. The agency has filed a number of lawsuits. But the statistics on these cases suggest that the law could face some challenges.

In a recent jury trial, a jury found that a city firm violated the

ADA when it fired its executive director after he was found to have a brain tumor. The employee was awarded back pay, as well as punitive damages totaling \$200,000—the maximum allowed for a mid-sized firm.

Last week, the Inter-Continental Hotel in New York settled a suit brought by the Justice Department and agreed to spend more than \$1 million to install ramps for wheelchair users, to buy telecommunications devices for the deaf and to make other changes to accommodate disabled guests.

EEOC officials have received nearly 200 complaints from the Washington area and many more are being considered by local law firms.

One case under investigation involves a top salesman at a local retail store who was dismissed by his employer after suffering an epileptic seizure. The company argued that his condition posed a hazard and that the seizures would alarm customers, but the EEOC ruled that the employee's claim was justified and plans to file a federal suit against the company, a commission spokesman said.

Earlier this month, a lawsuit was filed against The Wiz, alleging that the chain's 13 local music stores are inaccessible to people in wheelchairs. The suit was the first filed by the Disability Rights Council of Greater Washington, which is spearheading the effort to survey local establishments for potential violations.

Other complaints have been settled out of court, including one involving a local company that agreed to restore the health benefits of an HIV-infected employee who filed federal charges.

Legal experts say hundreds of cases will have to be heard before employers get a sense of when workers have legitimate grounds for legal action.

Often, companies can accommodate disabled employees with little extra expense, said Joe Sellers, a member of the Washington Lawyers Committee for Civil Rights Under Law who is investigating more than 30 cases of alleged discrimination against the disabled.

For instance, he said, one of his clients has a disorder that affects his attention span and has asked for

INSIDE: EEOC



The Equal Employment Opportunity Commission, the federal agency that handles workplace discrimination issues, has received nearly 12,000 complaints from people with disabilities in the first year of a landmark civil rights law—the Americans with Disabilities Act—designed to ensure equal treatment for all workers, among other provisions.

Complaint charges

Below are the most common types of charges alleged in the complaints; figures do not equal 100 percent because one person can file more than one charge in a complaint:

Discharged from work because of disability	48%
Employer failed to provide reasonable accommodation	22%
Disability prevented worker from getting job	13%
Harassed because of disability	10%
Unfairly disciplined because of disability	7.2%
Denied benefits because of disability	3.6%

Types of disability

The most common disabilities those who file complaints allege they have:

Back impairment	18%	Neurological impairment	3.7%
Mental illness	9.8%	Diabetes	3.6%
Heart impairment	4.3%		

SOURCE: Equal Employment Opportunity Commission

THE WASHINGTON POST

a "fairly simple" change in work schedule.

While some changes can be achieved inexpensively, labor lawyer Esposito conceded that additional costs often are incurred.

"Even if it's just a change in a work schedule that's needed, somehow, someone from somewhere has to be brought in to do that job when the other person can't," said Esposito.

Esposito said he agrees with the spirit of the law, but is discovering many cases of people trying to abuse it by bringing dubious charges.

A woman sued one of his clients, saying she needed to start her workday one hour later because her medication made it difficult for her to wake up in the morning. In that case, Esposito said, the woman never asked the company for the later start time before filing her complaint.

Lawyers for labor and management said they expect the number of complaints to increase as various

provisions of the law are phased in. Beginning this week, for example, telephone companies must provide relay services for hearing-impaired individuals, with violators subject to action by the Federal Communications Commission. Such services have been available in the Washington area for more than a year.

Ultimately, the new law's success will be measured by how the lives of those with disabilities are improved, advocates said. And slowly, improvement seems to be occurring.

Officials at Gallaudet University for the deaf said the number of corporations recruiting on campus has tripled since 1990, an increase attributed largely to the new law.

"It usually takes a while for any civil rights law to have an impact," said Robert Weinstock, who until recently oversaw career counseling at Gallaudet. "But slowly it's becoming more acceptable to have a disability than it was in the past. I'd say we're making progress."

Attitudes Main Difficult

Mayor OSCAR WELSH

won't hesitate to tell you

THAT NUCLEAR ENERGY

THE FEDERAL PA

The Disabilities Act, One Year Later

EEOC Deluged With Nearly 12,000 Complaints Alleging Discrimination

By Liz Spayd
Washington Post Staff Writer

The Americans with Disabilities Act, key provisions of which took effect a year ago this week, has prompted thousands of U.S. workers to file discrimination complaints against their employers, an outpouring that over time could bring profound changes to the workplace.

Employment experts say the landmark legislation is effectively reshaping the definition of civil rights by challenging long-held axioms about what companies must do to accommodate every type of disabled person—whether an employee with back problems, a customer who can't reach store shelves or a job applicant who needs special equipment.

At the same time, surveys and other data suggest that after an initial rush to comply with the ADA, most businesses are now adopting a more complacent "wait-and-see" stance before significantly changing their premises or policies.

So far, nearly 12,000 complaints by individuals alleging discrimination have poured in to the U.S. Equal Employment Opportunity Commission, far surpassing the number of complaints filed by women and minorities in the first year after those groups were extended civil rights protection in 1964, records show.

The Justice Department, which enforces aspects of the disability law that ensure equal access to restaurants, movie theaters and other public spaces, is investigating more than 1,000 other complaints, officials said.

"Maybe it's human nature not to do anything until you get caught short, but we're seeing widespread violations," said David Marlin, who heads a local advocacy group that is scouring nearly 200 restaurants, movie theaters, libraries and retail stores to find possible infractions.

The most wide-ranging legislation ever drafted for persons with disabilities, the statute guarantees equal employment and other rights to the 43 million Americans who are deaf, blind, use wheelchairs or are otherwise physically or mentally impaired. The law was passed in 1990.

Unlike other civil rights measures,

the law does not say precisely who is covered and under what circumstances. Instead, it says only that employers must make "reasonable accommodations" to allow qualified disabled applicants to perform a job, unless the company can show that taking such steps would pose an "undue hardship" on its operations.

