FOIA Number: 2007-0143-F

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

Collection/Record Group:	Clinton Presidential Records
Subgroup/Office of Origin:	Domestic Policy Council
Series/Staff Member:	Diana Fortuna
Subseries:	

OA/ID Number:	12024
FolderID:	

Folder Title:
ADA [Americans with Disabilities Act] Backlash

Stack:	Row:	Section:	Shelf:	Position:
S	97	2	10	3

U.S. Department of Justice
Civil Rights Division
Disability Rights Section

MYTHS AND FACTS ABOUT THE AMERICANS WITH DISABILITIES ACT

MYTH: ADA suits are flooding the courts.

FACT: The ADA has resulted in a surprisingly small number of lawsuits -- only about 650 nationwide in five years. That's tiny compared to the 6 million businesses; 666,000 public and private employers; and 80,000 units of state and local government that must comply.

MYTH: The ADA is rigid and requires businesses to spend lots of money to make their existing facilities accessible.

FACT: The ADA is based on common sense. It recognizes that altering existing structures is more costly than making new construction accessible. The law only requires that public accommodations (e.g. stores, banks, hotels, and restaurants) remove architectural barriers in existing facilities when it is "readily achievable", i.e., it can be done "without much difficulty or expense." Inexpensive, easy steps to take include ramping one step; installing a bathroom grab bar; lowering a paper towel dispenser; rearranging furniture; installing offset hinges to widen a doorway; or painting new lines to create an accessible parking space.

MYTH: The government thinks everything is readily achievable.

FACT: Not true. Often it may not be readily achievable to remove a barrier -- especially in older structures. Let's say a small business is located above ground. Installing an elevator would not, most likely, be readily achievable -- and there may not be enough room to build a ramp -- or the business may not be profitable enough to build a ramp. In these circumstances, the ADA would allow a business to simply provide curbside service to persons with disabilities.

MYTH: The ADA requires businesses to remove barriers overnight.

FACT: Businesses are only required to do what is readily achievable at that time. A small business may find that installing a ramp is not readily achievable this year, but if profits improve it will be readily achievable next year. Businesses are encouraged to evaluate their facilities and develop a long-term plan for barrier removal that is commensurate with their resources.

MYTH: Restaurants must provide menus in braille.

FACT: Not true. Waiters can read the menu to blind customers.

MYTH: The ADA requires extensive renovation of all state and local government buildings to make them accessible.

FACT: The ADA requires all government programs, not all government buildings, to be accessible. "Program accessibility" is a very flexible requirement and does not require a local government to do anything that would result in an undue financial or administrative burden. Local governments have been subject to this requirement for many years under the Rehabilitation Act of 1973. Not every building, nor each part of every building needs to be accessible. Structural modifications are required only when there is no alternative available for providing program access. Let's say a town library has an inaccessible second floor. No elevator is needed if it provides "program accessibility" for persons using wheelchairs by having staff retrieve books.

MYTH: Sign language interpreters are required everywhere.

FACT: The ADA only requires that effective communication not exclude people with disabilities -- which in many situations means providing written materials or exchanging notes. The law does not require any measure that would cause an undue financial or administrative burden.

MYTH: The ADA forces business and government to spend lots of money hiring unqualified people.

FACT: No unqualified job applicant or employee with a disability can claim employment discrimination under the ADA. Employees must meet all the requirements of the job and perform the essential functions of the job with or without reasonable accommodation. No accommodation must be provided if it would result in an undue hardship on the employer.

MYTH: Accommodating workers with disabilities costs too much.

FACT: Reasonable accommodation is usually far less expensive than many people think. In most cases, an appropriate reasonable accommodation can be made without difficulty and at little or no cost. A recent study commissioned by Sears indicates that of the 436 reasonable accommodations provided by the company between 1978 and 1992, 69% cost nothing, 28% cost less than $1,000, and only 3% cost more than $1,000.

MYTH: The government is no help when it comes to paying for accessibility.

FACT: Not so. Federal tax incentives are available to help meet the cost of ADA compliance.

MYTH: Businesses must pay large fines when they violate the ADA.

FACT: Courts may levy civil penalties only in cases brought by the Justice Department, not private litigants. The Department only seeks such penalties when the violation is substantial and the business has shown bad faith in failing to comply. Bad faith can take many forms, including hostile acts against people with disabilities, a long-term failure even to inquire into what the

ADA requires, or sustained resistance to voluntary compliance. The Department also considers a business' size and resources in determining whether civil penalties are appropriate. Civil penalties may not be assessed in cases against state or local governments or employers.

MYTH: The Justice Department sues first and asks questions later.

FACT: The primary goal of the Department's enforcement program is to increase voluntary compliance through technical assistance and negotiation. Under existing rules, the Department may not file a lawsuit unless it has first tried to settle the dispute through negotiations -- which is why most every complaint settles.

MYTH: The Justice Department never files suits.

FACT: The Department has been party to 20 suits under the ADA. Although it tries extensively to promote voluntary compliance, the Department will take legal action when entities continue to resist complying with the law.

MYTH: Many ADA cases involve frivolous issues.

FACT: The Justice Department's enforcement of the ADA has been fair and rooted in common sense. The overwhelming majority of the complaints received by the Justice Department have merit. Our focus is on fundamental issues related to access to goods and services that are basic to people's lives. We have avoided pursuing fringe and frivolous issues and will continue to do so.

MYTH: Everyone claims to be covered under the ADA.

FACT: The definition of "individual with a disability" is fraught with conditions and must be applied on a case-by-case basis.

MYTH: The ADA protects people who are overweight.

FACT: Just being overweight is not enough. Modifications in policies only must be made if they are reasonable and do not fundamentally alter the nature of the program or service provided. The Department has received only a handful of complaints about obesity.

