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THE WHITE HOUSE
WASHINGTON

Mike —

FYI

Shirley Chater's final
plan for re-engineering
the disability process
at SSA

— Jeremy

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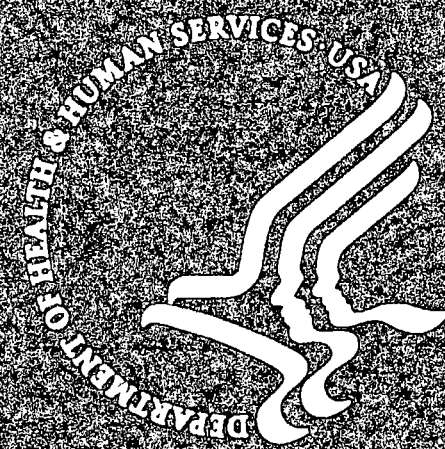
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PLAN FOR A NEW DISABILITY CLAIM PROCESS



Social Security Administration

September 1994

THE WHITE HOUSE
WASHINGTON

July 26, 1994

**CELEBRATION OF THE FOURTH ANNIVERSARY OF
THE AMERICANS WITH DISABILITIES ACT**

DATE: Wednesday July 27th, 1994
TIME: 10:30 AM
LOCATION: The White House South Lawn
From: Mike Lux
Debbie Fine
through Alexis Herman

I. PURPOSE

The purposes of this event are:

- 1) to celebrate the fourth anniversary of the Americans with Disabilities Act (ADA) and implementation of the final phase of the law;
- 2) to make the connection between universal health coverage and the ADA, whereby guaranteed insurance for all Americans helps make the promise of the ADA a reality; and
- 3) to restate the importance of universal coverage, achieved by building on the current employer based system of shared responsibility.

II. BACKGROUND

This event, with approximately 3,000 participants, is the largest event we have yet done at the White House. Water bottles and fans will be provided for each participant, with the following printed on each: "INDEPENDENCE....SECURITY... With Universal Health Coverage and the ADA... Americans with Disabilities Act Anniversary 1994."

On Health Care and the ADA

According to the Bureau of Census there are 49 million people with disabilities. The anniversary of the ADA is called Independence Day for people with disabilities. People with disabilities and their families cannot become truly independent until they achieve economic independence. For many, their disability status -- compounded by the lack of available and affordable assistance -- renders them unable to get health insurance, and therefore hurts their job prospects. They are either not hired because of the insurance 'risk' they pose, or they opt not to work because they fear losing the health benefits they now get through Medicaid. Passage of a health care bill that achieves universal coverage with no pre-existing conditions and no life-time limits on care would eliminate a strong disincentive for employment, and

help make what the Americans with Disabilities Act aims to achieve into reality.

As a major piece of civil rights legislation, one of the goals of the ADA is to include people with disabilities in mainstream society. Universal health coverage extends this principle of inclusion in another form for people with disabilities.

Health care that provides long-term home and community-based care is also directly connected to achieving independence for people with disabilities. Many people with disabilities require some form of personal assistance services in order to work. Judy Heumann, Assistant Secretary at the Department of Education for the Office of Special Education and Rehabilitative Services, is an example of someone who has been able to develop an effective and successful career because of personal attendant services.

Those who fought to pass the ADA in 1990, say that the health care insurance piece was severely weakened with compromise language early on because of the sense that it was politically unrealistic. The community recognizes this administration's fight for universal coverage and its role in making health care reform a possibility; they are very grateful for this.

Health Care Activity

The disability community has been very active in the health care reform debate and in general has been supportive of the administration's approach to health care reform, although initially much of the community was more sympathetic to the single payer approach. The disability rights activists have been working to educate and activate the grassroots network.

Since May 2nd, when both the Bridge to Freedom March and Rally and your event with people with disabilities at the White House were held, the disability community has markedly stepped up its level of activity. You asked them to take the lead in the fight for health care reform, and they responded. They have been very active on Capitol Hill and are working hard to heighten the level of grassroots activity. They have also participated in the Health Security Express bus tour.

Some of the activities on health care this week include a "Real Health Care For All" rally on Capitol Hill organized by Senator Kennedy. The National Council on Disability also released a report on its findings on what the disability community wants from health care reform, which support the administration's approach to reform. Throughout this week, many of the participants of the White House event are going to Capitol Hill to lobby Members of Congress to pass a health care reform bill that achieves universal coverage, in addition to home and community based long term care and other issues of importance to the community.

The community should be acknowledged for accepting your challenge from May 2nd, and urged to do much more in the coming critical weeks -- both on Capitol Hill and in their communities.

Issues to Highlight on Health Care

The issues in the health care debate most important to the disability community are:

- universal coverage with no pre-existing conditions and no life-time limits;
- a defined comprehensive benefits package; and
- home and community-based long-term care, with personal assistance services.

Two aspects of the Health Security Act that the disability community considered critical and that they have pursued on Capitol Hill are:

- A broad range of personal assistance services will be available to children and adults with severe disabilities, through the home and community based long term care. Personal assistance services has been the primary goal for the disability community because it is identified as the mechanism that allows people with disabilities to participate in society.
- Tax credits for employees with disabilities who require personal assistance with daily tasks.

On the ADA This Year

As you know, the ADA, signed into law in 1990, eliminates discrimination in access, employment, transportation and communications for Americans with disabilities. This year marks the fourth anniversary of enactment of the Americans with Disabilities Act and implementation of the final phase of the law -- which requires small businesses that employ fifteen or more employees to comply with the employment provisions of the law. This will affect an additional 400,000 private businesses and 100,000 organizations and non-profits this year, amounting to a total of two million businesses covered by the ADA. (Businesses with 25 or more employees were required to comply by July 26, 1992.)

According to the United Cerebral Palsy Associations 1994 ADA Report Card on America, employment of people with disabilities is lagging behind in both full and part time jobs and in perceived commitment from employers. Some cite the small business requirement as being the most important because it opens the door to job opportunities for people with disabilities in small businesses, which according to the Dole Foundation employ 86% of America's workforce.

Furthermore, by making businesses accessible for customers with disabilities, UCPA cites that there has been a 12% increase in customer base in the retail and hospitality industry alone.

History of the ADA

The passage of the ADA was driven by a growing realization that government was spending far too much on custodialism and medical and income support in ways that perpetuated the isolation and dependency of people with disabilities, while spending far too little on measures that would enable people with disabilities to live productively and independently.

July 26, 1990: The ADA was signed into law.

January 26, 1992: Public accommodations were required to have facilities accessible. Local municipalities and state governments were required to be accessible. Paratransit services were required.

July 26, 1992: Businesses employing 25 or more workers were prohibited from discrimination against qualified individuals with disabilities in all aspects of employment.

July 26, 1993: Telephone relay services were required at all times in all states. Some transit and commuter stations were required to comply with some exceptions extended up to 20 years.

July 26, 1994: Small businesses employing fifteen or more employees must comply with the ADA employment provisions.

Some of the transportation provisions are phased in until 2010.

Issues of Concern with the Administration and Enforcement of the ADA

Department of Justice: Throughout the last two years, disability rights groups and Members of Congress have expressed concerns about limited resources dedicated to ADA enforcement that have resulted in an inability to investigate every complaint received against public accommodations.

Department of Transportation: The Department of Transportation recently extended the date by which the Washington D.C. metro system had to comply with the ADA by 6-12 months. Currently many of the metro stations have platforms without any system that signals the edge of the platform for blind people (i.e. building in a truncated dome at the edge of all platforms). The leadership of the disability community has perceived this as "backing away" from the ADA. A meeting with disability leaders and Secretary Pena is scheduled for Tuesday, July 26.

Reinventing Government: The ADA is often cited by the administration as an example of unfunded mandates. The disability rights community views this as a negative definition of the ADA, and continue to argue that "unfunded mandate" is a mis-classification for civil rights legislation.

Political Background on the Disability Community

With the signing of the ADA in 1990, George Bush and the Republican Party got a lot of credit in the disability community. Although there were many Democratic Representatives and Senators who worked very hard to pass the ADA -- they were not recognized for their efforts at the Bush signing ceremony. (Democrats did not even have reserved seats, while the Republican Members of Congress did.)

The politics of the disability community are complicated and often volatile. During the campaign, leaders on both the national and the grassroots level were periodically disappointed

with the perceived lack of inclusion of people with disabilities in speeches and events. There have also been issues around personnel, with leaders in the community feeling we haven't done a good job of placing people with the disabilities into jobs. The administration has increasingly reached out to the community on several issues, including health care, which has resulted in a very good relationship with the community. This is the fourth Presidential event, Mrs. Clinton has participated in several health care events with the community, and Mrs. Gore is viewed as a hero in the mental health and developmental disability community.

We would also note that this community is particularly sensitive to being treated differently from others and to any hint of being patronized. Describing people with disabilities as any more "courageous" or "inspirational" than anyone else should be avoided, as should people being described as "frail" or "fragile". The phrase "shackles of a wheelchair" is another one that definitely sets people off.

Statistical Background

Following are some relevant statistics:

- While 15% of people with no disability are without coverage; 35 % of people with disabilities (including severe and non-severe) are without coverage. (Bureau of Census 1/94)
- Due to a variety of physical, mental and emotional conditions, an estimated 49 million noninstitutionalized Americans have a disability (20%). Of these persons, 24 million have a "severe" disability. (Bureau of Census 1/94)
- Severe disabilities reduce employment chances. Those with disabilities constituted 13% of all employed persons; those with a severe disability comprised 3%. Although having a less than severe disability does not have a large effect on one's chance of being employed, having a severe disability does. Among person 2-64 years old, 81% without a disability and 76% with a disability that was not severe were employed. However, just 23% with a severe disability worked. Data show that persons with a disability -- particularly a severe one -- earn less than those without one. (Bureau of Census 1/94)
- According to the Dole Foundation, two-thirds of Americans with disabilities between the ages of 16 and 64 are not working. The cost to America is estimated \$200 billion dollars annually in private and public payments and an additional \$100 billion in unrealized wages and taxes.

III. PARTICIPANTS

From the White House:

The President

The Vice President

Hillary Rodham Clinton

Mary Elizabeth Gore

From the Administration: (None have speaking roles.)

Attorney General Reno

Secretary Pena

Secretary Riley

Secretary Shalala

Secretary Jesse Brown

Dr. Lee Brown, Director of the Office of National Drug Control Policy

Deval Patrick, Assistant Attorney General for Civil Rights

Judy Heumann: (HUMAN) Assistant Secretary for the Office of Special Education and Rehabilitation Services at the Department of Education. She is on stage because of her significant contribution to passage of the ADA, rather than because of her position in the administration. She is a great example of someone with a disability who was able to develop a successful career because of personal assistance services. She has been a long-time, loyal supporter of yours, and was a key advisor to us during the campaign.

NOTE: Of the above mentioned representatives of the administration, only the Attorney General, Secretary Pena and Assistant Attorney General for Civil Rights have enforcement responsibilities of the ADA. The others have technical assistance and education responsibilities.

From the Community (None have speaking roles):

Marca Bristo: She was recently confirmed as Chair of the National Council on Disability, although she has not yet been sworn in. She has been a longtime ADA and health care activist, as well as a strong supporter of the administration.

Judi Chamberlin: She works at the National Empowerment Center in Lawrence, Massachusetts and leads the psychiatric survivors movement in Boston. She was very active in the ADA movement and continues to be very active now in the health care reform debate.

Brian Clukey: He is the President of People First of Northern Virginia, who recently chaired a 700 person People First national conference. People First is an organization of citizens with developmental disabilities who are learning to advocate for their rights and become actively involved in their communities. He attended the May 2nd health care event with people with disabilities, and is active in the health care reform debate. He works at a Washington D.C. law firm in a support capacity.

Tony Coehlo: Chair of the President's Committee on the Employment of People with

Disabilities. As you know, he has epilepsy and his struggle with the disease was a major factor in influencing his career. He introduced the original version of the ADA in the House, and after leaving Congress was a leader in the campaign for its passage. We would note that the President's Committee took a lead role in helping organize and fund this event. They have devoted tremendous staff resources to developing the invitation list and sorting through problems that have arisen with the list. They are also providing staff to assist at the gate for the event.

Justin Dart: As you know, he is the former Chair of the President's Committee on the Employment of People with Disabilities. He and Pat Wright are thought of as the two key champions responsible for passage of the ADA. He is a life-long Republican and friend and appointee of President Bush, but he is one of your strongest supporters on health care and has invested significant resources into the debate via existing coalitions and the DNC. You have met him several times.

