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THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

July 26, 1991

REMARKS BY THE PRESIDENT  
IN CEREMONY FOR AMERICAN WITH DISABILITIES ACT

The Rose Garden

10:04 A.M. EDT

THE PRESIDENT: First, may I greet the distinguished members of Congress here in the front rows, thank them for coming, thank them for their interest in the passage of this important legislation we're here to celebrate today, but also in their interest in following up on it. May I greet, also, the Attorney General Dick Thornburgh, and our Secretary of HHS Lou Sullivan and the Vice President, of course. He and I welcome you to the Rose Garden. And may I salute the other guests that are with us. And a special thanks today to the men and women from our business community. American corporations, you see, are a vital part of this team, and your support of the ADA is critical to its success.

One year ago, I stood over there -- many of you present -- on the South Lawn. And I will never -- literally, never -- forget that sight or certainly the emotional feeling I felt on that day. Thousands of people from across the country had come to celebrate the signing of the Americans with Disabilities Act, one of the most comprehensive civil rights bills in the history of this country.

And while people felt a justifiable sense of triumph last year, you also could see a feeling of eager impatience. After all, the signing of the ADA didn't mark the end of a long struggle, it marked, really, a beginning.

Some of you here today joined me on the South Lawn, as I mentioned, a year ago, and we've made tremendous advances since that ceremony. We've introduced changes that will transform people's worlds. The ADA has also helped us -- all of us -- to understand a little bit more about ourselves. It reminds us that along with the privilege of being an American comes a duty, to recognize and defend the rights of every American.

This bill does more than make the American dream of equality a reality for 43 million Americans with disabilities. It offers, in a sense, fresh testimony to our nation's greatness. It demonstrates how we can advance the cause of civil rights. It shows what can happen when we work together -- drawing upon the fundamental decency of the American people.

The quest for civil rights is not a zero-sum game. It shouldn't mean advancing some at the expense of others. The quest for civil rights is a quest for individual rights and equal opportunity and it's a crusade to throw open the doors of opportunity and tear down the walls of bigotry.

The ADA works because it calls upon the best in the American people -- and then Americans respond. It works because it embodies what must be at the heart of all civil rights struggles -- the spirit of inclusiveness, the devotion to individual rights and equal opportunity.

That devotion runs deep in our nation. We are the land of opportunity and always have been.

MORE

Our Constitution and our courts pledge equal protection under the law. But equally important, our people believe in legal equality -- and many try to broaden opportunity in little ways, by reaching out to capable people and giving them a chance -- giving them a fair chance.

America must be a country where the sons and daughters of poverty have the same grasp on the American dream as the children of privilege. And it must be a land where a child can overcome any obstacle and fulfill his or her own potential.

We see this promise fulfilled by a man I presented to this nation four weeks ago. And we can be proud to live in a country whose highest court will include a man who understands the importance of basic American values -- tolerance, industry and decency. And I'm speaking, of course, of my nominee to the court, Clarence Thomas.

While Judge Thomas was at the EEOC, he compiled an excellent record on disability issues, with which I hope all of you are familiar. But his life illustrates the principle that inspires all civil rights bills -- the principle that we must throw open the doors of opportunity to everyone. And this spirit should guide us as we pursue all civil rights legislation -- for our greatest strength lies in our ability to work together and honor the shared values we treasure.

We have worked together this last year. And in so doing, we've understood more fully just how much people with disabilities have to offer. We've demonstrated that social progress includes economic growth -- and that both play essential roles in the American dream. Businesses support the ADA because it gives everyone a chance to be productive in the workplace. It broadens our economic mainstream. It enables society to benefit from the wisdom, energy and industry of people who want just one thing -- a fair chance.

And while we've made a strong start, we have much to do. As long as the doors of opportunity are closed to even one American -- we must keep working at it.

The passage of the ADA, the world's first declaration of equality for people with disabilities, made this country the international leader on this human rights issue. And now the world is watching to see how we use this act -- how we remove the physical barriers we've created and the social barriers that we've accepted. Our success or failure in keeping the promise of the ADA will affect the lives of hundreds of millions of people with disabilities -- not just here in the United States but throughout the world.

Our challenges remain great, but our will is even greater. In America -- the most generous, optimistic nation on the face of the earth -- we will not rest until every man and woman and child with a dream has a fair chance to realize it.

Most of this work will be done by individual Americans acting day by day to increase tolerance and understanding. But the ADA also required five federal agencies to come up with implementation regulation or guidelines. These regulations -- relating to employment, public accommodation, transportation and communications -- are key to the full implementation of ADA.

And so I'm proud to announce that most of these federal regs will be issued today.

All guidelines required of the Department of Justice, the EEOC, the FCC are in final form -- and those regarding transportation will be issued soon. I want to thank the people of the Executive Branch who have worked so hard to make the ADA a reality.

And in addition, today I'm issuing a memorandum to federal departments and agencies. And it directs them to recruit people with disabilities as federal employees and to ensure that Americans with disabilities have access to federal programs. The

federal government must serve as a model employer for the rest of the nation.

And again, thank you all so very much for your work, for your dedication and for your devotion and your steadfast faith, and to many here, for your inspiring example. And may God bless you all. And thank you very, very much. (Applause.)

END

10:12 A.M. EDT



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

June 7, 1989

MEMORANDUM FOR BOBBIE KILBERG  
DOUG WEAD  
SHIREE SANCHEZ

FROM: KIM TIMMONS GIBSON *ktg*  
OMB

SUBJECT: MEETING WITH TRANSPORTATION SECTOR ON ADA

Today Janet Hale and I met with Susan Perry, vice president for congressional affairs at the American Bus Association, and Ted Knappen, senior vice president of Greyhound. They discussed the negative effect the ADA would have on private intercity bus service.

Their concerns, which are primarily financial and practical, are outlined in the attached fact sheets.

cc: Janet Hale



1015 15th STREET, N.W., # 250 WASHINGTON DC. 20005 (202) 842-1645

## FACT SHEET

### THE AMERICANS WITH DISABILITIES ACT AND PRIVATE INTERCITY BUS OPERATORS

Intercity bus service, particularly in rural areas, is provided by several thousand small private companies which play a unique and vital role in the nation's transportation system. The typical company is a small, often family owned business with a narrow profit margin. These companies are struggling to survive in a virtually unsubsidized environment as they routinely compete with federally subsidized entities, namely Amtrak and the airlines. Federal subsidies for Amtrak are \$33.45 per passenger trip vis-a-vis \$.08 for intercity bus per passenger trip.

\* This disparity has contributed to a decline in the intercity bus industry. In 1986, the most recent data available, the industry's profit margin was a meager 3 percent.

\* The intercity bus industry already provides for the disabled: Seeing eye and hearing aid dogs are allowed on buses, and attendants to incapacitated passengers travel free.

\* If wheelchair lifts are required for all new buses, even the smallest increase estimates (\$10,000 to \$12,000 per bus) will force companies to further reduce service. The companies' 3 percent profit margin cannot absorb any additional costs, nor can they be passed on. Lower-income passengers can least afford higher fares.

\* The nation's poor, young, and elderly depend most upon the network of regional and national bus carriers because they cannot afford to travel by other modes. A 1988 survey indicates that nearly half of the intercity bus industry's passengers are from families with incomes under \$15,000--below the 1988 poverty level for a family of five.

\* Intercity buses go where no other mode of transportation does. Buses serve more than 10,000 points, contrasted with Amtrak service to 498 cities and airline service to 477 cities.

\* Package express service is vital in rural areas. Over 80 percent of the blood needed by New Hampshire and Vermont hospitals is delivered by bus.

\* The wheelchair lift options will cause a loss of up to 38 percent of cargo space for packages or up to four revenue seats. Requiring restroom access would cause the loss of at least eight more seats. This would further diminish the 3 percent profit margin.

\* Imposing wheelchair lift requirements for all new buses will narrow the already small margin of profitability of these carriers, leaving them the option to further reduce services or go out of business. Handicapped and able-bodied passengers alike will lose.

**S.933, THE AMERICANS WITH DISABILITIES ACT, AND  
THE INTERCITY BUS INDUSTRY**

- o S.933 would require wheelchair lifts and accessible restrooms on all new intercity buses. The industry's total annual cost for this requirement, which includes lift and accessible restroom installation; loss of revenue seats for lift and restroom accessibility; possible loss of package express revenue capacity; maintenance costs; training costs--would be at least \$200 million or roughly four times the net annual profit for the industry.
- o These requirements would spell the end of private sector intercity bus service in the United States. Virtually without subsidy, the intercity bus industry provides public transportation service to 10,000 communities, 9,500 of which have no other form of intercity public transportation. Intercity buses provide transportation for those that truly need a low cost transportation alternative--those with lower incomes; minorities; the young and the old; and rural Americans. The transportation disadvantaged would no longer have access to this vital public service.
- o No need has been shown for the requirements of S.933. In the one known test of lift equipped buses providing intercity services, the state of Massachusetts provided lift equipped buses to an intercity bus operator, who operated them in scheduled service throughout New England. In the first three years of this heavily publicized service, three people per year requested use of the lift equipped service.
- o The intercity bus industry believes that it has been meeting the needs of travelers with disabilities but to the extent that there is a further need, it can be met with more cost effective utilization of existing resources. There are thousands of Federally funded lift equipped vehicles providing local transit service in both rural and metropolitan areas. Private sector bus companies increasingly are coordinating and intergrating their services with these local transit operations in order to enhance mobility. That same coordination can be expanded to meet the intercity mobility needs of the handicapped. The specific need for, and extent of, this coordinated system can be decided through a Department of Transportation rulemaking process.

S.933 PER BUS ANNUAL COSTS FOR GREYHOUND

	<u>Low Estimate</u>	<u>High Estimate</u>
Lift installation	\$1,000.00	\$3,500.00
Restroom Installation	\$100.00	\$100.00
Cost of Loss of Seats Due to Lift	\$2,400.00 (2 seats)	\$4,800.00 (4 seats)
Cost of Loss of Seats Due to Restroom Accessibility	\$4,800.00 (4 seats)	\$12,000.00 (10 seats)
Loss of Package Express Capacity	\$0.00	\$9,000.00
Maintenance Costs	\$1,000.00	\$3,000.00
Training Costs	\$800.00	\$1,600.00
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	\$10,100.00	\$33,300.00

TOTAL ANNUAL COST OF S.933 TO GREYHOUND

<u>Low</u>	<u>High</u>
<u>\$40,400,000.00</u>	<u>\$133,200,000.00</u>

Calculations assume a 4,000 bus fleet with 400 buses purchased annually.

were falling in love and getting married, I was falling in love and not getting married. And yet I'm not sorry I got involved, nor do I regret any of the moments, some sweet to remember, others probably best forgotten. Each time I enter into a relationship, whether it is a sexual one or not, I find a new aspect of myself more clearly defined and articulated. The finding out is worth it."

Looking back on her romances, both short and long, she finds them expressions of a life style she has created for herself. "When I'm lonely or afraid, I see my life style as a failure to realize a close, caring primary relationship. I may even indulge myself in a good session of self-pity. Then the pendulum swings and I see that all lives, mine especially, are a matter of compromise and each way has its own joys and aches. I've done it my way, and I have no regrets."

On her first thirty-two years, Susan waxes philosophical. "My question is not 'Why me?' but 'What next?' There is no answer to the first question. Nobody knows why certain people are born disabled. But 'What next?' asks the question: 'What are you going to do with the rest of your life?' And that is something I can do something about."

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# ROBERT SMITHDAS

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"Death never had a stillness like this one  
that I know."

Bob,  
will need to  
update a lot of his  
his book was written in  
1981.

ONLY ONE PERSON has surpassed the remarkable record of achievement of the celebrated Helen Keller. That man is Robert Joseph Smithdas, fifty-five, the first deaf-blind person to earn an advanced degree. Now director of community relations for the Helen Keller National Center for Deaf-Blind Youths and Adults in Sands Point, Long Island, New York, he is happily married, a proud home owner, and a fiercely competitive fisherman.

Bob's accomplishments would be distinguished enough for someone with full use of all his senses. He is an honors graduate of St. John's University, holds a master's degree from New York University, and has received three honorary doctorates. He has written two books and delivered more than three thousand lectures to some two million people throughout the United States and much of the rest of the world. His schedule leaves little time for avocations, yet he has become so expressive a poet as to earn the Poetry Society of America's Poet of the Year Award.

What he calls the "silent fog" has deprived him of sight and sound since the summer of 1930, when he was a strapping five-year-old in depression-ravaged Pittsburgh. People who are deaf learn by making maximum use of their sight; through lip-reading, reading, and sign language, they try to acquire what others learn by hearing. Conversely, people who are blind sharpen their auditory skills, seeking to obtain by listening information most people acquire through their eyes. But for Bob Smithdas, and thousands of other deaf-blind people, both of the lead senses are forever closed.

Bob has expressed his profound losses in many ways, but never so vividly as in his deeply felt poem "Silence":

There never was a silence  
as deep as this one is:  
a silence filled with circling thoughts  
and spanless distances.

ROBERT SMITHDAS

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Death never had a stillness  
like this one that I know,  
where space and time stand idle  
and my brain rocks to and fro

It should not be surprising, then, to find Walter Cronkite calling him "superhuman" or Barbara Walters saying that he is "the man who has made the most lasting impression of my eleven years of interviewing." Anyone who has overcome such an unimaginable stillness so completely deserves every honor he can get.

How refreshing to discover that he wears his laurels so lightly, a quiet, unassuming gentleman genuinely eager to meet new people and help others solve their problems. The impression one receives upon meeting Bob is that he is a man at peace with himself. He seems to have accepted, and adjusted to, his dual disabilities, content with the senses of taste, smell, and touch and the world they reveal to him. He smiles easily and frequently, giving no evidence at all that the fires of determination and ambition still burn.

That is not altogether a false image. Yet Bob harbors deeply felt passions and firmly held beliefs, convictions and emotions that guide his life and shape his poetry: about the value of human life, the nobility of exquisite phrasing, the joy of independent living, the tenderness of a moment completely experienced, and the power of the senses he has forever lost. It is not anger, he is not an angry man, but it is sorrow; not bitterness, but poignancy; not detachment, but a powerful involvement. If something matters to him, it matters intensely. Having struggled so long and so hard to live his life, Bob is fully, irrevocably, and finally committed to life, the bad with the good, the pain with the joy, the frustrations with the victories.

As director of community relations for the Helen Keller National Center for Deaf-Blind Youths and Adults, Bob is responsible for developing and conducting public-awareness campaigns to increase the general understanding of deaf-blindness and of the center's ability to help deaf-blind people. Bob spends

a great deal of time in public-speaking engagements, delivering more than two hundred speeches annually. He writes and edits a nationally distributed newsletter describing the center and its programs. From time to time, he appears before congressional committees to testify on legislation. It was as a witness before one such committee in 1967 that he helped secure enactment of the law establishing the center itself. He participates in senior staff meetings of center personnel involved in educational, vocational, and other endeavors, assisting them where needed to garner community support for their work. And he works individually, often informally, with deaf-blind youths and adults who live and study at the center, offering them a role model, an example, an inspiration, and often just an encouraging word.

Watching Bob in these activities, one notices how quickly and unobtrusively his sign language interpreter keeps up with the conversation in meetings and conferences. Bob places his hands on the interpreter's, following the signs and finger spelling with ease. When he talks, Bob uses his own voice. To take notes, he makes indentations in Braille with a pin and special paper. Bob uses a teletypewriter (TTY) device converted to Braille when he needs the telephone. The device produces Braille versions of what the caller types; it is a modified form of the one many deaf people use to communicate with each other. To talk with persons not equipped with such a machine, Bob relies upon his interpreter as he does in meetings, feeling the message in his hands and responding with his own voice. He is also skilled at one-to-one communication without an interpreter, placing his hands gently on the other person's lips and throat to "lip-read" and replying in normal speech.

Each of these methods of communication had to be learned in long, often tedious, sessions over a period of years. He has had to struggle mightily to keep his speech intelligible; five decades of deafness have trained him to use kinesthetic cues to feel what he cannot hear and thus to monitor the volume

and pitch of his speech. Lip-reading by touch, too, is extraordinarily difficult. Bob brings to it fingers attuned to minute sensations from years of reading Braille. To sign and read sign language, he has had to visualize, somehow, the movement of hands in space and memorize the meaning of each motion.

I first met Bob at a conference on deafness in March of 1973, in Williamsburg, Virginia. As he was waiting to check in at the hotel, I introduced myself to him, placing my hands in his, letting him feel my signs and finger spelling. Bob's rejoinder surprised me. Not only were his signing and spelling fluent, but his facial expressions were far more mobile and animated than I had expected. Bob and I had no difficulty at all comparing notes about the speeches we were scheduled to give, about our flights to Williamsburg, or about our mutual friends. Much of that initial ten-minute conversation has remained with me in the years since. But it was the sense of easy calm that most impressed me, possibly because as a deaf individual I am especially sensitive to visual cues.

I have often wondered about that calm. That Bob Smithdas has strong emotions cannot be doubted by anyone with even a passing familiarity with his poetry; certainly "Silence" could not have been written by anyone other than a person seared by the pain of intense loss. Yet those feelings are for the most part masked in interpersonal communication. That he is ambitious is evident from his accomplishments and his steadfast refusal to admit that he cannot do something; yet, again, unless one spends a lot of time with Bob and comes to know him well, that ambition is not evident.

Why, then, the calm? Over the years, several possible explanations have occurred to me. My knowledge of many blind people suggests that Bob, like numerous others who cannot see, has gradually adapted to a life that requires almost incessant waiting: for someone to enter and speak to him, for something to be said which reveals how his words have gone over. For Bob, this adjustment to blindness and the need to wait

must have been compounded by the additional burden of unhearing ears. When one can neither see nor hear others, a great deal of time is spent in imposed isolation, a removal from stimulation that itself acts to produce the appearance of patience.

Then, too, the same factors must lead Bob to withhold full expression of his emotions until he has an accurate understanding of the other person's feelings. Uncertainty about how friendly or interested the other is suggests that the most appropriate posture is one of cautious openness and, again, patient waiting. Consider, for example, how often each of us ventures a noncontroversial remark upon first meeting another person, and how carefully we couch expressions of opinions, looking repeatedly at the person to whom we are talking to catch any disagreement early enough to change our remarks, retract our statement, and avoid embarrassment. As a deaf-blind person, Bob misses both the body cues, such as facial expressions and posture, and the vocal intonations, including pitch and other inflections signaling skepticism, sarcasm, or ridicule. That he is careful in what he says until he knows someone very well should not be surprising.

But as I came to know Bob better, three considerations seemed more convincing as explanations for the serenity which attracted and baffled me. None has to do with his disabilities. First, Bob is in an environment which he knows extremely well and which makes him very comfortable. He has worked for the Industrial Home for the Blind, sponsor of the Helen Keller National Center for Deaf-Blind Youths and Adults, since 1952. During these twenty-nine years, he has performed a variety of public relations, community relations, and program coordination tasks which suit his talents and interests. A natural outgrowth of performing work at which one is highly competent and long experienced is exactly the kind of serenity Bob exudes. The second consideration is related to the first: Bob has done and experienced almost everything he can expect

to encounter in the course of a normal day. Incidents which earlier generated high excitement or deep anger now elicit milder responses as a natural product of the maturity that comes with wide experience. And third, Bob has accomplished about everything an individual can reasonably expect to achieve: he has every reason to be satisfied, content, and, yes, serene.

For all of this, Bob has passionate convictions. Perhaps the most powerful is that symbolized by his own life: deaf-blind people can achieve and live lives of meaning and dignity. This belief is his preoccupation, the driving force behind his life. Bob devoted two full decades to an unrelenting effort to overcome deaf-blindness. For the next thirty years, he worked with several thousand other deaf-blind individuals, helping them to surmount the loneliness and isolation of deaf-blindness. He has spent, then, half a century doing everything he knows how—writing, lecturing, composing poetry, counseling, and showing by personal example—to get across the point that deaf-blind people can be helped to live productive, useful lives. He has given his life to a belief, and not many of us do that.

Another of his passions is a love of language, a delight in precision and expressiveness, a joy in the use of language to evoke memories and visions he has no other way of sharing. To appreciate Bob's love affair with English, one needs to recognize how long the odds against his mastering even rudimentary language became when he lost his hearing early in life. For most people deafened in childhood, a fifth-grade reading level is an achievement. But Bob Smithdas made an important discovery early in his education: the key to his success over deafness and blindness would be mastery of language, for it was that key which would unlock specialized knowledge he would need and open the doors to vocational success. As he began to understand the complexities of English, he quickly fell in love with its endless intricacies, its ability to go beyond utilitarian uses to express uniquely personal and beautiful visions

and thoughts. A lifelong fascination with poetry resulted. Bob's intense dedication to unraveling the mysteries of language has given him all the control over English he needed to succeed in his education and in his career. But it has given him more. It is this pursuit—the never-ending quest for just the right word or phrase—that excites him still, that keeps him young, alert, curious, and always seeking more.

Just as he has sought to overcome deaf-blindness and to master English, so too has he worked ceaselessly to become as completely independent as humanly possible. For a child or an adult who is deaf-blind, few things are more natural than responsiveness to external stimulation, guidance, and direction. It is only too easy to become dependent upon others, to permit them to do for you what you have not yet learned to do for yourself, and to allow them to shape your life and each of your days. From earliest childhood, Bob has been a person who rebels against such control, a boy and then a man who thrives on taking his own risks and pursuing his own challenges. That passion still drives him today. It is that desire to do it himself that leads Bob to own his house, do his own repairs, and even hang his own wallpaper; the satisfaction of knowing that he did it and did it well.

In recent years, Bob has broadened his vision considerably. Content in the knowledge that he had achieved independence in his own life, he felt ready, at last, to assume responsibility for the life of another. Bob was nearly fifty when he married the former Michelle Craig, a deaf woman who had lost her sight in a snowmobile accident. She has filled his life with energy and excitement as no one else had before, her effervescence banishing forever the loneliness that Bob knew as his constant companion for almost half a century.

And he has grown increasingly insistent that others who are deaf-blind have the ability to achieve what he did and deserve the chance to try. Bob is not content, if he ever was, with being a token, an exception, a superachiever. But more and

more, he is calling upon his colleagues in services to deaf-blind people to employ, consult, and listen to persons who themselves are deaf and blind. He takes great pride in the knowledge that he is the first person since Helen Keller to complete a college education. But he is determined not to be the last.