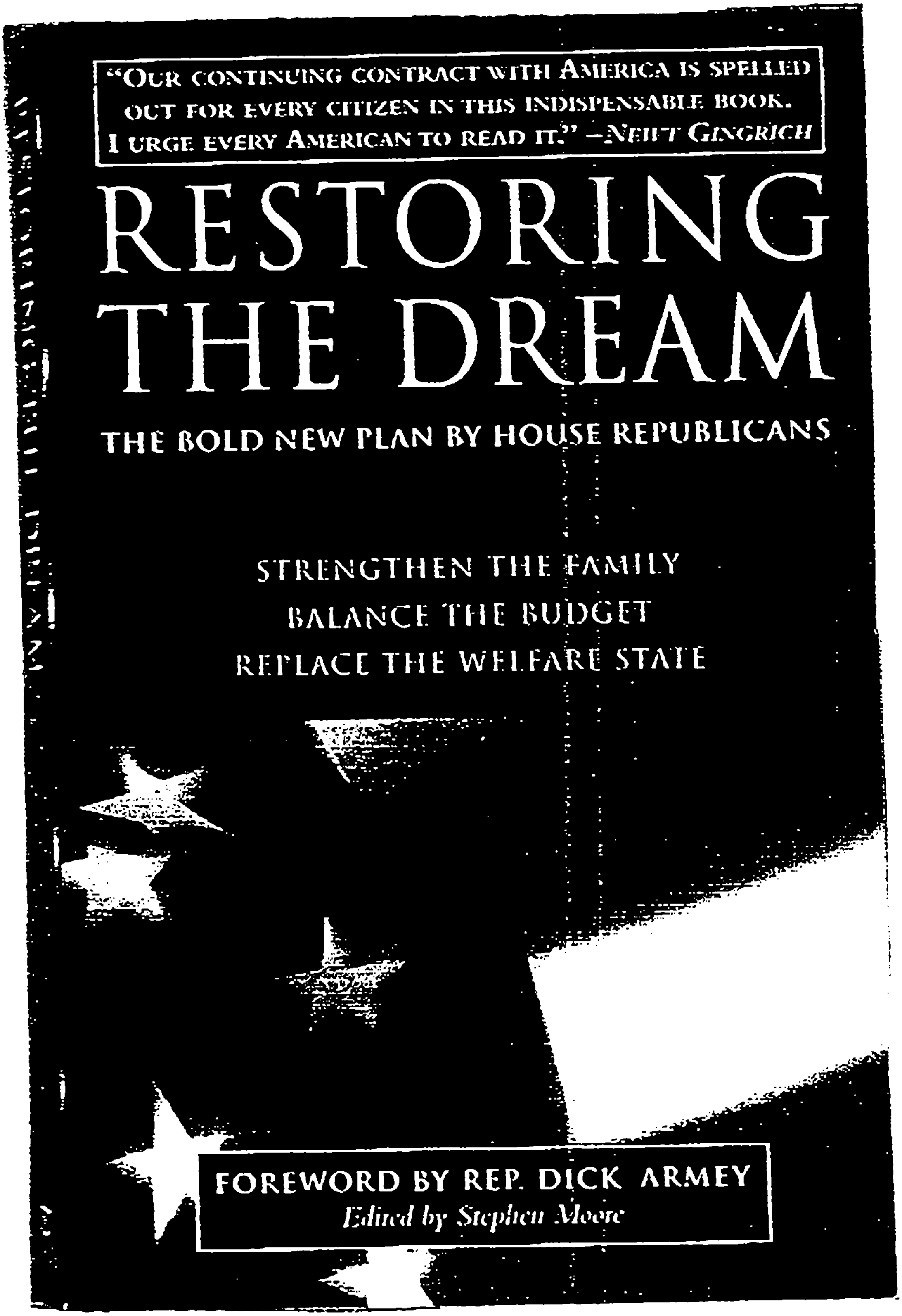
MYTH: The ADA is being misused by people with "bad backs" and "emotional problems."

FACT: Trivial complaints do not make it through the system. And many claims filed by individuals with such conditions are not trivial. There are people with severe depression or people with a history of alcoholism who are judged by their employers, not on the basis of their abilities and work history, but rather upon stereotypes and fears that employers associate with their conditions.

05-30-1995 06:14PM FROM Justin Dart, Jr. TO 5140293 P.01

ADA Backlash

To: Liz Savage
Fr: Justin Dart
5/30/95 4 pages
FYI



and minor risks, widespread and narrow, real and negligible, with equal zeal. The underlying statutes are not a coherent body of law but a kind of archeological pile, each layer a reflection of the headlines and political impulses of the day. The excessive regulations discredit the essential. Too little attention is paid to the cost of the whole and the relation of the cost to benefit."

Increasingly, federal regulations border on the absurd. For example, the *National Review* reports that there are 66 words in the Lord's Prayer, 286 words in the Gettysburg Address, 1,322 words in the Declaration of Independence, but 26,911 words in the federal regulations on the sale of cabbages. How is it that these kinds of plainly inefficient regulations ever got enacted into law in the first place? One answer is that Congress has never been required to balance the cost versus the benefit when it passes new regulations. This is the equivalent of holding a trial, but only allowing one side to present its case.

Sometimes even the best-intentioned regulations spiral out of control. For example, many of us who were in Congress in 1990 voted for the Americans with Disabilities Act. The law is intended to protect the civil rights of the disabled by prohibiting discrimination in the workplace and requiring access in public buildings and facilities. Who could be against providing civil-rights protections and special accommodations for those in our society who are blind or in wheelchairs? But under the Act, 43 million people—that's one out of every six Americans—are potentially

considered "disabled," though they may not know they are disabled themselves. The list includes drug abusers, the obese, and the "emotionally disturbed."