With that much latitude, many businesses feared an explosion of

Surveys and other data suggest that after an initial rush to comply with the Americans with Disabilities Act, most businesses are now taking a "wait-and-see" stance about significantly changing their premises or policies.

litigation from a segment of society that previously had no such legal recourse. Though the law has spurred a 20 percent jump in complaints to the EEOC, most were filed by employed people with disabilities that defy common stereotypes, such as those in wheelchairs.

"One of the biggest surprises is that in approximately 80 percent of the cases filed so far, it is a current employee who is charging discrimination," said Michael D. Esposito, a labor lawyer who represents large national employers.

Generally, employment claims have been filed by individuals who had a prior disability and are now exercising their right to file a lawsuit, or who became disabled and are suing employers who do not accommodate their needs, Esposito said.

The most common disability alleged in complaints is back injury, according to EEOC officials, followed by mental impairments and heart conditions.

Federal officials say it is too early to tell how many of the initial complaints are from people with bona fide disabilities and how many are merely abusing the law. To be legitimate, an individual's impairment must substantially limit him or her from performing "a major life activity" such as "hearing, seeing, speaking, walking, breathing, performing manual tasks, caring for oneself, learning or working." But the law is specifically designed to cover a variety of disabilities—not just the most severe.

If the new law has spawned the kind of complaints businesses did not expect, it also has left them mystified about how best to respond to the law.

While studies show that most businesses are aware of the act and have taken some steps to modify their premises—installing ramps for wheelchairs, for example—few have yet addressed disability issues in the workplace.

In a recent survey, the United Cerebral Palsy Association found that 76 percent of businesses had made some effort to comply with the law, but a majority declined to discuss whether they employed people with disabilities or what steps they had taken to improve their workplaces.

"A lot of companies are sitting back and waiting to see whether this president and this attorney general are willing to enforce the law," said Pat Wright, chief lobbyist for the Disability Rights Education and Defense Fund. "The make-or-break success of ADA rests on this administration, and I think they realize that."

The EEOC has had to handle the large caseload generated by the new law without any new investigators, and as a result, many charges filed last fall are only now being investigated. So far, the agency has filed only a handful of lawsuits. But the outcomes of those cases suggest that firms that break the law could face substantial penalties.

Last month, a jury found that a Chicago security firm violated the

ADA when it fired its executive rector after he was found to have a brain tumor. The employee awarded back pay, as well as punitive damages totaling \$200,000—maximum allowed for a mid-firm.

Last week, the Inter-Continental Hotel in New York settled a lawsuit brought by the Justice Department and agreed to spend more than \$1 million to install ramps for wheelchair users, to buy telecommunications devices for the deaf and to make other changes to accommodate disabled guests.

EEOC officials have received only 200 complaints from the Washington area and many more are considered by local law firms.

One case under investigation involves a top salesman at a local store who was dismissed by his employer after suffering an epileptic seizure. The company argued his condition posed a hazard and the seizures would alarm customers but the EEOC ruled that the employee's claim was justified and plan to file a federal suit against the company, a commission spokesman said.

Earlier this month, a lawsuit filed against The Wiz, alleging the chain's 13 local music stores inaccessible to people in wheelchairs. The suit was the first filed by Disability Rights Council of Greater Washington, which is spearheading the effort to survey local establishments for potential violations.

Other complaints have been filed out of court, including one involving a local company that agreed to restore the health benefits of an HIV-infected employee who filed federal charges.

Legal experts say hundreds of cases will have to be heard before employers get a sense of how workers have legitimate grounds for legal action.

Often, companies can accommodate disabled employees with little extra expense, said Joe Seller, member of the Washington Lawyers Committee for Civil Rights Under Law who is investigating more than 30 cases of alleged discrimination against the disabled.

For instance, he said, one client has a disorder that affects his attention span and has asked

New Accommodations, if Not Attitudes While Barriers May Be Fewer, Everyday Activities Remain Difficult

Passengers aboard Metro's A-12 bus to Landover press up against their windows, peering out with a mixture of irritation and curiosity at a woman in a wheelchair trying to




Ma
won't
N
Page 30 of 50

Memorandum

Date: May 11, 1993

To: Senator Dole

From: Alec Vachon 

Re: Washington Times Op-Ed on ADA

Attached is a recent Washington Times op-ed, venting grievances (real and imagined) against ADA. One particular target is the National Council on Disability, the federal agency which proposed ADA and has been since involved in monitoring its implementation.

Not to be outdone, the National Council responded in kind with a Letter to the Editor (copy attached).

In conversations with Kansas local and county government officials, I have encountered only positive attitudes, although concerns about what constitutes adequate compliance and costs.

Six Kansans have contacted us since late 1992, half complaining ADA does not do enough or should be implemented faster:

- a dentist in Shawnee who read a newspaper article that ADA would require expensive renovations to Wichita State stadium. (Comment: According to the article, the school is prepared to spend \$9.5 million to bring the stadium up to NCAA Division I-A standards. In any case, ADA makes no new requirements over those of the 20-year old Rehabilitation Act.);
- a complaint from Lansing that ADA did not cover federal workers (Comment: Sec. 501 of the Rehab Act does);
- a short note from the Superintendent of Schools in Chanute expressing confusion about ADA requirements (Comment: will refer for technical assistance);
- one complaint from a disability advocate in Overland Park that proposed Title II regs would delay timely implementation of ADA;
- an allegation from a disabled person in White City that Kansas rehabilitation agencies are the most guilty of ADA violations;
- a person from Atlanta who spoke with you in mid-April who felt ADA was being used improperly to force funding of a new school building (Comment: Referred to Kansas Title II coordinator for definitive information).

LLEWELLYN ROCKWELL JR.

Disabling act with 9,000 nightmares

Just one year after going into effect, the Americans With Disabilities Act (ADA) has proved to be a regulatory menace of historic proportions. More than 9,000 lawsuits have attacked businesses and communities, and the Clinton administration wants to hire another 157 staffers for the Equal Employment Opportunity Commission just to process the paperwork.