THE DISEASE that was to have such a devastating and pervasive effect on Robert Smithdas's life struck without warning one summer afternoon in 1930, as he awoke from a nap at the family's home on Sunnyland Street in Pittsburgh, Pennsylvania. He remembers feeling a sharp, stabbing pain in his lower back—and then nothing. Regaining consciousness three months later, he discovered that he could see only "a thick, muddy fog," and that he had lost all hearing in his left ear. He was soon to lose his hearing in the other ear as well. The disease had a name he did not recognize, meningitis.

A five-year-old is just beginning to make sense of the world around him. He knows what school is, but has not yet attended one. He knows a little of reading and writing, just enough to appreciate how much he does not yet know. And he faces each new day with excitement, eager to see new sights and hear new sounds. He accepts these senses, vision and hearing, as natural; he literally cannot imagine life without them.

So it was for "Bobby" Smithdas. He did not appreciate the beauty of spring mornings, the brilliant hues of a rainbow, or the thousand other views he had seen until he could no longer see them. Nor did he relish the sounds of rain and thunder, the stirrings of music, or other sounds quite so much as when he could no longer hear them. These are the gifts deaf-blindness takes away immediately, and they are mourned passionately. What is more important to the child's ability to live a life, the contribution made by hearing and vision to keeping him in communication with people around him, is less understood at the beginning but more missed later. And missed terribly: the great curse of deaf-blindness is not that you cannot see

beautiful art or hear lovely music, but rather that you are cut off from your fellow human being. You are alone.

Bob has described deaf-blindness as a "silent fog" and the isolation it brings as akin to sailing in a fog-enshrouded ocean without a compass or rudder. He remembers the first six months of deaf-blindness as having been especially frightening. In his 1958 autobiography, *Life at My Fingertips*, he recalls being:

unable to distinguish between night and day except by the vibratory movements of the people around me, the warmth of the sun on my face. Time had no meaning. Life was simply a continuous physical rhythm. . . . It is a curious fact that when I finally learned to distinguish between day and night, I developed an acute fear of darkness. It is difficult to explain why I should have been afraid of the dark when I could not see it. Yet, whenever the warmth of the sun left my face, and I realized night was coming on, I would cling to anyone who happened to be at hand.

The five-year-old Bobby Smithdas had three senses remaining—touch, smell, and taste. He used all three, plus the little remaining hearing in his right ear, in a voracious, inexorable quest to understand his world. Climbing into the attic, rumbling through closets, tasting every item in the kitchen, and even the flowers in the garden, he banished his fear of the unknown by turning it into a known. Around his home, he learned to identify his position by the smell of the trees, grass, and flowers. In the neighborhood, his clues were the shapes of the terraces and hedges. Even in a vacant lot, apparently devoid of directional cues, he was able to orient himself with tufts of grass, the slant or rise of the ground, and the texture of shrubbery.

It may well have been this insatiable curiosity that saved Bobby Smithdas. Certainly, had he been passive rather than active, waiting for the world to come to him, he would have developed much more slowly. A child who lacks reliable hear-

ing and vision is without exactly those senses that bring information into the mind, that stimulate thought, and that provoke reaction to what is happening around him. The child with normal hearing and vision can afford a certain amount of relaxed passivity; indeed, the amount of information coming in through the eyes and ears may occasionally be overwhelming, and withdrawal from it necessary from time to time. But a deaf-blind child like Bobby Smithdas must generate information himself, must seek it out, and must comprehend it without the advantages of sight and hearing.

Bobby "listened" to music, feeling the beat and rhythm of the melodies and sensing the difference between drums, horns, and harmonicas through touch more than through hearing. Gradually but surely, the hearing that remained in the right ear was leaving. Others in his family would shout directly into his ear, repeating again and again until he understood; as time went on, even this did not produce comprehension.

Now, even his driving curiosity was not enough. Bobby needed, desperately, a reliable way to communicate with others, to learn more than could be acquired through touch, smell, and taste. And he knew this, remembering life with hearing and sight. So when a Miss Clare at the Western Pennsylvania School for the Blind in Pittsburgh introduced Bobby to Braille, he attacked the system with single-minded devotion: "I kept practicing until the tip of my forefinger grew numb and the skin was worn through." He absorbed the manual alphabet and American sign language as fast as his teachers could instruct him, driving himself mercilessly to master what he knew would be the tools that would at last unlock the larger world he had left behind when meningitis struck that warm summer afternoon.

Bobby's rapid progress soon outpaced Western Pennsylvania's capacities to assist him. He was the only deaf-blind child enrolled in the school. His teachers were not trained to meet his special needs, nor were his classmates receptive to his over-

tures of friendship. "My habit of feeling and smelling everything irritated them," he recalled. "They gave me the nickname Smearcase." As a result of the school's limitations, Bobby was slipping behind his classmates. His speech was deteriorating rapidly because his hearing was no longer adequate to monitor it and because his teachers were not trained as speech therapists. Nor could they help him understand them, knowing little or nothing about lip-reading and other techniques to help deaf children.

The solution—the only one, it seemed at the time—was a transfer to the Perkins Institute in Watertown, Massachusetts. Perkins, unlike the Western Pennsylvania School, was equipped to teach deaf-blind children and in fact had already enrolled several his age. Bobby moved to the institute in the middle of the fifth grade, living away from home for most of the year. But it was worth it: at Perkins, Bobby regained his sadly diminished self-confidence. His mother and father knew that Perkins was his last best chance. Just before seeing him off to Watertown, his mother said to him: "Bobby, you will never have a chance like this again." As it turned out, he would need only this one.

Bobby's well-developed senses of taste, touch, and smell were stimulated as never before by the carefully designed campus at Perkins. As he later recalled: "It has been a principle with the founders of Perkins that the unseeing and unhearing should live in an aesthetically inspiring environment, for beauty has its own channels of communication even when the senses are deficient." Years later, the experience of walking around the campus remained with him: "After a few weeks of bloom, the blossoms fell, covering the ground with a muffled carpet. And when I walked along the flagstone paths of the herb garden, my footsteps crushed the leaves of thyme and sorrel, sending up a curtain of tart, mingled fragrances that hung in the air like a giant censer." This sensitivity in touch, smell, and taste struck me as remarkable. I wondered whether he was aware that most people with normal hearing

and vision rarely realize that their senses are capable of picking up such detailed information about their environments. He nodded sadly. "I know. But what makes me even more despondent is the knowledge that they do not appreciate the senses I have lost. Seeing and hearing are so much more powerful than the senses I have, and yet I don't think most people appreciate them." He has expressed his longing for these lost senses in several poems. One I like particularly is "Light," a four-stanza poem. These are the first and fourth:

Once my eyes were filled with light  
and the glory of the sun and stars and moon,  
and all the world of radiant colors  
were mine without asking. They flowed  
into my consciousness every morning  
like the flood tide of the sea  
suffusing every nook of my being.  
I used to stand by my window  
and watch the red yolk of a rising sun  
spread out into a blaze of gold  
over the green treetops. In the evening  
I would see its fire sink down behind the hills  
until it burned itself out  
in the silent ashes of night.

. . . . .  
But all this was long ago  
when I was a child and could not understand.  
The gift of light was always there  
shining in through the windows of my eyes  
and I accepted it without question  
because it was such a natural quality of life.  
But having lost its glory forever  
my memory clings to its preciousness  
tenaciously. And sometimes in my dreams  
the distance of thirty years of darkness is drowned  
in the river of timelessness  
and I find it once again.

Bobby learned to sense changes in weather by the weight of the air against his face. As he later described it: "The air at night is heavier than during the day and the fragrance of

the night world is more clearly defined to my nostrils. If I had not been violating the conventional timetable, I would have much preferred to do my living in the evening and sleep all day. When the earth is hushed, senses are much more alive. The night winds are the master music makers of the skies." This admission is as revealing of the change brought about at Perkins as any other, because it shows how much Bobby had adjusted to deaf-blindness and how much he had learned to take full advantage of the senses left him. The five-year-old terrified of the night he could not see was forever gone now, never to return.

During his first few years at Perkins, Bobby further developed his finger spelling and signing skills while picking up a new way to communicate: lip-reading. The technique depends upon extremely sensitive fingers, which Bobby by this time had because of his constant work at Braille. By placing his thumb over another person's lips, with his other fingers resting gently on the throat, Bob is able to understand normal conversational speech. "Lip-reading opened up an entirely new world of communication for me," he would later recall. "For the first time, I was able to appreciate with my fingers the changing relationships of the voice and facial expression. I learned, for instance, that anger is a very generalized emotion: the voice becomes harsher and often rises in pitch; the mouth tightens; the head invariably thrusts forward; and the body becomes more rigid in posture." He was able to glean all of this merely by touch.

But the method, called the Tadoma approach, had its limits. On cold days, for example, his fingers would be too insensitive for him to follow conversations. Then, too, success in lip-reading varied with the individual, with some people much easier to follow than others. He found it easier to read women than men, and southerners than northerners, usually because of the greater vibration in the throat when women speak and the tendency of southerners to form words farther in front of the mouth than do others.

He also made an astonishing discovery: people smile in different ways. He found that people whose smiles naturally curl the mouth upward tend to be happier than those whose smiles seem more horizontally made. And, by trying out the different kinds of smiles, he found that he could affect his own mood.

His progress in reading Braille, in lip-reading, and in finger spelling and sign language enabled him to absorb, for the first time, the full range of academic information presented by his teachers in the classroom. He literally could not learn enough. Bob's excitement at discovering biology and chemistry, mathematics and physics was great. But he fell in love with words. It was English he loved best, where he found his passions overflowing, and where he felt himself compelled to go beyond what was offered in the classroom to explore the original writings of hundreds of authors, especially poets.

Bob particularly liked the Romantic poets, Shelley, Keats, and Wordsworth, for their direct imagery and use of simple but apt words. A. E. Housman and Robert Browning he detested because of their use of "quaint language." His visit to the home of Henry Wadsworth Longfellow in Cambridge, Massachusetts, was a highlight of his years at Perkins. Bob had been writing his own verses as early as the third grade, but now, after exposure to the Romantic poets, he spent more and more hours writing his poetry.

As a change from the discipline of study and writing, Bob decided to try out for the wrestling team. Although Perkins had long held a team of blind wrestlers, Bob received little encouragement. "Are you crazy?" asked one of his friends. "No deaf-blind person has ever succeeded in becoming a wrestler." But one member of the team taught him the fundamentals and the coach gave him a chance to try out for the team. Bob's approach to this opportunity was typical: he drove himself mercilessly. As he recalled much later:

Although my elbows and knees became painfully abraded from my continual mauling on the heavy cotton cover of the mat, I refused to concede that my case was hopeless. Gradually I

learned how to defend myself against nelsons, the cradle, and the figure-four scissors. I practiced running on the circular track, punching the bag, exercising with pulleys, and lifting weights. I did finger tip pushups and situps. Slowly my reflexes became more rapid; I developed an instinctive muscular balance, an intuitive sense which told me when an opponent was shifting to a new hold. I learned to block on the defensive; studied all the methods used by others in making their opening attacks. My sense of touch became keener, my balance and posture improved as I learned to control my muscles at will.

After one full year of such preparations, he was crestfallen to be eliminated in the tryouts for the team during his sophomore year. So he spent another full year exercising and practicing. The following fall, he made the team.

It may seem remarkable for someone to spend two years trying to make a school wrestling team, but this was typical of the way Bob lived his life. Others might have given up, but he could not allow himself the luxury of admitting defeat without first being absolutely certain that he had made his best and last effort. Characteristically, he wrestled for his team despite illness, injury, and cuts. Bob likes a saying that expresses his approach to such challenges: "The Chinese have a proverb that says, 'The journey of a thousand miles begins with a single step.'"

Following graduation from Perkins in 1945, Bob entered the Industrial Home for the Blind in Brooklyn, New York, for vocational training. He learned to wind brooms, fold tape, and sew, performing work contracted to the Home by various governmental agencies participating in the war effort. He proved so skilled in manual labor that he set records for production. This left him largely unmoved. But what did stimulate and challenge him was the awesome task of learning to walk the streets alone.

He mastered the use of a cane easily enough. It was crossing streets that terrified him. Once he was almost robbed by a man who helped him across; another time he enraged a woman

ROBERT SMITHDAS

who volunteered to help him, only to be ignored because Bob could not hear her. Despite crashing into fences and sustaining numerous bruises from falls, he eventually gained courage and experience. It was at that point that the Home decided to teach him to navigate New York's labyrinthine subway system.

The trick, he learned, was to ask a passenger at each of the transfer points to guide him to the track for the next leg of his journey. Bob carried a stack of cards, each of which he was to show to some passenger in order to be led to the correct spot. On his first trip, he showed it inadvertently to a blind individual, who, of course, led him to the wrong platform.

Early in 1946, Bob was ready to make a try at his long-time ambition: to go to college. He was inspired by the example of Helen Keller, but was painfully aware that she was the only deaf-blind person to have been graduated from a college. With the support of the Home staff, he decided to attend St. John's University in Brooklyn. Financial assistance was arranged from the New York State Vocational Rehabilitation Service, the American Foundation for the Blind, the Howe Memorial Fund, and the Home. Bob spent several months training a nineteen-year-old, Johnny Spainer, to serve as his attendant and interpreter. While he was teaching sign language and Braille to Spainer, the Home arranged for his textbooks for the freshman year to be transcribed into Braille.

Just before classes started in September, he achieved a life-long goal, to meet Helen Keller. As he recalls that first meeting:

Miss Keller took my hand in her own. I remember vividly how warm, how energetic, her handclasp was. She was then in her sixty-fifth year, but no one would have guessed it if he had merely taken her hand. Her eager clasp conveyed all that youthful vigor which has characterized her personality and set aside the weight of years. "I think it is wonderful that you are going to college, Bob. It has been nearly half a century since I graduated from Radcliffe, and times have changed so much since then. You have courage to begin a project like this. You will have many difficult situations to face. God knows the trials you will have to endure."

learned to  
NYC subway  
system  
69  
unbelievable!  
Able!

Mrs. Keller  
w.  
H. Keller

But you will succeed, I am sure of it. You will overcome all the difficulties if you really believe in yourself."

That brief conversation has stayed with Bob for thirty-five years as one of the highlights of his life.

He would need all the inspiration he could get. With Johnny translating lectures and taking notes as well as Brailleing these notes after classes, Bob settled into an intensive routine of reading bulky Braille volumes and memorizing information from lectures and texts. Often, he would study all night. "Burning the midnight oil is an understatement," he recalled. "I would burn away the whole night without sleep. I studied in half-hour periods; then I would sit still, holding my head in one hand while I tapped off the information I needed with the fingers of the other." When he took tests, someone would read off the questions for Bob in signs and finger spelling, and Bob would type out his answers. To prevent distraction for other students, he arranged to take the tests in a private room.

But it was not all drudgery. Bob was thrilled to be initiated into Sigma Tau Alpha fraternity and to attend the frat's parties, which provided him with his first dates.

In the summer before his junior year at St. John's, Bob took courses in rehabilitation of the blind at the University of Michigan. The six-week session in Ypsilanti was unforgettable for one reason: blue-eyed, brown-haired Betty. For the first time in his life, Bob Smithdas was in love. The dinners, long walks, dances, and endless conversations of that love affair still bring smiles to his face. Betty was seriously interested in marriage, a prospect that filled Bob with a hitherto rare emotion: an overwhelming sense of inadequacy. He felt unable to assure her of any stability and support for the rest of her life, and resisted all entreaties to the contrary. Eventually, the affair ended; Betty later married and raised several children in suburban Ohio. For many years after that 1948 romance, Bob wondered if ever again he would meet a woman about whom he

felt so strongly—and whether someday he would feel confident of himself as a husband, father, and breadwinner.

In fact, it would be twenty-six more years before he felt ready.

His last two years at St. John's were filled with intensive study. A bus accident in the winter of 1949 took him away from his classes for two months, making success even more elusive. Two lengthy term papers had to be redone; they were blank because he had forgotten to put a ribbon in the typewriter. His final semester was made especially difficult by the necessity of taking two extra courses in order to qualify for graduation.

But he made it. Having appeared on every term's honors list, he was graduated cum laude, in the upper 10 percent of his class at St. John's, in the spring of 1950. He was the first deaf-blind man ever to get a B.A.

Bob immediately made plans to go one step further. He enrolled at New York University that fall for a master's degree in rehabilitation in order to prepare for a career of helping blind and other disabled persons. Once again, it was a first: no other deaf-blind person, male or female, had ever received an M.A. His comment about receiving the diploma is characteristic: "It pleased me, of course, to know that I was the first deaf-blind person ever to progress so far academically; and it satisfied me even more to realize that now that the way to higher education had been demonstrated, others like me would follow my path and undoubtedly go even further."

The Industrial Home for the Blind immediately hired him as a public relations specialist. His job was to crisscross the country delivering lectures to business groups, civic associations, and organizations of professional workers in rehabilitation about deaf-blindness and the Home's programs. His preparation for this assignment was typically thorough. For fifteen years after losing his hearing in both ears, Bob had worked constantly to maintain his speech. Now he trained in-

In this  
all  
true?  
Absolutely  
incredible!



tensively under the direction of a professional singer who was also blind, John di Francesco. Bob considered it the most thorough immersion in speech instruction he had ever experienced. But he was soon to learn that there was more to the fine art of speechmaking.

Bob's first attempt at the effort revealed one unforeseen problem. Johnny Spainer, still his aide, tried to explain it as gently as he could. "Bob, you turned a little too much to the right. You kept moving gradually toward your right—just a little at a time. When you finished you were completely turned away from your audience." Simple adjustments, such as use of a podium or table with which Bob could orient himself, were made. Johnny would sit beside him, using a system of hand signals to indicate that Bob should raise or lower his voice and to cue him on the time left before he had to conclude his talk.

Bob learned almost as much from these lectures as did his audiences. He was constantly amazed by how little the general public knew about blindness and deafness. The same questions would come up again and again. Can blind people really work and support themselves? How do they read? Can deaf people learn to talk? These kinds of inquiries redoubled his determination to speak to as many audiences as possible. He once estimated that in a typical year he delivered 250 speeches to 112,000 people.

Gradually, he began to become involved in other activities as well. He served as a consultant to the World Council for the Welfare of the Blind, a United Nations-associated organization, to establish an international system of communication for deaf-blind individuals. For four years, from 1957 to 1960, he conducted research on new approaches to rehabilitation of deaf-blind persons. By 1962, Bob's experience was sufficiently broad to merit his promotion to associate director of the Home, in charge of its deaf-blind department. During these years, he continued his public speaking, now appearing before

as many as a quarter of a million people each year.

He was selected as Handicapped American of the Year for 1965. At the ceremony, held April 28, 1966, Hubert Humphrey presented the award on behalf of President Johnson. That same year, the Taplinger Publishing Company printed his volume of poetry, *City of the Heart*. Stories about his work appeared in the *New York Times*, the *New York Daily News*, and the *Washington Post*.

Even while celebrating his successes, Bob continued to drive for greater personal independence. One of his proudest accomplishments was moving from the residential facility he had lived in for many years to his own apartment. As he later recalled, "A home meant many things for me: a measure of personal independence in not being bound to the regulated life I had hitherto known; the reassurance that I could make my own decisions without criticism from others. But perhaps more than any other reason, it offered a new challenge to my ingenuity and resourcefulness. Would I be able to maintain a home and resolve all the problems it might entail because of my disabilities? Would I be able to solve the usual problems of domestic housekeeping—cooking, cleaning, buying supplies for an apartment—and act as a host when friends came to visit?"

The apartment was on the eleventh of twelve floors. For the first few days, he found himself getting off on the wrong floors. Cooking was a major problem because he had never before prepared meals for himself. But these and countless other problems were solved, one by one, with ingenuity and help from his colleagues and friends from the Home. A continuing problem was locating items; he had to remember where he had placed each one or spend lengthy periods searching the entire apartment.

So that he could be alerted to the ringing of the doorbell, he asked a friend to attach the bell to an electric fan, which would generate a slight breeze he would feel. This worked only if he was sitting or standing near the fan. He soon learned

learned to cook!  
completely self sufficient citizen

to make arrangements with friends to time their visits and to leave the door unlocked at those times. Gradually, he solved these and many other daily problems. The feeling of privacy, relaxation, and independence was, he remembers, worth every agonized moment he had to endure along the way to self-sufficiency.

Yet with this new excitement at being able to live by himself came another, less welcome, companion: a deeper sense of loneliness. "Loneliness is a hunger for increasing human companionship, a need to be part of the activity that I know is constantly going on about me," he has written in his autobiography, *Life at My Fingertips*. "To share moments of joy with someone else, to have others sympathize with my failures, appreciate my accomplishments, understand my moods and value my intelligence—these are the essential conditions that are needed for happiness."

Partly to relieve his anxieties, he threw himself into the activities of the Industrial Home for the Blind with greater vigor. As associate director in charge of services for deaf-blind clients, he found that he constantly had to think beyond his own needs and desires. He planned numerous events, including Christmas-Hanukkah parties and Helen Keller dinners, at the Home for the eighty deaf-blind clients in his department. One evening each week, he organized recreational programs and games for the clients. From time to time, he helped them shop, visit the doctor, and solve domestic problems. He even made tools and other equipment for his clients in the Home's workshops.

The 1963 epidemic of German measles, or rubella, resulted in thousands of deaf and deaf-blind infants, many with other physical and mental disabilities. Bob knew that these children would soon need services at centers like the Home—and that their numbers would greatly exceed the Home's capacity. He began to insist, first at professional meetings and later on the lecture circuit, that a new center would soon be needed to meet the needs of these people. In 1967, he testified, along

with Dr. Peter Salmon of the Home, before Congress on behalf of a new national center for deaf-blind persons. A few months later, the National Center for Deaf-Blind Youths and Adults was established by law.

The center began operation in 1969 in a converted, cramped warehouse in New Hyde Park on Long Island, New York. Capacity was limited to eighteen persons; a staff of twenty was hired. It was not until 1973 that construction of a new campus was completed, the number of trainees was increased, and the present staff complement was obtained. Five years later, by act of Congress, the center was renamed the Helen Keller National Center for Deaf-Blind Youths and Adults.