We don't know if we should laugh or cry over the latest nationally publicized incident involving the Act. The Associated Press reported earlier this year that Dade County, Florida, must spend $18,500 to build a wheelchair ramp to a nude beach and $30,000 more for handicapped parking spaces at the beach's lot. Civil-rights lawyers prevailed when they insisted that the ramp and parking spaces were required under the Disabilities Act.

These kinds of regulatory horror stories are becoming far too commonplace. Too many of Washington's one-size fits all regulations are senseless, arbitrary, and entirely insensitive to the huge cost they impose. For this reason, federal regulatory overreach reduces job opportunities. The economic costs of regulation are much higher than most Americans and federal policymakers realize. For example:

- Regulations add as much as 33 percent to the cost of building an airplane engine and as much as 95 percent to the price of a new vaccine. Federal regulation also adds about $3,000 to the cost of a new car.

- Excessive regulation has the impact of a tax on every American worker. It's estimated that regulation and mandates add about $6,000 to the cost of a business hiring a new worker. A report by the well-respected Joint Economic Committee of Congress found that these costs have risen by one-third since 1989 and

THE BALANCED BUDGET QUESTIONNAIRE

Your voice counts. Tell us what you think about various approaches to balancing the budget. Please answer the following questions and send this page to Speaker of the House Newt Gingrich, 233 U.S. Capitol Building, Washington, D.C. 20515.

	AGREE	DISAGREE
• *Balancing the federal budget should be the top priority of this Congress.*	☐	☐
• *Taxes should be raised to balance the budget.*	☐	☐
• *Defense spending has already been cut too much.*	☐	☐
• *Congress should cut its own budget and staff.*	☐	☐
• *We can reduce the deficit by eliminating waste, pork, and bureaucracy.*	☐	☐
• *Foreign aid should be substantially reduced.*	☐	☐
• *We should take big business off the dole by cutting corporate welfare.*	☐	☐
• *Taxpayer assistance for the Corporation for Public Broadcasting should end.*	☐	☐
• *We should start to privatize Amtrak.*	☐	☐
• *We should privatize public housing.*	☐	☐
• *Congress spends money on programs that exceed its constitutional authority.*	☐	☐
• *More federal activities should be turned over to states and communities.*	☐	☐

• *What other programs should be reformed, reorganized, reduced or eliminated?*

____

____

____

About the Editor

STEPHEN MOORE is director of fiscal policy at the Cato Insti-tute in Washington, D.C. A former senior economist at th Joint Economic Committee for Rep. Dick Armey of Texa Moore is a regular contributor to numerous publication including *The Wall Street Journal*, *Human Events*, the *Nation Review*, *The New York Times*, and *Readers Digest*. A native c Chicago, Moore is a graduate of the University of Illinoi He completed his graduate studies in economics at Georg Mason University. He lives with his wife, Allison, and hi sons, Justin and William, in Arlington, Virginia.

CONGRESSMAN DICK ARMEY
26TH DISTRICT, TEXAS

COMMITTEES:
EDUCATION AND LABOR
JOINT ECONOMIC COMMITTEE
REPUBLICAN CONFERENCE
CHAIRMAN

JD

WASHINGTON OFFICE:
301 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-4326
(202) 225-7772

DISTRICT OFFICE:
9901 VALLEY RANCH PKWY. EAST
SUITE 3050
IRVING, TX 75063
(214) 556-2500

Congress of the United States
House of Representatives
Washington, DC 20515-4326

May 22, 1995

Justin Dart
907 6th Street, S.W., Apartment 516C
Washington, DC 20024

Dear Justin,

Thank you for contacting my office. It's good to hear from you.

Recently, I've received calls and letters about the comments I made at a recent town hall meeting regarding the Americans with Disabilities Act (ADA). In response to questions asked of me, I said that I would support efforts to revise this law to ensure that it serves those for whom it was intended. I support tightening up the language of the ADA to prevent abuses of the law by those who, by any objective standard, would not be entitled to its benefits.

However, I did not intend to imply that I was developing legislation or supporting a specific proposal regarding this law. I was speaking in general terms of doing what's necessary to prevent abuses of the ADA. With back impairments being the single largest category of ADA claims, and one-quarter of claims alleging emotional, psychiatric, or neurological impairment, I don't believe ADA reform is unreasonable.

Nevertheless, I understand that while ADA is prone to abuse by some, it assists many others in achieving their full potential. Should the Judiciary Committee take action on this issue, I will be sure to keep your views in mind.

Again, thanks for contacting me.

Respectfully yours,

Dick

DICK ARMEY
Member of Congress

Debbie

Department of Justice

MYTHS AND FACTS ABOUT THE AMERICANS WITH DISABILITIES ACT

MYTH: ADA suits are flooding the courts.
FACT: The ADA has resulted in a surprisingly small number of lawsuits -- only about 650 nationwide in five years. That's tiny compared to the 6 million businesses; 666,000 public and private employers; and 80,000 units of state and local government that must comply.

MYTH: The ADA is rigid and requires businesses to spend lots of money to make their existing facilities accessible.
FACT: The ADA is based on common sense. It recognizes that altering existing structures is more costly than making new construction accessible. The law only requires that public accommodations (e.g. stores, banks, hotels, and restaurants) remove architectural barriers in existing facilities when it is "readily achievable", i.e., it can be done "without much difficulty or expense." Inexpensive, easy steps to take include ramping one step; installing a bathroom grab bar; lowering a paper towel dispenser; rearranging furniture; installing offset hinges to widen a doorway; or painting new lines to create an accessible parking space.

MYTH: The government thinks everything is readily achievable.
FACT: Not true. Often it may not be readily achievable to remove a barrier -- especially in older structures. Let's say a small business is located above ground. Installing an elevator would not, most likely, be readily achievable -- and there may not be enough room to build a ramp -- or the business may not be profitable enough to build a ramp. In these circumstances, the ADA would allow a business to simply provide curbside service to persons with disabilities.