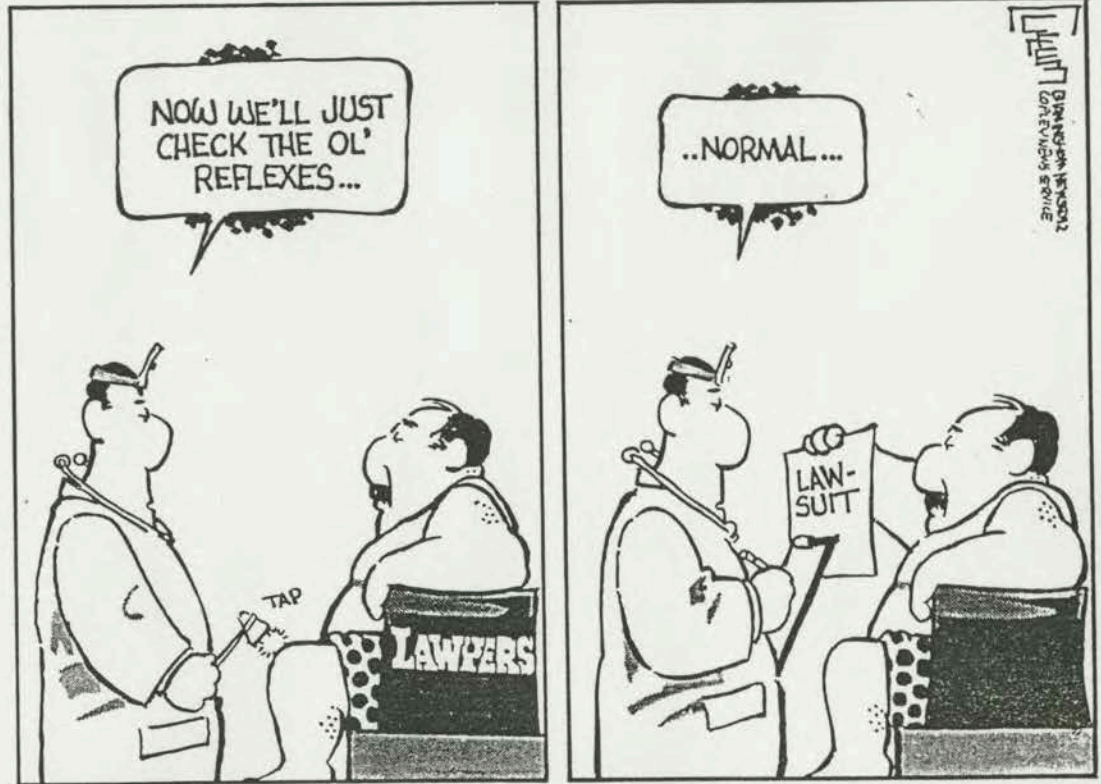
Yet most ADA cases never go to court. The mere threat has enabled plaintiffs to win an astounding number of settlements, some of them with a science-fiction character. For example, a fire department had to rehire a firefighter who lost his eyesight, which one would think was necessary to firefighting, and give him back pay and damages.

Little league baseball has to allow a man in a wheelchair to coach at third base, despite the danger to any player who might slide into him. A public skating rink has to allow a girl in a steel walker to skate. It may not take into consideration the danger to other skaters. And a private school had to install ramps and new restrooms for one wheelchair-bound relative of one student to attend one ceremony.

The America West Arena in Phoenix had to build 14 wheelchair sections "in all price ranges and viewing angles" and a "dog park" for seeing-eye dogs and lower all concession counters to 3 feet for customers in wheelchairs and "people of short stature." (Fans with sore backs who have to stoop to buy a hotdog don't count as disabled.)

Consider the first ADA case, filed by the federal government two days after the act went into effect. Charles Wessel was the executive director of AIC Security Investigations, but was diagnosed in 1987 as having lung cancer. By 1992, the cancer had metastasized to his brain, and he was given six months to live.

The company said Mr. Wessel was "not functioning," thanks to the disease and the drugs he had to take, and asked him to retire. Discrimination! He refused, was laid off and brought suit. In March, a federal court declared the company had violated the ADA by discharging someone who clearly could not do his job. Mr. Wessel received \$22,000 in back pay, \$200,000 in compensatory damages paid by the company and \$250,000 from Ruth Vrdolyak, the



Most ADA cases never go to court. The mere threat has enabled plaintiffs to win an astounding number of settlements.

owner of the company, a total of \$572,000.

Are these anomalies? All these cases are praised by the National Council on Disabilities — the federal agency that oversees the ADA — as proper uses of the law.

Some people, clearly using the ADA to vent their anger against society, are not satisfied with one suit. A man filed 60 complaints against private schools in Vermont and Massachusetts; 90 of the first 250 cases filed were initiated by two people.

A wheelchair lawyer in Austin, Texas, filed a string of suits against local businesses for having insensitive restrooms, doorways, elevators, pay telephones, serving lines, water fountains, etc. Included were

McDonald's, Pizza Hut, Popeye's, Dairy Queen, Wendy's, Circle K, Blockbuster Video, Eckerd Drugs and Coco's. Several battered businesses have already settled.

You don't even have to be an American to play this game. An Atlanta medical clinic asked a woman to take an HIV test before she received pre-natal care. She refused, was turned away and, though a Nigerian citizen, filed suit in U.S. district court in Georgia charging violations of the ADA and the 1964 Civil Rights Act. The ACLU is paying all her expenses.

When a man failed the test to become a licensed electrician in Wisconsin, he too brought an ADA suit. His disability? He wasn't good at taking tests. Just before the case went to trial, the state settled. The man was then allowed 10 hours over two days to take the test, instead of four hours on one day, and to have with him a tutor, a copy of the state electrical code and a crib.

Yet the National Council on Disabilities wants even more ADA complaints. In general, restroom faucets, public phones, water fountains and library card catalogs are too high, it says. So are supermarket shelves. The council even wants "deodorizing devices" taken out of rest-

rooms, which would seem to favor one set of the olfactory-challenged over another.