By this time, Bob was director of community relations of the center. His work included public speaking, radio and television appearances, presentations at professional conferences, and preparation of brochures and other written material on the center and its programs. He appeared on the NBC *Today* show, on *The Ed Sullivan Show*, and on numerous other nationally broadcast programs. And his public speaking engagements took him to forty-five states.

And then something new and very different happened to Bob Smithdas. As he recounted it to me, the beginning was modest enough. "In 1971, I received a letter from a young woman in Golden, Colorado, asking about services of the center. She had just lost her sight due to a snowmobile accident during her senior year at Gallaudet College, the national college for deaf people. Despite her blindness, she had learned Braille quickly and continued courses at local colleges in Denver. Her name was Michelle Craig."

Bob responded to her immediately. "It was obvious to me after reading her letter that she needed encouragement. I suggested that the center could be of assistance to her by providing training. An exchange of letters followed, and finally a date was set for her admission. By an odd fluke of circumstance, on the day that Michelle arrived at the center, I was walking

in the hall when I was stopped by one of our counselors and introduced to Michelle, who had just come into the building.

"It is difficult to explain the sudden, overwhelming interest I felt in this young woman as soon as I met her—at the time, I thought it was merely a wave of sympathy, perhaps compassion. She had extremely poor balance, seemed so unsure of herself, yet had a vivacious, outgoing spirit that captivated me. From the first day, we seemed to gravitate to each other, spending lunch periods and coffee breaks together."

I myself had met Michelle at Gallaudet, before she lost her sight. We met again at New York University in 1973, when she attempted to pursue a master's degree at the Washington Square campus. Despite the university's attempts to provide her with the kinds of assistance she needed, it was apparent to her and to her counselors that she needed more training in independent living and adjustment to deaf-blindness before she could cope with the stresses of the city and the university.

I told Bob that Michelle had impressed me, too, with her remarkable openness and curiosity. "I guess she was vulnerable, Bob."

He agreed, but said that he had sensed much, much more in her. "Marriage never entered my mind in the beginning. In fact, I had always said that I would never marry a deaf-blind woman! But as time passed, the relationship between Michelle and myself grew deeper and more intense. Gradually we realized that we needed each other and finally we began planning for our marriage."

The reaction to news of the pending wedding caused precisely the opposite reaction among his peers from that Bob had encountered a quarter of a century earlier with Betty. Then, he had resisted countless pleas to go ahead with marriage. But now, he told me, "When we announced that we planned to marry, it caused consternation at the center. Other directors rushed to tell me that I might be making a mistake. Even Dr. Salmon, who had been my mentor for years, seemed concerned."

But this was a different Smithdas. No longer fearful of inadequacy, he now had no doubts about his ability to be a good husband and to provide for a wife. He was also steadfast in his conviction that Michelle was the woman he wanted to marry. "Gradually, Dr. Salmon and the others came to realize it was not a spur-of-the-moment relationship or a passing whim," he recalled. They decided to go ahead with their plans.

On December 13, 1975, precisely at noon, Father Rudy Gawlik, who had been close to Michelle at Gallaudet, celebrated a wedding Mass for Michelle Craig and Robert Smithdas at St. Edward the Confessor Church in Syosset, New York.

Soon, the new couple bought their own home in Port Washington, near the Helen Keller Center. Bob describes it as "a charming house, but like all houses it has had its problems—plumbing and electrical failures and all that. Whenever possible, I do most of the repairs myself, but sometimes there are emergencies that require professional workmen." With a grin, he added: "Friends told me that it was not possible for me to do certain remodeling chores in a house. Despite their misgivings, I papered our kitchen walls and put in a new tile floor in the large downstairs family room. I have been told since that both jobs look professional and friends find it hard to believe that the work was done wholly by myself."

The awards kept coming in. Gallaudet awarded him an honorary doctorate of letters. From the University of Western Michigan, he received an honorary doctorate of humanities. Then, in January, 1980, his alma mater, St. John's University, gave him a doctorate of humane letters. "Because I have such vivid, heartwarming memories of my undergraduate days at St. John's," he told me, "this honor has very special meaning for me."

TODAY, after more than five years of marriage, Bob feels more content and more relaxed than at any time in the past half century. But his pace has barely slackened. In addition to serving on the President's Committee on Employment of the Hand-

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*Disabled*

#### COMEBACK

icapped, he continues to work for the World Council for the Welfare of the Blind of the United Nations, acting as the chairman of its committee on services for the deaf-blind. For three years, he was on the Architectural and Transportation Barriers Compliance Board's advisory committee in Washington, D.C., and he has also served in recent years on other committees, including the council of the National Conference of the Disabled and Disadvantaged.

He has been the guest of the Ministry of Education in Japan and has traveled to Holland and West Germany. In part because of these international activities and in part because of his deep desire to improve services in the United States, Bob participated actively in the International Year of Disabled Persons (1981), sponsored by the United Nations.

The "silent fog" remains as impenetrable as it ever was, but Robert Joseph Smithdas has seen and heard more than most of us can ever know.

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# ROGER MEYERS

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"Getting married is like coming  
out of retardation."

MEMORANDUM TO DAN MCGROARTY

FROM TONY SNOW

SUBJECT SPEECHES

In hopes of making my various comments on speeches intelligible, I've decided to put together this little memo. As always, use your best judgment with the criticisms.

ADA Speech:

Since I have a lot of comments on this one, I will begin with general comments, then go to paragraph-by-paragraph suggestions.

I) GENERAL SUGGESTIONS:

✓ A) Watch the adjectives: "glorious fruit" (third graph); "proud door of opportunity" (same graph); "dramatic renewal" (first full graph on page 2), etc. either are inappropriate or excessively gushy. If, as we way, the bill represents a beginning, we cannot treat enactment as if it ended the civil rights war to end all wars.

✓ B) Avoid vicarious-sounding verbs: We have the president referring to all the things he has (or we have) seen, heard, read. This gives the impression that POTUS, like Chance the Gardner, likes to watch -- not to act. This criticism applies especially to page three, where we try to make a litany of hearing, then of seeing. Let's look for something more active, and something that lends itself to calls for action.

✓ C) Insert broader themes: This is what I discussed with you on the phone. We should fold in a discussion of civility and civil rights -- no one threw riots in order to make this bill into a law; activists relied upon the decency of the American public. We also can segue into a discussion of the life and times of Clarence Thomas.

✓ The second theme is growth: This administration believes that social progress includes economic growth. This is true of our environmental initiatives; it also should apply to ADA.

Now, a few graph-by-graph comments:

A) Page 1:

First graph: The second sentence is almost entirely abstract, and desperately needs concrete details. For instance, what physical characteristics signal pride, confidence and triumph: smiles, good posture, what? Second, not to be too literal, but do people actually feel triumph as a result of ADA? Finally, what dream was realized? We shouldn't leave these hanging. The first two graphs might be rewritten along these lines (please please please don't use the language; it's designed to give an idea what I'm talking about:

One year ago today I stood over there on the South Lawn. I'll never forget the sight. Thousands of people from across the nation made their way to Washington and the White House. They came because they worked long and hard to enact the Americans with Disabilities Act, one of the most comprehensive Civil Rights Bills in our history.

The bill offers testimony to the greatness of the American people, both in their devotion to working together to achieve common aims, and their determination to extend the blessings of freedom and opportunity to everyone.

The ADA incorporates a simple principle: That we should throw open the doors of opportunity to every man, woman and child in America; that we should ensure that no one suffers discrimination because of a physical disability.

My friends on the South Lawn came to celebrate a great occasion. Yet you could tell from their smiles, their posture, their happy impatience that they didn't regard the signing as the end of a long struggle. Last year marked a beginning.

Over the last year ...

B) Page 2:

First graph: the "dramatic renewal" passage offers an opportunity to throw in the civility and civil rights stuff. We didn't renew our sensitivity to rights and fairness and all -- I presume Americans never forfeited their decency. We began to understand again that the civil rights struggles of the past succeeded because they sought to include everyone in the business of forging new progress -- and sharing the benefits of freedom. ADA was not an us/them proposition; it just expanded the universe of people included in "us."

Second graph: "process of implementation" -- can we get something a little more human? Also, the graph implies that business had absolutely nothing to do with ADA, and that it has shown grace in handling new strictures imposed upon it. That may be true, but we don't want to congratulate business for its response to federal arm-twisting. Besides, the "business community" -- and particularly small businesses -- lobbied very hard on the bill, and helped shape it. The point is, they didn't

respond to the challenge: Like everyone else they helped formulate it. They want to give everyone a chance to make it in the workplace -- and to benefit from the growth of prosperity, not the growth of litigation.

C) Page 3: Here, I think we should spin the bill as a positive expansion of opportunity, rather than as a demolition job against the forces of stolid bigotry.

Sorry I was so windy.

FACT-CHECK COPY  
DUE AT 4PM

(Hinchliffe/Blymire)  
July 22, 1991 5 p.m.  
ADA2.DMG Draft Four

PRESIDENTIAL REMARKS: ADA FIRST ANNIVERSARY  
July 26, 1991 10 a.m.  
Rose Garden

ACKNOWLEDGEMENTS! (Shiree)

One year ago today I stood over there on the South Lawn. I'll never forget the sight. Thousands of people from across this country had come to celebrate their victory -- the signing of the Americans with Disabilities Act, one of the most comprehensive Civil Rights bills in history.

There was something remarkable mixed in with the pride of that day -- a feeling of eager impatience. Everyone knew it wasn't the end of a long struggle. That day marked a beginning.

Some of you here today joined me on the South Lawn a year ago. We've made tremendous advances since that ceremony. We've introduced changes that have transformed people's worlds. The ADA has also helped us -- all of us -- to understand a little bit more about ourselves. It reminds us that along with the privilege of being an American comes a duty -- to recognize and defend the rights of every American.

This bill does more than make the American dream of equality a reality for 43 million Americans. It offers fresh testimony to our nation's greatness. It demonstrates how we can advance the cause of civil rights. It shows what can happen when we work together -- depending not upon lawsuits or demonstrations or demands, but upon the decency of the American people.

The quest for civil rights is not a zero-sum game. It shouldn't mean advancing some at the expense of others. It

Based on  
government  
figures during  
search for  
ADA leg.

should mean opening the doors of opportunity because it's the right thing to do. It should invite everyone's participation and support.

The ADA works because it calls upon the best in the American people -- and Americans respond. This spirit of shared purpose made possible many great civil rights victories in the 1960s -- and now, with ADA, in the '90s.

The ADA works because it embodies what must be at the heart of all civil rights struggles -- the spirit of inclusiveness.

Whether we're talking about people whose horizons have been unfairly limited because of race or creed or sex or disability -- the civil rights debate reminds us of something essential. America is the land of opportunity -- always has been. Our Constitution and our courts pledge equal protection under the law -- and we can guarantee opportunity in our own daily deeds.

America must be a country where the sons and daughters of poverty have the same grasp on the American dream as the children of privilege. America must be a land where a child can overcome any obstacle and fulfill all potential.

We see this promise fulfilled by the man I presented to this nation four weeks ago. We can be proud to live in a country whose highest court will include a man who understands the importance of basic American values -- industry, tolerance, decency. I'm speaking, of course, of my nominee for the U.S. Supreme Court -- Clarence Thomas.

Judge Thomas' life speaks of the same principle that

Justin  
202-488-7684

inspires all civil rights bills -- that we must throw open the doors of opportunity to everyone.

This spirit should guide us as we pursue all Civil Rights legislation -- for our greatest strength lies in our ability to work together and honor the shared values we treasure.

We have worked together this last year. And in so doing, we have begun to realize just how much we need what you of the disabled community have to offer. For social progress includes economic growth -- they are unmistakably linked parts of our American dream. Businesses support the ADA because it gives everyone a chance to be productive in the workplace -- so we can all benefit.

The ADA helps us broaden the economic mainstream. It enables society to benefit from men and women who want only one thing -- a fair chance.

There are many triumphs of this bill. But while we have made a strong start, we have more to do. As long as the doors of opportunity are closed to even one American -- we must not rest.

The passage of the ADA, the world's first declaration of independence for people with disabilities, made this country the international leader on this human rights issue.

Now the world is watching to see how we use this Act -- how we remove the physical barriers we've created and the social barriers we've accepted. Our success or failure in keeping the promise of ADA will affect the lives of hundreds of millions of people with disabilities -- not just here in the United States

equality  
last yr.'s remarks.

ok  
Sandy P.  
John L.  
other countries  
have at least gone  
this far.  
Cut it.

but throughout the world -- for generations to come.

Yes, our challenges remain great -- but our will is even greater. In America -- the most generous, optimistic nation on the face of the earth -- we will not rest until every man and woman with a dream has a fair chance to achieve it.

Thank you for your work, your devotion, and your faith -- in the past and in the days yet to come. God bless you all.

# # # # #

FILE  
AMERICAN  
DISABILITIES  
ACT

*Since*

THE WHITE HOUSE

WASHINGTON

June 19, 1989

MEMORANDUM FOR ATTORNEY GENERAL THORNBURGH  
SECRETARY SKINNER  
DEPUTY SECRETARY DeARMENT  
GOVERNOR SUNUNU  
DIRECTOR DARMAN  
DAVID Q. BATES  
DAVID DEMAREST  
C. BOYDEN GRAY  
FRED McCLURE  
ROGER PORTER  
BILL ROPER  
DICK SCHMALENSSEE  
DIANE WEINSTEIN  
JANET HALE

FROM: KEN YALE

SUBJECT: Americans with Disabilities Act (S. 933)

Attached are materials to be discussed at a 1 p.m. meeting in the Roosevelt Room, Tuesday, June 20, 1989. Please come prepared to review the general framework for Administration disability policy, and to provide input on the Attorney General's testimony before the Senate Labor and Human Resources Committee.

The attachments include: (1) an options paper with alternatives for Administration policy on disabilities legislation; and (2) draft testimony prepared for the Attorney General's presentation.

Attachments

June 20, 1989

MEMORANDUM FOR THE ATTORNEY GENERAL  
THE SECRETARY OF LABOR  
THE SECRETARY OF TRANSPORTATION  
THE DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET  
CHIEF OF STAFF SUNUNU  
THE CHAIRMAN, COUNCIL OF ECONOMIC ADVISORS

FROM: THE DISABILITIES WORKING GROUP

SUBJECT: Administration's Position on the  
Americans with Disabilities Act

#### THE ADMINISTRATION'S POSITION

Staff at the DPC and OMB have consulted with Executive Branch agencies and sought their comments on the Harkin bill. There appears to be an Administration-wide consensus that legislation in the disability area is both inevitable and desirable. The agencies also recognize, however, the substantial costs that the Harkin bill would engender, the bill's ambiguous and overly ambitious legal standards of what constitutes discrimination, and the bill's imposition of substantial burdens on small businesses.

After consideration of a wide range of options for legislation by the Cabinet agencies, a consensus is also developing on an approach to comprehensive civil rights legislation for the disabled. There is agreement that the Administration should endorse a course of action somewhat more modest than that followed by the ADA within its present form. Rather than striking out in new directions with new language as the ADA presently sometimes does, the Administration would in general favor modifying the bill so it is directed at extending existing civil rights law in the disability area to activities and classes of entities covered by the 1964 Civil Rights Act. Such an approach would seek to apply established and generally well understood standards and enforcement measures to newly covered activities and entities. This approach would essentially require that private employers and others not intentionally discriminate and that they make "reasonable accommodations" for the disabled except where to do so would be an "undue burden." Of course, such an approach would require that the scope of the accommodations required and the protections provided be tailored to reflect the differing circumstances inherent in prohibiting discrimination on the basis of disability. It will also be

important to make clear in the statute that substantial expenditures or restructuring by private entities is not required. Consideration should be given to tax benefits for any expenditures that are required, and for affirmative efforts to educate the private sector on their new responsibilities.

There are substantial advantages to this approach. It fully meets the President's commitment to protecting in comprehensive fashion the rights of this country's disabled persons. It does so, moreover, in a fashion that is fair, prudent, and balanced: it brings persons with disabilities into the mainstream of American life while, at the same time, keeping the American economic system strong and viable. It is less costly than the current ADA approach, but it also ends the anomaly of widely protecting women and minorities from discrimination while failing to provide parallel protection for persons with disabilities. Finally, it draws heavily on the existing array of civil rights laws prohibiting discrimination on the basis of race, color, national origin, and sex.

Some in Congress and in the disability rights community may criticize this approach because it is not as generous and far-reaching as the current version of the ADA and because it does not exactly parallel existing coverage for minorities and women. This approach does, however, significantly expand the rights of persons with disabilities and the obligations of private employers and places of public accommodation. In light of the uncertain but potentially erroneous costs that overbroad legislation would place on the private sector, the federal government's initial foray into this area should be subject to well-defined limits. Thus, an incremental approach to this broad legislation is necessary to ensure the very success of the bill.

#### ISSUES

The following section of this memorandum discusses how this approach applies to the major issues raised by the ADA in its present form.

#### Issue #1: What new coverage of public accommodations should be required?

- A. Define places of public accommodation as they are in Title II of the Civil Rights Act of 1964.
- ° Places of lodging, eating, entertainment, and other clearly public service establishments (e.g., gas stations) would be covered.
  - ° The unprecedented, overbroad coverage of the ADA would be avoided (85% of the small businesses qualifying as

public accommodations under the ADA approach would be exempted).

- Would avoid First Amendment problems created by the ADA because title II does not apply to religious institutions.
- B. Include a small establishment exemption based on the number of employees using a phased-in approach: places of public accommodations with 50 or more employees would be covered two years from the date of enactment; places of public accommodations with 25 or more employees would be covered four years from date of enactment.
- Would place the cost of making accommodations on larger establishments that can more easily bear increased costs; coverage can be expanded to cover smaller establishments once experience of this legislation can be evaluated.
  - Substantial coverage would still result: if 25 or more employees is the threshold, 86,000 firms (20% of the firms covered by title II) would be covered; if 50 or more employees is the threshold, 30,000 firms (7% of the firms covered by title II) would be covered.
- C. Limit the scope of the accommodations required: e.g., require that restaurants be wheelchair accessible, but do not require the provision of such auxiliary aids as sign language interpreters and Brailled materials.
- Burden on private sector would be lessened greatly because of the high cost of auxiliary aids (this limitation would, however, likely be resented by persons with visual and hearing impairments and their advocates).

Issue #2: In the employment area, which employers should be covered, and under what standard?

- A. Raise the threshold of covered employers from those with 15 or more employees (the ADA approach) to those with 50 or more employees two years from the date of enactment and to those with 25 employees four years from the date of enactment.
- Would place cost on larger establishments that are most likely to be able to absorb increased costs; again, legislation can be expanded later if appropriate.

- Significant coverage of the workforce will still result. 72% of the workforce will be covered with the 50+ standard; 80% with the 25+ standard.
- B. Require that employers make "reasonable accommodations" for disabled persons unless an "undue hardship" results.
- This approach can draw on established legal precedents and avoid the uncertainties of an entirely new set of standards.
  - Would minimize inconsistencies with existing law.
- C. Clarify that employee insurance plans sponsored by employers are not affected by this legislation.
- CEA estimates that the potential costs of providing employee group insurance coverage for pre-existing disabling conditions for newly employed disabled workers is between .3 and 1.5 billion dollars (assuming that approximately 1.7 million new disabled workers will be able to obtain work as a result of this legislation).
  - Would help ensure support of business community for the bill.
  - Would minimize unfair impact on nondisabled employees, who would suffer if employers decided to terminate health plans in light of ADA.

Issue #3: What should be the extent of coverage of state and local governments?

- A. Extend coverage to all state and local governments, whether or not they receive federal funds, and include existing limitations on the obligation not to discriminate -- i.e., governments would not have to make accommodations that resulted in "undue financial and administrative burdens" nor take actions that "fundamentally altered" their programs.
- Parallel coverage would eliminate confusion and conflict with other state and local agencies covered by Section 504.
  - Would ensure smooth implementation and compliance.
- B. Consider inclusion of an exemption for small municipal governments.

- Would limit federal intrusion into local matters and be consistent with the goals of the Regulatory Flexibility Act.
- Would limit costs to larger governmental entities better able to shoulder them.

Issue #4: What remedies should be provided for violation of the Act?

Provide remedies and enforcement procedures for each title of the law that parallel the remedies and procedures in existing civil rights laws, including the availability of attorney fees -- i.e., use Title II enforcement remedies for public accommodations, Title VII procedures for employment, and Section 504 procedures for state and local governments, including the provision of public transportation.

- Would provide disabled persons a full array of remedies for violations of the act.
- Use of enforcement mechanisms already in existence in other statutes should ease enforcement and eliminate inconsistencies and confusion.
- Would employ preventive relief and restitution for out-of-pocket expenses and backpay, which are forms of relief long recognized as important in civil rights actions.
- Would allow continued use of existing federal enforcement coordination mechanisms, particularly those of the EEOC and the Department of Justice.
- Use of Section 504 administrative procedures and elimination of 42 U.S.C. 1981 coverage (which would entail jury trials and punitive damages) will minimize litigation.

Issue #5: What coverage should there be of alcoholics and drug abusers?

Make clear that the definition of "handicap" does not include use or addiction to illegal drugs, or those who have been convicted of drug trafficking, regardless of their current ability to meet job requirements; those who use or are addicted to legal drugs will be subject to the current Section 504 standard, i.e., covered only if their current use does not prevent them from meeting job qualifications or cause a direct threat to property or the safety of other.

- Expresses policy consistent with drug-free workplace requirements and Administration policy on illegal drugs.
- Appropriately distinguishes between legal and illegal drug use.

Issue #6: What provisions should be adopted to ensure mobility and access to mass transportation systems for individual with disabilities?

Two options for accessible mass transportation are discussed in a separate memorandum.

Issue #7: What requirements should be imposed with respect to telecommunications relay services?