MYTH: The ADA requires businesses to remove barriers overnight.
FACT: Businesses are only required to do what is readily achievable at that time. A small business may find that installing a ramp is not readily achievable this year, but if profits improve it will be readily achievable next year. Businesses are encouraged to evaluate their facilities and develop a long-term plan for barrier removal that is commensurate with their resources.

MYTH: Restaurants must provide menus in braille.
FACT: Not true. Waiters can read the menu to blind customers.

<u>MYTH:</u> The ADA requires extensive renovation of all state and local government buildings to make them accessible.
<u>**FACT:**</u> The ADA requires all government <u>programs</u>, not all government <u>buildings</u>, to be accessible. "Program accessibility" is a very flexible requirement and does not require a local government to do anything that would result in an undue financial or administrative burden. Local governments have been subject to this requirement for many years under the Rehabilitation Act of 1973. Not every building, nor each part of every building needs to be accessible. Structural modifications are required only when there is no alternative available for providing program access. Let's say a town library has an inaccessible second floor. No elevator is needed if it provides "program accessibility" for persons using wheelchairs by having staff retrieve books.

<u>MYTH:</u> Sign language interpreters are required everywhere.
<u>**FACT:**</u> The ADA only requires that effective communication not exclude people with disabilities -- which in many situations means providing written materials or exchanging notes. The law does not require any measure that would cause an undue financial or administrative burden.

<u>MYTH:</u> The ADA forces business and government to spend lots of money hiring unqualified people.
<u>**FACT:**</u> <u>No unqualified job applicant or employee with a disability can claim employment discrimination under the ADA.</u> Employees must meet all the requirements of the job and perform the essential functions of the job with or without reasonable accommodation. No accommodation must be provided if it would result in an undue hardship on the employer.

<u>MYTH:</u> Accommodating workers with disabilities costs too much.
<u>**FACT:**</u> Reasonable accommodation is usually far less expensive than many people think. In most cases, an appropriate reasonable accommodation can be made without difficulty and at little or no cost. A recent study commissioned by Sears indicates that of the 436 reasonable accommodations provided by the company between 1978 and 1992, 69% cost nothing, 28% cost less than $1,000, and only 3% cost more than $1,000.

<u>MYTH:</u> The government is no help when it comes to paying for accessibility.
<u>**FACT:**</u> Not so. Federal tax incentives are available to help meet the cost of ADA compliance.

<u>MYTH:</u> Businesses must pay large fines when they violate the ADA.
<u>**FACT:**</u> Courts may levy civil penalties only in cases brought by the Justice Department, not private litigants. The Department only seeks such penalties when the violation is substantial and the business has shown bad faith in failing to comply. Bad faith can take many forms, including hostile acts against people with disabilities, a long-term failure even to inquire into what the ADA requires, or sustained resistance to

voluntary compliance. The Department also considers a business' size and resources in determining whether civil penalties are appropriate. Civil penalties may not be assessed in cases against state or local governments or employers.

MYTH: **The Justice Department sues first and asks questions later.**
FACT: The primary goal of the Department's enforcement program is to increase voluntary compliance through technical assistance and negotiation. Under existing rules, the Department may not file a lawsuit unless it has first tried to settle the dispute through negotiations -- which is why most every complaint settles.

MYTH: **The Justice Department never files suits.**
FACT: The Department has been party to 20 suits under the ADA. Although it tries extensively to promote voluntary compliance, the Department will take legal action when entities continue to resist complying with the law.

MYTH: **Many ADA cases involve frivolous issues.**
FACT: The Justice Department's enforcement of the ADA has been fair and rooted in common sense. The overwhelming majority of the complaints received by the Justice Department have merit. Our focus is on fundamental issues related to access to goods and services that are basic to people's lives. We have avoided pursuing fringe and frivolous issues and will continue to do so.

MYTH: **Everyone claims to be covered under the ADA.**
FACT: The definition of "individual with a disability" is fraught with conditions and must be applied on a case-by-case basis.

MYTH: **The ADA protects people who are overweight.**
FACT: Just being overweight is not enough. Modifications in policies only must be made if they are reasonable and do not fundamentally alter the nature of the program or service provided. The Department has received only a handful of complaints about obesity.

MYTH: **The ADA is being misused by people with "bad backs" and "emotional problems."**
FACT: Trivial complaints do not make it through the system. And many claims filed by individuals with such conditions are not trivial. There are people with severe depression or people with a history of alcoholism who are judged by their employers, not on the basis of their abilities, but rather upon stereotypes and fears that employers associate with their conditions.

U.S. Department of Justice
Civil Rights Division
Disability Rights Section

Enforcing the ADA

A Special Fifth Anniversary Status Report from the Department of Justice

July 26, 1995

This is a special edition commemorating the fifth anniversary of the enactment of the ADA. Regular quarterly status reports will resume in October 1995. Copies of previous reports are available through our Office of Public Affairs at 202-514-2008.

INSIDE..

A Message from Deval L. Patrick, Assistant Attorney General for Civil Rights

Five years ago, the landmark Americans with Disabilities Act began a new era of opportunity, promise, and dignity for the 49 million Americans with disabilities. The ADA reflects the good common sense that is at the heart of all of our civil rights laws. For eliminating barriers that prevent people from fully participating in society is not only the right thing to do; it also enriches the lives of all Americans.

The ADA is a fair and reasonable law. It strikes a careful balance between the legitimate rights of individuals with disabilities and the resources and capabilities of private businesses and government. In enforcing the Act, we have focused on sensibly achieving its central goals. We have avoided the pursuit of fringe and frivolous disputes. Thanks to our educational outreach efforts, we have fostered a high degree of voluntary compliance with a minimum of costly litigation.