In 1990, when Congress passed this act overwhelmingly, its proponents promised that the bill would not be costly, would not generate much new litigation and would not break the back of business.

The ADA has also radically changed the nature of the job interview. Such questions as, "Are you taking any prescribed drugs that would affect your work performance?" can lead to a lawsuit that will bankrupt the company. And in all these cases, the burden of proof is on the business to prove it did not "discriminate." The final result of the ADA, therefore, is to wipe out the ability of businesses to hire and fire according to economic necessity. And every business in every area of the country is vulnerable if it attempts to commit capitalism in personnel policies.

And now the government tells us that any "known physical or mental limitation" is a protected disability. But who exactly is exempt under that designation? Not even the "chronically late," as a suit urges in Minnesota. So watch it, boss, the next time the mailboy drifts in two hours late. [Page 32 of 50](#)

Llewellyn H. Rockwell Jr. is president of the Ludwig von Mises Institute in Auburn, Ala.



National Council on Disability

800 Independence Avenue, S.W.
Suite 814
Washington, DC 20591
202-267-3848 voice
202-267-3232 TDD

An Independent
Federal Agency

May 4, 1993

Wesley Pruden, Editor
The Washington Times
3600 New York Avenue, N.E.
Washington, DC 20002

TO THE EDITOR:

This is in response to the editorial entitled "Disabling act with 9000 nightmares" by Llewellyn Rockwell, Jr. that appeared in the Washington Times on May 4, 1993. We commend you for running this editorial, as we believe it provides clear and incontrovertible evidence of the absolute need for the Americans with Disabilities Act (ADA). It quite plainly demonstrates the extreme ignorance, prejudice, and perversion of truth that has haunted the lives of people with disabilities in this country for decades.

Mr. Rockwell's hateful and paternalistic attitude, coupled with his absolute misstatement of facts serve as revealing indicators of the long road that yet has to be traveled by millions of people with disabilities and their families. As he taunts his way through a litany of examples that he lifts completely out of context from our recent report, *ADA Watch: A Report to the President and the Congress on Progress in Implementing the Americans with Disabilities Act*, he manages to insult virtually every adult and child with a disability in America. He attempts to bully a man dying of cancer, a blind public employee, a little league coach, and a little girl who wanted to go ice skating (among others) for having a chance to participate in real life. He insults businesses who *of their own accord* decided to open their doors to people with disabilities, not as he mistakenly claims because of the threat of lawsuits, but because they happen to believe that people with disabilities might actually have some value.

Rockwell apparently lives in a very strange world, where people who consider themselves "normal" can dole out whatever little favors their arrhythmically charitable hearts find the time to apportion to the "undeserving". His world is not America, the land of equal opportunity. It much more resembles many communist countries in the world where babies with "disabilities" (which, by the way, includes being "female" in some countries —although he probably doesn't like women either) are killed. If one were to follow Rockwell's diatribe to its illogical conclusion, people with disabilities would either be killed outright or placed in a permanent and inescapable big

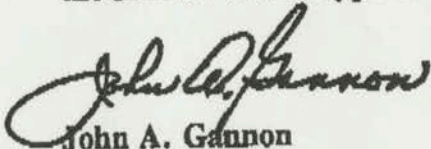
Wesley Pruden
Page Two

May 4, 1993

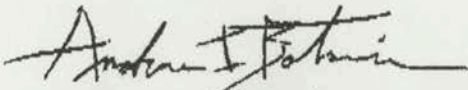
government-sponsored welfare camp, so that "enlightened" citizens like Mr. Rockwell would never have to interact with their "inferiors".

While we would never want to interrupt Rockwell's phantasmagoric stream of unconsciousness to the needs of others in a democracy, we would like to clear up some important facts. For the record, the National Council did not "praise" litigation activities in its report. We merely reported on issues that had been brought up in both informal and formal efforts to resolve ADA-related disputes. Nor is it true that the National Council on Disability "wants even more ADA lawsuits." An even cursory reading of the report would demonstrate that the National Council is in favor of the most informal dispute resolution means available.

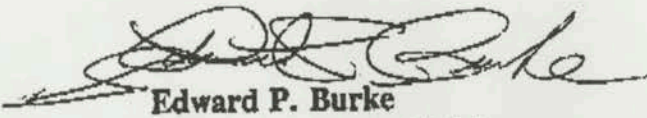
Mr. Rockwell's article truly is a "disabling act" and does constitute a "nightmare" for Americans with disabilities and their families. We pledge to redouble our efforts to ensure that the next generation of Americans with disabilities never have to live under the shadow of this type of prejudice.



John A. Gannon
Acting Chairperson



Andrew I. Batavia
Executive Director




Edward P. Burke
Chief, Government Liaison

Memorandum

Date: April 2, 1993

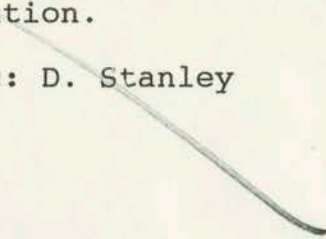
To: Senator Dole

From: Alec Vachon 

Re: Newsclip/Saline County CDBG Grant Application

Apropos of the Congressional Record statement you approved recommending Community Development Block Grant (CDBG) monies included in the Supplemental be used for ADA-related expenses, the attached newsclip describes a CDBG application from Saline County proposing to do exactly that.

I spoke with David Gurss, Saline County planning and zoning director, and he will be sending me a summary of this CDBG application.

cc: D. Stanley 

Salina 3/24/93

Saline County seeks grant to fund accessibility items

By The Journal Staff

Renovations could be made to county buildings to bring them into compliance with the Americans with Disabilities Act if the county's application for a Small Cities Development Block Grant is approved.

Saline County commissioners Tuesday voted to apply for a grant of about \$170,000 to improve county buildings so they are more accessible to those with disabilities.

David Gurs, county planning and zoning director, said the grant requires a 2-to-1 match from the county, which would bring the total funding to about \$250,000.