- A. Give the Federal Communications Commission the maximum degree of freedom to use its expertise in determining which specific requirements will result in the most efficient and cost-effective system.
  - Recently passed Telecommunications Accessibility Enhancement Act requires FCC to complete an inquiry regarding an interstate TDD relay system; new legislation should await the results of FCC's efforts.
  - Several states already provide relay services; FCC should have time to analyze these efforts and make recommendations.
- B. Consider establishment of a national network to provide telecommunications services at the national level. FCC would designate an entity responsible for the design and management of the network, likely to include 10 relay stations and an "800" access number.
  - Could be basis for an incremental approach that might be supplemented or expanded after FCC has completed its study.
  - Costs of network could be funded through surcharge on all telecommunication users.
  - Would cost \$15 million to establish and \$150 million to operate annually.
- C. Allow common carriers flexibility to offer telecommunications relay services at prices that will recover a portion of the incremental cost, the remaining incremental cost to be covered by increases in basic monthly charges.

BACKGROUND

President Bush has consistently supported efforts to include persons with disabilities in the "mainstream" of American society. In a statement made on March 31, 1988, then Vice President Bush stated:

We must develop programs and policies that promote independence, freedom of choice and productive involvement in the social and economic mainstream. This does not merely mean employment. It also means access to the mainstream educational system, to public accommodations, to public transportation -- in other words, meaningful access to all aspects of society.

In his acceptance speech at the Republican National Convention, and in his remarks to the Joint Session of Congress this year, the President reiterated his commitment to measures to assure equal opportunity, independence, and social integration for persons with disabilities.

Surprisingly, except in the housing industry, current federal law does not provide disabled persons with broad protection against discrimination by purely private citizens, let alone go beyond that protection to require the frequently minimal accommodations that would allow persons with disabilities to participate in the mainstream of American society. To date, legislation protecting the rights of disabled persons has instead fallen into two broad categories: federal law prohibiting discrimination by the federal government and by recipients of federal money, and a variety of state laws providing different levels of protection in different categories of private activity.

The two existing bodies of federal law most relevant in this area are Section 504 of the Rehabilitation Act of 1973 and the Civil Rights Act of 1964. Section 504 forbids the federal government and those entities that receive federal financial assistance from discrimination in employment and in the provision of services on the basis of disability, and requires employers to make "reasonable accommodation" for those with disabilities unless to do so would cause an "undue hardship" on the employer or "undue burdens" on the entity's program. The Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, national origin, sex, and religion by private employers (Title VII) and on the basis of race, color, national origin, and religion by places of public accommodations (Title II).

DEVELOPMENT OF THE AMERICANS WITH DISABILITIES ACT

The concept of comprehensive civil rights legislation to remedy the gaps of coverage in the disability rights area has been championed for several years by the National Council on Disability (previously called the "National Council on the Handicapped"). The National Council is an independent federal agency with 15 members appointed by the President. In February 1986, the National Council issued a report to the President and the Congress and recommended enactment of a comprehensive law requiring equal opportunity for individuals with disabilities. The Council drafted proposed legislation, and last year Senators Kennedy and Weicker introduced the bill. Although hearings were held on the bill, no formal action was taken by the last Congress.

The report of President Reagan's AIDS Commission, which was chaired by now-Secretary of Energy Watkins, provided an additional impetus to the enactment of comprehensive federal antidiscrimination legislation. One of the major recommendations of the Commission was the passage of legislation "which prohibits discrimination against persons with disabilities in the public and private sectors, including employment, housing, public accommodations, and participation in government programs."

Action by the Congress this year has centered on the "Americans with Disabilities Act," or ADA, a bill introduced this year by Sen. Harkin with the bipartisan support of 33 cosponsors in the Senate, and by Rep. Coelho and a bipartisan group of 83 cosponsors in the House. This bill is a revamped and somewhat more limited version of the bill first drafted by the National Council and introduced last year by Senators Kennedy and Harkin. The bill aims at ensuring equal opportunity for persons with disabilities in employment, public accommodations, mass transportation, and telecommunications.

In employment, the bill seeks to parallel the nondiscrimination provisions of Title VII of the Civil Rights Act of 1964. It covers all employers with 15 or more employees and requires that employers affirmatively make "reasonable accommodations" for persons with disabilities unless such accommodations would result in "undue hardship" for the employer's business. Reasonable accommodations include making facilities accessible, restructuring jobs, modifying work schedules, modifying equipment, and providing readers for interpreters.

In public accommodations, the bill prohibits discrimination in any place of public accommodation (e.g., restaurants, hotels) and defines the term "place of public accommodation" much more expansively than the definition in Title II (for example, doctor's offices, shopping malls, and office buildings are included). The bill contains a number of "defenses" to making accommodations accessible; for example, auxiliary aids like

readers and interpreters would not be required where their use would result in "undue burden" on the business and architectural barriers would not have to be eliminated unless their removal was "readily achievable."

The bill would provide specific requirements for making mass transportation accessible. It requires that all new buses and train cars be accessible, that one car per train be accessible within five years, that paratransit services be made available where bus service is offered, that key rail stations be made accessible within three years (with extension by DOT of up to 20 years), and that all intercity rail stations be accessible.

The bill also requires the establishment of a telecommunications relay service. This service would be offered by all common carriers of telephone services and would enable simultaneous communication to take place between individuals who use TDD's (telecommunication devices for persons who are deaf) and individuals who use standard telephones. The cost for this service would be borne by all telephone users.

Congressional support for the ADA is widespread and bipartisan. However, considerable concern has been expressed about the costs, broad scope, and many technical problems in the bill. Concerns about the ADA include the following:

- It contains novel and potentially burdensome requirements that depart substantially from the standards and scope of coverage of existing civil rights and disability law, and imposes inconsistent requirements on State and local governments and others.
- It sets forth ambiguous, internally inconsistent, and overlapping legal standards of what constitutes discrimination.
- It undermines existing federal drug-free workplace initiatives by including all drug and alcohol abusers as protected handicapped individuals.
- It would impose transportation accommodation requirements estimated to cost private sector providers and State and local governments up to a billion dollars a year.
- It would impose substantial burdens and costs on small businesses, which would be required to make the same accommodations as larger, more financially capable entities.

- ° It would cause the federal government to encroach upon the independence of religious institutions, since they are not expressly exempted from the bill's coverage.
- ° It would have a potentially enormous impact on the provision of private employee health care and other insurance benefit plans.
- ° It overemphasizes litigation seeking extraordinary remedies as a central means of achieving results, rather than encouraging cooperation and voluntary compliance.

Many in the House and Senate who are not cosponsors of the Harkin bill, Republicans and Democrats alike, are looking to the White House for leadership in the development of a sensible, fair bill that will provide comprehensive protections for persons with disabilities.

#### CONCLUSION

The Administration needs a position that can be articulated simply and coherently at the congressional hearing on June 22. If we fail to do this, we lose the opportunity to be credible players in shaping this landmark legislation for disabled persons. The approach outlined above provides a solid basis for the Administration's position. It is fair, sensible, and comprehensive. It is consistent with the President's statements on the subject and envisions a federal disability policy in the civil rights area that contributes to the independence of all persons with disabilities, gives them the opportunity to participate in the mainstream of American life, and reinforces their dignity as citizens.

**PUBLIC ACCOMMODATIONS AND THE ADA**  
**(S. 933, as passed by the Senate, Sept. 8, 1989)**

**I. Coverage**

The Americans with Disabilities Act regards the following privately operated entities as public accommodations if their operations affect interstate commerce--

- ° An inn, hotel, motel, or similar place of lodging, except for an establishment in a building containing not more than five rooms for rent that is actually occupied by the proprietor of such establishment as his or her residence.
- ° A restaurant, bar, or other establishment serving food or drink.
- ° A motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment.
- ° An auditorium, convention center, or lecture hall.
- ° A bakery, grocery store, clothing store, hardware store, shopping center, or other similar retail sales or rental establishment.
- ° A laundromat, dry-cleaners, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other similar service establishment.
- ° A terminal used for public transportation.
- ° A museum, library, gallery, and other similar place of public display or collection.
- ° A park or zoo.
- ° A nursery, elementary, secondary, undergraduate, or postgraduate private school.
- ° A day care center, senior citizen center, homeless shelter, food bank, adoption program, or other similar social service center.
- ° A gymnasium, health spa, bowling alley, golf course, or other similar place of exercise or recreation.

The ADA, however, does not apply to--

- ° Private clubs or establishments exempted from coverage under title II of the Civil Rights Act of 1964.

- ° Religious organizations or entities controlled by religious organizations, including places of worship.

- ° Facilities covered or expressly exempted from coverage under the Fair Housing Act of 1968. In other words, the ADA does not apply to residential dwellings, including, for example, the residential wing of a hotel otherwise covered by the ADA.

## II. Requirements

The ADA--

- ° Prohibits discrimination against individuals with disabilities in places of public accommodation.

- ° Requires reasonable modifications in policies, practices, and procedures when necessary to ensure nondiscrimination, unless they would result in a fundamental alteration in the privileges, advantages, or accommodations being offered.

- ° Mandates the provision of auxiliary aids and services, unless it would result in a fundamental alteration in the nature of the goods, services, or accommodations being offered or in an undue burden.

- ° Compels the removal from existing facilities of architectural and communication barriers that are structural in nature, if such removal is readily achievable (if not, mandates provision of services through alternative methods if they are readily achievable).

- ° Requires that, when alterations are made to existing facilities, the altered portions must be made accessible to the maximum extent feasible, and that, when major structural alterations are made, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving that area must be made accessible to the maximum extent feasible.

- ° Mandates that all new construction in public accommodations and, in addition, "potential places of employment" (nonresidential facilities affecting commerce) be accessible.

- ° Requires installation of elevators in newly constructed multistory buildings. In existing multistory buildings, requires installation of elevators in connection with major structural alterations or when alterations are made in the means of vertical access. However, elevators are generally not required in a

building of fewer than three stories or fewer than 3,000 square feet per floor, unless the building is a shopping center, mall, or a professional office of a health care provider.

° Generally requires entities not principally engaged in providing transportation to at least provide equivalent service, when viewed in its entirety, to individuals with disabilities. In certain circumstances, all new vehicles capable of carrying more than 16 passengers, other than over-the-road buses, purchased or leased by such entities, must be accessible.

### **III. Remedies**

The ADA--

° Provides, in private suits, the remedies available under title II of the Civil Rights Act of 1964, i.e., injunctive relief, but no compensatory or punitive damages.

° Authorizes suits by the Attorney General (pattern or practice cases or cases of general public importance) in which injunctive relief, monetary damages, and civil penalties may be obtained. Monetary damages may only be awarded when requested by the Attorney General. Civil penalties may not exceed \$50,000 for a first violation and \$100,000 for any subsequent violation.



# National Council on the Handicapped

800 Independence Avenue, S.W.

Suite 814

Washington, DC 20591

202-453-3846

An Independent Federal Agency

June 12, 1989

To: Shiree Sanchez  
From: Sandra Swift Parrino, Chairperson  
Subject: Endorsements By President George Bush

The following is a list of the occasions in which President Bush specifically endorsed equal rights legislation for persons with disabilities and the occasions in which he supported persons with disabilities in general.

## I. Support of Equal Rights Legislation By President Bush

In 1985, the Reagan/Bush White House received a copy of the National Council's **NATIONAL POLICY FOR PERSONS WITH DISABILITIES** (See Attachment A). In the policy statement, the Council states that "Congress should act forthwith to include persons with disabilities in the Civil Rights Act of 1964 and other civil and voting rights legislation and regulations." As you may know the National Council is an independent Federal agency comprised of 15 members appointed by the President and confirmed by the Senate.

In February 1986, President Bush officially accepted the National Council's report **TOWARD INDEPENDENCE** (See Attachment B). Present at that meeting were the Vice President, Jeremiah Milbank, Justin Dart, Boyden Gray and myself. **TOWARD INDEPENDENCE** was the report that Congress asked the Council to prepare. The principal priority in the report was called the Equal Opportunity Laws. ADA...

During the years 1984-1988, the National Council authored a bill called the Americans With Disabilities Act of 1988 (See Attachment C-Original and copy of Act introduced). The Council wrote this piece of legislation because no one in Congress had done so as recommended in **TOWARD INDEPENDENCE**.

As you can see from the attached copy (Attachment D) of the Congressional Record dated April 28, 1988, the Council was applauded for taking the initiative to develop the Americans With Disabilities Act (ADA).

At the White House swearing in of the Executive Director of the National Council on August of 1988, the Vice President announced his support for the Americans With Disabilities Act (ADA) saying, "Disabled people do not have the same civil rights protection as women and minorities. However, an enactment of the Americans With Disabilities Act of 1988 (ADA)-legislation developed by the National Council on Disability (formerly the National Council on the Handicapped) or similar legislation would remedy this situation." (See Attachment E-Press Release)

In September 1988, I presented testimony on behalf of the National Council at the first hearing on ADA. (See Attachment F)

At the Joint Session of Congress, February 9, 1989, President Bush again endorsed the concepts of equal rights legislation as embodied in the Americans With Disabilities Act. He stated the following in his speech, Building A Better America, "I share your goal of integrating disabled Americans fully and equally into the mainstream of America. We are working to increase the economic and personal independence of disabled Americans." (See Attachment G)

## II. Support By President Bush for Disability Issues In General

President Bush is personally aware of the importance of special education programs, and included in the Republican Platform is a commitment to protect the rights established under the Education for All Handicapped Children Act which mandates a free, appropriate public education for all handicapped children. (See Attachment H)

On July 29, 1988, Vice President Bush announced a program to enable children with serious disabilities to receive additional benefits for home care. (See Attachment I)

Worth sharing are excerpts from the Vice President's acceptance speech from the Republican National Convention. "I am going to do whatever it takes to make sure the disabled are included in the mainstream. For too long they've been left out. But they're not going to be left out anymore."

On March 1, 1988 Vice President Bush sent Philip Bravin, of the Presidential Search Committee of Gallaudet University a letter regarding the selection process for a new President. The Vice President strongly urged that they appoint a president who was not only highly qualified but also deaf.

I have heard the President publicly describe his own son's learning disability and how he and his wife had to cope with it. This is very significant for millions of people with learning disabilities - to have a President talk publicly about it.

Attachments

Attachment - H

# George Bush for President

REPUBLICAN PLATFORM  
August 15, 1988

## AMERICANS WITH DISABILITIES

One measure of our country's greatness is the way it treats its disabled citizens.

Our citizens are the nation's most precious resource. As Republicans, we are committed to ensuring increased opportunities for every individual to reach his or her maximum potential. This commitment includes providing opportunities for individuals with disabilities. The 1980's have been a revolution, a declaration of independence for persons with disabilities, and Republicans have initiated policies which remove barriers so that such persons are more independent.

The most effective way to increase opportunities for such persons is to remove intentional and unintentional barriers to education, employment, housing, transportation, health care, and other basic services. Republicans have played an important role in removing such barriers:

- \* Republicans supported the creation of a new program to provide early intervention services to infants and toddlers with disabilities.
- \* Republicans initiated a supported employment program that allows individuals with severe disabilities to earn competitive wages in integrated work settings, thus, in many instances, creating first-time taxpayers.
- \* Republicans initiated changes in the Social Security Act that now permit individuals with disabilities to work without losing health insurance coverage.
- \* Republicans developed legislation to increase the availability of technology-related assistance for individuals with disabilities, thereby increasing their ability to do things for themselves, others, and their communities.
- \* Republicans have made a sustained commitment to policies that create opportunities for individuals with disabilities to lead productive and creative lives.

THE WHITE HOUSE  
WASHINGTON

August 7, 1989

MEMORANDUM FOR THE MEMBERS OF THE DPC WORKING GROUP ON  
AMERICANS WITH DISABILITIES

FROM: KENNETH P. YALE *KY*  
Special Assistant to the President  
and Executive Secretary

SUBJECT: Final Text of S. 933 Committee Amendment

For your information, I have attached a copy of the Senate Labor Committee's final version of S. 933, the Americans with Disabilities Act, which reflects the bipartisan agreement reached between Senate leaders and the White House.

Copies of this text have been circulated by OMB's Legislative Reference Division for agency comments on the bill and to assist in the development of report language. You may want to contact your agency's LRD liaison to ensure an appropriate response is made to that request.

If you have any additional questions, feel free to contact my office.

Attachment

*final*  
*8/3/89*

Calendar No. \_\_\_\_\_

101ST CONGRESS  
1ST SESSION

# S. 933

[Report No. 101-\_\_\_\_]

## IN THE SENATE OF THE UNITED STATES

MAY 9 (legislative day, JANUARY 3), 1989

Mr. HARKIN (for himself, Mr. KENNEDY, Mr. DURENBERGER, Mr. SIMON, Mr. JEFFORDS, Mr. CRANSTON, Mr. MCCAIN, Mr. MITCHELL, Mr. CHAFEE, Mr. LEAHY, Mr. STEVENS, Mr. INOUE, Mr. COHEN, Mr. GORE, Mr. PACKWOOD, Mr. RIEGLE, Mr. GRAHAM, Mr. PELL, Mr. DODD, Mr. ADAMS, Ms. MIKULSKI, Mr. METZENBAUM, Mr. MATSUNAGA, Mr. WIRTH, Mr. BINGAMAN, Mr. CONRAD, Mr. BURDICK, Mr. LEVIN, Mr. LIEBERMAN, Mr. MOYNIHAN, Mr. KERRY, Mr. SARBANES, Mr. BOSCHWITZ, Mr. HEINZ, Mr. GLENN, Mr. SHELBY, Mr. PRESSLER, Mr. HOLLINGS, Mr. SANFORD, Mr. WILSON, Mr. SASSER, Mr. DIXON, Mr. KERREY, Mr. ROBB, Mr. FOWLER, Mr. ROCKEFELLER, Mr. BIDEN, Mr. BENTSEN, Mr. SPECTER, Mr. DECONCINI, Mr. KOHL, Mr. LAUTENBERG, Mr. D'AMATO, Mr. DOLE, and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

AUGUST \_\_\_\_ (legislative day, \_\_\_\_\_), 1989

Reported by Mr. KENNEDY, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

# A BILL

To establish a clear and comprehensive prohibition of discrimination on the basis of disability.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—*This Act may be cited as the “Americans with Disabilities Act of 1989”.*

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

*Sec. 1. Short title; table of contents.*

*Sec. 2. Findings and purposes.*

*Sec. 3. Definitions.*

**TITLE I—EMPLOYMENT**

*Sec. 101. Definitions.*

*Sec. 102. Discrimination.*

*Sec. 103. Defenses.*

*Sec. 104. Posting notices.*

*Sec. 105. Regulations.*

*Sec. 106. Enforcement.*

*Sec. 107. Effective date.*

**TITLE II—PUBLIC SERVICES**

*Sec. 201. Definition.*

*Sec. 202. Discrimination.*

- Sec. 203. Actions applicable to public transportation provided by public entities considered discriminatory.*  
*Sec. 204. Regulations.*  
*Sec. 205. Enforcement.*  
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**TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES**

- Sec. 301. Definitions.*  
*Sec. 302. Prohibition of discrimination by public accommodations.*  
*Sec. 303. New construction in public accommodations and potential places of employment.*  
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*Sec. 305. Study.*  
*Sec. 306. Regulations.*  
*Sec. 307. Exemption for private clubs and religious organizations.*  
*Sec. 308. Enforcement.*  
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**TITLE IV—TELECOMMUNICATIONS RELAY SERVICES**

- Sec. 401. Telecommunication services for hearing-impaired and speech-impaired individuals.*

**TITLE V—MISCELLANEOUS PROVISIONS**

- Sec. 501. Construction.*  
*Sec. 502. Prohibition against retaliation and coercion.*  
*Sec. 503. State immunity.*  
*Sec. 504. Regulations by the architectural and transportation barriers compliance board.*  
*Sec. 505. Attorney's fees.*  
*Sec. 506. Technical assistance.*

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) **FINDINGS.**—Congress finds that—

3 (1) some 43,000,000 Americans have one or  
 4 more physical or mental disabilities, and this number  
 5 is increasing as the population as a whole is grow-  
 6 ing older;

7 (2) historically, society has tended to isolate  
 8 and segregate individuals with disabilities, and, de-  
 9 spite some improvements, such forms of discrimina-

1        *tion against individuals with disabilities continue to*  
2        *be a serious and pervasive social problem;*

3            *(3) discrimination against individuals with dis-*  
4        *abilities persists in such critical areas as employ-*  
5        *ment, housing, public accommodations, education,*  
6        *transportation, communication, recreation, institu-*  
7        *tionalization, health services, voting, and access to*  
8        *public services;*

9            *(4) unlike individuals who have experienced dis-*  
10        *crimination on the basis of race, sex, national origin,*  
11        *religion, or age, individuals who have experienced*  
12        *discrimination on the basis of disability have often*  
13        *had no legal recourse to redress such discrimina-*  
14        *tion;*

15            *(5) individuals with disabilities continually en-*  
16        *counter various forms of discrimination, including*  
17        *outright intentional exclusion, the discriminatory ef-*  
18        *fects of architectural, transportation, and communi-*  
19        *cation barriers, overprotective rules and policies,*  
20        *failure to make modifications to existing facilities*  
21        *and practices, exclusionary qualification standards*  
22        *and criteria, segregation, and relegation to lesser*  
23        *services, programs, activities, benefits, jobs, or other*  
24        *opportunities;*

1           (6) *census data, national polls, and other stud-*  
2 *ies have documented that people with disabilities, as*  
3 *a group, occupy an inferior status in our society,*  
4 *and are severely disadvantaged socially, vocational-*  
5 *ly, economically, and educationally;*

6           (7) *individuals with disabilities are a discrete*  
7 *and insular minority who have been faced with re-*  
8 *strictions and limitations, subjected to a history of*  
9 *purposeful unequal treatment, and relegated to a po-*  
10 *sition of political powerlessness in our society, based*  
11 *on characteristics that are beyond the control of*  
12 *such individuals and resulting from stereotypic as-*  
13 *sumptions not truly indicative of the individual abili-*  
14 *ty of such individuals to participate in, and contrib-*  
15 *ute to, society;*

16           (8) *the Nation's proper goals regarding individ-*  
17 *uals with disabilities are to assure equality of oppor-*  
18 *tunity, full participation, independent living, and eco-*  
19 *nommic self-sufficiency for such individuals; and*

20           (9) *the continuing existence of unfair and un-*  
21 *necessary discrimination and prejudice denies people*  
22 *with disabilities the opportunity to compete on an*  
23 *equal basis and to pursue those opportunities for*  
24 *which our free society is justifiably famous, and*  
25 *costs the United State billions of dollars in unneces-*