I. King Jordan: He is currently President of Gallaudet University, and is the first deaf president of Gallaudet. He was a key player in the passage of the ADA. He participated in the meeting you had in honor of the ADA last year, and you also met him at your speech to Gallaudet earlier this year.

Rebecca (Becky) Ogle: (OH-GUL) Director of Project Accessibility at NAMES, and Co-chair of The Real Health Care For All Campaign, which is the coalitional grassroots network. She was Disability Access Coordinator for the Inaugural.

Paul Schroeder: (SHRAYDER) Director of Governmental Affairs for the American Council of the Blind. He was active in working for passage of the ADA and continues to be active in the fight for health care reform. He is also working on the National Information Infrastructure in the disability community.

Patrisha (Pat) Wright: She is Director of Government Affairs at the Disability Rights Education and Defense Fund. She and Justin Dart are considered the key champions of passage of the ADA; she is sometimes referred to as the mother of the ADA.

From Congress: (No speaking roles)

Representative Hamilton Fish (R-NY): He was named by Congressman Hoyer as the most helpful Republican of those who are still in Congress. (The main Republican floor manager of the ADA was Steve Bartlett, who is currently mayor of Dallas, Texas.)

Speaker of the House Foley (D-WA)

Senator Tom Harkin (D-IA): He was the chief Senate sponsor of the ADA bill.

Senator Orrin Hatch (R-UT): He managed the bill for the minority in the Senate, and was named by Harkin as the most helpful Republican in passage of the ADA.

Representative Steny Hoyer (D-MD): He was the chief sponsor of the ADA bill in the House.

Majority Leader George Mitchell (D-ME)

Members of Congress Seated in the Audience

Chairman Edward Kennedy (D-MA)

Senator Howard Metzenbaum (D-OH)

Senator James Jeffords (R-VT)

Representative Don Edwards (D-CA)

Representative Major Owens (D-NY)

Chairman Jack Brooks (D-TX)

Representative Bill Goodling (R-PA)

Representative Steve Gunderson (R-WI)

Chairman Bill Ford (D-MI)

Representative John Lewis (D-GA)

Chairman Joseph Moakley (D-MA)

Representative Jerrold Nadler (D-NY)

Representative Alan Mollohan (D-WV)

The Audience

The audience is comprised of approximately 3,000 disability rights advocates from all over the country, approximately 30 political appointees with disabilities, and approximately 30 key agency and department personnel who run disability related programs.

IV. PRESS PLAN

This event will be open to the press. An extensive list of disability specialty press have also been invited. Following the event, the participants from the community on stage and approximately 12 previously identified leaders from key states will be available for interviews by all press, including regional and specialty. All of those available for interview plan to underscore the importance for health care reform that achieves universal coverage for successful implementation of the ADA.

V. SEQUENCE OF EVENTS

- You will proceed to the Map Room from the Oval Office following completion of the telephone call to Dr. Glenn Anderson, to join the Vice President, Mrs. Clinton and Mrs. Gore for a logistics briefing.

- You will all proceed to the Diplomatic Reception Room to greet the stage participants.
- Members of Congress will be announced onto stage, followed by members of the Cabinet, followed by disability rights leaders.
- You, the Vice President, the First Lady and Mrs. Gore will be announced onto stage.
- Mrs. Clinton will welcome the participants, recognize the Cabinet, make remarks and introduce Mrs. Gore.
- Mrs. Gore will recognize the disability rights leaders, make remarks, and introduce the Vice President.
- The Vice President will make remarks and introduce you.
- You will recognize Members of Congress present and deliver remarks.
- You will exit the stage and work the ropeline.

VI. REMARKS

Speech to be provided by David Kusnet.

President William J. Clinton
Remarks Before Americans With Disabilities
May 2, 1994
(Final Draft)

[Acknowledgments: ADAPT; The National Council for Independent Living; Consortium of Citizens with Disabilities; Tony Coehlo.]

I am honored to be given this book on behalf of all of the people taking part in the rally today... knowing that every signature of every person represents thousands of other names of Americans who have also overcome tremendous obstacles... and who every day are fighting hard for health-care reform.

I want to especially thank Justin Dart, who provides an example for us all. He has risen above partisanship and taken the message for health care reform all over our nation.

There may be no truer grass-roots movement than that of Americans with disabilities. It is a movement that has made our laws, our environment and our society more fair and more humane. It has been fueled by anger... frustration... and, as we have seen with Kate Miles and her family... by determination and love.

I applaud the courage of Kate Miles and Robert and the rest of the Miles family in coming here today.

It's fitting that the theme of your rally today is "Bridge to Freedom."

I became President because I wanted to to ensure that every one of our people has the opportunity to become economically free.

Almost four years ago, the Americans With Disabilities Act became law and it has helped to fight job discrimination and to begin including, rather than excluding, the disability community from the main stream of American life.

But it is only part of the equation. The other part is this: We have to get rid of the systemic discrimination in insuring the health of our people.

And unless we do, millions of Americans will never know the dignity of putting in a day at work... will never know the independence of collecting a paycheck... will never know economic freedom.

It is unconscionable that any American with ~~the mind and~~ the desire and the ability to work is denied that chance.

It is self-defeating to have a system that says to Americans with disabilities: You can have health benefits, but only if you do not work.

It is counter-productive to have a system that discourages employers from hiring a qualified person just because that person may be at risk of high medical bills.

There are about 49-Million Americans with disabilities... 24 million with severe disabilities... and half, about 12 Million, have no private health insurance.

Let's face it: The health care system we have now is failing these millions and millions more. The health care system is failing us all.

We had better fix it now, because if we don't it will be a long time before we can pass this way again. And every day that passes without a reformed health care system will be filled with wasted time and wasted humanity.

We can do it by getting rid of the obstacles to freedom in our health care system. **You have a slogan: "Real health care for all." That's what we want: We want a system that provides universal coverage so that everyone is included.**

The term "pre-existing condition" is one that the people here today and millions of Americans know as prevention: It prevents people from being insured and it prevents employers from hiring these people because of the potential health care costs.

We need to say once and for all: You can't deny coverage to anyone with a pre-existing condition.

And further... there must be a defined package of comprehensive benefits... and there can be no lifetime limits on care.

You should have the freedom to choose the doctor and health plan that is best for you. This is something that is important for every American, but especially for Americans with disabilities, who depend on a doctor who knows them and with whom they feel comfortable.

At the same time, we need to require all employers to provide health coverage... and we need to make it affordable for them to do so.

With our plan, workers as well as the businesses that employ them will be part of large buying groups that are community rated. That means that everyone -- no matter what their health condition or age -- will pay the same rate for their health insurance. And that will eliminate discrimination against those with disabilities and the employers who hire them.

Our health care plan does more. It gives us a serious start on the thing that is most important to many Americans with disabilities: home- and community-based long-term care.

No family should be put through the stress test that the Miles family and thousands of others like them have experienced... going it alone to provide care for a family member.

No family breadwinner should have to be locked into a job... no family should have to deplete its savings or risk bankruptcy to give a loved one long-term care. Our home-care program will give families and individuals with disabilities a fair break: greater choices about how and where to get care, and it will help pay for the cost of that care.

Our home-care program provides those who need it with personal-assistance services so that they can avoid being institutionalized.

Furthermore, this plan helps the person with a disability to be able to take a job by including a tax credit for personal-assistance services worth 50 percent of what he or she earns.

We should be rewarding the people who take personal responsibility... who go the extra mile... who have the desire and the capacity to contribute to our society.

By being here in Washington you have gone the extra mile... bringing the voices of grass roots to fertile ground.

Let your voices grow... and we can be assured of inclusion not exclusion for Americans with disabilities.

Let your voices grow... and the goal of independence not dependence will draw closer.

Let your voices grow... and empowerment not paternalism will carry the day.

Let your voices grow... and at the other end of Pennsylvania Avenue... in the halls of the Congress... the people will be put first.

Make no mistake about it: This is a critical time. Make yourself heard... make yourselves seen... make yourselves, once again as you have so often to great effect, agents of change. I am committed to winning health care reform. I know we can win, but it can't be done unless you fight with us.

Thank you.



Leadership Conference on Civil Rights

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"Equality In a Free, Plural, Democratic Society"

TESTIMONY OF WARREN H. PHILLIPS
Chairman of Dow Jones & Company, Inc., 1978-91

Good morning Mr. Chairman, Senator Kassebaum and other distinguished members of the Committee. My name is Warren Phillips. I was the chief executive officer of Dow Jones & Co. and also publisher of *The Wall Street Journal* for 15 years, until I retired at 65 in 1991. My wife and I now operate Bridge Works Publishing Company, a very small company, publishing books, fiction and nonfiction.

I thank you for permitting me to appear before your Committee today to endorse the Employment Non-Discrimination Act of 1994.

Dow Jones publishes newspapers, not just *The Wall Street Journal* but also community dailies from New Bedford and Cape Cod to Mankato, Minnesota and Medford, Oregon. About half of our business is electronic publishing--the computerized delivery of information. About a quarter of our business is international.

Like most business, it is dependent on brains, talent, creativity. It would be self-defeating for us, and American business generally, to limit the talent pool because of prejudice. Morally wrong, yes. But also poor business, for us and for the country.

There are many editors and writers, sales people and others I have known and worked with over the years, inside and outside Dow Jones, who have made superb contributions to the improvement and growth of the *Journal* and other publishing enterprises -- some of whom happen to be gay and lesbian. The same can be said for talented gays and lesbians in our electronic divisions.

Even in the small business that my wife and I operate today, one of the five books we are publishing this year is a novel by a wonderfully lyrical writer, Kristina McGrath, who happens to be lesbian. The advance reviews in the book-trade press have hailed her work as "flecked with brilliance...A domestic drama in the noblest, most wistful sense."

In my early years at the Wall Street Journal and Dow Jones, I was a correspondent in Germany. I covered the Berlin blockade and airlift -- flying into the city on those C47s that would leave the Rhein-Main air base every 30 seconds laden with coal, flying into Berlin's Tempelhof airdrome. I witnessed first hand then, and in later years, the response of our country and our allies to threats to freedom.

On the other side of the world, I once reported from and wrote a book on China. I saw the cost in that society also of persecuting people because they were different.

My own father and my mother's family were immigrants to this country, fleeing societies that persecuted them for being different.

Thus I have strong personal as well as professional reasons for supporting legislation designed to strengthen and expand our society's fundamental bedrock principle of being intolerant of intolerance.

I was at Dow Jones for 44 years in a wide variety of positions and locations. I never saw a correlation between ability on the one hand, and on the other hand, race, or gender, or religion--or sexual orientation.

Our policy has been -- and is -- not to discriminate. My successor as chairman and CEO of Dow Jones, Peter Kann, restated that policy as recently as February 1993 in the company-wide newsletter.

"I hope it is clear to everyone in the company," he wrote, "that we consider it unacceptable to discriminate in our workplace against any colleague--other than to distinguish among individuals on the basis of job performance." He went on to say that that certainly covers discrimination on the basis of sexual orientation. "Prejudice doesn't belong in our workplace; talented people do," he said.

More than one-fourth of the Fortune 500 companies -- companies as diverse as Xerox, Boeing, RJReynolds, Chevron and Kodak -- have explicit policies prohibiting discrimination based on sexual orientation. And since 1990, the number of corporations with such policies has tripled.

The increasing number of companies with nondiscrimination policies which include sexual orientation shows that real change is occurring in corporate America. And this change goes beyond simply large corporations. Smaller firms such as Trek Bicycle, Fidelity Federal Bank of Glendale, California, and Johnson & Higgins have also moved forward with adopting inclusive non-discrimination policies.

But while a growing number of businesses have adopted these policies, most gay and lesbian employees in the corporate American workforce remain unprotected. This lack of protection leaves a gaping hole in America's commitment to equal opportunity, and is an invitation to the perpetuation of prejudice and stereotypes.

This bill supports business by helping to create an environment where all workers can produce and excel.

This bill supports business by taking a narrowly tailored approach that does not require the provision of partner benefits, does not force a business to defend neutral practices which may have a disproportionate impact based on sexual orientation, and it specifically prohibits affirmative action and quotas. This bill is about fairness, and it is more than fairly crafted.

It has been the law of the land that employment discrimination is unacceptable based on race, gender, religion, ethnic origin or other non-performance-related considerations. It is time to include sexual orientation. It is the right thing to do. It is the sensible thing to do. It is also the business-like thing to do.