If the grant is awarded, the money would fund these projects to help people with disabilities:

- Install two lifts at the Bicenten-

nial Center. At about \$75,000, that's the most expensive item planned, consuming 30 percent of the project budget.

- Renovate bathrooms in Kenwood Hall, the rodeo arena, the county barns and the road and bridge department offices.

- Create special parking areas.

- Build ramps and make a second floor bathroom more accessible at the Smoky Hill Museum.

- Install electric doors and renovate bathrooms at the Salina-Saline County Health Department.

Also Tuesday, commissioners approved the purchase of ammunition for the Saline County Sheriff's Department. A bid was awarded to Morris Henry of Salina for \$3,346.

MONEY SAVING COUPONS



the Sunflower Group



Memorandum

Date: April 2, 1993

To: Senator Dole

From: Alec Vachon

Re: Newsclips/Title I (Employment) of ADA

ADA's employment section became effective July 26, 1992, for businesses with more than 25 employees. Three related newsclips:

1. New York Times (3/20/93): News article -- EEOC won first lawsuit on March 18. Also apparently first under Civil Rights Act of 1991, which allows limited punitive damages in employment discrimination cases (not provided in ADA).

Comment: According to an earlier press report, Charles Wessel, complainant, knew about ADA because he was in charge of his company's compliance before fired.

2. Wall Street Journal (3/15/93): Op-ed complains about ambiguity of ADA and regs. So far, no Letters in response.

Comment: Perception issue. Yes, laws & regs are confusing, but not fault of ADA but inherent to variability of disability and workplace accommodations. Considering size of U.S. labor force, few Title I complaints expected. According to EEOC:

- a. From July 1992 to March 1993, about 5,500 people have file employment discrimination complaints.

- 37 filed by Kansans. Most filed by Texans (637); least by Vermonters (1).

- b. EEOC expects 15-18,000 complaints by end of first year.

- c. ADA covers, however, 77 million people (66% of labor force).

3. Wall Street Journal (3/31/93): News article about "screwy" ADA complaints.

Comment: Perhaps unintentionally, makes some good points:
(1) broad legislation such as ADA always full of surprises;
(2) if Congress wants to retain policy control (vs. courts or Administration), will have to consider amending law.

cc: D. Stanley

The New York Times, March 20, 1993 (Saturday), p. 7.

Man Dismissed Over Cancer Wins Judgment

CHICAGO, March 19 (AP) — In the first test of a Federal law barring job discrimination against the disabled, a court awarded more than \$200,000 on Thursday to an executive dismissed after his company had learned he had terminal brain cancer.

The company, AIC Securities, was sued by the Equal Employment Opportunity Commission on Nov. 5 under the Americans with Disabilities Act, which took effect July 26.

The commission said the owner of the company, Ruth Vrdolyak, told Charles Wessel, 59, to resign as executive director in the summer when she learned of the diagnosis.

The jury in Federal District Court ordered Mrs. Vrdolyak to pay Mr. Wessel \$500,000 in punitive damages, \$50,000 in compensatory damages and

\$22,000 in back pay. But the law, which limits the amount of damages in such cases, required the judge to reduce the total Mr. Wessel will get to \$222,000.

The verdict is "a bittersweet victory for Chuck Wessel, since he is still ill, and a terrific victory for the disabled," said Allison Nichol, a lawyer for the Equal Employment Opportunity Commission.

The Americans with Disabilities Act prohibits employers from firing, refusing to hire or otherwise discriminating against people because of disabilities as long as they can do the work.

Whoever Wrote ADA Regs Never Ran a Business

A businessman in Maryland recently sought the advice of an attorney at my firm because his place of business appeared to be inaccessible to the handicapped. After hearing a recital of the many new obligations imposed by the Americans With Disabilities Act (ADA)—including both the access and the employment requirements—the shocked businessman candidly told the attorney that he had no intention of complying with all of that. He reasoned that it would be simpler and cheaper in the long run to wait and see if anyone sued. If he was sued, he would make changes then. Even then, he figured he would be ahead.

All over the U.S., businesses have spent millions of dollars to send their managers to seminars and speeches to learn how to comply with the ADA. But instead of receiving enlightenment, those managers often return to their businesses with their heads spinning. Troubled by the cost of compliance, and confused over the scope of the new edicts, many of those

Manager's Journal

By Julie C. Janofsky

affected by the law have made a business decision to wait to be sued, rather than to comply voluntarily.

These people have not suddenly chosen to become outlaws. Their problem is that the law is so complicated and unclear that the only way they can know exactly what it requires of them is to be told by a judge. Indeed, the ADA is so confusing that it may be unteachable to the millions of managers who are most affected by it.

Case precedents may not be helpful in clearing up the confusion, either. My firm is representing a business in the first enforcement case brought by the Justice Department under the access provisions of the ADA. Our client is a business that ran a professional licensure exam review course and offered a hearing-impaired student a verbatim transcript of the course. The student had demanded a sign-language interpreter instead. In discussions with the business, the Justice Department took the position that whether the accommodation was adequate should be judged solely by the disabled person. In its suit, the Justice Department has sought civil penalties of as much as \$50,000, as well as "damages" for the student.

There are only a handful of employment laws that affect the vast majority of employers in the U.S. Most of those laws are fairly plain—you cannot discriminate based on sex, age, race, and the like; you must pay minimum wage and overtime when required. This is hardly the case with the ADA. The list of required reading to understand the ADA is daunting even to experienced attorneys and ensures that virtually no lay employer can ever fully come to grips with the law—let alone fully comply with it.

The problems only begin with the definition of "disability," which casts so wide a net that it includes even allergies and learning problems. And because disabilities are self-identified by the employee under the ADA, that means that the accommodations required of the employer are also defined by the employee. Once an employee identifies himself or herself as having a "disability," there are virtually no limits to what accommodations can be demanded.