Our focus is on the fundamentals – access to vital government activities and to private sector goods and services that are necessary for daily living and employment. Through lawsuits and settlements, we have achieved greater access for people with disabilities in over 350 cases. This special fifth anniversary status report highlights some of these accomplishments.

We are committed to the long-term effort that will be required to fully implement the ADA. Through vigorous enforcement – and partnerships with business, state and local government, and the disability community – we will realize the ADA's promise of new opportunities for people with disabilities and all Americans.

Deval L. Patrick
Assistant Attorney General

The Americans with Disabilities Act (ADA) is a comprehensive civil rights law for people with disabilities. The Department of Justice enforces the ADA's requirements in three areas -

Title I: Employment practices by units of State and local government

Title II: Programs, services, and activities of State and local government

Title III: Public accommodations and commercial facilities

I. Enforcement Highlights

Gaining Access to Emergency Services

Under the ADA, the basic services that we all expect from government must be provided on a nondiscriminatory basis to people with disabilities.

9-1-1 system in Chicago -- The Department reached a formal agreement with Chicago ensuring access to 9-1-1 services for people who are deaf, hard of hearing, or have speech impairments. The agreement resolved three complaints filed with the Justice Department alleging that in three separate incidents deaf people were unable to get help by calling 9-1-1. In one case, a woman who had to wait for a cab to take her to the hospital was told by her physician that she could have died if she had arrived an hour later. In the other two cases, individuals who had been assaulted were able to reach the police only by calling intermediaries. Under the agreement, Chicago agreed to install telecommunication devices for the deaf (TDD's) in its 9-1-1 emergency center, train dispatchers to handle TDD calls, and promote its new accessible 9-1-1 system.

> A Los Angeles mother who is deaf tried to get emergency help for her two-year-old son who had just received a head injury. Her repeated TDD calls to 9-1-1 went unanswered.

9-1-1 system in Los Angeles -- The City of Los Angeles agreed to make its 9-1-1 emergency services accessible to persons who use TDD's. The formal agreement resolves a complaint alleging that the City failed to respond to a 9-1-1 call made by a mother who is deaf. After her two-year-old son sustained a head injury, the mother tried calling 9-1-1 on a TDD three times. Finally, she gave up and took her son to the hospital herself. Under the agreement, the City agreed to install TDD's, train its staff to handle TDD calls, and promote the use of 9-1-1 by individuals who use TDD's.

Emergency medical services in Philadelphia -- The Department resolved a complaint against the City of Philadelphia alleging that the City's emergency medical technicians (EMT's) had refused to assist an individual who they learned had HIV. Under the agreement, the City will no longer refuse to provide emergency services to individuals with disabilities. It will also discipline any employee who fails to follow the City's guidelines and will train the fire department's 2,300 EMT's and firefighters on ways to prevent the transmission of HIV/AIDS. In addition, the City will pay $10,000 in compensatory damages and issue a written apology to the complainant.

Ensuring Equal Employment Opportunity

The ADA guarantees equal employment opportunities for people with disabilities. The Department has attacked failures to make reasonable accommodation and the discriminatory denial of pension and retirement benefits.

Employment opportunities in Slidell, Louisiana -- The Department sued Slidell alleging that the City failed to reasonably accommodate Gregory Smith, an employee in its department of parks and recreation. It claimed that the City discharged Smith, who had a chronic knee condition stemming from an on-the-job injury, without considering whether a reasonable accommodation would enable him to continue to do the job. Under the consent decree, Smith received $2,000 in compensatory damages and more than $21,000 in back pay. He did not seek reinstatement to his job. The case originated at the Equal Employment Opportunity Commission and was referred to the Justice Department for litigation when conciliation efforts failed.

Pension funds in Illinois -- In response to a suit filed by the Department, Illinois enacted legislation to eliminate discriminatory provisions in its police and fire pension code. The Department had sued the board of trustees of the Aurora police pension fund, the City of Aurora, and the State for excluding police officers and firefighters from the City's pension funds on the basis of disability. Under the challenged system, police officers and firefighters were required to undergo separate physical examinations after they were hired to determine eligibility for retirement and disability benefits. Even though they were performing successfully on the job, police officers and firefighters could be denied disability and retirement benefits.

> Kevin Holmes served successfully for ten years as a police officer in Aurora, Illinois. But, because he had diabetes, he was excluded from the State's pension fund. He would not receive the retirement pension available to other officers, and if he was injured in the line-of-duty, he would not receive any disability benefits.

Right to Citizen Participation

The ADA protects the right of people with disabilities to have equal access to the basic institutions of government. The Department has sought to eliminate physical, communication, and policy barriers in town halls, courtrooms, and legislative chambers.

City hall in Waukesha, Wisconsin -- Resolving a complaint by a Waukesha City alderman who uses a wheelchair, the City agreed to make its city hall accessible. It agreed to hold its closed deliberations in the accessible room in which it holds general meetings, renovate the first floor bathrooms, install automatic door openers at the building's entrance, and provide a van accessible parking space.

Jury service in Salt Lake City -- The Utah State Administrative Office of the Courts committed its courts to provide appropriate auxiliary aids and services, including qualified interpreters, when necessary to provide an individual with a disability an opportunity to serve as a juror. The agency agreed to establish a policy on providing interpreters for individuals serving on jury duty, notify the public about the policy, and instruct district court officials to adhere to the policy.

Civic functions in Manhattan, Montana -- A small Montana town agreed to make its town programs accessible by making a few renovations and taking alternative nonstructural measures. It agreed to install a ramp at an entrance, make the route to the entrance accessible, create one van-accessible parking space, and make the water fountain and bathroom on the first floor accessible. Also, town council meetings will be moved to the first floor when necessary.

Jury service in the D.C. Superior Court -- Donald Galloway filed suit in federal court charging that the District of Columbia Superior Court violated the law by categorically excluding blind persons from jury service. The federal court agreed, and awarded Galloway $30,000 in damages. The Justice Department argued in support of Galloway's view that compensatory damages can be obtained under both the ADA and the Rehabilitation Act of 1973.