1        *sary expenses resulting from dependency and non-*  
2        *productivity.*

3        (b) *PURPOSE.—It is the purpose of this Act—*

4            (1) *to provide a clear and comprehensive na-*  
5        *tional mandate for the elimination of discrimination*  
6        *against individuals with disabilities;*

7            (2) *to provide clear, strong, consistent, enforce-*  
8        *able standards addressing discrimination against in-*  
9        *dividuals with disabilities;*

10          (3) *to ensure that the Federal Government plays*  
11        *a central role in enforcing the standards established*  
12        *in this Act on behalf of individuals with disabilities;*  
13        *and*

14          (4) *to invoke the sweep of congressional author-*  
15        *ity, including its power to enforce the fourteenth*  
16        *amendment and to regulate commerce, in order to*  
17        *address the major areas of discrimination faced day-*  
18        *to-day by people with disabilities.*

19        **SEC. 3. DEFINITIONS.**

20        *As used in this Act:*

21            (1) **AUXILIARY AIDS AND SERVICES.—***The term*  
22        *“auxiliary aids and services” includes—*

23            (A) *qualified interpreters or other effective*  
24        *methods of making aurally delivered materials*

1           *available to individuals with hearing impair-*  
2           *ments;*

3           *(B) qualified readers, taped texts, or other*  
4           *effective methods of making visually delivered*  
5           *materials available to individuals with visual*  
6           *impairments;*

7           *(C) acquisition or modification of equip-*  
8           *ment or devices; and*

9           *(D) other similar services and actions.*

10          (2) *DISABILITY.—The term “disability” means,*  
11          *with respect to an individual—*

12           *(A) a physical or mental impairment that*  
13           *substantially limits one or more of the major*  
14           *life activities of such individual;*

15           *(B) a record of such an impairment; or*

16           *(C) being regarded as having such an im-*  
17           *pairment.*

18          (3) *STATE.—The term “State” means each of the*  
19          *several States, the District of Columbia, the Com-*  
20          *monwealth of Puerto Rico, Guam, American Samoa,*  
21          *the Virgin Islands, the Canal Zone, the Trust Terri-*  
22          *tory of the Pacific Islands, and the Commonwealth*  
23          *of the Northern Mariana Islands.*

1                                   **TITLE I—EMPLOYMENT**

2    *SEC. 101. DEFINITIONS.*

3           *As used in this title:*

4           (1) *COMMISSION.*—*The term “Commission”*  
5           *means the Equal Employment Opportunity Commis-*  
6           *sion established by section 705 of the Civil Rights*  
7           *Act of 1964 (42 U.S.C. 2000e-4).*

8           (2) *COVERED ENTITY.*—*The term “covered*  
9           *entity” means an employer, employment agency,*  
10           *labor organization, or joint labor-management com-*  
11           *mittee.*

12           (3) *EMPLOYEE.*—*The term “employee” means an*  
13           *individual employed by an employer.*

14           (4) *EMPLOYER.*—

15                   (A) *The term “employer” means a person*  
16                   *engaged in an industry affecting commerce who*  
17                   *has 15 or more employees for each working day*  
18                   *in each of 20 or more calendar weeks in the*  
19                   *current or preceding calendar year, and any*  
20                   *agent of such person, except that, for two years*  
21                   *following the effective date of this title, an em-*  
22                   *ployer means a person engaged in an industry*  
23                   *affecting commerce who has 25 or more em-*  
24                   *ployees for each working day in each of 20 or*

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

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

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

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

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

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

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

1        *reasonable accommodation, can perform the essen-*  
2        *tial functions of the employment position that such*  
3        *individual holds or desires.*

4        (8) *REASONABLE ACCOMMODATION.*—The term  
5        “*reasonable accommodation*” may include—

6                (A) *making existing facilities used by em-*  
7                *ployees readily accessible to and usable by in-*  
8                *dividuals with disabilities; and*

9                (B) *job restructuring, part-time or modified*  
10               *work schedules, reassignment to a vacant posi-*  
11               *tion, acquisition or modification of equipment*  
12               *or devices, appropriate adjustment or modifica-*  
13               *tions of examinations, training materials or*  
14               *policies, the provision of qualified readers or*  
15               *interpreters, and other similar accommodations*  
16               *for individuals with disabilities.*

17        (9) *UNDUE HARDSHIP.*—

18                (A) *IN GENERAL.*—The term “*undue hard-*  
19                *ship*” means an action requiring significant dif-  
20                *ficulty or expense.*

21                (B) *DETERMINATION.*—In determining wheth-  
22                *er an accommodation would impose an undue*  
23                *hardship on a covered entity, factors to be con-*  
24                *sidered include—*

1                   (i) *the overall size of the business of a*  
2                   *covered entity with respect to the number*  
3                   *of employees, number and type of facilities,*  
4                   *and the size of the budget;*

5                   (ii) *the type of operation maintained*  
6                   *by the covered entity, including the compo-*  
7                   *sition and structure of the workforce of*  
8                   *such entity; and*

9                   (iii) *the nature and cost of the accom-*  
10                  *modation needed under this Act.*

11 **SEC. 102. DISCRIMINATION.**

12           (a) **GENERAL RULE.**—*No covered entity shall discrimi-*  
13 *nate against a qualified individual with a disability be-*  
14 *cause of the disability of such individual in regard to job*  
15 *application procedures, the hiring or discharge of employ-*  
16 *ees, employee compensation, advancement, job training,*  
17 *and other terms, conditions, and privileges of employment.*

18           (b) **CONSTRUCTION.**—

19               (1) **IN GENERAL.**—*As used in subsection (a), the*  
20 *term “discrimination” includes—*

21                   (A) *limiting, segregating, or classifying a*  
22 *job applicant or employee in a way that ad-*  
23 *versely affects the opportunities or status of*  
24 *such applicant or employee because of the dis-*  
25 *ability of such applicant or employee;*

1           (B) participating in a contractual or other  
2 arrangement or relationship that has the effect  
3 of subjecting a qualified applicant or employee  
4 with a disability to the discrimination prohibited  
5 by this title (such relationship includes a rela-  
6 tionship with an employment or referral agency,  
7 labor union, an organization providing fringe  
8 benefits to an employee of the covered entity, or  
9 an organization providing training and appren-  
10 ticeship programs);

11           (C) utilizing standards, criteria, or methods  
12 of administration—

13                 (i) that have the effect of discrimina-  
14 tion on the basis of disability; or

15                 (ii) that perpetuate the discrimination  
16 of others who are subject to common ad-  
17 ministrative control;

18           (D) excluding or otherwise denying equal  
19 jobs or benefits to a qualified individual be-  
20 cause of the known disability of an individual  
21 with whom the qualified individual is known to  
22 have a relationship or association;

23           (E) not making reasonable accommoda-  
24 tions to the known physical or mental limita-  
25 tions of a qualified individual who is an appli-

1           *cant or employee, unless such covered entity*  
2           *can demonstrate that the accommodation would*  
3           *impose an undue hardship on the operation of*  
4           *the business of such covered entity;*

5           *(F) denying employment opportunities to a*  
6           *job applicant or employee who is a qualified in-*  
7           *dividual with a disability, if such denial is*  
8           *based on the need of such covered entity to*  
9           *make reasonable accommodation to the physical*  
10          *or mental impairments of the employee or appli-*  
11          *cant;*

12          *(G) using employment tests or other selec-*  
13          *tion criteria that screen out or tend to screen*  
14          *out an individual with a disability or a class of*  
15          *individuals with disabilities unless the test or*  
16          *other selection criteria, as used by the covered*  
17          *entity, is shown to be job-related for the posi-*  
18          *tion in question and is consistent with business*  
19          *necessity;*

20          *(H) failing to select and administer tests*  
21          *concerning employment in the most effective*  
22          *manner to ensure that, when such test is admin-*  
23          *istered to a job applicant or employee who has*  
24          *a disability that impairs sensory, manual, or*  
25          *speaking skills, such test results accurately re-*

1           *flect the skills, aptitude, or whatever other*  
2           *factor of such applicant or employee that such*  
3           *test purports to measure, rather than reflecting*  
4           *the impaired sensory, manual, or speaking skills*  
5           *of such employee or applicant (except where*  
6           *such skills are the factors that the test purports*  
7           *to measure).*

8           **(c) MEDICAL EXAMINATIONS AND INQUIRIES.—**

9           **(1) IN GENERAL.—***The prohibition against dis-*  
10          *crimination as referred to in subsection (a) shall in-*  
11          *clude medical examinations and inquiries.*

12          **(2) PREEMPLOYMENT.—**

13               **(A) PROHIBITED EXAMINATION OR INQUIRY.—**  
14          *Except as provided in paragraph (3), a covered*  
15          *entity shall not conduct a medical examination*  
16          *or make inquiries of a job applicant or employ-*  
17          *ee as to whether such applicant or employee is*  
18          *an individual with a disability or as to the*  
19          *nature or severity of such disability.*

20               **(B) ACCEPTABLE INQUIRY.—***A covered entity*  
21          *may make preemployment inquiries into the*  
22          *ability of an applicant to perform job-related*  
23          *functions.*

24               **(3) EMPLOYMENT ENTRANCE EXAMINATION.—***A cov-*  
25          *ered entity may require a medical examination after*

1     *an offer of employment has been made to a job ap-*  
2     *plicant and prior to the commencement of the em-*  
3     *ployment duties of such applicant, and may condition*  
4     *an offer of employment on the results of such exami-*  
5     *nation, if—*

6             (A) *all entering employees are subjected to*  
7             *such an examination regardless of disability;*

8             (B) *information obtained regarding the*  
9             *medical condition or history of the applicant is*  
10            *collected and maintained on separate forms and*  
11            *in separate medical files and is treated as a*  
12            *confidential medical record, except that—*

13               (i) *supervisors and managers may be*  
14               *informed regarding necessary restrictions*  
15               *on the work or duties of the employee and*  
16               *necessary accommodations;*

17               (ii) *first aid and safety personnel may*  
18               *be informed, when appropriate, if the dis-*  
19               *ability might require emergency treatment;*  
20               *and*

21               (iii) *government officials investigating*  
22               *compliance with this Act shall be provided*  
23               *relevant information on request; and*

24             (C) *the results of such physical examina-*  
25             *tion are used only in accordance with this title.*

1           (4) *EXAMINATION AND INQUIRY.—*

2           (A) *PROHIBITED EXAMINATIONS AND INQUIR-*  
3           *IES.—A covered entity shall not conduct or re-*  
4           *quire a medical examination and shall not make*  
5           *inquiries of an employee as to whether such em-*  
6           *ployee is an individual with a disability or as to*  
7           *the nature or severity of the disability, unless*  
8           *such examination or inquiry is shown to be job-*  
9           *related and consistent with business necessity.*

10           (B) *ACCEPTABLE INQUIRIES.—A covered*  
11           *entity may make inquiries into the ability of an*  
12           *employee to perform job-related functions.*

13 *SEC. 103. DEFENSES.*

14           (a) *IN GENERAL.—It may be a defense to a charge of*  
15           *discrimination under this Act that an alleged application*  
16           *of qualification standards, tests, or selection criteria that*  
17           *screen out or tend to screen out or otherwise deny a job or*  
18           *benefit to an individual with a disability has been shown to*  
19           *be job-related and consistent with business necessity, and*  
20           *such performance cannot be accomplished by reasonable*  
21           *accommodation.*

22           (b) *QUALIFICATION STANDARDS.—The term “qualifica-*  
23           *tion standards” may include a requirement that an indi-*  
24           *vidual with a currently contagious disease or infection*

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

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

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

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

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

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

22 (d) *RELIGIOUS ENTITIES.—*

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

1        *ment to individuals of a particular religion to per-*  
2        *form work connected with the carrying on by such*  
3        *corporation, association, educational institution, or*  
4        *society of its activities.*

5                (2) *QUALIFICATION STANDARD.—A religious orga-*  
6        *nization may require, as a qualification standard to*  
7        *employment, that all applicants and employees con-*  
8        *form to the religious tenets of such organization.*

9        **SEC. 104. POSTING NOTICES.**

10        *Every employer, employment agency, labor organiza-*  
11        *tion, or joint labor-management committee covered under*  
12        *this title shall post notices in an accessible format to appli-*  
13        *cants, employees, and members describing the applicable*  
14        *provisions of this Act, in the manner prescribed by section*  
15        *711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-10).*

16        **SEC. 105. REGULATIONS.**

17        *Not later than 1 year after the date of enactment of*  
18        *this Act, the Commission shall issue regulations in an ac-*  
19        *cessible format to carry out this title in accordance with*  
20        *subchapter II of chapter 5 of title 5, United States Code.*

21        **SEC. 106. ENFORCEMENT.**

22        *The remedies and procedures set forth in sections*  
23        *706, 707, 709, and 710 of the Civil Rights Act of 1964 (42*  
24        *U.S.C. 2000e-5, 2000e-6, 2000e-8, and 2000e-9) shall be*  
25        *available, with respect to the Commission or any individ-*

1 *ual who believes that he or she is being subjected to dis-*  
2 *crimination on the basis of disability in violation of any*  
3 *provisions of this Act, or regulations promulgated under*  
4 *section 105, concerning employment.*

5 **SEC. 107. EFFECTIVE DATE.**

6 *This title shall become effective 24 months after the*  
7 *date of enactment.*

8 **TITLE II—PUBLIC SERVICES**

9 **SEC. 201. DEFINITION.**

10 *As used in this title, the term “qualified individual*  
11 *with a disability” means an individual with a disability*  
12 *who, with or without reasonable modifications to rules,*  
13 *policies, and practices, the removal of architectural, com-*  
14 *munication, and transportation barriers, or the provision*  
15 *of auxiliary aids and services, meets the essential eligibil-*  
16 *ity requirements for the receipt of services or the partici-*  
17 *pation in programs or activities provided by a department,*  
18 *agency, special purpose district, or other instrumentality*  
19 *of a State or a local government.*

20 **SEC. 202. DISCRIMINATION.**

21 *No qualified individual with a disability shall, by*  
22 *reason of such disability, be excluded from the participa-*  
23 *tion in, be denied the benefits of, or be subjected to dis-*  
24 *crimination by a department, agency, special purpose dis-*

1 *trict, or other instrumentality of a State or a local govern-*  
2 *ment.*

3 **SEC. 203. ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION PRO-**  
4 **VIDED BY PUBLIC ENTITIES CONSIDERED DISCRIMI-**  
5 **NATORY.**

6 (a) *DEFINITION.—As used in this title, the term “public*  
7 *transportation” means transportation by bus or rail, or by*  
8 *any other conveyance (other than air travel) that provides*  
9 *the general public with general or special service (includ-*  
10 *ing charter service) on a regular and continuing basis.*

11 (b) *VEHICLES.—*

12 (1) *NEW BUSES, RAIL VEHICLES, AND OTHER FIXED*  
13 *ROUTE VEHICLES.—It shall be considered discrimina-*  
14 *tion for purposes of this Act and section 504 of the*  
15 *Rehabilitation Act of 1973 (29 U.S.C. 794) for a*  
16 *public entity to purchase or lease a new fixed route*  
17 *bus of any size, a new intercity rail vehicle, a new*  
18 *commuter rail vehicle, a new rapid rail vehicle, a*  
19 *new light rail vehicle to be used for public transpor-*  
20 *tation, or any other new fixed route vehicle to be*  
21 *used for public transportation and for which a solici-*  
22 *tation is made later than 30 days after the date of*  
23 *enactment of this Act, if such bus, rail, or other vehi-*  
24 *cle is not readily accessible to and usable by indi-*

1        *viduals with disabilities, including individuals who*  
2        *use wheelchairs.*

3            (2) *USED VEHICLES.—If a public entity purchases*  
4        *or leases a used vehicle to be used for public trans-*  
5        *portation after the date of enactment of this Act,*  
6        *such individual or entity shall make demonstrated*  
7        *good faith efforts to purchase or lease such a used*  
8        *vehicle that is readily accessible to and usable by in-*  
9        *dividuals with disabilities, including individuals who*  
10       *use wheelchairs.*

11           (3) *REMANUFACTURED VEHICLES.—If a public*  
12       *entity remanufactures a vehicle, or purchases or*  
13       *leases a remanufactured vehicle to be used for*  
14       *public transportation, so as to extend its usable life*  
15       *for 5 years or more, the vehicle shall, to the maxi-*  
16       *mum extent feasible, be readily accessible to and*  
17       *usable by individuals with disabilities, including in-*  
18       *dividuals who use wheelchairs.*

19        (c) *PARATRANSIT AS A SUPPLEMENT TO FIXED ROUTE*  
20 *PUBLIC TRANSPORTATION SYSTEM.—*

21           (1) *IN GENERAL.—If a public entity operates a*  
22       *fixed route public transportation system to provide*  
23       *public transportation, it shall be considered discrimi-*  
24       *nation, for purposes of this Act and section 504 of*  
25       *the Rehabilitation Act of 1973 (29 U.S.C. 794), for a*

1     *public transit entity that is responsible for providing*  
2     *public transportation to fail to provide paratransit or*  
3     *other special transportation services sufficient to*  
4     *provide a comparable level of services as is provid-*  
5     *ed to individuals using fixed route public transporta-*  
6     *tion to individuals with disabilities, including indi-*  
7     *viduals who use wheelchairs, who cannot otherwise*  
8     *use fixed route public transportation and to other in-*  
9     *dividuals associated with such individuals with dis-*  
10    *abilities in accordance with service criteria estab-*  
11    *lished under regulations promulgated by the Secre-*  
12    *tary of Transportation unless the public transit entity*  
13    *can demonstrate that the provision of paratransit or*  
14    *other special transportation services would impose*  
15    *an undue financial burden on the public transit*  
16    *entity.*

17           (2) *UNDUE FINANCIAL BURDEN.—If the provision*  
18    *of comparable paratransit and other special trans-*  
19    *portation services would impose an undue financial*  
20    *burden on the public transit entity, such entity must*  
21    *provide paratransit and other special transportation*  
22    *services to the extent that providing such services*  
23    *would not impose an undue financial burden on such*  
24    *entity.*

25           (3) *REGULATIONS.—*

1           (A) *FORMULA.*—Regulations promulgated by  
2           the Secretary of Transportation to determine  
3           what constitutes an undue financial burden, for  
4           purposes of this subsection, may include a flexi-  
5           ble numerical formula that incorporates appro-  
6           priate local characteristics such as population.

7           (B) *ADDITIONAL PARATRANSIT SERVICES.*—Not-  
8           withstanding paragraphs (1) and (2), the Secre-  
9           tary may require, at the discretion of the Secre-  
10          tary, a public transit authority to provide para-  
11          transit services beyond the amount determined  
12          by such formula.

13          (d) *COMMUNITY OPERATING DEMAND RESPONSIVE SYS-*  
14          *TEMS FOR THE GENERAL PUBLIC.*—If a public entity operates  
15          a demand responsive system that is used to provide public  
16          transportation for the general public, it shall be consid-  
17          ered discrimination, for purposes of this Act and section  
18          504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for  
19          such individual or entity to purchase or lease a new vehi-  
20          cle, for which a solicitation is made later than 30 days  
21          after the date of enactment of this Act, that is not readily  
22          accessible to and usable by individuals with disabilities,  
23          including individuals who use wheelchairs, unless the  
24          entity can demonstrate that such system, when viewed in  
25          its entirety, provides a level of service to individuals with:

1 *disabilities equivalent to that provided to the general*  
2 *public.*

3 (e) *TEMPORARY RELIEF WHERE LIFTS ARE UNAVAIL-*  
4 *ABLE.—With respect to the purchase of new buses, a public*  
5 *entity may apply for, and the Secretary of Transportation*  
6 *may temporarily relieve such public entity from the obliga-*  
7 *tion to purchase new buses of any size that are readily*  
8 *accessible to and usable by individuals with disabilities if*  
9 *such public entity demonstrates—*

10 (1) *that the initial solicitation for new buses*  
11 *made by the public entity specified that all new*  
12 *buses were to be lift-equipped and were to be other-*  
13 *wise accessible to and usable by individuals with*  
14 *disabilities;*

15 (2) *the unavailability from any qualified manu-*  
16 *facturer of hydraulic, electro-mechanical, or other*  
17 *lifts for such new buses;*

18 (3) *that the public entity seeking temporary*  
19 *relief had made good faith efforts to locate a quali-*  
20 *fied manufacturer to supply the lifts to the manufac-*  
21 *turer of such buses in sufficient time to comply with*  
22 *such solicitation; and*

23 (4) *that any further delay in purchasing new*  
24 *buses necessary to obtain such lifts would signifi-*

1       cantly impair transportation services in the commu-  
2       nity served by the public entity.

3       (f) CONSTRUCTION.—

4           (1) IN GENERAL.—Any relief granted under sub-  
5       section (e) shall be limited in duration by a specified  
6       date and the appropriate committees of the Congress  
7       shall be notified of any such relief granted.

8           (2) FRAUDULENT APPLICATION.—If, at any time,  
9       the Secretary of Transportation has reasonable  
10      cause to believe that such relief was fraudulently ap-  
11      plied for, the Secretary of Transportation shall—

12           (A) cancel such relief, if such relief is still  
13      in effect; and

14           (B) take other steps that the Secretary of  
15      Transportation considers appropriate.

16       (g) NEW FACILITIES.—For purposes of this Act and  
17      section 504 of the Rehabilitation Act of 1973 (29 U.S.C.  
18      794), it shall be considered discrimination for a public  
19      entity to build a new facility that will be used to provide  
20      public transportation services, including bus service, inter-  
21      city rail service, rapid rail service, commuter rail service,  
22      light rail service, and other service used for public trans-  
23      portation that is not readily accessible to and usable by  
24      individuals with disabilities, including individuals who use  
25      wheelchairs.