In the Americans With Disabilities Act Manual, the employment provisions of the ADA occupy only about four pages. However, the commentary on those same provisions requires hundreds upon hundreds of pages, including the legislative history of the law, the Equal Employment Opportunity Commission's rules, joint procedural regulations of the EEOC and other agencies, EEOC policy statements, the Justice Department's rules and preamble, the EEOC's Technical Assistance Manual, the Justice Department Technical Assistance Manual, the IRS policy statement

The new law is so complicated and unclear that the only way managers can know exactly what it requires of them is to be told by a judge.

on disability-related tax provisions applicable to businesses, and the EEOC's and the Justice Department's question-and-answer brochure for employers. So, any employer who thinks that he or she can get away with just studying the text of the law itself must beware.

To make matters worse, the government's so-called Technical Assistance Manuals are so technical that they are of little assistance to employers, although they may prove to be of great help to employees who sue. Consider, for example, the problem of screening applicants who are addicted to illegal drugs.

On the face of it, illegal drug abusers are not protected under the ADA. Don't take too much comfort in that, though—past drug abuse is considered a "disability" within the protection of the ADA. To add to the confusion, current addiction to legal drugs or alcohol is also protected under the ADA. What all this means is that an employer can ask an applicant about present illegal drug abuse, but not about present legal drug or alcohol abuse, or past abuse of any substance, legal or illegal. Just try to explain that to your personnel managers! And how far in the past is considered "past" drug abuse? The EEOC's Technical Assistance Manual gives no guidance as to whether that means two weeks, six weeks or six months.

And what about, say, law enforcement officers, for whom a drug-free history is consistent with business necessity? The Technical Assistance Manual makes clear that "even in this case, exclusion of a person with a history of illegal drug use might not be justified automatically as a business necessity" under some circumstances. What this illustrates is that the EEOC requires a case-by-case analysis of each employee's particular circumstances, giving virtually no predictability to employers, who are left to rely upon the courts to sort through each ADA problem.

The law and the commentary are even more bizarre when they address what the employer can and cannot say to an applicant with a disability. No matter how profound the disability is, the employer is barred from initiating any discussion about it before making a conditional job offer. The employer may not ask anything at all about the nature, severity or prognosis of the condition, including its duration.

The ADA's framers and commentators—many of whom no doubt never hired anyone in their lives—have gagged you, the hiring manager, into sitting mutely before an obviously disabled applicant, allowing you only to ask whether the applicant can perform the essential functions of the job, and what if any accommodations are required. If the answers are not candid or forthcoming, you cannot ask any follow-up questions, but must drop the entire subject like the legal hot potato that it has become.

Never before was there such a regulation of free speech—let alone of justifiable curiosity—imposed by the government upon such a large group. Even more confusing is the fact that the ADA does not prohibit a physical exam *after* an offer of employment is made. And there is little restriction upon what questions can be asked at the physical. That means that the same questions that the employer could not ask at the 10 a.m. interview may be perfectly legal after the 1 p.m. job offer and the 2 p.m. physical exam.

While it is not clear yet what effect the ADA has had in nurturing access and employment opportunities for those who are truly disabled, it is clear that all of the confusion generated by the law has nurtured a legion of lawyers and consultants. The ADA, with its imprecision and its standardless case-by-case rules, may prove to be one of the grandest and most expensive attempts yet at government micromanagement of business.

Ms. Janofsky, a trial attorney in Baltimore, has handled a wide variety of employment matters.

LAW

Disabilities Act Is Being Invoked In Diverse Cases

By EDWARD FELSENTHAL

Staff Reporter of THE WALL STREET JOURNAL

The new federal disabilities act isn't just about disabilities any more.

Plaintiffs' lawyers are seeing to that, as they take advantage of the vague wording of the Americans with Disabilities Act to apply it in a wide range of surprising contexts.

Congress passed the ADA in 1990 to bar discrimination against disabled people in public accommodations and in the workplace.

But since the act took effect last year, dozens of cases have been filed over issues that many lawmakers never imagined when they voted for it. Such lawsuits include a lawyer's attempt to ban smoking at McDonald's Corp. restaurants, efforts by workers injured on the job to win damages for discrimination, and a claim that the disability of "depression" mitigates criminal behavior.

"There are going to be some successful screwy claims out there that Congress never intended," says Dewey Poteet, a discrimination-law specialist at the law firm Akin, Gump, Strauss, Hauer & Feld in San Antonio. "I don't think [Congress] had a real handle on the extent to which laws are stretched out of proportion."

To be sure, most ADA claims filed so far are ordinary kinds of disability cases, such as disputes over an employer's decision to fire a worker who is blind or mentally ill. And since October, the number of claims against employers has averaged about 1,000 a month, below what some critics of the law had expected. But the possibility still exists that judges will interpret the law broadly and open the door to a wider range of suits, given Congress's failure to provide clear guidance as to the law's limitations.

Indeed, the language of the ADA may make it particularly prone to judicial tugs and pulls. For example, the law requires employers to make "reasonable accommodations" for a worker's disability — but only if those accommodations aren't an "undue hardship" on the employer. "The statutory language is just incredibly broad and very ambiguous," says Robert Christenson, a labor lawyer with the firm

Please Turn to Page B8, Column 5



LAW

Disabilities Act Is Being Invoked In Many Unexpected Contexts

Continued From Page B1

Fisher & Phillips in Atlanta. "It's difficult to tell exactly what they mean."

Connecticut lawyer Robert Farr contends the ADA is broad enough to prohibit smoking at restaurants, and he has filed lawsuits seeking a smoking ban at a unit of Wendy's International Inc., McDonalds and Burger King Corp., a unit of Grand Metropolitan PLC. By allowing smoking, Mr. Farr says, the fast-food chains discriminate against people with respiratory ailments because smoking aggravates their breathing problems, forcing them to eat elsewhere.

Mr. Farr makes no secret that anti-smoking zeal rather than concern for the disabled triggered his initial interest in the ADA. As a Connecticut state representative, he tried unsuccessfully to win legislation banning restaurant smoking. "It's very hard to get legislative bodies to act," he complains.