Barry Goldwater

P.O. BOX 1601
SCOTTSDALE, ARIZONA 85252

July 19, 1994

Dear Ted and Nancy:

I'm sorry I couldn't be there today for your hearing on the Employment Non-Discrimination Act of 1994, but I wanted to let you know personally of my strong and enthusiastic support for this important legislation. And just in case you haven't seen it, I've attached a copy of a recent article I wrote for the Washington Post which tells why I think this bill is so essential.

Employment discrimination based on sexual orientation is a real problem in our society. From coast to coast and throughout the heartland, regular hard-working Americans are being denied the right to roll up their sleeves and earn a living. That is just plain wrong.

In my own state of Arizona, we had a young man named Jeff Blain who worked hard and was well-liked by his supervisors. In fact, he was doing such a good job, they raised his salary by 1/3! Then one day his supervisor found out he was gay, so they fired him. Pretty obvious discrimination - and open and shut case. Wrong! When the man tried to sue, the judge instructed the jury that "an employee is not wrongfully terminated if he is fired for being homosexual."

There's the rub. Most Americans don't realize that there's no federal law protecting qualified and competent Americans from being fired or refused a job solely because of their sexual orientation. And while 8 states and over 100 municipalities now provide gays and lesbians the same civil rights in employment provided to other Americans, that still leaves almost 80% of the country with no protection at all.

That's why it's so important for the Labor Committee, and the entire Senate, to stand up and do what's right.

You don't have to look very far to see that there's a lot of support out there for this kind of legislation. In 1992, I worked with a broad-based bi-partisan coalition to pass an ordinance prohibiting job discrimination based on sexual orientation here in Phoenix. We had the support of the civil rights, religious, and business communities. Even large companies like US West were on our side.

In spite of this wide support, some people said the world would end if the ordinance passed. But it didn't. Phoenix businesses haven't collapsed - in fact they haven't suffered one bit as a result. And that shouldn't be surprising. In states that have laws protecting gays and lesbians from job discrimination, officials report less than a 5% increase in job

discrimination claims. As US West put it, this kind of legislation presents no danger to firms who don't discriminate.

Our own experience in Tucson, bears this out. 14 years ago, Tucson's Republican mayor helped pass an ordinance protecting gays and lesbians in employment. According to the city manager's office, the ordinance "has had no negative impact on the business community at all." 14 years and NO IMPACT - imagine that.

So you can see, there's no cost to business, and it's the right thing to do. It doesn't just make dollars, it makes sense.

That's why such a broad-based coalition is endorsing the Employment Non-Discrimination Act today. Support has come from the Leadership Conference on Civil Rights, Bishop Browning of the Episcopal Church of America, Rabbi Schindler of the Union of American Hebrew Congregations, the Evangelical Lutheran Church of America, Dr. Paul Sherry of the United Church of Christ, the NAACP, the Japanese American Citizens League, the AFL-CIO, AFSME, and SEIU. Anyone who can assemble that impressive of a group has to be doing something right.

I recall the words of Phoenix's own Rev. William O. Smith of the Shadow Rock Congregation. He may not be as famous as all those other folks, but he wrote a pretty stirring letter in support of Phoenix's ordinance two years ago which I want to share with you. In it he says: "To disagree with one lifestyle, religious persuasion or political view is the right of us all, but to deny civil, equal and human rights of anyone or any group destroys a little bit of the humanity of each of us."

I urge my former colleagues, both Republican and Democrat, to join me in supporting this much-needed legislation.

I pledge to do all I can to assist you in its swift enactment - for my children, my grandchildren, and yours.



Barry Goldwater

Testimony of Steve Coulter

**Vice President
Pacific Bell**

**Senate Committee
on Labor and Human Resources
July 29, 1994**

Employment Non-discrimination Act of 1994

Senate Committee on Labor and Human Resources

Steve Coulter

Vice President, Pacific Bell

July 29, 1994

Good morning Mr. Chairman and distinguished members of the committee. My name is Steve Coulter and I am a Vice President of Pacific Bell. On the issue before us today, I was asked to present both my personal experience as a businessman as well as my company's position. I am pleased to say that we share the vision of Senator Kennedy and Senator Chaffee of a workplace free of discrimination; we think it's just good business.

Pacific Bell is a subsidiary of Pacific Telesis Group, one of the so-called Baby Bells. It is a California firm, over 52,000 employees, 10 million customers; last year it had \$9 billion in revenue, \$23 billion in assets. Its markets and employees reflect the diversity that is California. As a telecommunications company, we reach out to everyone. Five months ago we announced a program to bring state-of-the-art telephony to every public library, public school and community college within three years. Two months ago we started re-wiring every residence we serve in California, a \$16 billion project to bring home the information superhighway.

Pacific Bell has had a policy in place prohibiting discrimination against gays and lesbians since 1981. The company seeks to value diversity. It was not always so. There was a time when the company did not appreciate differences; there was a time when it preferred seeing the world as it wanted it to be rather than as it was. But the company eventually opened its eyes, learned, and came to terms with its environment. And Pacific Bell is, I believe, a better business because of it.

Today, 70% of the company's workforce are women and minorities. Twenty or more years ago, most women in our company were operators, few were in management. Today over half the workforce and half the management team are women, a third at senior levels.

Thirty percent of all Asians in the entire U.S. telecommunications industry work for one California corporation--Pacific Bell. Twenty-three percent of all Hispanics. African Americans make up 6% of the California workforce and 14% of our workforce. Pacific Bell has a large number of gay and lesbian employees, and customers. We provide service in six languages, one of the largest programs of its kind in America. We spend a half billion dollars a year with minority and women vendors.

In short, Pacific Bell has invested in diversity and believes it works. PacBell may be the most diverse major corporation in the nation's most diverse state.

Our company is committed to pursuing sound business strategies which build on a strong economic and social foundation. Non-discrimination and the next step, valuing a diverse employee body, is good business. The legislation we are discussing today is just plain common sense. It is not an added burden. It is not a significant added expense. It reflects our values as a business.

I believe that a manager who cannot tolerate, cannot respect the diversity of the human family, is probably not a very good manager. Management is more than crunching numbers; it is motivating people to give their best. My experience is that you motivate people more by lifting them up---not putting them down. If employees are afraid to be honest about who they are, if people are forced to build corporate closets, then they are using their energy and creativity for self preservation rather than making the business more profitable.

There are those who say tolerance is too great a burden. I hope we face them as competitors. If you can capture the talents of a diverse workforce, and reach out to a diverse population, you have a powerful competitive edge. Fairness is no burden, it is an advantage.

No company is perfect; certainly not PacBell. But it makes an effort. All companies should. A growing number of states, localities and businesses now prohibit job discrimination based on sexual orientation. When I learned that in 42 states it is still legal to fire someone because they are gay or lesbian, I was frankly shocked. That is wrong and a key reason why I am here before you today. I

This bill is very narrowly drawn. No special privileges. No quotas. Religious groups, small businesses and the military are exempt. It fits easily within our own way of working. And it brings uniformity to the law.

Pacific Telesis Group and Pacific Bell support this legislation. It is good public policy and good business. It is also the right thing to do.

Thank you.

Xerox Corporation
800 Long Ridge Road
P. O. Box 1600
Stamford, Connecticut 06904-1600
203 968-4515

Paul A. Allaire
Chairman and Chief Executive Officer

July 26, 1994

The Honorable Edward M. Kennedy
United States Senate
Washington, DC 20510

Dear Senator Kennedy:

In April, 1990, Xerox revised its nondiscrimination policy to include the category of sexual orientation. Discrimination of any form, against any employees, does not belong in our work environment.

We view diversity awareness and acceptance as enablers to increased productivity. We strive to create an atmosphere where all employees are encouraged to contribute to their fullest potential. Fear of reprisals on the basis of sexual orientation only serves to undermine that goal.

Enhancing our work environment to prohibit discrimination on the basis of sexual orientation has not added any financial cost to our organization. Instead, we believe our philosophy and practice of valuing diversity brings financial benefits to the workplace by encouraging full and open participation by all employees.

Accordingly, we are pleased to see your effort to enact federal legislation that will prohibit employment discrimination on the basis of sexual orientation. From the vantage point of our experiences to end workplace discrimination and our understanding of the Employment Non-Discrimination Act of 1994, we offer our endorsement of this bill which is designed to ensure fair and equal treatment for all citizens on the job.

Sincerely,

A handwritten signature in black ink, appearing to read "P. A. Allaire", with a long horizontal line extending to the right.

Paul A. Allaire

PAA/mps

JUSTIN DART, JR.
907 6TH STREET, S.W., APT. 516C
WASHINGTON, D.C. 20024
202-488-7684

Testimony of Justin Dart, former Chairman of the President's Committee on Employment of People with Disabilities, before the Senate Committee on Labor and Human Resources, July 29, 1994.

MR. CHAIRMAN, IT IS AN HONOR TO APPEAR BEFORE YOUR COMMITTEE TODAY.

AS A REPUBLICAN, AS A FORMER BUSINESSMAN, AS A LIFE LONG DISABILITY RIGHTS ADVOCATE, I CALL ON THE MEMBERS OF CONGRESS TO PASS AND THE PRESIDENT TO SIGN THE EMPLOYMENT NON-DISCRIMINATION ACT OF 1994. I CALL ON ALL WHO LOVE THE AMERICAN DREAM TO SUPPORT IT.

WHY AM I, A DISABILITY RIGHTS ADVOCATE WHO IS NOT GAY, SUPPORTING THIS BILL ON SEXUAL ORIENTATION?

BECAUSE MILLIONS OF PEOPLE WITH DISABILITIES ARE GAY AND LESBIAN.

BECAUSE SOME OF THE GREATEST HUMAN BEINGS I KNOW ARE GAYS AND LESBIANS WHO HAVE MADE MONUMENTAL CONTRIBUTIONS TO MY LIFE, TO MY FAMILY, TO MY PROSPERITY AND TO MY HAPPINESS. I COULD NOT LIVE WITH MY CONSCIENCE IF I DENIED THEIR CALL FOR SIMPLE JUSTICE.

I AM HERE TODAY, BECAUSE WHAT MARTIN LUTHER KING SAID IS PROFOUNDLY TRUE. "INJUSTICE ANYWHERE IS A THREAT TO JUSTICE EVERYWHERE."

EFFECTIVE PROTECTION OF THE RIGHT AND RESPONSIBILITY TO BE PRODUCTIVE IS A FOUNDATIONAL COMPONENT OF SUCCESSFUL HUMAN CULTURE. THE PRODUCTIVITY OF EACH IS ESSENTIAL TO THE PROSPERITY OF ALL. I HAVE A VESTED PERSONAL INTEREST IN ENSURING THE MAXIMAL FREEDOM AND PRODUCTIVITY OF EVERY PERSON.

MR. CHAIRMAN, AS A WHEEL CHAIR USER FOR 46 YEARS I KNOW ABOUT STEREOTYPES AND DISCRIMINATION. ALTHOUGH I WAS AN HONOR STUDENT IN THE FIELD OF EDUCATION AT THE UNIVERSITY OF HOUSTON, I WAS, IN 1954, DENIED A TEXAS TEACHING CERTIFICATE BECAUSE OF MY DISABILITY. I HAVE BEEN DENIED SCORES OF JOBS SINCE THAT TIME.

AS A YOUNG MAN I BORROWED THE DOWN PAYMENT TO BUY A SEARS ROEBUCK CAR SO THAT I COULD DELIVER HOUSTON CHRONICLE NEWSPAPERS FOR TWO CENTS GROSS PROFIT EACH. LATER I WENT DEEPLY IN DEBT TO FOUND SMALL BUSINESSES BECAUSE THERE WAS NO OTHER WAY TO GET A JOB.

MY YOUNGER BROTHER PETER WAS A TOP AIR FORCE JET PILOT AND A DEGREED ENGINEER WHEN HE WAS DISABLED BY POLIO, IN THE LATE FIFTIES. HE STRUGGLED FOR MORE THAN TWO DECADES AGAINST OVERWHELMING HOSTILE ATTITUDES. HE TOO HAD PROBLEMS FINDING EMPLOYMENT. FINALLY, SIX YEARS AGO, NO LONGER ABLE TO BEAR THE PAIN OF REJECTION BY HIS BELOVED NATION, UNWILLING TO ACCEPT DEPENDENCY, HE TOOK HIS OWN LIFE.