Donald Galloway was excited to be called for jury duty in the District of Columbia and eager to fulfill his civic responsibility. At the courthouse, though, he was told that because he is blind he could have saved himself the trip -- he would not be allowed to serve.

Town board meetings in New York State -- A small community agreed to purchase a public address system to resolve a complaint from a hard of hearing citizen who wanted to listen to town board meetings.

Opening Gateways to Opportunity

The ADA is lowering the barriers to educational and professional advancement faced by many people with disabilities. The Department has engaged in enforcement activities involving college entrance examinations and review courses for bar and accounting exams.

Scholastic Assessment Test -- The Educational Testing Service and the College Entrance Examination Board agreed to schedule more dates for more than 20,000 students with disabilities wishing to take the new version of the Scholastic Assessment Test. Under the original testing schedule, students with disabilities requiring accommodations were offered only one date to take the updated version, as opposed to their peers who had several opportunities to take the test. The agreement also allowed approximately 2,600 students with disabilities who took the old version of the test the chance to cancel their scores and retake the new exam.

Bar review course -- Under a consent decree, the company that runs Bar/Bri, the nation's largest review course for students taking the bar exam, agreed to provide qualified sign language interpreters, assistive listening devices, and Brailled materials to students with disabilities. The Department had alleged that the course failed to provide appropriate auxiliary aids to students with vision and hearing impairments. The company, Harcourt Brace, also agreed to pay $28,000 in compensatory damages, pay $25,000 in civil penalties to the United States, adopt a policy ensuring that auxiliary aids and services are provided, educate its staff about the needs of students with disabilities, and promote the availability of auxiliary aids and services in its advertising.

Jennifer Olson is deaf and has used interpreters throughout her college and law school years. When she signed up to take a bar review course, the company refused to provide an interpreter.

C.P.A. review course -- In a settlement resolving the first lawsuit filed by the Justice Department under the ADA, Becker C.P.A. Review, which prepares over 10,000 students annually to take the national certified public accountant exam, agreed to amend its auxiliary aids policy. Where a need can be demonstrated, Becker will provide qualified sign language interpreters and assistive listening devices to students who are deaf or hard of hearing. Becker also agreed to appoint a national ADA coordinator, train its staff regarding the policy revision, pay $20,000 in damages to be distributed to deaf and hearing impaired students, and establish a $25,000 scholarship fund for accounting students at California State University who have hearing impairments.

Becoming Part of the Economic Mainstream

A primary goal of the ADA is to bring people with disabilities into the mainstream of the American economy. The Department has achieved greater access in a wide variety of private-sector settings.

Venture Department Stores -- The Department entered into a consent decree resolving its suit against Venture Stores, Inc., a St. Louis firm that operates more than 90 discount department stores in eight states. Venture agreed to modify its policy of permitting only customers with drivers' licenses to pay with a personal check, and will now permit individuals who do not drive because of a disability to pay by check if they have a non-driver state ID card. It also agreed to compensate the complainants.

Joan Abbati has epilepsy and is unable to get a driver's license. When making purchases by check, she shows the cashier an ID card issued by the State of Illinois. A Venture discount department store in Chicago refused to honor the card, preventing her from paying by check.

Parking facilities in Colorado -- The Department entered into a consent decree resolving its suit against Allright Colorado, a company that owns or operates over 100 parking lot facilities in Denver. Under the agreement, Allright will add over 400 accessible parking spaces to its facilities, and instruct parking attendants to monitor the slots and ticket cars that are improperly parked. Allright also paid $20,000 in civil penalties because of alleged delay in complying.

Gibson's Discount Center -- By consent decree, the Department resolved a case against the operator of 30 discount department stores in eight Midwest and Rocky Mountain States. The Department investigated complaints against several Gibson's department stores alleging that Gibson's had failed to remove architectural barriers to access and that it had made alterations that did not comply with the ADA's Standards for Accessible Design. Under the agreement, Gibson's will bring all its stores into full compliance with the Standards; provide at least one accessible fitting room and entrance at each store; and offer accessible parking, check-out aisles, and restrooms. Also, Gibson's will pay $30,000 in civil penalties and $15,000 in compensatory damages.

In some Kansas communities, Gibson's Discount Center is the only place in town to shop for clothing, hardware, electronics, and sporting goods. But for Richard Knight, who uses a wheelchair, it was often impossible to shop at his hometown store because of insufficient accessible parking and inaccessible restrooms.

Municipal Credit Union of New York City -- A branch office of the Municipal Credit Union of New York City was inaccessible to people with mobility impairments. The Credit Union agreed to install a ramp at the entrance, notify its customers of the ramp, post appropriate signs, and instruct the staff to provide assistance when requested by individuals with disabilities.

Smith Barney -- Under a formal settlement, Smith Barney, a nationwide financial planning services company, will provide, upon request, financial statements and correspondence in large print to its customers with vision impairments. (Smith Barney already provides documents in Braille.) Smith Barney also agreed to pay $1,500 to the complainant and notify its customers of the new service. Since the agreement, 645 customers already have requested large print documents.

Lone Star Steakhouse and Saloons -- Lone Star Steakhouse and Saloons, a nationwide restaurant chain operating 105 restaurants in 29 States, agreed to bring 97 new or altered facilities into full compliance with the ADA. This settlement was the first resulting from a compliance review, a process by which the Department reviews architectural plans to determine if new construction projects will comply with the ADA's standards. By reviewing the plans and visiting several sites, officials learned that Lonestar failed to provide accessible seating, restrooms, and parking, as well as accessible routes from parking areas. Under the settlement, Lone Star is contributing a total of $25,000 to four disability advocacy groups.