Then along came the ADA. Mr. Farr investigated the new law and discovered it might be "a means to an end of eliminating smoking," he says. The American Lung Association put him in touch with three mothers of children with asthma, he says, and he filed the claims on their behalf. Mr. Farr also represents a woman with lupus, Linda Ravenell, who objects that she is forced to take her kids through the McDonald's takeout window and feed them in the car because of smoke in the building. "I believe McDonald's is denying me access to the restaurant," Ms. Ravenell says in her ADA claim.

The ADA has spawned other unexpected progeny. Many ADA claims, for example, have been filed by employees who were injured while working. In most states, worker's compensation claims are supposed to be the only remedy for on-the-job injuries. But an injured worker now may be able to collect damages under the ADA as well, if the boss won't transfer the employee to a job that accommodates the injury.

"Injured workers are going to be the single biggest beneficiaries of the ADA, and I don't think Congress thought about that," says Christopher Bell, a disabilities-law specialist at the law firm Jackson, Lewis, Schnitzler & Krupman in Washington. A former lawyer with the Equal Employment Opportunity Commission, Mr. Bell helped develop the agency's ADA regulations.

Another case pushes the envelope even further. Olan Rand Jr., a former Northwestern University professor, contends the school violated the ADA when it fired him for committing a crime. The 61-year-old art history teacher pleaded guilty in 1991 to collecting his mother's Social Security checks for five years after she died. But Mr. Rand asserts that a disability — "severe depression and procrastination behavior" — led him to delay notifying the government of his mother's death, according to Marshall Dickler, a lawyer for Prof. Rand.

Some of the ADA's supporters aren't concerned about cases that appear to stretch the law beyond its original scope. The courts can sort out a legitimate claim from one that "diverts the intent of the law," says Steve Bartlett, the mayor of Dallas who as a U.S. congressman helped draft the ADA.

But courts sometimes aid efforts to expand vaguely written laws. The federal Civil Rights Act of 1964 makes no mention of sexual harassment, but lawyers have successfully argued that the act encompasses it.

Lawyers say companies will have to defend themselves against seemingly frivolous ADA cases because the act requires claims to be judged individually. In each case, the disabled plaintiff's hardships must be balanced against the diffi-

culty a defendant faces in accommodating the disability. Thus, a plaintiff might win even a weak case filed against a company that can inexpensively make the accommodations. A company sued in such a case "can't just say, 'Oh, that's ridiculous,' and not look at it," says Mr. Bell.

Memorandum

Date: March 11, 1993

To: Senator Dole

From: Alec Vachon

Re: Congratulatory Note to Judy Heumann

Judy Heumann, a longtime disability advocate and Vice President of the World Institute on Disability in California, has been appointed as Assistant Secretary for Special Education and Rehabilitative Services in the Department Education (see attached article from yesterday's Washington Post). Judy is the recipient of many honors, including the Henry B. Betts Award in 1990.

In this session, we will be working with her on at least two important reauthorizations: Technology-related Assistance Act (this year) and the Individuals with Disabilities Education Act (next year).

I understand from Mo and Kathleen that you have a high regard for Ms. Heumann, and have drafted a short note of congratulations (also attached) for your signature.

DO YOU WISH TO SEND THIS NOTE? (IF SO, PLEASE SIGN & RETURN.)

YES _____ NO _____

cc: D. Stanley

Memorandum

Date: March 24, 1993

To: Senator Dole

From: Alec Vachon *AV*

Re: Statement on Use of Supplemental Appropriations by
States and Local Communities for ADA Requirements

Attached for your consideration is a statement for the Congressional Record advocating that states and local communities use Community Development Block Grant (CDBG) funds included in the Supplemental to meet the requirements of the Americans with Disabilities Act. This statement could be either be included as part of a larger message on the Supplemental (if such a statement is to be made) or as a separate statement.

Incidentally, we have received one or two letters recommending this use from Kansas. Also, Congressman Glickman wanted us to sign a joint letter his office drafted advocating this use of CDBG funds, but the Supplemental passed the House before any letter could be approved, and was no longer timely.

I am coordinating this statement with Greg and Kathy.

~~DO YOU~~ WANT TO PLACE THIS STATEMENT IN THE CONGRESSIONAL RECORD?

YES NO

IF YES,

PART OF LARGER STATEMENT

AS SEPARATE STATEMENT

cc: K. Ormiston
G. Schnacke
D. Stanley

Mr. President: As we complete action on the Supplemental bill, I would like to bring to the attention of my colleagues an opportunity for states and local communities to use some of the appropriated funds to meet their responsibilities under the Americans with Disabilities Act (ADA).

The bill contains over \$2.5 billion in additional monies for Community Development Block Grants. As I and others have pointed out, there is great potential for wasteful or frivolous use of funds included in the Supplemental. However, using Community Development Block Grant money to meet the requirements of ADA placed on states and local communities would be a sound and continuing investment. Such use of these funds would also reduce the costs of ADA faced by states and communities, and help fulfill the pledges ADA makes to the millions of Americans with disabilities.

In 1990, Congress passed ADA, legislation which I was proud to support. But we recognized then that ADA might require substantial expenditures by states and local communities to make public buildings and programs accessible to people with disabilities. Of course, not all ADA-required alterations will be costly -- many can be accomplished with creativity and at low cost -- but we should expect at least some will be expensive.

But despite the costs entailed by ADA, Congress believed -- and properly I might add -- that the rights of citizens with disabilities to equal participation in our society and to independence were so fundamental, so long denied, and that these costs were justified.

Nonetheless, we should not, and indeed in good conscience cannot, forget our obligation to help whenever possible with the financial responsibilities Washington places on states and communities, including those entailed by ADA. No one needs to be reminded that taxpayers today are overburdened, and that they have as many good uses for their money as we have.

Moreover, ADA made strong and clear promises to our fellow citizens with disabilities about accessibility to state and local programs. Mr. President, these promises came due on January 26, 1992, when Title II of the ADA became effective. But if states and communities lack the funds to fulfill these promises, we shall have made empty promises to people with disabilities.