TENS OF MILLIONS OF MY COLLEAGUES WITH DISABILITIES HAVE SUFFERED THE SAME REJECTION, WITH DEVASTATING RESULTS FOR THE ECONOMY AND THE QUALITY OF LIFE OF THE NATION.

PRESIDENT BUSH ESTIMATED THAT IT COST THIS NATION ALMOST 200 BILLION DOLLARS ANNUALLY TO EXCLUDE PEOPLE WITH DISABILITIES FROM THE PRODUCTIVE MAINSTREAM. THE HUMAN COST IS BEYOND EXPRESSION IN NUMBERS OR WORDS.

THAT IS WHY IT WAS ABSOLUTELY ESSENTIAL TO PASS THE HISTORIC AMERICANS WITH DISABILITIES ACT OF 1990.

FOR THE SAME KINDS OF REASONS, THE TIME HAS COME TO PROTECT THE BASIC RIGHTS OF PERSONS WHO ARE OPPRESSED BECAUSE OF THEIR SEXUAL ORIENTATIONS. IN MANY WAYS DISCRIMINATION AGAINST GAY AND LESBIAN PEOPLE IS MORE VICIOUS AND VIOLENT THAN THAT SUFFERED BY PEOPLE WITH DISABILITIES.

THIS DISCRIMINATION IS SO PERVASIVE AND INTIMIDATING THAT I DO NOT FEEL AT LIBERTY TO CITE EXAMPLES WITHIN MY KNOWLEDGE WITHOUT PERMISSION FROM THE INDIVIDUALS INVOLVED.

MR. CHAIRMAN, HISTORICALLY, THERE HAS BEEN OPPOSITION TO CIVIL RIGHTS. THERE IS THE ASSERTION THAT CIVIL RIGHTS IS A KIND OF BOTHERSOME

BURDEN THAT DO-GOODERS IMPOSE ON SOUND BUSINESS AND SOUND GOVERNMENT. THIS IS A DANGEROUS FALLACY.

CIVIL RIGHTS AND FREE ENTERPRISE ARE TWO SIDES OF THE SAME SOLID GOLD CULTURAL CURRENCY THAT HAS REVOLUTIONIZED THE PRODUCTIVITY AND THE QUALITY OF HUMAN LIFE.

OUR FOREFATHERS AND MOTHERS CAME TO THIS COUNTRY BECAUSE WE OFFERED EXTRAORDINARY LEGAL GUARANTEES OF EQUAL OPPORTUNITY. THEY GOT RICH AND AMERICA GOT RICH. EVERY TIME WE EXPANDED THOSE CIVIL RIGHTS GUARANTEES TO INCLUDE ANOTHER OPPRESSED MINORITY, AMERICANS GOT RICHER, AMERICA BECAME MORE DEMOCRATIC.

CIVIL RIGHTS PUTS THE "FREE" IN FREE ENTERPRISE. AMERICA IS NOT RICH IN SPITE OF CIVIL RIGHTS. AMERICA IS RICH BECAUSE OF CIVIL RIGHTS. IN COMBINATION WITH THE WORK ETHIC AND AN IRREPRESSIBLE WILL TO LIVE THE HUMAN DREAM, AN EVER EXPANDING CONSCIOUSNESS AND ENFORCEMENT OF CIVIL RIGHTS FORMS THE HEART, THE SOUL AND THE POWER OF THE AMERICAN HERITAGE.

BUT SOME FOLKS CLAIM THAT CIVIL RIGHTS LAWS ARE LEGITIMATE ONLY IN THE AREAS OF RACE, RELIGION, GENDER - AND MAYBE DISABILITY. THEY CLAIM THAT IT IS IMMORAL TO BE GAY OR LESBIAN, AND THAT IT IS OK TO DENY JOBS TO HARD WORKING AMERICANS BECAUSE OF WHO THEY LOVE. NOTHING IS WRONG WITH DENOUNCING THAT WHICH YOU BELIEVE TO BE IMMORAL. EVERYTHING IS WRONG WITH ACQUIESCING IN VICIOUS DISCRIMINATION AGAINST AMERICAN CITIZENS JUST BECAUSE YOU DISAGREE WITH THEIR PERSONAL VIEWS AND ACTIVITIES - ACTIVITIES WHICH IN NO WAY INFRINGE THE RIGHTS OF OTHERS.

THEN THERE IS THE MATTER OF FAMILY VALUES. IS THERE A HIGHER FAMILY VALUE THAN THE RIGHT, INDEED THE RESPONSIBILITY TO WORK, TO BE ALL THAT ONE CAN BE, OPENLY, PROUDLY IN THE SUNSHINE OF THE AMERICAN DREAM? IS THERE A HIGHER FAMILY VALUE THAN THAT MOST PROFOUND LOVE WHICH COMMANDS MOTHER AND FATHER, SON AND DAUGHTER, BROTHER AND SISTER TO NURTURE AND SUPPORT EACH OTHER, IN SPITE OF ALL DIFFERENCES?

THE GAY AND LESBIAN PEOPLE I KNOW ARE NOT AMORAL ALIENS FROM ANOTHER PLANET. THEY ARE SOLID, HARD WORKING, COMMITTED AND CARING PEOPLE. THEY HOLD MY FAMILY VALUES.

EVENTUALLY EVERY FAMILY IN THE UNITED STATES WILL HAVE ONE OR MORE MEMBERS WHOSE BASIC RIGHTS WILL BE PROTECTED BY THIS ANTI-DISCRIMINATION ACT. THIS IS NOT A LAW FOR SOMEBODY ELSE - FOR "THEM." THIS IS A LAW FOR US. ALL OF US.

THE NON-DISCRIMINATION ACT OF 1994 WILL BE ANOTHER LANDMARK OF JUSTICE IN THE GREAT TRADITION OF THE CIVIL RIGHTS ACT OF 1964, THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967, THE REHABILITATION ACT OF 1973, THE ADA AND THE CIVIL RIGHTS ACT OF 1991. IT WILL PRODUCE PROFITS THAT WILL REDUCE PUBLIC DEFICITS. IT WILL ENRICH EVERY CITIZEN IN TERMS OF MONEY AND OF QUALITY OF LIFE.

MR. CHAIRMAN, MANY YEARS AGO PRESIDENT EISENHOWER APPOINTED A BLUE RIBBON COMMISSION ON GOALS FOR AMERICANS. PERSONS OF MY AGE WILL RECOGNIZE THE NAMES OF THE MEMBERS OF THAT COMMISSION: CANHAM, CONANT, DARDEN, GREENWALT, GRUENTHER, HAND, KERR, KILLIAN, MEANY, PACE AND WRISTON. THEIR REPORT STATED:

"The paramount goal of the United States was set long ago. It is to guard the rights of the individual, to ensure his development, and to enlarge his opportunity.... Our enduring aim is to build a nation and help build a world in which every human being shall be free to develop his capacities to the fullest. We must rededicate ourselves to this principle and thereby strengthen its appeal to a world in political, social, economic, and technological revolution."

ABRAHAM LINCOLN SAID THIS: "I have often inquired of myself, what great principle or idea it was that kept this Confederacy so long together. It was not the mere matter of the separation of the colonies from the motherland; but something in that Declaration giving liberty, not alone to the people of this country, but hope to the world for all future time. It was that which gave promise that in due time the weights should be lifted from the shoulders of all men, and that all should have an equal chance. This is the sentiment embodied in that Declaration of Independence..."

4



Leadership Conference on Civil Rights

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STATEMENT OF

CHAI R. FELDBLUM

ASSOCIATE PROFESSOR OF LAW,

GEORGETOWN UNIVERSITY LAW CENTER

BEFORE THE COMMITTEE ON LABOR

AND HUMAN RESOURCES

UNITED STATES SENATE

ON BEHALF OF

THE LEADERSHIP CONFERENCE

ON CIVIL RIGHTS

IN SUPPORT OF

S. 2238, THE EMPLOYMENT

NON-DISCRIMINATION ACT OF 1994

JULY 29, 1994

"Equality In a Free, Plural, Democratic Society"

Mr. Chairman and members of the Committee, my name is Chai Feldblum. I am an Associate Professor of Law at Georgetown University Law Center, where I direct a Federal Legislation Clinic and teach Federal Legislation, Disability Law, and Sexual Orientation and the Law.

I am pleased to testify here today on behalf of the Leadership Conference on Civil Rights, the nation's oldest, largest, and most broadly-based coalition. For forty-four years, the Leadership Conference has been the legislative arm of the civil rights movement. As part of my work with the Leadership Conference, and as a consultant to the Human Rights Campaign Fund, I have worked on the issue of employment discrimination on the basis of sexual orientation, and specifically, on the Employment Non-Discrimination Act of 1994.

My testimony covers four areas:

- * The lack of existing protection for gay men, lesbians, bisexuals, and heterosexuals who experience discrimination in employment based on their sexual orientation;
- * The need to outlaw employment discrimination based on sexual orientation;
- * The experiences of six of the eight states that have passed anti-discrimination protection in employment based on sexual orientation; and
- * A description of what S. 2238 requires, and does not require, in the area of employment non-discrimination.

I. LACK OF EXISTING PROTECTION

A majority of the American people believe gay men and lesbians currently enjoy protection

against arbitrary discrimination in the workplace.¹ This misperception should not surprise us. American people have a gut sense that essential American values of fairness and equality should prevail in our society and that, indeed the federal Constitution or "some federal law" protects Americans from unfair and arbitrary discrimination in the workplace.

Unfortunately, this is not the case. As civil rights attorneys across this country know, the federal Constitution prohibits discrimination **only** when practiced by a governmental body or by an entity significantly intertwined with a governmental body.² Thus, even if gay people were successful in gaining protection through the provisions of the federal Constitution,³ such protection would still not provide legal recourse to the majority of people who work for private employers. Thus, gay people need what other minorities and women have: protection under the federal Constitution and protection under a federal statute.

Individuals who experience discrimination in private employment because of their race, religion, national origin, gender, age, or disability are covered under various federal anti-

¹ According to a 1994 Mellman, Lazarus & Lake poll, 70% of the American public are unaware that federal civil rights laws do not prohibit firing a person solely on the basis of his or her sexual orientation.

² To bring a constitutional challenge against an employment decision made by a non-governmental employer, an individual must show: 1) that the state compelled the employer to act as it did, or; 2) that the employer provided a public function that the state was obligated to provide, or; 3) that the relationship between the state and the employer is so close that it is fair to treat the two as one entity. See *Burton v. Wilmington Parking Auth.*, 365 U.S. 715 (1961); *Rendell-Baker v. Kohn*, 457 U.S. 830 (1982).

³ Appendix I, pp. 1-9, includes a summary of cases which have raised constitutional challenges and the reasoning used to reject or accept the constitutional claim. This summary excludes cases challenging the military ban.

discrimination laws.⁴ The first of such laws, Title VII of the Civil Rights Act of 1964, prohibits employment discrimination on the basis of -- among other characteristics -- sex. In a few cases, gay people have attempted to receive protection under Title VII by arguing that discrimination on the basis of sexual orientation should be included under the rubric of sex discrimination.

The judicial response to such challenges has not been positive. For example, the court that ruled against Ernest Dillon, who brought such a sexual orientation discrimination claim under Title VII, had this to say: "[Dillon's coworkers' actions] were all directed at demeaning him solely because they disapproved of his alleged homosexuality. These actions, although cruel, are not made illegal by Title VII."⁵

Thus, with few exceptions, gay people who experience discrimination in employment have no constitutional protection and no federal statutory protection. Some gay people who have

⁴ Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of race, color, religion, sex, or national origin. The Age Discrimination in Employment Act of 1967 prohibits employment discrimination on the basis of age. The Americans with Disabilities Act of 1990 prohibits employment discrimination on the basis of disability. Other federal laws also prohibit employment discrimination on the part of entities that receive federal funds. Title VI of the Civil Rights Act of 1964 prohibits such discrimination in limited circumstances on the basis of race, color, and religion; section 504 of the Rehabilitation Act of 1973 prohibits such discrimination on the basis of disability; and the Age Discrimination Act of 1975 prohibits such discrimination on the basis of age; and Title IV of the Education Amendments of 1972 prohibits sex discrimination in education.