Gas station in Arlington, Virginia -- Under an agreement, an Exxon gas station in Arlington agreed to pump gas for persons with disabilities and implement a procedure that would ensure that persons with disabilities could bypass the inaccessible electronic card reader devices when pumping their own gasoline. Exxon also will display signs describing this procedure.

Ensuring Fair Treatment

The ADA protects people with disabilities from unfair treatment. The Department has successfully fought for the rights of people with HIV infection not to be refused routine dental care because of irrational fears.

Dental service in New Orleans -- A Federal court in Louisiana ruled that a dentist violated the law by referring persons with HIV or AIDS to another dentist solely on the basis of the patient's HIV positive status. Under a consent order the dentist, Dr. Morvant, agreed to pay $60,000 in damages to the family of one deceased patient, Ismael Pena, and $60,000 to another patient, and to no longer discriminate against persons with HIV or AIDS. Morvant may refer such patients to another dentist only when the dental treatment being sought or provided is outside his area of expertise. The order also requires Morvant and his staff to undergo training on the treatment of persons with HIV or AIDS, infection control in the dental workplace, and the ethical duty to treat persons with HIV or AIDS.

> For 11 years Ismael Pena went to the same dentist in New Orleans for basic dental care. But after learning that his longstanding and loyal patient had AIDS, Dr. Morvant told Pena to go elsewhere to get his teeth cleaned.

Access to Business and Leisure Travel

The ADA guarantees the right of people with disabilities to enjoy the amenities of leisure and business travel. The Department's activities have led to greater accessibility in the hotel, rental car, and resort industries.

Hyatt Regency in Dallas -- The Department resolved a suit alleging that the Hyatt Regency Dallas Hotel failed to remove architectural barriers where it was readily achievable to do so. Under the consent agreement, the Hyatt Corporation agreed to provide 28 accessible guest rooms, modify three sets of restrooms on several floors, and construct ramps providing access to the hotel's swimming pool and hot tub areas. It also agreed to pay a total of $36,000 in compensatory damages to 24 individuals with disabilities.

For some families who have children with spina bifida, the yearly convention of the Spina Bifida Association is a summer vacation. The children can play with other children with spina bifida and not feel excluded or self-conscious. In 1992, excitement turned to disappointment when families showed up at the convention only to find that the guestrooms, restrooms, and pool at the Dallas Hyatt were inaccessible.

Avis, Inc. -- Under a formal settlement, Avis, Inc., the country's second largest car rental company, agreed to provide rental cars with hand controls for persons with disabilities -- with as little as eight hours notice in most major airport locations. Avis also agreed to urge all existing licensees to adopt the same policy, require all new franchisees and those renewing their contracts to adopt the policy, train its staff at its corporate-owned rental locations, and allow persons who are unemployed due to a disability and who do not use credit cards, to substitute verifiable disability-related income in lieu of a verifiable employment history. Also, Avis will allow persons who cannot drive due to a disability to rent cars in their own name and maintain financial responsibility for renting the car when accompanied by a licensed driver.

Resort hotels in Hawaii -- The Department sued Pleasant Travel Service, Inc., and its subsidiary, Hawaiian Hotels & Resorts, Inc., who own and operate several resort hotels in Hawaii and California. It alleged that the hotels failed to remove barriers to access and renovated the hotels in ways that did not comply with the ADA's standards. Under a consent decree, the Royal Lahaina Resort, the Royal Kona Resort, and the Kauai Coconut Beach Resort will provide accessible parking; modify restrooms to make them accessible; provide access to restaurants, swimming pools and the luau areas; and offer between 12 and 14 accessible guest rooms at each hotel. Also, the defendants agreed to pay a total of $25,000 in compensatory damages to two individuals who use wheelchairs and $25,000 in civil penalties.

John Hartman, a wheelchair user who is active in community affairs in Kona, Hawaii, frequently attends meetings of his local government at the Royal Kona Resort. Because there was no accessible restroom, Hartman often would have to leave meetings abruptly, return to his van, and drive into town to find an accessible facility.

Increasing Access to Recreational Activities

The ADA bolsters the ability of people with disabilities to enjoy recreational activities with their family and friends. The Department has successfully increased access in diverse settings ranging from bowling centers to county fairs.

Empire State Building in New York -- The Justice Department alleged that the owners of the Empire State Building failed to remove architectural barriers where it was readily achievable to do so. An agreement resolving the complaint mandates changes to the lobby, entrance, observation decks, restrooms and telephones, but does not cover any privately leased office space in the building.

Bowling alley in Greenwood, South Carolina -- The owners of Emerald Lanes, a bowling center, agreed to construct a ramp and an accessible door at the front entrance, build a new accessible unisex restroom and vestibule leading to it, and add accessible parking.

A South Carolina man just wanted to be able to see his children bowl in league competition -- but inaccessible facilities made it impossible.

Public fair in Minnehaha County, South Dakota -- In the first settlement agreement involving a public fair, Minnehaha County agreed to a wide range of measures to ensure accessibility at the Sioux Empire Fair. The County agreed to renovate several bathrooms, install two TDD's at pay phones, create an accessible path of travel through areas of the Fairgrounds, upgrade accessible parking, make the vending and ticketing counters and booths accessible, provide materials to Fair volunteers and patrons regarding the accommodations available for people with disabilities, and adopt a policy that allows patrons with mobility impairments to buy the same number of companion tickets to Fair concerts that other patrons are able to buy.

Theaters in New York City -- A number of motion picture and performing arts theaters in New York City agreed to install assistive listening systems and provide individual receivers for patrons who are hard of hearing.

Providing Freedom from Unnecessary Inquiries into Disability

The ADA gives people with disabilities the right to be free from undue requests for personal and private information about their physical or mental condition. Many State licensing authorities are reconsidering the questions they are asking applicants for professional licenses due to the Department's activities in this area.