1       (h) *ALTERATIONS OF EXISTING FACILITIES.—With respect*  
2 *to a facility or any part thereof that is used for public*  
3 *transportation and that is altered by, on behalf of, or for*  
4 *the use of a public entity in a manner that affects or could*  
5 *affect the usability of the facility or part thereof, it shall be*  
6 *considered discrimination, for purposes of this Act and*  
7 *section 504 of the Rehabilitation Act of 1973 (29 U.S.C.*  
8 *794), for such individual or entity to fail to make the alter-*  
9 *ations in such a manner that, to the maximum extent feasi-*  
10 *ble, the altered portions of the facility are readily accessi-*  
11 *ble to and usable by individuals with disabilities, including*  
12 *individuals who use wheelchairs. If such public entity is*  
13 *undertaking major structural alterations that affect or*  
14 *could affect the usability of the facility (as defined under*  
15 *criteria established by the Secretary of Transportation),*  
16 *such public entity shall also make the alterations in such a*  
17 *manner that, to the maximum extent feasible, make the*  
18 *path of travel to the altered area, and the bathrooms, tele-*  
19 *phones, and drinking fountains serving such area readily*  
20 *accessible to and usable by individuals with disabilities,*  
21 *including individuals who use wheelchairs.*

22       (i) *EXISTING FACILITIES, INTERCITY RAIL, RAPID RAIL,*  
23 *LIGHT RAIL, AND COMMUTER RAIL SYSTEMS, AND KEY STA-*  
24 *TIONS.—*

1           (1) *EXISTING FACILITIES.*—Except as provided in  
2           paragraph (3), with respect to existing facilities used  
3           for public transportation, it shall be considered dis-  
4           crimination, for purposes of this Act and section 504  
5           of the Rehabilitation Act of 1973 (29 U.S.C. 794),  
6           for a public entity to fail to operate such public  
7           transportation program or activity conducted in such  
8           facilities so that, when viewed in the entirety, it is  
9           readily accessible to and usable by individuals with  
10          disabilities, including individuals who use wheel-  
11          chairs.

12          (2) *INTERCITY, RAPID, LIGHT, AND COMMUTER RAIL*  
13          *SYSTEMS.*—With respect to vehicles operated by inter-  
14          city, light, rapid and commuter rail systems, for pur-  
15          poses of this Act and section 504 of the Rehabilita-  
16          tion Act of 1973 (29 U.S.C. 794), it shall be consid-  
17          ered discrimination for a public entity to fail to have  
18          at least one car per train that is accessible to indi-  
19          viduals with disabilities, including individuals who  
20          use wheelchairs, as soon as practicable but in any  
21          event in no less than 5 years.

22          (3) *KEY STATIONS.*—

23                 (A) *IN GENERAL.*—For purposes of this Act  
24                 and section 504 of the Rehabilitation Act of  
25                 1973 (29 U.S.C. 794), it shall be considered

1           *discrimination for a public entity to fail to make*  
2           *stations in intercity rail systems and key sta-*  
3           *tions in rapid rail, commuter rail and light rail*  
4           *systems readily accessible to and usable by in-*  
5           *dividuals with disabilities, including individuals*  
6           *who use wheelchairs.*

7           *(B) RAPID RAIL, COMMUTER RAIL, AND LIGHT*  
8           *RAIL SYSTEMS.—Key stations in rapid rail, com-*  
9           *muter rail, and light rail systems shall be made*  
10          *readily accessible to and usable by individuals*  
11          *with disabilities, including individuals who use*  
12          *wheelchairs, as soon as practicable but in no*  
13          *event later than 3 years after the date of enact-*  
14          *ment of this Act, except that the time limit may*  
15          *be extended by the Secretary of Transportation*  
16          *up to 20 years for extraordinarily expensive*  
17          *structural changes to, or replacement of, exist-*  
18          *ing facilities necessary to achieve accessibility.*

19          *(C) INTERCITY RAIL SYSTEMS.—All stations in*  
20          *intercity rail systems shall be made readily ac-*  
21          *cessible to and usable by individuals with dis-*  
22          *abilities, including individuals who use wheel-*  
23          *chairs, as soon as practicable, but in no event*  
24          *later than 20 years after the date of enactment.*

1       **(b) SECRETARY OF TRANSPORTATION.—**

2           **(1) IN GENERAL.—***Not later than 1 year after the*  
3       *date of enactment of this Act, the Secretary of Trans-*  
4       *portation shall promulgate regulations in an accessi-*  
5       *ble format that include standards applicable to fa-*  
6       *ilities and vehicles covered under section 203.*

7           **(2) CONFORMANCE OF STANDARDS.—***Such stand-*  
8       *ards shall be consistent with the minimum guidelines*  
9       *and requirements issued by the Architectural and*  
10       *Transportation Barriers Compliance Board in ac-*  
11       *cordance with section 504.*

12       **SEC. 205. ENFORCEMENT.**

13       *The remedies, procedures, and rights set forth in sec-*  
14       *tion 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a)*  
15       *shall be available with respect to any individual who be-*  
16       *lieves that he or she is being subjected to discrimination*  
17       *on the basis of disability in violation of this Act, or regula-*  
18       *tions promulgated under section 204, concerning public*  
19       *services.*

20       **SEC. 206. EFFECTIVE DATE.**

21       **(a) IN GENERAL.—***Except as provided in subsection (b),*  
22       *this title shall become effective 18 months after the date of*  
23       *enactment of this Act.*

1                   (D) *PLANS AND MILESTONES.*—*The Secretary*  
2                   *of Transportation shall require the appropriate*  
3                   *public entity to develop a plan for compliance*  
4                   *with this paragraph that reflects consultation*  
5                   *with individuals with disabilities affected by*  
6                   *such plan and that establishes milestones for*  
7                   *achievement of the requirements of this para-*  
8                   *graph.*

9 *SEC. 204. REGULATIONS.*

10           (a) *ATTORNEY GENERAL.*—*Not later than 1 year after*  
11 *the date of enactment of this Act, the Attorney General*  
12 *shall promulgate regulations in an accessible format that*  
13 *implement this title (other than section 203), and such reg-*  
14 *ulations shall be consistent with this title and with the co-*  
15 *ordination regulations under part 41 of title 28, Code of*  
16 *Federal Regulations (as in existence on January 13, 1978),*  
17 *applicable to recipients of Federal financial assistance*  
18 *under section 504 of the Rehabilitation Act of 1973 (29*  
19 *U.S.C. 794) except, with respect to the regulations and*  
20 *analysis applicable to “program accessibility, existing fa-*  
21 *cilities”, and “communications” (as referred to in part 39*  
22 *of title 28 of the Code of Federal Regulations), such regu-*  
23 *lations shall be consistent with such part as is applicable*  
24 *to federally conducted activities under section 504 of the*  
25 *Rehabilitation Act of 1973 (29 U.S.C. 794).*

1       (b) *FIXED ROUTE VEHICLES.*—Section 203(b)(1), as re-  
2       garding new fixed route vehicles, shall become effective on  
3       the date of enactment of this Act.

4       **TITLE III—PUBLIC ACCOMMODA-**  
5       **TIONS AND SERVICES OPERATED**  
6       **BY PRIVATE ENTITIES**

7       **SEC. 301. DEFINITIONS.**

8               (1) *COMMERCE.*—The term “commerce” means  
9       travel, trade, traffic, commerce, transportation, or  
10       communication—

11               (A) *among the several States;*

12               (B) *between the District of Columbia and*  
13       *any State;*

14               (C) *between any foreign country or any*  
15       *territory or possession and any State or the*  
16       *District of Columbia; or*

17               (D) *between points in the same State but*  
18       *through another State or the District of Colum-*  
19       *bia or foreign country.*

20               (2) *POTENTIAL PLACES OF EMPLOYMENT.*—The term  
21       “potential places of employment” means facilities—

22               (A) *that are intended for nonresidential*  
23       *use; and*

24               (B) *whose operations will affect commerce.*

1        *Such term shall not include facilities that are cov-*  
2        *ered or expressly exempted from coverage under the*  
3        *Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.).*

4            (3) *PUBLIC ACCOMMODATION.—The following pri-*  
5        *vately operated entities are considered public ac-*  
6        *commodations for purposes of this title, if the oper-*  
7        *ations of such entities affect commerce—*

8            (A) *an inn, hotel, motel, or other similar*  
9        *place of lodging, except for an establishment lo-*  
10       *cated within a building that contains not more*  
11       *than five rooms for rent or hire and that is ac-*  
12       *tually occupied by the proprietor of such estab-*  
13       *lishment as the residence of such proprietor;*

14           (B) *a restaurant, bar, or other establish-*  
15       *ment serving food or drink;*

16           (C) *a motion picture house, theater, con-*  
17       *cert hall, stadium, or other place of exhibition*  
18       *or entertainment;*

19           (D) *an auditorium, convention center, or*  
20       *lecture hall;*

21           (E) *a bakery, grocery store, clothing store,*  
22       *hardware store, shopping center, or other simi-*  
23       *lar retail sales establishment;*

24           (F) *a laundromat, dry-cleaners, bank,*  
25       *barber shop, beauty shop, travel service, shoe*

1           *repair service, funeral parlor, gas station, office*  
2           *of an accountant or lawyer, pharmacist, insur-*  
3           *ance office, professional office of a health care*  
4           *provider, hospital, or other similar service es-*  
5           *tablishment;*

6           (G) *a terminal used for public transporta-*  
7           *tion;*

8           (H) *a museum, library, gallery, and other*  
9           *similar place of public display or collection;*

10          (I) *a park or zoo;*

11          (J) *a nursery, elementary, secondary, un-*  
12          *dergraduate, or postgraduate private school;*

13          (K) *a day care center, senior citizen*  
14          *center, homeless shelter, food bank, adoption*  
15          *program, or other similar social service center;*  
16          *and*

17          (L) *a gymnasium, health spa, bowling*  
18          *alley, golf course, or other similar place of ex-*  
19          *ercise or recreation.*

20          (4) *PUBLIC TRANSPORTATION.—The term “public*  
21          *transportation” means transportation by bus or rail,*  
22          *or by any other conveyance (other than by air*  
23          *travel) that provides the general public with general*  
24          *or special service (including charter service) on a*  
25          *regular and continuing basis.*

1 (5) *READILY ACHIEVABLE.*—

2 (A) *IN GENERAL.*—*The term “readily achiev-*  
3 *able” means easily accomplishable and able to*  
4 *be carried out without much difficulty or ex-*  
5 *pense.*

6 (B) *DETERMINATION.*—*In determining wheth-*  
7 *er an action is readily achievable, factors to be*  
8 *considered include—*

9 (i) *the overall size of the covered*  
10 *entity with respect to number of employees,*  
11 *number and type of facilities, and the size*  
12 *of budget;*

13 (ii) *the type of operation of the cov-*  
14 *ered entity, including the composition and*  
15 *construction of the entity; and*

16 (iii) *the nature and cost of the action*  
17 *needed.*

18 **SEC. 302. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOMMO-**  
19 **DATIONS.**

20 (a) *GENERAL RULE.*—*No individual shall be discrimi-*  
21 *nated against on the basis of disability in the full and*  
22 *equal enjoyment of the goods, services, facilities, privi-*  
23 *leges, advantages, and accommodations of any place of*  
24 *public accommodation.*

25 (b) *CONSTRUCTION.*—

1 (1) *GENERAL PROHIBITION.—*

2 (A) *ACTIVITIES.—*

3 (i) *DENIAL OF PARTICIPATION.—It shall*  
4 *be discriminatory to subject an individual*  
5 *or class of individuals on the basis of a*  
6 *disability or disabilities of such individual*  
7 *or class, directly, or through contractual,*  
8 *licensing, or other arrangements, to a*  
9 *denial of the opportunity of the individual*  
10 *or class to participate in or benefit from*  
11 *the goods, services, facilities, privileges,*  
12 *advantages, and accommodations of an*  
13 *entity.*

14 (ii) *PARTICIPATION IN UNEQUAL BENE-*  
15 *FIT.—It shall be discriminatory to afford an*  
16 *individual or class of individuals, on the*  
17 *basis of a disability or disabilities of such*  
18 *individual or class, directly, or through*  
19 *contractual, licensing, or other arrange-*  
20 *ments with the opportunity to participate in*  
21 *or benefit from a good, service, facility,*  
22 *privilege, advantage, and accommodation*  
23 *that is not equal to that afforded to other*  
24 *individuals.*

1                   (iii) *SEPARATE BENEFIT.*—It shall be dis-  
2                   criminatory to provide an individual or  
3                   class of individuals, on the basis of a dis-  
4                   ability or disabilities of such individual or  
5                   class, directly, or through contractual, li-  
6                   censing, or other arrangements with a  
7                   good, service, privilege, advantage, or ac-  
8                   commodation that is different or separate  
9                   from that provided to other individuals,  
10                  unless such action is necessary to provide  
11                  the individual or class of individuals with a  
12                  good, service, privilege, advantage, or ac-  
13                  commodation, or other opportunity that is  
14                  as effective as that provided to others.

15                  (B) *INTEGRATED SETTINGS.*—Goods, services,  
16                  privileges, advantages, accommodations, and  
17                  services shall be afforded to an individual with  
18                  a disability in the most integrated setting as ap-  
19                  propriate to the needs of the individual.

20                  (C) *OPPORTUNITY TO PARTICIPATE.*—Notwith-  
21                  standing the existence of separate or different  
22                  programs or activities provided in accordance  
23                  with this section, an individual with a disability  
24                  shall not be denied the opportunity to partici-

1            *pate in such programs or activities that are not*  
2            *separate or different.*

3            (D) *ADMINISTRATIVE METHODS.—An individ-*  
4            *ual or entity shall not, directly or through con-*  
5            *tractual or other arrangements, utilize stand-*  
6            *ards or criteria or methods of administration—*

7                    (i) *that have the effect of discriminat-*  
8                    *ing on the basis or disability; or*

9                    (ii) *that perpetuate the discrimination*  
10                  *against others who are subject to common*  
11                  *administrative control.*

12            (E) *ASSOCIATION.—It shall be discriminatory*  
13            *to exclude or otherwise deny equal goods, serv-*  
14            *ices, privileges, advantages, and accommoda-*  
15            *tions, or other opportunities to an individual or*  
16            *entity because of the known disability of an in-*  
17            *dividual with whom the individual or entity is*  
18            *known to have a relationship or association.*

19            (2) *SPECIFIC PROHIBITIONS.—*

20                    (A) *DISCRIMINATION.—As used in subsection*  
21                    (a), *the term “discrimination” shall include—*

22                            (i) *the imposition or application of eli-*  
23                            *gibility criteria that screen out or tend to*  
24                            *screen out an individual with a disability*  
25                            *or any class of individuals with disabilities*

1 from fully and equally enjoying any goods,  
2 services, facilities, privileges, advantages,  
3 and accommodations, unless such criteria  
4 can be shown to be necessary for the pro-  
5 vision of the goods, services, facilities, or  
6 accommodations being offered;

7 (ii) a failure to make reasonable  
8 modifications in policies, practices, proce-  
9 dures, when such modifications are neces-  
10 sary to afford such privileges, advantages,  
11 and accommodations to individuals with  
12 disabilities, unless the entity can demon-  
13 strate that making such modifications  
14 would fundamentally alter the nature of  
15 such privileges, advantages, and accommo-  
16 dations;

17 (iii) a failure to take such steps as  
18 may be necessary to ensure that no individ-  
19 ual with a disability is excluded, denied  
20 services, segregated or otherwise treated  
21 differently than other individual because of  
22 the absence of auxiliary aids and services,  
23 unless the entity can demonstrate that  
24 taking such steps would fundamentally  
25 alter the nature of the good, service, or ac-

1           *commodation being offered or would result*  
2           *in undue burden;*

3                     *(iv) a failure to remove architectural*  
4                     *barriers, and communication barriers that*  
5                     *are structural in nature, in existing facili-*  
6                     *ties, and transportation barriers in existing*  
7                     *vehicles used by an establishment for*  
8                     *transporting individuals (not including bar-*  
9                     *riers that can only be removed through the*  
10                    *retrofitting of vehicles by the installation of*  
11                    *a hydraulic or other lift), where such re-*  
12                    *moval is readily achievable;*

13                    *(v) where an entity can demonstrate*  
14                    *that the removal of a barrier under clause*  
15                    *(iv) is not readily achievable, a failure to*  
16                    *make such goods, services, facilities, privi-*  
17                    *leges, advantages, and accommodations*  
18                    *available through alternative methods if*  
19                    *such methods are readily achievable;*

20                    *(vi) with respect to a facility or part*  
21                    *thereof that is altered by, on behalf of, or*  
22                    *for the use of an establishment in a manner*  
23                    *that affects or could affect the usability of*  
24                    *the facility or part thereof, a failure to*  
25                    *make alterations in such a manner that, to*

1           *the maximum extent feasible, the altered*  
2           *portions of the facility are readily accessi-*  
3           *ble to and usable by individuals with dis-*  
4           *abilities, including individuals who use*  
5           *wheelchairs, and where the covered entity*  
6           *is undertaking major structural alterations*  
7           *that affect or could affect the usability of*  
8           *the facility (as defined under criteria estab-*  
9           *lished by the Attorney General), the entity*  
10          *shall also make the alterations in such a*  
11          *manner that, to the maximum extent feasi-*  
12          *ble, the path of travel to the altered area*  
13          *and the bathrooms, telephones, and drink-*  
14          *ing fountains serving the remodeled area,*  
15          *are readily accessible to and usable by in-*  
16          *dividuals with disabilities, except that this*  
17          *paragraph shall not be construed to re-*  
18          *quire the installation of an elevator for fa-*  
19          *cilities that are less than three stories or*  
20          *that have less than 3,000 square feet per*  
21          *story unless the building is a shopping*  
22          *center, a shopping mall, or the profession-*  
23          *al office of a health care provider or*  
24          *unless the Attorney General determines*  
25          *that a particular category of such facilities*

1                    *requires the installation of elevators based*  
2                    *on the usage of such facilities.*

3                    *(B) FIXED ROUTE SYSTEM.—*

4                    *(i) ACCESSIBILITY.—It shall be consid-*  
5                    *ered discrimination for a covered entity*  
6                    *that uses a vehicle for a fixed route system*  
7                    *to transport individuals not covered under*  
8                    *section 203 or 304, to purchase or lease a*  
9                    *bus or a vehicle that is capable of carrying*  
10                   *in excess of 16 passengers, for which so-*  
11                   *licitations are made later than 30 days*  
12                   *after the effective date of this Act, that is*  
13                   *not readily accessible to and usable by in-*  
14                   *dividuals with disabilities (including indi-*  
15                   *viduals who use wheelchairs); except that*  
16                   *over-the-road buses shall be subject to sec-*  
17                   *tion 304(b)(4) and section 305.*

18                   *(ii) EQUIVALENT SERVICE.—If such entity*  
19                   *purchases or leases a vehicle carrying 16*  
20                   *or less passengers after the effective date*  
21                   *of this title that is not readily accessible to*  
22                   *or usable by individuals with disabilities, it*  
23                   *shall be discriminatory for such entity to*  
24                   *fail to operate a system that, when viewed*  
25                   *in its entirety, ensures a level of service to*

1           *individuals with disabilities, including indi-*  
2           *viduals who use wheelchairs, equivalent to*  
3           *the level of service provided to the general*  
4           *public.*

5           (C) *DEMAND RESPONSIVE SYSTEM.*—*As used*  
6           *in subsection (a), the term "discrimination"*  
7           *shall include, in the case of an covered entity*  
8           *that uses vehicles in a demand responsive*  
9           *system to transport individuals not covered*  
10          *under section 203 or 304, an incident in*  
11          *which—*

12           (i) *such entity purchases or leases a*  
13           *vehicle carrying 16 or less passengers*  
14           *after the effective date of this title, a fail-*  
15           *ure to operate a system that, when viewed*  
16           *in its entirety, ensures a level of service to*  
17           *individuals with disabilities, including indi-*  
18           *viduals who use wheelchairs, equivalent to*  
19           *the level of service provided to the general*  
20           *public; and*

21           (ii) *such entity purchases or leases a*  
22           *bus or a vehicle that can carry in excess of*  
23           *16 passengers for which solicitations are*  
24           *made later than 30 days after the effective*  
25           *date of this Act, that is not readily accessi-*

1            *ble to and usable by individuals with dis-*  
2            *abilities (including individuals who use*  
3            *wheelchairs) unless such entity can demon-*  
4            *strate that such system, when viewed in its*  
5            *entirety, already provides a level of service*  
6            *to individuals with disabilities equivalent to*  
7            *that provided to the general public, except*  
8            *that over-the-road buses shall be subject to*  
9            *section 304(b)(4) and section 305.*

10 **SEC. 303. NEW CONSTRUCTION IN PUBLIC ACCOMMODATIONS AND**  
11 **POTENTIAL PLACES OF EMPLOYMENT.**

12            *(a) APPLICATION OF TERM.—Except as provided in sub-*  
13 *section (b), as applied to a—*

14            *(1) public accommodation; and*

15            *(2) potential place of employment;*

16 *the term “discrimination” as used in section 302(a) shall*  
17 *mean a failure to design and construct facilities for first*  
18 *occupancy later than 30 months after the date of enact-*  
19 *ment of this Act that are readily accessible to and usable*  
20 *by individuals with disabilities, except where an entity can*  
21 *demonstrate that it is structurally impracticable to meet*  
22 *the requirements of such subsection in accordance with*  
23 *standards set forth or incorporated by reference in regula-*  
24 *tions issued under this title.*

1       (b) *ELEVATOR.*—Subsection (a) shall not be construed  
2 to require the installation of an elevator for facilities that  
3 are less than three stories or have less than 3,000 square  
4 feet per story unless the building is a shopping center, a  
5 shopping mall, or the professional office of a health care  
6 provider or unless the Attorney General determines that a  
7 particular category of such facilities requires the installa-  
8 tion of elevators based on the usage of such facilities.

9 **SEC. 304. PROHIBITION OF DISCRIMINATION IN PUBLIC TRANSPOR-**  
10 **TATION SERVICES PROVIDED BY PRIVATE ENTITIES.**

11       (a) *GENERAL RULE.*—No individual shall be discrimi-  
12 nated against on the basis of disability in the full and  
13 equal enjoyment of public transportation services provided  
14 by a privately operated entity that is primarily engaged in  
15 the business of transporting people, but is not in the prin-  
16 cipal business of providing air transportation, and whose  
17 operations affect commerce.