⁵ *Dillon v. Frank*, No. 90-2290, 1992 U.S. App. LEXIS 766 (6th Cir. Jan. 15, 1992). Cases in which a Title VII claim was unsuccessfully raised to challenge sexual orientation employment discrimination are summarized in Appendix I, pp. 10-13.

experienced egregious forms of discrimination have pursued tort remedies, and some have pursued implied-contract remedies. As a general matter, such claims have not been successful.⁶

II. THE NEED TO OUTLAW EMPLOYMENT DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION

There is a long tradition in this country, embodied in the "employment-at-will" doctrine, which allows private employers to fire, hire, and make other employment decisions as they wish. While the labor movement in this country has made critical strides in negotiating contractual protections for its members, most private employers' prerogatives are constricted only in limited circumstances: if they voluntarily choose to bind themselves by contract; in some states, if their actions are found by a court to be contrary to public policy;⁷ or if the state or federal government chooses to intervene through passage of anti-discrimination legislation.

⁶ Appendix I, pp. 17-18, summarizes five cases brought under contract or tort theories, two of which were successful.

⁷ In some states, courts have created an exception to the "employment-at-will" doctrine by refusing to uphold discharges that are contrary to the state's public policy. For example, an employee who is discharged in retaliation for "whistle-blowing," in a state that has a policy encouraging whistle-blowing, may successfully argue the discharge was illegal because it contravened the state's public policy.

The public policy exception, however, requires a pre-existing expression of the state's policy, usually embodied in a state statute or regulation. This exception has never been successfully invoked in the area of sexual orientation, probably because if there were a state law prohibiting sexual orientation employment discrimination (which would embody the state's policy), an individual would sue directly under that law. *See*, Appendix I, p. 17 (rejecting public policy contract claim).

Historically, state or federal governments have passed anti-discrimination legislation where there is a demonstrated problem of discrimination against a recognized group of people. Compelling evidence of such discrimination, on bases such as race and gender, was evident in 1964 when Title VII of the Civil Rights Act of 1964 was passed. Compelling evidence of such discrimination, on the basis of age, was evident in 1967 when the Age Discrimination in Employment Act was passed. Compelling evidence of such discrimination, on the basis of disability, was evident in 1990 when the Americans with Disabilities Act was passed.

Compelling evidence of such discrimination, on the basis of sexual orientation, is evident today. The three appendices to this testimony document such cases of discrimination. Appendix I summarizes over fifty cases alleging employment discrimination that have reached federal and state courts over the years, and that have resulted in judicial opinions. Appendix II, Part A, catalogs the number of complaints filed in seven of the eight states that have anti-discrimination laws -- over 800 complaints over the course of five years. The vast majority of these complaints deal with employment. Part B reproduces quotes from attorney participants in the Los Angeles County Bar Association Report on Sexual Orientation Bias which illustrate the overt discrimination gay men and lesbians face in the labor market. Appendix III summarizes 23 personal cases of discrimination documented by the Human Rights Campaign Fund. The Committee has heard today from two people who have personally experienced discrimination on the basis of sexual orientation: Cheryl Summerville and Ernest Dillon.

There is abundant evidence of employment discrimination against gay men, lesbians, and

bisexuals across this country. Evidence of such discrimination justifies passage of the Employment Non-Discrimination Act of 1994.

III. STATE EXPERIENCES

The United States Congress would not be breaking new ground with passage of S. 2238. Eight states and the District of Columbia already have laws that prohibit employment discrimination on the basis of sexual orientation. These states are Wisconsin, which enacted the first law in 1982, followed by: Massachusetts in 1989; Connecticut and Hawaii in 1991; California, D.C., New Jersey, and Vermont in 1992; and Minnesota in 1993.⁸

Appendix II indicates the number of sexual orientation discrimination complaints filed since enactment of these state laws for six of the eight states. In four of the states, the cumulative number of sexual orientation complaints and a breakdown of the number of employment discrimination complaints are noted. In the remaining two states, the number of employment complaints are noted. As a general matter, the area of employment represents the vast majority of the claims of discrimination based on sexual orientation.

Here are some examples of those statistics. In Massachusetts, which enacted a sexual orientation non-discrimination law in 1989, over 330 complaints have been filed with the

⁸ All eight states and the District of Columbia prohibit sexual orientation discrimination in employment, and all but California extend this protection to housing and public accommodations. Minnesota and Wisconsin also outlaw sexual orientation discrimination in public and private education.

Massachusetts Commission Against Discrimination (MCAD). Of these complaints, 256 allege discrimination in employment. None of these complaints have gone to court. They have either been resolved or dismissed.

In New Jersey, which enacted its law in 1982, 18 complaints charging discrimination on the basis of sexual orientation were filed for all covered areas in 1991-1992; 29 such complaints were filed in 1992-1993; and 25 such complaints were filed in 1993-1994. Of these 72 complaints, 25 dealt with alleged discrimination in employment. A majority of these cases have either been settled or dismissed. None has yet reached court.

Connecticut reflects similar numbers. In 1991-1992, there were 19 complaints filed charging employment discrimination on the basis of sexual orientation. In 1992-1993, there were 31 such employment complaints.

Minnesota passed its law quite recently: the law became effective on August 1, 1993. Since that time, 14 complaints of sexual orientation discrimination have been filed with the Minnesota Department of Human Rights. Ten of the complaints concern employment and are currently being processed.⁹

⁹ It is interesting to note that, of the ten complaints, five were brought by heterosexuals. In four of those cases, heterosexual men complained of being perceived as gay and harassed on that basis. In one complaint, a heterosexual woman complained of being subject to discrimination by a lesbian.

IV. S. 2238: THE EMPLOYMENT NON-DISCRIMINATION ACT OF 1994

S. 2238, the Employment Non-Discrimination Act of 1994, represents a reasoned and balanced approach to remedying employment discrimination on the basis of sexual orientation.

The core of S. 2238 is found in Section 3. That section states:

A covered entity, in connection with employment or employment opportunities, shall not --

- (1) subject an individual to different standards or treatment on the basis of sexual orientation;
- (2) discriminate against an individual based on the sexual orientation of persons with whom such individual is believed to associate or to have associated; or
- (3) otherwise discriminate against an individual on the basis of sexual orientation.

The prohibition of S. 2238 is simple and straightforward. An employer may not use the fact of an individual's sexual orientation in making employment decisions. An employer may not treat an individual better or worse because that individual is a gay man, a lesbian, a bisexual, or a heterosexual. No better and no worse -- just the same.

S. 2238 does not deal with the issue of partner benefits. While employers are free to provide such benefits if they wish, S. 2238 does not create a right to such benefits.

S. 2238 also does not provide for a "disparate impact" claim. A disparate impact claim is a claim that a facially neutral practice of an employer has a disproportionately adverse effect on persons of a particular protected group.

A disparate impact claim under Title VII relies heavily on statistics. The plaintiff compares the percentage of individuals of a particular gender, race, or ethnicity in an employer's workforce with the percentage of such individuals in the pool of qualified applicants. If there is a significant disparity between the percentages, the plaintiff may argue that one or more of the employer's facially neutral employment practices causes the adverse effect on the hiring of such individuals. If the plaintiff makes out this case, the employer must then show the challenged employment practice is job-related and consistent with business necessity.

As you know, Congress codified the "disparate impact" claim under Title VII in the Civil Rights Act of 1991.

S. 2238 excludes disparate impact claims primarily because it is difficult to perform an accurate statistical analysis in the context of sexual orientation. Privacy concerns ordinarily foreclose an accurate statistical count of all gay men, lesbians, bisexuals, and heterosexuals in an employer's workforce and in the qualified applicant pool. While one could develop a count of the number of openly-gay people in a particular workforce, it would be difficult, if not impossible, to assess the number of openly-gay people in the relevant applicant pool.

Moreover, gay people do not usually face the type of discrimination that takes the form of disparate impact. Rather, the discrimination that occurs usually is either overt, intentional discrimination, or facially neutral actions that are pretexts for discrimination. Both of these types of actions are prohibited by S. 2238.

S. 2238 prohibits an employer from adopting a quota based on sexual orientation. The bill also prohibits an employer from giving preferential treatment to any individual based on the individual's sexual orientation. This is stricter than the rule which applies under Title VII. Under Title VII, an employer may voluntarily go beyond race or gender neutrality in certain circumstances, primarily to remedy past discrimination. Under S. 2238, while an employer may increase the diversity of its applicant pool by advertising and reaching out to members of the gay community, the employer may not give preferential treatment to an individual based on that individual's sexual orientation.

S. 2238 contains a broad religious exemption. The types of religious organizations that are exempted are derived from a similar exemption in Title VII. The scope of the exemption, however, is significantly broader than the scope in Title VII. Title VII exempts religious organizations only with regard to discrimination based on religion; these organizations remain subject to Title VII's prohibition of discrimination on such grounds as race and gender. By contrast, except for profit-making activities, S. 2238 exempts religious organizations from the bill completely, thus exempting them from requirements based on sexual orientation.

S. 2238 does not apply to the relationship between the United States and members of the Armed Forces. Thus, the bill does not affect current law on gay men, lesbians, and bisexuals in the military.

S. 2238 adopts the enforcement mechanisms of Title VII, as amended by the Civil Rights Act of 1991. There is no desire to re-fight battles regarding enforcement in this bill. Rather, whatever enforcement mechanisms are granted to, and required of, other minorities and women under Title VII are the enforcement mechanisms that will be granted to, and required of, individuals who bring claims under this law. Thus, the requirement of filing claims with the Equal Employment Opportunity Commission (EEOC); the ability of an individual to bring a private right of action in court; and the ability of an individual to receive injunctive relief and damages, up to the limits authorized by Title VII, are all incorporated by reference in S. 2238.

Mr. Chairman and members of the Committee, it is time to pass the Employment Non-Discrimination Act of 1994.

I am attaching a statement from Ralph G. Neas, Executive Director of the Leadership Conference on Civil Rights.

I would be pleased to answer any questions.

Mike Lutz



President's Committee on Employment
of People with Disabilities

September 1, 1994

MEMORANDUM

TO: Interested Presenters

FROM: Tony Coelho, Chairman

Tony Coelho

SUBJ: INVITATION TO SUBMIT WORKSHOP PRESENTATION PROPOSALS
FOR THE 1995 PRESIDENT'S COMMITTEE ANNUAL CONFERENCE

You are invited to submit a proposal to present a workshop at the 48th Annual Conference of the President's Committee on Employment of People With Disabilities. This conference will be held in Portland, Oregon, on May 17-19, 1995.

The enclosed Request for Workshop Presentation Proposals outlines the instructions for making a submission. Please note that all proposals should be sent to the President's Committee by close of business on December 2, 1994.

We look forward to receiving your proposals, and to seeing you in Portland next May.

SEP - 9 1994



President's Committee on Employment
of People with Disabilities

48th ANNUAL CONFERENCE
PRESIDENT'S COMMITTEE ON EMPLOYMENT OF PEOPLE WITH
DISABILITIES

PORTLAND, OREGON
MAY 17 - 19, 1995

REQUEST FOR
WORKSHOP PRESENTATION PROPOSALS

The Annual Conference of the President's Committee on Employment of People With Disabilities provides an excellent opportunity for a diverse group of individuals who are working to promote employment options for people with disabilities to share their professional and organizational expertise and experience. Each Annual Conference builds upon the excitement and success of the previous year's, and the 48th Annual Conference, to be held in Portland, Oregon, May 17-19, 1995, will be no exception. You are invited not only to attend, but also to enrich the gathering with your own ideas, approaches, and successful strategies by preparing and presenting a workshop.

The Annual Conference Planning Committee currently is soliciting proposals for workshop sessions that will facilitate a lively exchange of views on issues related to the employment of people with disabilities. The theme for 1995, "Celebrate Ability," provides a positive framework for highlighting ideas that work. Workshop sessions will be about 90 minutes long (including a question period) and will constitute a large segment of the three-day Conference. About 40 presentations will be selected from the proposals submitted.

We are seeking proposals that reflect a diversity of topics and content to appeal to the varying interests of the Conference audience. Among the more than 3,000 people who are expected to attend are employers, rehabilitation professionals, organized labor representatives, educators, training and placement specialists, government officials from federal, state, and local agencies, members of veterans organizations, advocates and civil rights activists, people with disabilities and their family members and friends, and community leaders and volunteers interested in the employment goals of the President's Committee.

Of particular interest to us this year are workshops that focus on the development of job seeking and career enhancement skills for people with disabilities. We would like to be able to present several sessions that would cover such topics as resume writing; interviewing skills; conducting a job search for public and/or private sector employment; where to turn for help; finding and using a mentor effectively; building a personal resource network, and other knowledge, skills and strategies that could be helpful to people with disabilities who are trying to find employment or enrich their current careers.