And let me point out that inaction today will only put off, and likely increase, the costs to states and local communities of meeting ADA responsibilities.

Mr. President, I will encourage my constituents in Kansas to use Community Development Block Grant monies for ADA-related purposes, and hope my colleagues will do the same with their constituents.

ADA VANTAGE

1001 Connecticut Avenue, N.W., Suite 435
 Washington, D.C. 20036

Voice (202) 296-ADAV • Voice/TDD (202) 296-0355 • FAX (202) 659-5234

MEMORANDUM

DATE: January 30, 1995

TO: Alexander Vachon
 Office of Senator Robert Dole

FROM: Kathryn Shane McCarty
 ADA Vantage, Inc.

RE: ADA Paratransit Compliance Issues

Post-it™ Fax Note	7671	Date	1/31/95	# of pages	6
To	Alexander Vachon	From	Kathryn McCarty		
Co./Dept.	Sen. R. Dole's	Co.			
Phone #		Phone #	296-2328		
Fax #	228-4569	Fax #	659-5234		

Thank you for the opportunity to share with you some background information on our initiative and our firm. ADA Vantage, Inc. is a women-owned corporation which provides training, technical assistance, dispute resolution, and intergovernmental linkages with both public and private sector clients on ADA implementation.

Our current initiative has been the creation of a national ADA paratransit coalition which is comprised of city governments, public transit agencies, and metropolitan planning organizations (MPOs). The goal of the coalition is to identify existing federal transportation resources that could be better coordinated to achieve efficiencies and enhance transportation services for elders and riders with disabilities. We need to understand that communities need a continuum of transportation services ranging from fixed route to emergency medical transportation services.

Through our investigations, we have identified more than \$800 million in non-emergency medical transportation in the Medicaid budget alone that would be utilized more cost effectively to enhance service delivery with an estimated \$1.3 billion in transportation services funded by key DHHS programs. With the possible re-authorization of the Older Americans Act and new welfare reform legislation, we will be exploring all possible opportunities to elevate transportation as a key access issue to places of work, senior nutrition sites, and job training sites. We have a "mobility message" that must be inserted in these and other key pieces of Congressional legislation.

Our transit clients are not asking for delays in the ADA compliance deadlines as some other organizations are (such as the National League of Cities, another client of ours). Instead they view the new legislative initiatives as an opportunity to achieve coordinated paratransit services at the community level (See attached client list).

The following briefing paper was prepared for a presentation that Larry Dahms, Executive Director of the Metropolitan Transportation Commission, made at the US Conference of Mayors meeting last week on this ADA paratransit initiative.

BRIEFING PAPER ON ADA PARATRANSIT REQUIREMENTS

What does ADA require?

- Transit operators are required to provide paratransit service that complements fixed route service for those persons who are unable to use fixed route services due to their disability.
- There are three categories of eligible persons:
 1. Cannot use fixed route even when considered fully accessible.
 2. Can use fixed route, but service isn't yet fully accessible to meet their needs (can vary by time of day, route, etc.)
 3. Can use fixed route, but needs help to and from bus stop or rail station.
- Complementary paratransit means:
 1. Must operate within 3/4 mile corridor on either side of fixed route or within 3/4 mile radius of rail station.
 2. Provided at the same time and days of the week as fixed route service.
 3. Provided within one day of service request.
 4. Fares cannot be more than twice the regular adult fare on the fixed route system.
 5. No constraints on number of trips requests or trip purpose.
 6. Disabled individuals allowed to bring another passenger to accompany on trip, even if not needed as an "attendant".

The Funding Problem

- The Government Accounting Office (GAO) estimates the cost of ADA paratransit will approach \$700 million per year based on ADA plans submitted to FTA. \$602 million (86%) of this would be operating costs, not capital costs.

Page 2

- Many transit operators believe this is a **minimum** figure because existing regulations require:
 1. No capacity constraints are allowed; as service improves, demand will likely grow (this is a new entitlement).
 2. Expectation of social service agencies that ADA services will now transport their eligible clients; shift of responsibility will drive demand up.
 3. Efforts to improve health care will have a significant impact on demand for transportation into the future.
 4. Because ADA plans are to show progress toward full implementation, few operators will indicate at this time that they will have financial difficulties, since full compliance is not required until January 1997; most will wait until 1997 plans to claim undue financial burden when they can document demand and resource constraints. (Besides, FTA officials will not accept requests for waivers yet.)
- Due to funding limitations, ADA establishes a *de facto* priority for ADA eligible persons to access paratransit services. By law, operators cannot provide paratransit services to other individuals, if they are not meeting their ADA obligation. However, this causes serious community consequences when there other individuals are denied service.

Federal Funding Strategies

Despite significant financial impacts, ADA can serve as a catalyst for fundamental change in federal programs that can help offset the cost of paratransit obligations:

- Establish a rationale for federal obligation re: transit operating assistance or other dedicated DOT appropriation for ADA implementation.
- Integrate health/human service transportation into the state and regional planning processes required by ISTEA to identify service needs and to avoid service duplication.
- Consolidate/rationalize the myriad separate federal programs that now support non-emergency paratransit services for their clients, many of whom will be considered ADA eligible:

Page 4

- **Replace the separate federal programs with a "mobility program" that supports a continuum of transportation services to meet local public transportation needs and uses available public and private services to deliver:**
 - **accessible fixed route service;**
 - **deviated fixed route to service high-demand origins/destinations at certain times of the day (service routes); and**
 - **demand response service to meet special needs.**

ADA
VANTAGE

LIST OF CLIENTS

American Association of Retired Persons
Association of Washington Cities
Coalition of Dispute Resolution on Aging and Disability
Community Transportation Association of America
Cities of Madison, WI; Seattle, WA; Bonney Lake, WA
International Racing Symposium
Kentucky League of Cities
Metropolitan Transportation Commission (of San Francisco Bay area)
National Association of Counties
National League of Cities
New Jersey Transit
San Diego Center for Municipal Dispute Resolution
US Conference of Mayors