18       (b) *CONSTRUCTION.*—As used in subsection (a), the  
19 term “discrimination against” includes—

20           (1) the imposition or application by an entity of  
21 eligibility criteria that screen out or tend to screen  
22 out an individual with a disability or any class of in-  
23 dividuals with disabilities from fully enjoying the  
24 public transportation services provided by the entity;

25           (2) the failure of an entity to—

1           (A) make reasonable modifications consist-  
2           ent with those required under section  
3           302(b)(2)(A)(ii);

4           (B) provide auxiliary aids and services  
5           consistent with the requirements of section  
6           302(b)(2)(A)(iii); and

7           (C) remove barriers consistent with the re-  
8           quirements of section 302(b)(2)(A) (iv), (v), and  
9           (vi); and

10          (3) the purchase or lease of a new vehicle  
11          (other than an automobile or an over-the-road bus)  
12          that is to be used to provide public transportation  
13          services, and for which a solicitation is made later  
14          than 30 days after the date of enactment of this Act,  
15          that is not readily accessible to and usable by indi-  
16          viduals with disabilities, including individuals who  
17          use wheelchairs (except in the case of a vehicle used  
18          in a demand response system, in which case the new  
19          vehicle need not be readily accessible to and usable  
20          by individuals with disabilities if the entity can dem-  
21          onstrate that such system, when viewed in its entire-  
22          ty, provides a level of service to individuals with dis-  
23          abilities equivalent to the level of service provided to  
24          the general public);

1           (4) *the purchase or lease of a new over-the-*  
2 *road bus that is used to provide public transporta-*  
3 *tion services and for which a solicitation is made*  
4 *later than 6 years after the date of enactment of this*  
5 *Act for small providers (as defined by the Secretary)*  
6 *and 5 years for other providers, that is not readily*  
7 *accessible to and usable by individuals with disabil-*  
8 *ities, including individuals who use wheelchairs.*

9 **SEC. 305. STUDY.**

10           (a) **PURPOSE.**—*The Architectural and Transportation*  
11 *Barriers Compliance Board established under section 502*  
12 *of the Rehabilitation Act of 1973 (29 U.S.C. 792) shall*  
13 *undertake a study to determine—*

14                   (1) *the access needs of individuals with disabil-*  
15 *ities to over-the-road buses; and*

16                   (2) *the most cost effective methods for making*  
17 *over-the-road buses readily accessible to and usable*  
18 *by individuals with disabilities, particularly individ-*  
19 *uals who use wheelchairs.*

20           (b) **CONTENT.**—*The study shall analyze issues, includ-*  
21 *ing—*

22                   (1) *the anticipated demand by individuals with*  
23 *disabilities for accessible over-the-road buses;*

1           (2) *the degree to which over-the road buses are*  
2           *readily accessible to and usable by individuals with*  
3           *disabilities;*

4           (3) *the cost of providing accessibility to over-*  
5           *the-road buses by individuals with disabilities, in-*  
6           *cluding recent technological and cost saving devel-*  
7           *opments in equipment and devices providing such*  
8           *accessibility;*

9           (4) *possible design changes in over-the-road*  
10          *buses that could enhance such accessibility; and*

11          (5) *the impact of accessibility requirements on*  
12          *the continuation of inter-city bus service by over-the-*  
13          *road buses, with particular consideration of impact*  
14          *on rural service.*

15          (c) *ADVISORY COMMITTEE.—In conducting the study re-*  
16          *quired by subsection (a), the Architectural and Transpor-*  
17          *tation Barriers Compliance Board shall establish an advi-*  
18          *sory committee, of which—*

19               (1) *50 percent of the members shall be selected*  
20               *from among private operators using over-the-road*  
21               *buses, bus manufacturers, and lift manufacturers;*  
22               *and*

23               (2) *50 percent of the members shall be individ-*  
24               *uals with disabilities, particularly individuals who*

1 use wheelchairs, who are potential riders of such  
2 buses.

3 (d) *DEADLINE.*—The study required by subsection (a),  
4 along with recommendations by the Board, shall be sub-  
5 mitted to the President and the Congress within 36 months  
6 from the date of enactment of this Act.

7 *SEC. 306. REGULATIONS.*

8 (a) *ACCESSIBILITY STANDARDS.*—Not later than 1 year  
9 after the date of enactment of this Act, the Secretary of  
10 Transportation shall issue regulations in an accessible  
11 format that shall include standards applicable to facilities  
12 and vehicles covered under section 302(b)(2) (B) and (C)  
13 and section 304.

14 (b) *OTHER PROVISIONS.*—Not later than 1 year after the  
15 date of enactment of this Act, the Attorney General shall  
16 issue regulations in an accessible format to carry out the  
17 remaining provisions of this title not referred to in subsec-  
18 tion (a) that include standards applicable to facilities and  
19 vehicles covered under section 302.

20 (c) *STANDARDS.*—Standards included in regulations  
21 issued under subsections (a) and (b) shall be consistent  
22 with the minimum guidelines and requirements issued by  
23 the Architectural and Transportation Barriers Compliance  
24 Board in accordance with section 504.

1 SEC. 307. EXEMPTIONS FOR PRIVATE CLUBS AND RELIGIOUS ORGA-  
2 NIZATIONS.

3 *The provisions of this title shall not apply to private*  
4 *clubs or establishments exempted from coverage under*  
5 *title II of the Civil Rights Act of 1964 (42 U.S.C. 2000-*  
6 *a(e)) or to entities controlled by religious organizations,*  
7 *including places of worship.*

8 SEC. 308. ENFORCEMENT.

9 (a) IN GENERAL.—

10 (1) AVAILABILITY OF REMEDIES AND PROCEDURES.—

11 *The remedies and procedures set forth in section 204*  
12 *of the Civil Rights Act of 1964 (42 U.S.C. sec.*  
13 *2000a-3(a)) shall be available to any individual who*  
14 *is being or is about to be subjected to discrimination*  
15 *on the basis of disability in violation of this title.*

16 (2) INJUNCTIVE RELIEF.—*In the case of violations*  
17 *of section 302(b)(2)(A)(iv) and (vi) and section*  
18 *303(a), injunctive relief shall include an order to*  
19 *alter facilities to make such facilities readily accessi-*  
20 *ble to and usable by individuals with disabilities to*  
21 *the extent required by this title. Where appropriate,*  
22 *injunctive relief shall also include requiring the pro-*  
23 *vision of an auxiliary aid, modification of a policy,*  
24 *or provision of alternative methods, to the extent re-*  
25 *quired by this title.*

26 (b) ENFORCEMENT BY THE ATTORNEY GENERAL.—

1           (1) DENIAL OF RIGHTS.—

2                   (A) DUTY TO INVESTIGATE.—The Attorney  
3           General shall investigate alleged violations of  
4           this title, which shall include undertaking peri-  
5           odic reviews of compliance of covered entities  
6           under title.

7                   (B) POTENTIAL VIOLATION.—If the Attorney  
8           General has reasonable cause to believe that  
9           any person or group of persons is engaged in a  
10          pattern or practice of resistance to the full en-  
11          joyment of any of the rights granted by this title  
12          or that any person or group of persons has  
13          been denied any of the rights granted by such  
14          title, and such denial raises an issue of general  
15          public importance, the Attorney General may  
16          commence a civil action in any appropriate  
17          United States district court.

18           (2) AUTHORITY OF COURT.—In a civil action  
19          under subsection (1), the court—

20                   (A) may grant any equitable relief that  
21           such court considers to be appropriate, includ-  
22           ing granting temporary, preliminary, or perma-  
23           nent relief, providing an auxiliary aid, modifica-  
24           tion of policy or alternative method, or making  
25           facilities readily accessible to and usable by in-

1            *dividuals with disabilities, to the extent required*  
2            *by this title; and*

3            *(B) may award such other relief as the*  
4            *court considers to be appropriate, including*  
5            *monetary damages to persons aggrieved; and*

6            *(C) may, to vindicate the public interest,*  
7            *assess a civil penalty against the covered entity*  
8            *in an amount—*

9                    *(i) not exceeding \$50,000 for a first*  
10                   *violation; and*

11                   *(ii) not exceeding \$100,000 for any*  
12                   *subsequent violation.*

13    **SEC. 309. EFFECTIVE DATE.**

14            *This title shall become effective 18 months after the*  
15            *date of enactment of this Act.*

16    **TITLE IV—TELECOMMUNICATIONS**  
17            **RELAY SERVICES**

18    **SEC. 401. TELECOMMUNICATIONS SERVICES FOR HEARING-IM-**  
19            **PAIRED AND SPEECH-IMPAIRED INDIVIDUALS.**

20            *(a) TELECOMMUNICATIONS.—Title II of the Communica-*  
21            *tions Act of 1934 (47 U.S.C. 201 et seq.) is amended by*  
22            *adding at the end thereof the following new section:*

23            **“SEC. 225. TELECOMMUNICATIONS SERVICES**  
24            **FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED**  
25            **INDIVIDUALS.**

1       “(a) *DEFINITIONS.—As used in this section—*

2               “(1) *COMMON CARRIER OR CARRIER.—The term*  
3       *‘common carrier’ or ‘carrier’ includes any common*  
4       *carrier engaged in interstate communication by wire*  
5       *or radio as defined in section 3(h), any common car-*  
6       *rier engaged in intrastate communication by wire or*  
7       *radio, and any common carrier engaged in both*  
8       *interstate and intrastate communication, notwith-*  
9       *standing sections 2(b) and 221(b).*

10              “(2) *TDD.—The term ‘TDD’ means a Telecom-*  
11       *munications Device for the Deaf, which is a machine*  
12       *that employs graphic communication in the transmis-*  
13       *sion of coded signals through a wire or radio com-*  
14       *munication system.*

15              “(3) *TELECOMMUNICATIONS RELAY SERVICES.—The*  
16       *term ‘telecommunications relay services’ means tele-*  
17       *phone transmission services that provide the ability*  
18       *for an individual who has a hearing impairment or*  
19       *speech impairment to engage in communication by*  
20       *wire or radio with a hearing individual that is func-*  
21       *tionally equivalent to the ability of an individual who*  
22       *does not have a hearing impairment or speech im-*  
23       *pairment to communicate using voice communication*  
24       *services by wire or radio. Such term includes serv-*  
25       *ices that enable two-way communication between an*

1 individual who uses a TDD or other nonvoice termi-  
2 nal device and an individual who does not use such  
3 a device.

4 “(b) AVAILABILITY OF TELECOMMUNICATIONS RELAY  
5 SERVICES.—

6 “(1) IN GENERAL.—In order to carry out the pur-  
7 poses established under section 1, to make available  
8 to all individuals in the United States a rapid, effi-  
9 cient nationwide communication service, and to in-  
10 crease the utility of the telephone system of the  
11 Nation, the Commission shall ensure that interstate  
12 and intrastate telecommunications relay services are  
13 available, to the extent possible and in the most effi-  
14 cient manner, to hearing-impaired and speech-im-  
15 paired individuals in the United States.

16 “(2) REMEDIES.—For purposes of this section,  
17 the same remedies, procedures, rights, and obliga-  
18 tions under this Act that are applicable to common  
19 carriers engaged in interstate communication by  
20 wire or radio are also applicable to common carri-  
21 ers engaged in intrastate communication by wire or  
22 radio and common carriers engaged in both inter-  
23 state and intrastate communication by wire or radio.

24 “(c) PROVISION OF SERVICES.—Each common carrier  
25 shall provide telecommunications relay services individ-

1 ually, through designees, or in concert with other carriers  
2 not later than 2 years after the date of enactment of this  
3 section.

4 “(d) REGULATIONS.—

5 “(1) IN GENERAL.—The Commission shall, not  
6 later than 1 year after the date of enactment of this  
7 section, prescribe regulations to implement this sec-  
8 tion, including regulations that—

9 “(A) establish functional requirements,  
10 guidelines, and operations procedures for tele-  
11 communications relay services;

12 “(B) establish minimum standards that  
13 shall be met by common carriers in carrying  
14 out subsection (c);

15 “(C) require that telecommunications relay  
16 services operate every day for 24 hours per  
17 day;

18 “(D) require that users of telecommunica-  
19 tions relay services pay rates no greater than  
20 the rates paid for functionally equivalent voice  
21 communication services with respect to such  
22 factors as the duration of the call, the time of  
23 day, and the distance from point of origination  
24 to point of termination;

1           “(E) prohibit relay operators from refusing  
2 calls or limiting the length of calls that use tele-  
3 communications relay services;

4           “(F) prohibit relay operators from disclos-  
5 ing the content of any relayed conversation and  
6 from keeping records of the content of any such  
7 conversation beyond the duration of the call;  
8 and

9           “(G) prohibit relay operators from inten-  
10 tionally altering a relayed conversation.

11           “(2) TECHNOLOGY.—The Commission shall  
12 ensure that regulations prescribed to implement this  
13 section encourage the use of existing technology and  
14 do not discourage or impair the development of im-  
15 proved technology.

16           “(3) JURISDICTIONAL SEPARATION OF COSTS.—

17           “(A) IN GENERAL.—The Commission shall  
18 prescribe regulations governing the jurisdiction-  
19 al separation of costs for the services provided  
20 pursuant to this section.

21           “(B) RECOVERING COSTS.—Such regulations  
22 shall generally provide that costs caused by  
23 interstate telecommunications relay services  
24 shall be recovered from the interstate jurisdic-  
25 tion and costs caused by intrastate telecom-

1           *munications relay services shall be recovered*  
2           *from the intrastate jurisdiction.*

3           “(C) *JOINT PROVISION OF SERVICES.—To the*  
4           *extent interstate and intrastate common carriers*  
5           *jointly provide telecommunications relay serv-*  
6           *ices, the procedures established in section 410*  
7           *shall be followed, as applicable.*

8           “(4) *FIXED MONTHLY CHARGE.—The Commission*  
9           *shall not permit carriers to impose a fixed monthly*  
10           *charge on residential customers to recover the costs*  
11           *of providing interstate telecommunication relay serv-*  
12           *ices.*

13           “(5) *UNDUE BURDEN.—If the Commission finds*  
14           *that full compliance with the requirements of this*  
15           *section would unduly burden one or more common*  
16           *carriers, the Commission may extend the date for*  
17           *full compliance by such carrier for a period not to*  
18           *exceed 1 additional year.*

19           “(e) *ENFORCEMENT.—*

20           “(1) *IN GENERAL.—Subject to subsections (f) and*  
21           *(g), the Commission shall enforce this section.*

22           “(2) *COMPLAINT.—The Commission shall re-*  
23           *solve, by final order, a complaint alleging a viola-*  
24           *tion of this section within 180 days after the date*  
25           *such complaint is filed.*

1       “(f) CERTIFICATION.—

2               “(1) STATE DOCUMENTATION.—Each State may  
3 submit documentation to the Commission that de-  
4 scribes the program of such State for implementing  
5 intrastate telecommunications relay services.

6               “(2) REQUIREMENTS FOR CERTIFICATION.—After  
7 review of such documentation, the Commission shall  
8 certify the State program if the Commission deter-  
9 mines that the program makes available to hearing-  
10 impaired and speech-impaired individuals either di-  
11 rectly, through designees, or through regulation of  
12 intrastate common carriers, intrastate telecommuni-  
13 cations relay services in such State in a manner that  
14 meets the requirements of regulations prescribed by  
15 the Commission under subsection (d).

16               “(3) METHOD OF FUNDING.—Except as provided  
17 in subsection (d), the Commission shall not refuse to  
18 certify a State program based solely on the method  
19 such State will implement for funding intrastate tele-  
20 communication relay services.

21               “(4) SUSPENSION OR REVOCATION OF CERTIFICA-  
22 TION.—The Commission may suspend or revoke such  
23 certification if, after notice and opportunity for hear-  
24 ing, the Commission determines that such certifica-  
25 tion is no longer warranted.

1       “(g) COMPLAINT.—

2               “(1) REFERRAL OF COMPLAINT.—If a complaint to  
3       the Commission alleges a violation of this section  
4       with respect to intrastate telecommunications relay  
5       services within a State and certification of the pro-  
6       gram of such State under subsection (f) is in effect,  
7       the Commission shall refer such complaint to such  
8       State.

9               “(2) JURISDICTION OF COMMISSION.—After refer-  
10       ring a complaint to a State under paragraph (1), the  
11       Commission shall exercise jurisdiction over such  
12       complaint only if—

13               “(A) final action under such State program  
14       has not been taken on such complaint by such  
15       State—

16               .       “(i) within 180 days after the com-  
17       plaint is filed with such State; or

18               “(ii) within a shorter period as pre-  
19       scribed by the regulations of such State; or

20               “(B) the Commission determines that such  
21       State program is no longer qualified for certifi-  
22       cation under subsection (f).”.

23       (b) CONFORMING AMENDMENTS.—The Communications  
24       Act of 1934 (47 U.S.C. 151 et seq.) is amended—

1           (1) in section 2(b) (47 U.S.C. 152(b)), by strik-  
2           ing "section 224" and inserting "sections 224 and  
3           225"; and

4           (2) in section 221(b) (47 U.S.C. 221(b)), by  
5           striking "section 301" and inserting "sections 225  
6           and 301".

## 7           **TITLE V—MISCELLANEOUS** 8           **PROVISIONS**

### 9           SEC. 501. CONSTRUCTION.

10          (a) **REHABILITATION ACT OF 1973.**—Nothing in this Act  
11          shall be construed to reduce the scope of coverage or  
12          apply a lesser standard than the coverage required or the  
13          standards applied under title V of the Rehabilitation Act of  
14          1973 (29 U.S.C. 790 et seq.) or the regulations issued by  
15          Federal agencies pursuant to such title.

16          (b) **OTHER LAWS.**—Nothing in this Act shall be con-  
17          strued to invalidate or limit any other Federal law or law  
18          of any State or political subdivision of any State or juris-  
19          diction that provides greater or equal protection for the  
20          rights of individuals with disabilities than are afforded by  
21          this Act.

22          (c) **INSURANCE.**—Titles I through IV of this Act shall  
23          not be construed to prohibit or restrict—

24                 (1) an insurer, hospital, medical service compa-  
25                 ny, health maintenance organization, agent or entity

1        *that administers benefit plans, or similar organiza-*  
2        *tion from underwriting, classifying, or administering*  
3        *insurance risks that are based on or not inconsistent*  
4        *with State law; or*

5                *(2) a person or organization covered by this Act*  
6        *from establishing, sponsoring, or observing the terms*  
7        *of a bona fide benefit plan that are based on under-*  
8        *writing, classifying, or administering insurance risks*  
9        *that are based on or not inconsistent with State law,*

10 *Provided, that paragraphs (1) and (2) shall not be used as*  
11 *a subterfuge to evade the purposes of titles I and III.*

12 **SEC. 502. PROHIBITION AGAINST RETALIATION AND COERCION.**

13        *(a) RETALIATION.—No individual shall discriminate*  
14 *against any other individual because such other individual*  
15 *has opposed any act or practice made unlawful by this Act*  
16 *or because such other individual made a charge, testified,*  
17 *assisted, or participated in any manner in an investigation,*  
18 *proceeding, or hearing under this Act.*

19        *(b) INTERFERENCE, COERCION, OR INTIMIDATION.—It*  
20 *shall be unlawful to coerce, intimidate, threaten, or inter-*  
21 *fere with any person in the exercise or enjoyment of, or on*  
22 *account of his or her having exercised or enjoyed, or on*  
23 *account of his or her having aided or encouraged any*  
24 *other person in the exercise or enjoyment of, any right*  
25 *granted or protected by this Act.*

1       (c) *REMEDIES AND PROCEDURES.*—The remedies and  
2 procedures available under section 106, 205, and 308  
3 shall be available to aggrieved persons for violations of  
4 subsections (a) and (b).

5 **SEC. 503. STATE IMMUNITY.**

6       A State shall not be immune under the eleventh  
7 amendment to the Constitution of the United States from  
8 an action in Federal court for a violation of this Act. In  
9 any action against a State for a violation of the require-  
10 ments of this Act, remedies (including remedies both at law  
11 and in equity) are available for such a violation to the  
12 same extent as such remedies are available for such a vio-  
13 lation in an action against any public or private entity  
14 other than a State.

15 **SEC. 504. REGULATIONS BY THE ARCHITECTURAL AND TRANSPOR-**  
16 **TATION BARRIERS COMPLIANCE BOARD.**

17       (a) *ISSUANCE OF GUIDELINES.*—Not later than 6 months  
18 after the date of enactment of this Act, the Architectural  
19 and Transportation Barriers Compliance Board shall issue  
20 minimum guidelines that shall supplement the existing  
21 Minimum Guidelines and Requirements for Accessible  
22 Design for purposes of titles II and III.

23       (b) *CONTENTS OF GUIDELINES.*—The guidelines issued  
24 under subsection (a) shall establish additional require-  
25 ments, consistent with this Act, to ensure that buildings,

1 *facilities, and vehicles are accessible, in terms of architec-*  
2 *ture and design, transportation, and communication, to in-*  
3 *dividuals with disabilities.*

4 **SEC. 505. ATTORNEY'S FEES.**

5 *In any action or administrative proceeding com-*  
6 *menced pursuant to this Act, the court, or agency, in its*  
7 *discretion, may allow the prevailing party, other than the*  
8 *United States, a reasonable attorney's fee, including litiga-*  
9 *tion expenses, and costs, and the United States shall be*  
10 *liable for the foregoing the same as a private individual.*

11 **SEC. 506. TECHNICAL ASSISTANCE.**

12 *(a) PLAN FOR ASSISTANCE.—The Attorney General, in*  
13 *consultation with the Secretary of Transportation, the*  
14 *Chairman of the Federal Communications Commission,*  
15 *and the Secretary of Commerce shall, within 180 days of*  
16 *the enactment of this Act, develop and implement a plan to*  
17 *assist entities covered under this Act in understanding the*  
18 *responsibilities of such entities under this Act.*

19 *(b) AGENCY ASSISTANCE.—The Attorney General is au-*  
20 *thorized to obtain the assistance of other Federal agencies*  
21 *in carrying out the responsibilities as described in subsec-*  
22 *tion (a).*

THE WHITE HOUSE  
Office of the Press Secretary

For Immediate Release

August 2, 1989

STATEMENT BY THE PRESS SECRETARY

The Administration has reached a consensus with key Senators from both parties on legislation that would expand the reach of this country's civil rights laws to include disabled Americans. This will be landmark legislation, not only for the 37 million Americans with some form of disability, but for all Americans, demonstrating, as the President said in his Inaugural Address, that "this is the age of the offered hand."