Also of special interest to the Planning Committee are workshops that address the issues of implementation of the Americans with Disabilities Act (ADA) in small and medium sized businesses. Of course, workshops on many other subjects related to the employment of people with disabilities will be selected for presentation at the 1995 Annual Conference, as well. Following is a partial (but by no means exclusive) list of topics that could be used as a guide in designing a workshop proposal:

- ADA: Key Provisions and Policies
- Addressing Chronic Illness
- Addressing Hidden Disabilities
- Alternative Dispute Resolution
- Assistive Technology in the Workplace
- Business to Business: Best Practices and Successful ADA Implementation Strategies
- Civil Rights and the Government
- Cultural Diversity: Promoting Employment Opportunities
- Disability Law: Recent Developments
- Emerging Issues in the Field
- Employee Coalitions
- Employment in the Great Outdoors
- Employment of People with Disabilities in the Federal Sector
- Family Issues
- Health Care Reform
- Independent Living Resources and Their Role in Employment
- Mental Health Issues
- Networking Strategies for Job Seekers
- Personal Assistance as an Aid to Employment
- Reasonable Accommodation
- Recruitment, Placement, and Interviewing
- Safety and Egress for People With Disabilities
- Self-Advocacy, Leadership, and Empowerment
- Seniority Issues
- Sharing Ideas: Employers and the Rehabilitation/Education Community
- Social Security Incentives
- Training Supervisors/Train the Trainer Models
- Transition from School to Work
- Upward Mobility and the Glass Ceiling for Employees With Disabilities
- Workers' Compensation Issues

To submit a proposal to present a workshop, please complete the attached forms and return them with five copies by December 2, 1994, to:

Betsy Friedman
Conference Manager
President's Committee on Employment
of People With Disabilities
1331 F Street, N.W.
Third Floor
Washington, DC 20004-1107

All decisions regarding the selection of proposals will be made by February 15, 1995.

The President's Committee is happy to be able to waive the Conference registration fees for workshop presenters whose sessions are selected. However, **no other expenses**, including transportation, lodging rooms, or materials to be distributed, can be paid for by the President's Committee.

Please note that it is the policy of the President's Committee that when any written materials are disseminated at the Annual Conference, copies must be made available in a variety of accessible formats, including braille, large print, and audio cassette. If your workshop is selected, keep in mind that no materials may be distributed unless copies are provided in accessible formats. In addition, if you plan to use a videotape or film as part of your presentation, the tape or film must be captioned (preferably open captioned, as there is no guarantee that decoder equipment for closed captioning will be available on site at the Conference).

If you have any questions, please contact Betsy Friedman at the President's Committee on (202)376-6200.

1995 PRESIDENT'S COMMITTEE ANNUAL CONFERENCE WORKSHOP PRESENTATION PROPOSAL FORM

Please provide the following information (typewritten, please) for your workshop proposal. Workshops will be 90 minutes in length. Keep in mind that the information you furnish will be considered to be complete and accurate, and will be printed in the final program as it is presented here. Similarly, only the audio-visual equipment requested on this form will be provided for workshop presentations selected. Requests for additional equipment will not be honored.

Please submit your original proposal, and five copies, by
December 2, 1994, to:

Betsy Friedman, Conference Manager
President's Committee on Employment of
People With Disabilities
1331 F Street, NW
Third Floor
Washington, DC 20004

TITLE OF PROPOSED WORKSHOP SESSION:

SUMMARY OF WORKSHOP, INCLUDING GOALS & OBJECTIVES (Use additional paper if necessary):

ABSTRACT OF PRESENTATION (TO BE USED IN FINAL PROGRAM - NOT TO EXCEED 100 WORDS):

AUDIO-VISUAL EQUIPMENT NEEDED:

WORKSHOP MODERATOR INFORMATION SHEET

TITLE OF PROPOSED WORKSHOP SESSION:

NAME:

TITLE:

ADDRESS:

TELEPHONE:

FAX:

CREDENTIALS/RESUME/SUMMARY OF EXPERIENCE OF MODERATOR:

SHORT BIOGRAPHY FOR WORKSHOP INTRODUCTORY PURPOSES:

WORKSHOP PRESENTER INFORMATION SHEET

PLEASE SUBMIT A COPY OF THIS PAGE FOR EACH PRESENTER

TITLE OF PROPOSED WORKSHOP SESSION:

NAME:

TITLE:

ADDRESS:

TELEPHONE:

FAX:

CREDENTIALS/RESUME/SUMMARY OF EXPERIENCE OF PRESENTER:

SHORT BIOGRAPHY FOR WORKSHOP INTRODUCTORY PURPOSES:

DRAFT

MEMORANDUM FOR CAROL RASCO AND ALICE RIVLIN

FROM Lisa Fairhall and Richard Green
Jeremy Ben-Ami and Stan Herr

SUBJECT Draft Proposal for DPC/OMB Disability Task Force

Background

You have agreed to establish a joint DPC/OMB task force to examine issues surrounding Federal and national responsibilities for providing assistance to and protecting the rights of individuals with disabilities.

Below, we propose: a task force agenda, task force and support team composition, a time frame for task force activities, and some first organizational steps. The questions we have proposed to form the agenda for this Task Force are provisional; our initial conversations with key individuals will seek to validate their inclusion in the agenda, to determine what other issues must be addressed, and to set priorities for the Task Force.

I. PROPOSED TASK FORCE AGENDA

The Task Force should be guided by the President's credo of supporting public and private initiatives to enhance the independence and productivity of persons with disabilities. The Task Force should answer, to the extent possible, the following questions, in order to articulate and refine the Administration's overall disability policy:

National Disability Policy:

- Can we articulate a national disability policy to animate or guide Federal law and regulations?
- What is the Federal role in a national disability policy? What is the rationale for each specific Federal responsibility (e.g., constitutional right, insurance, indemnity, need)? Do the scope and nature of the responsibilities differ based on age (children vs. adults) or severity of disability?
- What are the policies and realities in other countries (e.g., Sweden, Canada, Germany) that may offer insight and direction to our policies and programs?

Federal Disability Programs:

- How are we meeting current responsibilities? What is the current array of programs? What services/benefits are they providing? What values do they promote? How delivered? To whom? What are the gaps and overlaps? How are the Federal programs/services integrated with State and local government programs? Are there exemplary State and local government programs? How can good practices be disseminated/encouraged?
- What do we know about the effect of each program and policy on recipients? What data are we currently collecting in each area? What do we need to answer the impact questions better?

Identifying and Implementing Change:

- What changes are needed to program purposes and program structure to better meet current Federal responsibilities? Are we currently identifying and reaching those individuals in need of services? Are we providing the most effective array of services and benefits for the costs incurred by each level of government, the individual, and the private sector?
- For those responsibilities identified but not addressed, what should be done, and by whom?
- Should we revise statutes and regulations to align definitions of disability across programs? What specific impact would such revisions have on eligibility and services? How can we make sense of eligibility criteria for various programs, to minimize overlap and duplication of services and benefits, and ease administration and assessment of program performance and move each program's focus towards participant outcomes (e.g., enhanced independence, community integration, self-sufficiency, greater productivity)?
- Should we develop a legislative strategy to integrate cash benefit programs with service programs to promote beneficiary independence and self sufficiency and reduce the need for benefits? To what extent can we test new approaches through pilot or demonstration programs before moving to national implementation?

Federal Government as a Model:

- How well does the Federal Government serve as a model, in both employment policies and practices, and customer service? How can this be improved for the benefit of job applicants, employees, customers, and members of the general public with disabilities?

Program/Issue Areas:

Program areas to be reviewed would include (but need not be limited to):

- o services to infants and toddlers
- o education programs
- o cash benefit programs (insurance, income assistance, and retirement)
- o medical and other health programs
- o social services and family supports
- o school-to-work transitional services
- o rehabilitation services and training
- o employment services
- o transportation services
- o housing
- o advocacy services, information and referral
- o personal assistance
- o civil rights enforcement
- o services for older persons
- o technology-related assistance
- o prevention programs

The work product should take the form of a report outlining the Task Force's answers to these questions, and recommendations for further action, including actions the Administration can take through changes to regulation or funding priorities, grants and contracts, administration of the Federal Government's own internal activities (e.g., employment and customer service practices), or legislative proposals.

II. TASK FORCE COMPOSITION

We recommend the following structure for the task force:

- The Task Force would be jointly directed by the White House and OMB, but would rely heavily on agency participation.
- The Task Force would be headed by the two of you, as "co-chairs."
- Each of the key agencies with an interest in disability issues (which would include at least ED, HHS, SSA, DoD, VA, OPM, DOL, HUD, and the Treasury) would be invited to participate at the policy level through designees of the agency heads, presumably Assistant Secretaries responsible for key program and policy areas. Where appropriate, more than one Assistant Secretary could be designated for an agency.

We recommend the following structure for the support team:

- Designate "co-team leaders" from OPD/DPC and OMB staff -- these are the people who would be responsible for making the task force happen. The Co-team leaders would be responsible for organizing Task Force meetings and for directing the work of the support team.

- Designate as additional support team members OPD/DPC and OMB staff who are currently involved in the disability area. For OMB, PADs would designate the examiners responsible for accounts funding key disability programs to be members of the support team. The Administrator of OIRA should also designate one or more staff to join the team.
- The agencies would be asked to designate staff to participate as members of the support team. We would expect each policy official to designate two or three people from their areas to be members of the team.
- Even though this could result in a fairly large number of staff, we envision the support team dividing into small subgroups, each tasked with researching specific areas along the lines of the proposed agenda.

We recommend that the Task Force utilize the following for advice:

- Draw on the expertise of the three Presidential advisory councils -- the President's Committee on Employment of People with Disabilities, the National Council on Disability, and the President's Committee on Mental Retardation -- in the design of the agenda and how it will be carried out. These councils could also provide the forum (formally or informally) to tap disability community sentiments.
- Invite the Architectural and Transportation Barriers Compliance Board, the Equal Employment Opportunity Commission, and the Federal Communications Commission to participate as appropriate.
- Individuals with disabilities, members of their families, and their advocates should be consulted regularly (formally and informally).

III. TIME FRAME FOR ACTION

We recommend that the Task Force be constituted, the support team named, and the agenda (see above) agreed on by the end of October. The Task Force could be initiated at a meeting of the DPC, co-chaired by the two of you, with other appropriate department or agency heads invited. We recommend that the timeframe for this Review be lengthy enough to ensure a comprehensive and thoughtful deliberative process, and to analyze and synthesize the findings of the Task Force and support group and develop recommendations. The specific dates for interim and final reports should be determined by the Task Force. The Task Force itself would meet at least once every three months.

III. NEXT STEPS

This National Disability Policy Review is a significant undertaking, of tremendous importance to the disability community, and no doubt will be subject to a great deal of comment and scrutiny both in and out of the Administration. To get the review off on the right foot, we propose devoting time in September and early October to laying the groundwork internally and externally through a series of meetings outlined below, before the Task Force Team begins its work. This outreach and initial leg-work will improve our design and create good will by informing and involving people on the front end and ensuring avenues for communication and input throughout the process. We will take care to make very clear that the suggestions received from this outreach process will be considered in the development of the agenda, but that we do not expect every recommendation to be included.

Pending your review and approval, we would propose the following steps and schedule:

Mid-late September: We (working as a kind of DPC/OMB staff "advance team") would hold preliminary meetings with administration officials at key agencies to explore the idea of a Review, brainstorm about its structure, work plan, and agenda. With help from Mike Lux in the Office of Public Liaison and from the Office of Legislative Affairs, we would identify and meet with key advocates and Hill staff to give them advance notice and discuss avenues for their input and consultation throughout the Review.

We would also meet with the three existing Federal advisory groups whose mandate is to provide advice to the President in this area: the President's Committee on Employment of People with Disabilities, the National Council on Disability, and the President's Committee on Mental Retardation.

We believe it is vital to the success of the Review to ensure that there is strong ongoing communication concerning the Review with members of Congress and their staff, advocates, and persons with disabilities. The three national commissions mentioned provide a logical starting point for such communication. Based on meetings with those commissions and their staffs, the Task Force will include in its October recommendations a plan for outreach and communication regarding the Review.

Early October: The two of you present the idea for a National Disability Policy Review to a special meeting of the Domestic Policy Council, also attended by other appropriate department and agency heads (e.g., Treasury, Defense), perhaps prefaced by an abridged presentation of material and questions from the OMB Disability Review prepared this summer. You ask Secretaries to designate members of the Task Force at the Assistant or Deputy Assistant Secretary level, as well as staff level support team who will be able to devote some time to this effort. The Task Force will also be charged with providing periodic updates and interim reports to both the DPC and OMB.

Late October: Convene the first meeting of the Task Force, chaired by the two of you, where you provide the charge to the group, and present it with a proposed agenda and workplan, built on the groundwork laid at the individual agency meetings in September. You

will ask the members to react to the proposed work plan and agenda by the middle of the month.

Early November: Convene the staff level support team, to discuss and synthesize Task Force members' comments on the proposed agenda and work plan, and to prepare for Task Force meeting in late October.

At this point, the two of you may wish to review the proposed agenda, and adjust the list of issues presented so as not to risk committing the Review to more than you think it can achieve. This would help to keep expectations of what the Review will accomplish within manageable bounds.

Late November: The Task Force meets to discuss and finalize agenda, workplan, and staff structure of the Review.



KALEIDOSCOPE
AMERICA'S DISABILITY CHANNEL

Voice: 210-824-SIGN (or 7448) • TDD: 210-824-1688 • FAX: 210-829-1388

FAX TRANSMITTAL SHEET

DATE: 10/13/94 TIME: 4:30 PM CT
TO: MR. MIKE LUX, Special Assistant to the President
COMPANY: _____
FAX #: 202-456-6682 PHONE: 202-456-2930
FROM: DR. BILL NICHOLS
TOTAL PAGES: 5 (INCLUDING COVER)
COMMENTS:

*Thanks for your help!
Please call as soon as you have some answer.
If you have any questions please call.*

Bill



NATIONAL COUNCIL ON DISABILITY

An independent federal agency working with the President and the Congress to increase the inclusion, independence, and empowerment of all Americans with disabilities.

November 29, 1994

**The President
The White House
Washington, D.C. 20500**

Dear Mr. President:

As the Chairperson of the National Council on Disability (NCD), I want to take this opportunity to respectfully suggest that you consider mentioning your continuing support for the Americans with Disabilities Act (ADA) in your upcoming State of the Union Address and highlight it with examples of ADA success stories. Since its passage in 1990, we continue to experience subtle resistance to the implementation of the ADA. This is even more apparent with some of the political rhetoric surfacing in the media since the elections.

I can assure you that the NCD is committed to your goals of inclusion, independence, and empowerment. We are working to truly reflect your 'people first' philosophy, and direct our attention to a multiplicity of emerging issues which impact on people with disabilities. The Council also has the statutory responsibility to monitor the implementation of the ADA.

As the agenda for the 104th Congress begins to take shape, all the progress we have made in shaping various pieces of legislation affecting people with disabilities may be in jeopardy. In particular, many in the disability community are concerned with attempts to weaken the ADA. Your continued vigorous support for the ADA and all it stands for in your State of the Union Address would send a powerful message to many who doubt the necessity for and the positive impact this law has had on our lives. In addition, this would also reinforce the fact that this Administration will continue to work toward the principles of inclusion, independence, and empowerment of all people with disabilities, as we prepare for the Fifth Anniversary of the ADA.

If you have any questions or would like additional material, please let me know. We will gladly provide any information you need.

Sincerely,

**Marca Bristo
Chairperson**

bcc: Mike Lux ✓

MEMORANDUM FROM JEREMY BEN-AMI AND STANLEY S. HERR

TO: DESIGNEES TO THE NATIONAL DISABILITY POLICY REVIEW

DATE: November 22, 1994

PRELIMINARY WORK PLAN
Discussion Draft Only
National Disability Policy Review
December 1994 - February 1995

Background

In response to initial memoranda suggesting a National Disability Policy Review, the Domestic Policy Council received comments and input on the Review's proposed agenda and work plan. We have met or will soon be meeting with all the Departmental designees. We have consulted key advocates in the disability community, Congressional staffers, the heads of three presidential advisory committees in the disability field, and other experts. In addition, we have made a presentation on the Review to the full membership of the President's Committee on Mental Retardation, reached out to the Administration's appointees with disabilities, and begun to obtain background policy papers.

Oral and written responses have emphasized that such a review is important, overdue, and should involve significant input from individuals with disabilities and their advocates. The comments also stressed the need to be realistic in setting goals and to focus on some shorter-term achievable goals while simultaneously engaging in a long-term policy process.

Based on these comments, we have outlined in the following pages key options and questions to be discussed by the Review Team on November 30th as it develops a proposed work plan for the first three months of the Review. We received a great deal of feedback that we should conduct our work in phases, focusing initially on some things and later on others. Although this discussion draft suggests possible ways of phasing the work, the key decisions of whether and how to stagger the work of the Team are left open for discussion on the 30th. We do hope that at that meeting or soon thereafter issue groups will be formed, members will volunteer for those groups, and concrete assignments with deadlines will be made.

Please review the attached material in advance of the meeting, prepare your concrete suggestions, and be ready to identify those tasks in which you and your staff will be able to participate. Thank you for your constructive engagement in this process so far.

Work Plan

This draft Work Plan proposes proceeding on two parallel tracks for the next three months. On the "Policy" track, the Team will break into a series of issue groups to address areas agreed to on the 30th. On the "Consultation" track, we propose outreach and coordination with the advocacy community, Congressional staff, and the Presidential committees. These two tracks are outlined in more detail below, and a timetable follows.

I. POLICY TRACK

Two possible approaches to the work of the Review have been proposed. At the meeting on the 30th, we would like to focus discussion on the potential frameworks described below, and any additional ones that Review Team members would like to suggest. Within each framework, there is the further question of whether and how to phase the work - i.e., do we start all of the subgroups working at once or do we begin some sooner than others.

A. Framework A: The "Life Cycle" Approach

One approach to the Review is to set up a series of interagency subgroups oriented around the different phases in people's lives - so that the full range of policies, programs and issues affecting people of different age groups can be looked at holistically. There are at a minimum, three clear subgroups that could be set up, but there might be more:

1. Childhood -- This subgroup would look at the range of educational, income benefit, and service programs available for children, from birth to age 18. This group would be particularly timely given the creation of the Childhood Disability Commission to look at the SSI program and the need to develop an administration policy that anticipates or responds to the findings of the Commission. Also, the Individuals with Disabilities Education Act (IDEA) is up for reauthorization this year and will certainly raise important policy issues.
2. Transition to Adulthood -- This subgroup would explore a range of issues related to the transition to adulthood from education programs that serve people until they are 18 (but sometimes 21). "Transitions" planning involves helping people to find employment, further schooling, independent or assisted living arrangements, and other activities that maximize their potential. There is a small group that has already begun meeting on this issue, and it might make sense to fold its work into the Review.
3. Adulthood -- This subgroup would focus on policies affecting

adults. A work group in this area would almost certainly focus on the problems associated with the chronic unemployment and underemployment of persons with disabilities and review policy options for helping people enter -- and remain -- in the workforce.

In addition, it might make sense to break into some narrower groups, for instance, having a group on infants and toddlers, and one on aging and the elderly.

B. Framework B: The Issue Cluster Approach

An alternative framework for the Review is to break into issue-based subgroups that would look at such areas as:

- o work and employment policies
- o housing
- o technology
- o transportation
- o childhood issues
- o administrative coordination of, for instance, applications for services, eligibility, services, and consumer information

A more complete list of potential issue clusters appears on pages 2 and 3 of the September 30th memorandum. The selection of issue clusters for the Review would be made by the Team on November 30th. Each subgroup would still be an interagency effort looking across departmental and program lines but might have a narrower substantive and strategic focus.

The Team might choose to adopt some of Framework A and some of Framework B and form some "Life Cycle" groups and some issue-based groups.

C. Discussion on November 30th

The key issues for discussion and decision on November 30th will be:

- o What general framework does the Team want to adopt to guide its work? Does the life-cycle or the issue-based approach, or some combination, make sense?
- o Given the general framework adopted, what is the best way to break into subgroups?
- o Do we want to form all the subgroups at this point, and if so, should they all begin work now, or should we phase them in over the coming months?

We hope that the end result of the meeting on the 30th will be that the Review Team forms several interagency groups, each chaired by a member of the Review Team, which any Review Team member may join. Decisions about groups can be revisited throughout the Review, as appropriate. A decision not to include an issue in the first phase should not be taken as a reflection of its importance as an issue.

D. Other Subgroups

In addition to the groups addressing policy areas as discussed above, two other suggestions have been made for potential subgroups for the Review:

1. Guiding Principles -- There was significant agreement that the Review would benefit from the early development of a set of principles articulating the values guiding the Review. This statement of principles would not predetermine the policies to be developed through the Review, but instead would guide Review Team members and staff in their work. It might eventually be the preamble to the Review's final report, but it might also be significantly modified along the way.

These guiding principles would draw not only on Administration policy and statements, speeches and comments by the President, but on policies incorporated in recent legislation in this area.

We propose forming a group on the 30th, charged with producing a short document not a lengthy discourse in consultation with all Review Team members and broadly with consumers and advocates. In addition to producing a draft for comment by the Review Team, the group would also propose a mechanism for obtaining broad public comment and a timetable for its public dissemination.

2. Federal Disability Accommodations Working Group -- In August, the DPC formed a Federal Disability Accommodations Working Group, which has just started to examine how the federal government can be a model of making reasonable accommodations that will benefit its customers, job applicants, employees, and the general public.

The work of this group could lead to short-term achievable administrative recommendations that would help demonstrate the Administration's commitment in this area.

II. CONSULTATION TRACK

We would like to proceed on several fronts externally as the policy groups are formed to begin their work.

A. Presidential Committees

We will continue to work closely with the Presidential committees to provide them the opportunity to be integrally involved in the Review. We hope the Committees will be interested in exploring the same policy areas as the Review Team and in meeting with the Review Team members and gathering public input on these policy questions.

B. Advocacy Organizations

The policy groups should each meet with a wide range of organizations representing the interests of people with disabilities to give them the opportunity to provide information and input into their work.

C. Legislative

We will also meet with legislative staff from both Houses and both parties to keep them fully apprised of the work of the Review.

TIMETABLE

A possible timetable would be as follows:

November 30	Issue groups formed
Early January	Initial work products available for review
	<u>Guiding Principles</u> : Draft statement and plan for public comment
	<u>Other Subgroups</u> : Draft scope of work and timetable for each subgroup
Second week January	Second meeting of the Review Team to review progress of issue groups and discuss draft of Guiding Principles. Overall scope of work and timetable for the entire Review to be discussed.
Early February	Initial background papers completed. Key policy questions identified.
	Review Team meets to determine what policy options each subgroup should pursue and how.

12/19
① Children
② School to work
③ Healthcare
④ Employment
⑤ Principles
⑥ Accommodation

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September 19, 1994

The Honorable Leon Panetta
Chief of Staff
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Leon:

When the President visited Kansas City during the summer, Tom Bloch, President of H&R Block, mentioned to him that the company would be pleased to work with the Administration and others to promote awareness of the recent expansion of the earned income tax credit during the 1995 tax season. I followed up on that offer with Mack McLarty and Roger Altman, leading to a July meeting with Ben Nye at Treasury.

Attached are specific ideas that we have sent to Ben as the basis for a meeting later this month to exchange ideas and hopefully develop a comprehensive plan for promotion of the EITC. H&R Block is willing to devote substantial resources to this effort in cooperation with the government, other companies, and non-profit groups. To do so effectively requires planning now so that Block's advertising program, network of 8,000 offices, etc. can be focused on the tasks identified in the plan. That will be true for other tax preparation firms as well. I will be following up with Ben next week. I just wanted to make you aware of this effort, underline the company's interest in it, and solicit your own thoughts and guidance.

Keep up the good work.