The President endorses this legislation as the vehicle to fulfill the challenge he offered in his February 9 address to the Nation: "Disabled Americans must become full partners in America's opportunity society."

The President has pursued a commonsense approach, seeking a practical bill that will help the disabled reach their full potential. He is committed to producing a bill that can be signed this year.

The discussions have resulted in an agreement we expect to be reflected in today's mark up in the Senate Labor and Human Resources Committee of the "Americans with Disabilities Act." The agreement provides for:

- Federal protection for the disabled against discrimination in the workplace, paralleling existing protections that apply to entities that receive federal funds. The requirement would initially apply to employers of 25 or more and phase down to employers of 15 or more. Covered employers would have to make reasonable accommodation to disabled persons.
- Prohibition of discrimination against the disabled in public accommodations. The agreement adopts a broad definition of public accommodations, including restaurants, stores, and health care providers. A core group of public accommodations would be required to make readily achievable alterations to existing facilities to accommodate the disabled. This legislation is designed to achieve access for the disabled in the most efficient manner, with emphasis on making new buildings accessible.
- Enforcement of the new protections through the Equal Employment Opportunity Commission, and suits seeking injunctive relief.

The President is committed to bringing persons with disabilities into the mainstream, including full participation and access to all aspects of society. He wants to do this through a framework that allows for maximum flexibility to implement effective solutions, builds on existing law to avoid unnecessary confusion and litigation, and attains these goals without imposing undue burdens. The President believes this can be accomplished by using reasonable measures, phased over time, as this legislation does.

We are pleased that substantial progress has been made. We will continue to analyze the full ramifications of the legislation and look forward to working with the Senate and the House to complete the legislative process this year.

# # #

# FOCUS

Shiree

National Council on Disability — An Independent Federal Agency • Winter 1989

## Hearing Held on the Americans With Disabilities Act

On Tuesday, September 27, 1988, joint committees of the Senate and the House held the first hearing on the "Americans with Disabilities Act" (ADA). The following testimony was presented by the Chairperson, Mrs. Sandra Swift Parrino on behalf of the National Council on Disability (formerly the National Council on the Handicapped).

### Testimony of Sandra Swift Parrino, Chairperson National Council on Disability

Good Morning,

My name is Sandra Swift Parrino.

I am honored to lead off testimony about a piece of legislation that is very close to my heart ... the *Americans with Disabilities Act of 1988*.

I am, in private life, a mother with an involvement and commitment to two children born with serious disabilities.

I am, in public life, the chairperson of the *National Council on Disability*. An independent federal agency whose board is comprised of 15 knowledgeable persons with disabilities ... and experts on disability service programs. All of us, appointed by the President and confirmed by the Senate.

We are the only federal agency mandated to address, analyze and make recommendations on issues of

public policy affecting Americans with disabilities. The main thrust of our efforts is towards eliminating barriers which prevent disabled persons from full participation in the mainstream of American life. Barriers, as you will see, that will topple upon passage of the *Americans with Disabilities Act* which you will hear referred to as ADA.

The National Council on Disability has not been timid in its efforts in both originating and spearheading this legislation. Legislation we first recommended in a report titled "*Toward Independence*" that was sent to both the President and the Congress in 1986.

Legislation we designed after in-depth analysis and study. Legislation that is of clear importance to persons with disabilities and to Federal Policy regarding disability programs. Legislation that offers constructive, realistic and fiscally sound solutions to enhance independence and productivity of people with disabilities. Landmark legislation that is a civil rights, equal opportunity bill for 36 million disabled Americans. Legislation that will, in essence, no longer



Continued on page 3

## Message From the Chairperson

For decades, America has ignored the hard-core facts relating to discriminatory practices imposed upon people with disabilities.

Now, thanks to the unswerving commitment and dedication on the part of the members and staff of the National Council, and ever-growing numbers of allies in the disability community, we are spearheading passage of landmark legislation. A civil rights bill for people with disabilities designed to topple discriminatory barriers that obstruct access to education, employment, public facilities, services, transportation, housing and other resources taken for granted by the rest of America.

Known as the *Americans with Disabilities Act* (S-2345, HR-4498) or *ADA*, this proposed federal legislation was first recommended to President Reagan and the Congress by the National Council in our 1986 report "*Toward Independence*". An in-depth analysis and study that provided not only a diagnosis of the problems of disabled individuals but also a cure in the form of recommendations.

Today, those recommendations by the Council form the bedrock of the *Americans with Disabilities Act*. Desperately needed legislative muscle that will enable disabled citizens to develop to their fullest potential as individuals and contributing members of American society.

In recognition of the National Council's pioneering efforts behind *ADA*, I was invited to give the lead-off testimony backing

passage (see page 1) before the joint Senate/House Committee hearings chaired by Senator Tom Harkin together with committee members Senators Kennedy and Weicker together with Representatives Tony Coelho, Silvio Conte, Major Owens and James Jeffords.

I stressed the fact that America has averted her gaze far too long from her disabled citizens. At the same time, I illuminated our legislators as to how *ADA* offers constructive, realistic and financially sound solutions to enhance independence and productivity of people with disabilities.

Legislation, I pointed out, that will no longer allow 36 million Americans to be dispossessed from the American dream.

Legislation, that is responsible for a rapidly-growing sense of community. A binding force behind an emerging group consciousness on the part of disabled Americans and several million more loved ones, friends, service providers and advocates.

As of this writing, we have amassed well over 125 additional co-sponsors of *ADA* both in the Senate and House in the 100th Congress.

I can assure you that the board and staff of the National Council are dedicated to our long-term mission of securing passage of *ADA*.

However, in this day of politics by headline, it is the job of all of us to promulgate the message of passage of *ADA* at the all-important grass-roots level.

Each one of you readers are important. You have the dynamic activeness, the conviction that is

all-important in the campaign behind passage of *ADA*. You must all be well informed.

In the months to come, we at the Council will be going into all the states to attend state-organized conferences. There we will conduct half-day *ADA* information update seminars where we will train attendees in public relations techniques to break the mental gridlock surrounding discrimination against disabled citizens.

Information packets containing press releases targeted for placement in local community newspapers/newsletters, photos, questions and answer sheets in layman's language in addition to a seven-minute audio music cassette suitable for airplay on local radio stations in addition to automobile tape decks, Walkman and home stereo players. A similar video cassette is in production to influence passage of this landmark bill.

We in the disabled community are known for our unflagging optimism in the face of multiple adversities. We are also known for our ingenuity, commitment and devotion.

That great observer of the American political landscape, Alexis de Tocqueville, wrote: "Next to its cultural habits, the things which a nation is least apt to change is its civil legislation."

Let us prove him wrong.

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## Executive Director's Report

Effective August 1, 1988, it has been a privilege to have been selected to fill the position of Executive Director of the National Council on Disability. In this short period of time, we have embarked on an ambitious agenda for the upcoming year in our ever-growing commitment to serve all persons with disabilities throughout this great land of ours.

At my swearing-in ceremony on August 10, the then Vice President, now President, George Bush, committed the Administration to the principles espoused in the *Americans with Disabilities Act*. In order to be truly effective for national change, the *Americans with Disabilities Act* must, and will, be law throughout the land. It is the National Council's commitment of the utmost priority to educate the general public regarding the discriminatory barriers which prevent persons with disabilities from employment, public transportation, access to public places, and freedom of communication in their everyday life.

In the second week of my tenure, I was honored to be present at the signing of the *Fair Housing Act Amendments of 1988*, the first major piece of civil rights legislation for disabled persons which reaches into the private sector; these Amendments open the doors for all disabled persons to be free from discrimination in obtaining housing accommodations. It is a landmark law which provides yet another step in the growth of participation in society for all persons with disabilities.

The National Council has set a vigorous agenda for me to pursue. We will begin a major task force on employment which will attempt to address the barriers faced in employment by persons with disabilities. We will attempt to maintain a constant vigilance over the ever-changing legislation and regulations affecting independent living, attendant care, and benefits afforded people with disabilities.

In the *Technology-Related Assistance for Individuals with Disabilities Act of 1988*, the Council is mandated to do a study and report to Congress which will attempt to suggest ways of removing financial barriers to the acquisition of equipment on behalf of persons with disabilities. This study must involve both the public and private sectors as well as persons with disabilities themselves in order to further promote independence in American life.

As its Executive Director, the Council will continue to perform its task of involvement in all aspects of disability in American life. It will be a difficult task to uphold the fine tradition of commitment and workmanship of those before me, but I accept the Council's charge with enthusiasm and hope for success for all of us.

Paul G. Hearne

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*Testimony continued from page 1*

allow 36 million Americans to be left out of the American dream scenario.

The *Americans with Disabilities Act of 1988* is not only important to 36 million citizens with disabilities ... it is also... as I will illustrate

a bit later ... of the highest importance to our nation.

From the quadriplegic as the result of a football injury ... to the child in a hospital crib ... from rapidly growing numbers of senior citizens ... to 75 thousand Vietnam Veterans ... the basic nugget of truth is that ... due to discriminatory practices ... persons with disabilities continue to suffer from the highest rates of unemployment and poverty than any other group of Americans. Less access to decent schooling ... housing ... work and transportation than anyone in this country ... including non-citizens.

ADA is critically important because its provisions are shaped to break the chains that bind many of these 36 millions into a bondage of unjust, unwanted dependency on families, charity and social welfare. A dependency that is a major and totally unnecessary contributor to public deficits and private expenditures.

These hearings will provide you with a vital source of information to assess the scope and meaning of the *Americans with Disabilities Act*. On behalf of 36 million citizens I ask you to keep in mind that ... for decades disabled people have been waiting.

For decades the disabled have seen laws enacted by their elected representatives that prohibit discrimination for other categories of individuals. For decades disabled Americans have had to live with the realization that there are no similarly effective laws to protect them.

Today, I am proud to say, there is an emerging group - conscious-

*Testimony continued on page 6*

## Disability Prevention Program

In its report, *Toward Independence*, the National Council recommended that our Nation should initiate programs to prevent both primary disabilities and further disabilities or complications in persons with disabilities (secondary disabilities).

The National Council officially requested that the recommendation for a national program in disability prevention be implemented. During the past two years since the recommendation was made, a great deal of progress has been realized. These accomplishments may be categorized into two areas of activities: (1) the development of a national plan to prevent disabilities and (2) the enactment of federal legislation for a national program to prevent disabilities.

In 1986 an ad hoc federal inter-agency committee on disability prevention was established by the National Council and the Office of Health Promotion and Disease and Injury Prevention, Department of Health and Human Services. The major charge of this committee was to develop a plan for disability prevention which would have an impact on federal, state and local efforts in the area of disability prevention.

During its meeting in June 1988, the committee reviewed two action items. The first was a report of nationwide hearings on the year 2000 Health Objectives for the Nation. When the year 2000 Health Objectives is published, objectives for the preven-

tion of both primary and secondary disabilities will be included.

The second item was the draft of the national plan to prevent disabilities. Once the final draft is completed, it will be published and distributed for implementation.

During the past two years, the National Council has realized a number of accomplishments to implement its initiative to prevent primary and secondary disabilities:

- In fiscal year 1988, Congress appropriated \$3.83 million for the first year of a five-year program to prevent disabilities.
- In fiscal year 1988, the Centers for Disease Control in Atlanta awarded \$2,123,523 in state based prevention projects and \$708,509 in demonstration/epidemiology projects.
- CDC held two conferences on the prevention of secondary disabilities in persons who are disabled.
- CDC and the National Council will establish a formal working relationship for future years in the implementation of the National Disability Prevention Plan.

• It has been recommended that an amendment to the Public Health Service Act, Title III, Section 317, be introduced in January 1989, establishing the National Program for the Prevention of Disabilities as a congressional authorization.

In summary, much progress has been realized and the future for this national disability prevention initiative is bright. We look forward to a rich and rewarding

relationship with CDC and the Institute of Medicine as we progress into the future with the *National Disability Prevention Plan*.

## NCD Holds Educational Forums on the Americans With Disabilities Act

The *National Council on Disability*, in its constant effort to educate and inform the general public as well as the disability community throughout the nation, has completed forums in the following cities:

Grand Rapids, Michigan  
August, 1988

Sponsored by: Herbert Start  
Robert Muller

Austin, Texas  
October, 1988

Sponsored by: The Texas  
Governor's Committee for  
Disabled, A. Kent Waldrep,  
Chairman

Washington, DC  
November, 1988

Sponsored by: The DC Mayor's  
Committee for Persons with  
Disabilities, Vincent Gray Chairman

Future forums are scheduled in many states across the country, some of which include California, New York, Illinois, North Carolina, Arizona, Pennsylvania and New Mexico.

### Upcoming Council Meetings

February 6-9, 1989 — San Francisco, California

May 15-17, 1989 — Washington, DC

August 7-9, 1989 — San Diego, California

## National Institute on Disability and Rehabilitation Research

The NIDRR standing committee of the *National Council on Disability* recommended that a formal written request be sent to NIDRR for response to the following questions:

1. Pursuant to the *Rehabilitation Act*, the *National Council on Disability* oversees NIDRR in accordance with guidelines set at a Council meeting August 3, 1988.
2. These guidelines and a five-year plan have been in effect and the Council wishes to ascertain their success. Therefore, the Council will be receiving a full report from NIDRR on the implementation of both the guidelines and the five-year plan.
3. Perhaps most important, a new planning process has begun and the Council will be formally participating in this process in conjunction with NIDRR.

Our next newsletter will report on the official response from NIDRR.

## Operation N.O.A.H.

*S.T.S. LORD NELSON*, the fully accessible sail training ship that is part of **OPERATION N.O.A.H.** will now accept American able-bodied and disabled applicants for "voyage crew" positions on her Summer 1989 cruises in English waters or on Winter 1988-1989 cruises in the Bahamas. The 141-ft. long *LORD NELSON* is steel-hulled, built in 1985 to

*Continued on page 8*

## Fair Housing Amendments Signed Into Law

On September 13, 1988, President Reagan signed into law the *Fair Housing Amendments of 1988* (P.L. 100-430). This law amends *Title VIII of the Civil Rights Act of 1968* and represents significant advances for persons with disabilities and their families. Two significant recommendations made by the Council in its 1986 report, *Toward Independence*, are substantially realized by the enactment of P.L. 100-430. First, the Council recommended that discrimination on the basis of handicap be added to other types of discrimination (race, color, religion, and national origin) which are expressly prohibited by law. Second, the Council recommended that new housing construction be required to comply with standards of accessibility and adaptive design.

The provisions addressing discrimination on the basis of handicap break important new ground in several ways:

- P.L. 100-430 is the first major, substantive Federal civil rights law in which discrimination on the basis of handicap has been added to the list of prohibited discrimination on the basis of race, color, sex, religion or national origin.
- The statute imposes accessibility standard upon the design and future construction of housing and makes the failure to comply with such requirements an unlawful act of discrimination.

*Continued on page 6*

## Report of the 100th Congress on Disability Legislation

The 100th session of the Congress adjourned in late October. Several important pieces of legislation were enacted which will improve the lives of persons with disabilities and their families. Below are two legislative items which we feel will be of interest to you, our readers.

□ *Technology Bill*: On August 19, 1988 the President signed into law the "*Technology-Related Assistance for Individuals with Disabilities Act of 1988*" (P.L. 100-407). **This legislation is designed to provide persons with disabilities and their families greater access to technology which will enhance opportunities for learning, living and working in the community.**

The law directs the Council to initiate an in-depth study on barriers to funding systems which provide technology to disabled persons at the Federal and State level. This study will be done under the guidance of an advisory committee which is to be comprised of individuals with disabilities and their families, advocacy agencies, and Federal agencies which provide funding for the development or acquisition of assistive devices. This study is to be completed in eighteen months and we will continue to keep our readers informed as we work on this project. In a short period of time, the Council will be announcing in the *Federal Register* a request for proposals in order to

*Continued on page 6*

*Fair Housing continued from page 5*

- The new law imposes a requirement on housing providers to make "reasonable accommodations" when necessary to afford a person with a disability an equal opportunity to use and enjoy housing.
- P.L. 100-430 not only outlines discrimination on the basis of disability, but also prohibits discrimination against someone because he or she associates with someone who has a disability or has someone with a disability residing in their dwelling. This will be particularly helpful for families of persons with disabilities, many of whom have experienced housing discrimination in past.
- Finally, the new law provides that an individual with a disability cannot be prohibited from making reasonable modification in a dwelling at his or her own expense if such modifications are necessary for full enjoyment of the premises.

In addition to these provisions, P.L. 100-430 greatly strengthens the enforcement processes in the *Fair Housing Act*, which now may include the levying of substantial fines by administrative law judges for failure to comply with the Act. Clearly, P.L. 100-430 is long awaited by persons with disabilities and their families and the Council looks forward to working with the Department of Housing and Urban Development as well as representatives from the disability community to see that the dreams envisioned in

this law become a reality for persons with disabilities and their families.

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*100th Congress continued from page 5*

solicit assistance in conducting this study as authorized by the law.

□ *Medicaid to Help Pay for Related Services*: P.L. 100-360 the "*Medicaid Catastrophic Coverage Act of 1988*" contains a provision which will make it easier for states to receive Medicaid reimbursement for medical and other related services which are required by a child's Individualized Education Program (IEP). Prior to this amendment, many state Medicaid agencies refused to pay for related services under P.L. 94-142, the "Education for All Handicapped Children Act" charging that because such services were rendered as a result of a child's IEP, the education agencies were responsible for payment. Under this new provision, Medicaid agencies can no longer refuse to pay for medical services which are (1) covered by the state's Medicaid plan and (2) are provided to children with disabilities in concurrence with the child's IEP. This provision will permit a new funding stream for numerous related services such as speech, physical and occupational therapies, psychological services, medical, counselling and diagnostic and evaluation services. Funding for related services under P.L. 94-142 has been problematic for some time. The Council applauds the inclusion of this provision and will work to see that it is fully implemented.

## Conference on Families

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The Council is planning to sponsor a "National Conference for Parents and Family Members of Persons with Disabilities", August 9-12, 1989, at the Omni Hotel San Diego, San Diego, California. The theme of the conference is **DISABILITY: IT'S A FAMILY AFFAIR**. The conference will include workshops on topics such as equal rights, parental involvement and advocacy, living arrangements, empowerment, and other key issues. If you are interested in receiving additional information concerning this conference, please let us know.

## Congress Changes Council's Name !!!

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On November 7, 1988, President Ronald Reagan signed into law the Public Law 100-630, **The Handicapped Programs Technical Amendments Act of 1988**. These amendments included many technical changes in the Education for All Handicapped Children Act and the Rehabilitation Act. One of most significance, is the name change of the National Council on the Handicapped to the **NATIONAL COUNCIL ON DISABILITY**. All of our legal proceedings and formal correspondence will now reflect this change.

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*Testimony continued from page 3*

ness on the part of disabled Americans, their families, friends and advocates. A consciousness toward mounting political

*Continued on page 7*

activism. Martin Luther King had a dream. We have a vision. Dr. King dreamed of an America where a person was judged not by the color of his skin, but by the content of his character.

**ADA's** vision is of an America where persons are judged by their abilities and not their disabilities.

36 million Americans ... our nation's largest and no longer silent minority. **Ladies and Gentlemen, America cannot afford to discard her disabled brothers and sisters.**

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

"In the 1984 report to Congress by the Rehabilitation Services Administration," it was indicated for every \$1.00 spent to return a disabled person to work, \$18.00 were returned to the tax base upon their placement. This would include not only taxes paid by the individual, but money saved from the removal of public expenditures.

**ADA** seeks to protect disabled citizens against discrimination in areas such as transportation ... private sector employment ... public accommodations ... housing and communications and, where appropriate, the activities of state and local government agencies.

**America can not afford to discard her disabled people.**

The majority of disabled people not working said that they want

to work. The first Louis Harris Poll showed that disabled workers in the workplace are rated "good" to "excellent" by an overwhelming majority of their employers.

Disability does not mean incompetence. The perception that disabled are flawed and incapable of caring for themselves is the result of discriminatory attitudes ... not the result of disability. **America can not afford to discard her disabled people.**

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

As Louis Harris discovered, people with disabilities want to become involved in their communities as taxpaying contributors.

It is contrary to sound principles of fiscal responsibility to spend billions of federal tax dollars to relegate people with disabilities to positions of dependency upon public support. **May I remind you, people with disabilities represent America's greatest untapped resource of employables who want to work.**

As we all know, in America jobs are a major source of status, dignity and self-esteem. "What do you do?" is a conversational staple.

To contribute to society and support yourself is a cherished precept of our American vision.

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

**America can not afford to discard her disabled brothers and sisters.** Advancing age, economic circumstances, illness, accident will someday, according to reputable statistics, put most of us in the category of a person with a disability.

The goals espoused in the *Americans with Disabilities Act* are economically practical as well as morally correct ... and humanely necessary.

The **ADA** is legislation that does away with troubling historical echoes. Echoes that must no longer be interpreted by America's disabled citizenry as a life sentence.

Esteemed members of Congress, in closing I wish to relay a message from 36 million disabled Americans. For decades we have retained a faith in the reformability and adaptability of our government. For decades we have been told to have patience. But patience is not an inexhaustible commodity. People with disabilities have waited long enough. America has waited long enough. The *Americans with Disabilities Act* must be enacted now.

The vision of equality for 36 million Americans with disabilities now rests with you.

I thank you.

## Who is the Council?

### Members of the Council:

Sandra Swift Parrino, Chairperson  
Briarcliff Manor, New York

A. Kent Waldrep, Jr.,  
Vice-Chairperson  
Plano, Texas

Justin Dart, Jr.  
Fort Davis, Texas

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Kathleen Roy ..... Children's Services Specialist  
Brenda F. Bratton ..... Executive Secretary  
Stacey Brown ..... Staff Assistant  
Frances Curtis ..... Staff Assistant

*Continued from page 5*  
modern vessel safety standards. Besides her permanent crew of ten, each voyage accommodates 40 "voyage crew" to help work the ship. Twenty of these are able-bodied, and the other twenty can be people with various disabili-

ties, eight of whom can be accommodated in wheelchairs. **OPERATION N.O.A.H.** cruises average seven days in length and cost about \$950 per person, excluding air and other travel.

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