Best wishes,


James C. Rosapepe

Enclosure

cc: Tom Bloch, President and CEO, H&R Block
Harry Buckley, President and CEO of H&R Block Tax Services
Marilyn DiGiaccobe, Associate Director of Public Liaison
Bill Evans, Senior Vice President, Corporate Operations,
H&R Block
Alexis Herman, Assistant to the President and Director of
Public Liaison
Judy Keisling, Vice President of Information Services,
H&R Block
✓Mike Lux, Special Assistant to the President for Public
Liaison
Thomas F. (Mack) McLarty, III, Counselor to the President
Benjamin J. Nye, Special Assistant to the Deputy Secretary,
Department of the Treasury
Robert Rubin, Assistant to the President for Economic
Policy, National Economic Council
Gene Sperling, Deputy Assistant to the President for
Economic Policy, National Economic Council
Caren Wilcox, Director of Business Outreach, Democratic
National Committee
Amy Zisook, Special Assistant to the President for Public
Liaison

H&R Block, Inc.
Corporate Headquarters
4410 Main Street
Kansas City, Missouri 64111
(816) 932-8422

Thomas M. Bloch
President and
Chief Operating Officer

Suggested promotion of EITC

- | | <u>Federal government</u> | <u>Block</u> |
|--|---|--|
| 1) <u>EITC promotion day</u>
<u>before</u>
<u>January 13, 1994</u>
<u>(preferably</u>
<u>January 6 or 7)</u> | <ul style="list-style-type: none">- coordinate with all tax preparers, anti-poverty groups, state tax departments, media, etc.- special events, press conferences, etc.- Saturday radio address by President- visit by President and interested members of Congress to one or more tax preparation sites, helping people determine whether or not they are eligible. | <ul style="list-style-type: none">- participation by up to 8,000 local Block offices, including offering free determination of EITC eligibility- provide sites as requested |
| 2) <u>Mass media</u> | | <ul style="list-style-type: none">- production and distribution of a PSA on EITC- consideration of production of paid TV and radio spots on expansion of the EITC |

Federal government

Block

3) Direct mail

- create insert for January issue of Congressional franked mail to low income areas
- January mail to AFDC and unemployment compensation recipients

4) Speakers

- ask tax preparers to provide speakers on EITC to community groups

- Block staff participate

5) Posters and flyers

- create posters and flyers with President urging use of EITC; distribute to community groups, government agencies, and tax preparers

- use in Block offices

6) Advance EITC

- send flyers to employers of EITC recipients
- send flyers to EITC recipients
- ask tax preparers to distribute flyers on Advance EITC in their offices

- do it in Block offices

F
A
XCOVER
SHEET

Phone

Fax 512-442-0522

DATE 10/21 TIME _____
TOTAL PAGES SENT 3

PLEASE DELIVER THE FOLLOWING TO:

NAME Michael CoxFIRM Bob SavaryPHONE Turner-DantNCILFROM CCDCOMMENTS PEEPNCBDREDF

IF YOU DO NOT RECEIVE ALL PAGES CALL 512 442-0252



ADAPT

FREE OUR PEOPLE

The President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

October 21, 1994

Dear President Clinton:

ADAPT, American Disabled for Attendant Programs Today, also known as American Disabled for Accessible Public Transportation, is shocked to learn that your administration is backing down on its commitment for full implementation of the Americans with Disabilities Act, ADA, especially on the issue of transportation.

Specifically, we are concerned about the proposed rules now being drafted by the Department of Transportation implementing accessibility requirements for privately owned and operated over-the-road buses (such as Greyhound). These proposed rules are now five months overdue.

Worse still, ADAPT has learned your administration will not commit to the position that all newly purchased over-the-road buses must be lift equipped. This is ADAPT's position and that of every major disability group in the country, and has been for over a decade.

The U.S. Office of Technology Assessment (OTA), the technical research arm of Congress, was directed by Section 305 of the ADA, to study accessibility for over-the-road (OTR) buses and to report on what changes were needed to accommodate wheelchairs and the cost involved, the effectiveness and other impacts.

In May, 1993 OTA released its study which said that the best option was that all new over-the-road buses must be lift equipped or all stops must be designed so people can get on the bus without being carried on. The report also stated that the cost would not be prohibitive. OTR industry representatives were an integral part of this study.

Access to transportation is one of the most important issues to the disability community. ADAPT members went to jail for a decade for the right to ride.

Members of ADAPT met with Secretary of Transportation Pena on October 12, 1994. The results of that meeting were not

encouraging. There was no indication from the Secretary that the Clinton administration was committed to full access to over-the road buses by people with disabilities.

This was personally disturbing considering Secretary Pena's support of ADAPT and our position on transportation when he was Mayor of Denver.

We want your administration to commit, that starting July 26, 1996 for large bus companies and July 26, 1997 for smaller bus companies, all newly purchased over-the-road buses be equipped with lifts so people in wheelchairs and those with other disabilities can access the over-the-road bus system.

Please respond by October 31, 1994.

We Will Ride!

For a Barrier and Institution Free America.



Mike Auberger
National Organizer

REAL HEALTH CARE FOR ALL

September 27, 1994
Honorable William Gradison
President, HIAA
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036-3998

Dear Mr. Gradison:

Thank you so much for taking your valuable time on September 19th to meet with our delegation of health care advocates representing the 49 million Americans with disabilities.

We are delighted to know that you and HIAA support universal coverage that is mandated by law, and several other important components of real health care reform.

We do disagree with you on some important things. You fault the President for the failure of health care reform in this Congress. Calm history will record that whatever the imperfections in his plan and strategy that hindsight might reveal, Bill Clinton had the courage to stake his political career on challenging America to confront the moral and economic necessity of comprehensive health care reform. He said over and over, "If you don't like my plan, draft your own, but we've got to provide health security to every single American." Calm history will record that whatever your personal intentions, HIAA, and Harry and Louise became the symbols of a campaign in which special interests spent an enormous amount of the people's health care dollars (100 million? 300 million?) to defeat universal health care; that the combined actions of HIAA and the anti-reform lobbies had the effect of stonewalling every attempt to reach consensus – and that there were more Americans without health insurance at the end of the debate than at the beginning. An influential Republican leader called for "gridlock" to effect the "unconditional ... defeat" of the mandated and subsidized universal health care which you told us you and HIAA support. When the gridlock occurred, we don't recall any audible protest by HIAA.

Mr. Gradison, we respectfully repeat our request that you write letters to President Clinton, and to the members of the next Congress urging the immediate passage of real health care reform:

- Universal coverage. Coverage for every American required by law.
- A comprehensive, affordable package of specified, mandated benefits.
- Community based long term care, including personal assistance services.

We urge you to include a commitment like the one made by the President, to make any reasonable compromise to achieve consensus for comprehensive health care reform. We urge you to promote real health care for all in at least the same number of ads that featured Harry and Louise.

You pointed out that comprehensive health care reform is dead in this Congress. Certainly that is true. You told us that passage before the '96 elections would be difficult. Probably, especially if HIAA continues its opposition. You implied that there is little urgency for communications to Congress and the President on this subject. We do not agree.

We believe, and apparently more than 3/4 of Americans agree, that health care is an obligation of civilized society. Yet here in our magnificent, wealthy democracy, with the best medical science in the world, we deny health security to our people. Increasing millions of our citizens are refused health insurance, or can't afford it. Millions more are forced to give up jobs and homes to qualify for poverty-based health services. Millions are incarcerated in nursing homes without due process of law because there is no adequate program of community based long term care that would enable them to be in their own homes. Exploding medical costs strangle our family and public budgets. We die younger than the people of 17 other countries. Now, with a golden opportunity to adopt decisive reforms, we have reaffirmed our shameful status as the only industrial democracy on earth that does not mandate universal health care. Enough!

Health care in America is not the political soap opera depicted in the media. It is not Bill and Hillary versus Harry and Louise, and then you switch the channel to the Redskins and the Cowboys. It is real people who have real sicknesses and die real deaths. It is unconscionable for millions of citizens of the United States to be denied health care security while leaders of government and the private sector wait for a comfortable political climate.

When the media images fade and reality comes into focus, when the political pendulum swings, as it always does, there are going to be a lot of angry people. They will be angry about the expense, the pain, the deaths caused by delaying health care reform. They will be impatient with free enterprise and the democratic process. There will be a serious risk of polarization and hasty, guillotine solutions that would victimize every American. You and your constituents would be convenient scapegoats.

This can be prevented – if enough Americans take positive action. You have a special responsibility. You have chosen to represent the health insurance industry. You have chosen to guide America in the matter of health care reform. Give us the leadership that your companies, that free enterprise democracy, that the present and future generations of your family, deserve.

America will long remember those who have the courage to stand for real health care reform now – and those who do not. We, the forty-nine million members of the disability community, have just begun to fight. We are not going to stop until the job of justice is done. Join us. Your family, my family, every family in America will be the winner.

Sincerely,

Justin Dart

Becky Ogle

JUSTIN DART, JR.

907 6TH STREET, S.W., APT. 516C
WASHINGTON, D.C. 20024
202/488-7684, 484-1370TDD, 863-0010FAX

August 31, 1994

Dear Mike:

Yoshiko and I appreciate your leadership for the July 27 White House celebration of the ADA. You made a significant contribution to the implementation of the rights of 49 million Americans with disabilities.

Enclosed is a token of our gratitude and respect, an engraved museum replica of a simple cup designed by Thomas Jefferson. We hope it will symbolize to you, as it does to us, the continuum of struggle to fulfill the dream of democracy, from the founders of our nation to you, to all of us, and beyond.

Together, we shall overcome,

A handwritten signature in black ink, appearing to read 'Justin Dart', with a large, sweeping initial 'J'.

Justin Dart

HEALTH CARE FOR ALL AMERICANS NOW

INSURANCE MONOPOLY \$\$\$

100

THE UNITED STATES OF AMERICA

100

F₁

THIS NOTE IS LEGAL TENDER FOR ANY
POLITICIAN WILLING TO SUPPORT A
COUNTERFEIT HEALTH CARE BILL

(202) 224-6551

5



(202) 224-6551

5 Rob U. Prudential

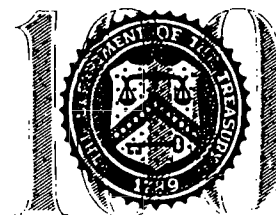
Treasurer of the United States



KERREY

WASHINGTON, D.C.

5



SERIES
1990

WE Swindle

5

Secretary of the Treasury

F₉₄

100

100

ONE HUNDRED DOLLARS

100

100

Kerrey Dollars Placed in Circulation by the Insurance Industry and Medical Establishment Since 1979:
\$411,999*

(*Dollars circulated through Senator Kerrey's election campaign funds, as reported to the FEC.)

***Health care as good as
Senator Kerrey gets***

Salary: \$133,600

**Amount he pays for health insurance:
\$1,215**

**Amount his employer (that's us) pays
for his health insurance: \$3,645**

**Most he can pay out-of-pocket for
health care: \$3,250**

Play Health Care Roulette!

Senator Kerrey: What proportion of Americans are you willing to leave uninsured?

**Are you willing to go without
health insurance? yes no**

Please nominate Senate colleagues to join the uninsured. Send your nominations to: Citizen Action, 1730 Rhode Island Ave. N.W., Wash. D.C. 20036. *All entries must be postmarked by November 8.*

***Yes, Senator, there is a
health care crisis***

	Nebraska	U.S.
# uninsured:	159,000	39 mill.
# who lose in- surance each month:	14,000	2 mill.
Added cost of family premium if no 80% employer contribu- tion.	\$4,152 per year	\$4,452 per year

For info call: Citizen Action (202) 775-1580

THE WHITE HOUSE
WASHINGTON

October 31, 1994

Mr. Mike Auburger
National Organizer
ADAAPT
13 Broadway
Denver, Colorado 80203

Dear Mike:

Thank you for your letter of October 21 concerning the Americans with Disabilities Act.

My Administration remains steadfast in its commitment to full implementation of the ADA. All Americans must have the opportunity to live up to the fullest of their potential. From the White House to the halls of Congress, we have brought high visibility and attention to this cause. We have launched a public service campaign to educate Americans on the act. The Department of Justice has vigorously worked to enforce ADA provisions in state and local governments and in the private sector in hotels, restaurants, theaters, stores, and other public accommodations. I have fought hard to pass comprehensive health care legislation to complete the work of the ADA, and I will continue that fight.

This Administration has included the disability community in the decision-making process at every level. We have brought in national and grassroots leaders for unprecedented numbers of meetings, and we have made a record number of appointments of disability leaders to important Administration positions.

I fully understand the importance of access to transportation for people with disabilities. Because your letter addresses proposed rules now being drafted by the Department of Transportation, I have forwarded it to Secretary Peña for appropriate action.

My Administration will continue to work closely with you on matters of concern to the disability community. As I work to build a brighter future for all Americans, I appreciate your continuing involvement.

Sincerely,

Bill Clinton