Professional licensing nationwide -- By challenging overly broad mental health inquiries by State licensing officials of applicants for professional licenses (law and medicine), the Department has spurred reform efforts nationwide. In briefs filed in New Jersey, Florida, and Virginia, the Department has argued that broad questions about an individual's history of treatment or counseling for mental, emotional, or nervous conditions that do not focus on current impairment of an applicant's fitness to practice in a given profession violate the ADA. In one case challenging an unnecessarily broad inquiry into past mental health treatment, the Federal court ordered the Virginia Board of Bar Examiners to stop asking bar applicants whether they had received counseling within the past five years.

II. Certification Highlights

The law requires that newly constructed or altered facilities comply with the ADA Standards for Accessible Design. The ADA authorizes the Justice Department to certify building codes that meet the ADA's standards. In litigation, an entity that complies with a certified code can use it as rebuttable evidence of compliance with the law.

Washington State's Code -- In March, the Justice Department certified that the requirements of Washington's building code are equivalent to those set forth in the ADA. Washington was the first State to submit, and receive certification of, its code. It may serve as a model for other states and localities.

III. Technical Assistance Highlights

Congress made the ADA very flexible and required the Federal Government to provide technical assistance to help the public understand the law's requirements. The Justice Department has fulfilled this mandate by establishing a wide ranging technical assistance program.

In the past five years, the Department has --

· distributed more than 70 million ADA publications and informational pieces to the public;

· established a toll-free Information Line that receives approximately 6,500 calls each month from the public;

· distributed public service announcements about the ADA to hundreds of TV and radio stations across the country;

· developed and disseminated an ADA Information File containing over 30 technical assistance publications to 15,000 public libraries and 6,000 Chambers of Commerce nationwide;

· provided grants to trade associations and other organizations for the development of specially-tailored publications and videotapes on the ADA. The groups included--

--owners and managers of hotels and motels, restaurants, grocery stores, other retail establishments, small businesses, and businesses whose owners speak Spanish or other languages;

--builders and contractors, students and professors of design education programs, and members of historic preservation boards and commissions;

--medical professionals, child care providers, and service providers for older people;

--mayors of medium and large cities, small towns and townships, police officers and court personnel, and managers and operators of emergency response ("9-1-1") centers;

II. Certification Highlights

The law requires that newly constructed or altered facilities comply with the ADA Standards for Accessible Design. The ADA authorizes the Justice Department to certify building codes that meet the ADA's standards. In litigation, an entity that complies with a certified code can use it as rebuttable evidence of compliance with the law.

Washington State's Code -- In March, the Justice Department certified that the requirements of Washington's building code are equivalent to those set forth in the ADA. Washington was the first State to submit, and receive certification of, its code. It may serve as a model for other states and localities.

III. Technical Assistance Highlights

Congress made the ADA very flexible and required the Federal Government to provide technical assistance to help the public understand the law's requirements. The Justice Department has fulfilled this mandate by establishing a wide ranging technical assistance program.

In the past five years, the Department has --

- distributed more than 70 million ADA publications and informational pieces to the public;
- established a toll-free Information Line that receives approximately 6,500 calls each month from the public;
- distributed public service announcements about the ADA to hundreds of TV and radio stations across the country;
- developed and disseminated an ADA Information File containing over 30 technical assistance publications to 15,000 public libraries and 6,000 Chambers of Commerce nationwide;
- provided grants to trade associations and other organizations for the development of specially-tailored publications and videotapes on the ADA. The groups included--

  --owners and managers of hotels and motels, restaurants, grocery stores, other retail establishments, small businesses, and businesses whose owners speak Spanish or other languages;

  --builders and contractors, students and professors of design education programs, and members of historic preservation boards and commissions;

  --medical professionals, child care providers, and service providers for older people;

  --mayors of medium and large cities, small towns and townships, police officers and court personnel, and managers and operators of emergency response ("9-1-1") centers;

--people with disabilities; and,

--community and professional mediators.

Most businesses and governments comply once they understand what is required. That is why our **ADA Information Line** is a cornerstone of our public education effort. Through the information line, ADA specialists are available to answer questions and provide basic information, technical guidance, and publications.

A State university administrator did not know how to accommodate a student who uses a wheelchair -- so he called the ADA hotline. An ADA specialist suggested moving courses to accessible sites as well as setting up meetings with students and staff to identify possible obstacles that limit campus access. Two weeks later, the administrator called back to say that the first meeting was a success, not only for the students, but for the school because it dispelled the myth that providing program access would be too costly.

Our technical assistance initiatives underscore the importance of developing partnerships between businesses or local governments and persons with disabilities. Working together makes compliance easier and more effective.

ADA Information Line

ADA specialists are available Monday, Tuesday, Wednesday, and Friday from 10:00 a.m. to 6:00 p.m. (EDT), and Thursday from 1:00 p.m. to 6:00 p.m. Spanish language service is also provided. Callers may hear recorded information and order materials at any time day or night.

1-800-514-0301 (voice)
1-800-514-0383 (TDD)

Publications

Copies of the Department of Justice's regulations and technical assistance manuals for titles II and III of the ADA, the ADA Questions and Answers booklet, the ADA Handbook (limited quantities available), ADA Status Reports, and information about the Department's technical assistance grant program can be obtained free of charge by calling the ADA Information Line at the number listed above or by writing to the address listed below. These materials are also available as an accommodation to people with disabilities in large print, Braille, audiotape, and computer disk.

U.S. Department of Justice
Civil Rights Division
Disability Rights Section
Post Office Box 66738
Washington, D.C. 20035-6738

ADA Documents are On-line — The Department of Justice operates an electronic bulletin board system (BBS) that contains its ADA regulations and technical assistance materials as well as some materials from other Federal agencies. These can be downloaded by computer modem by dialing 202-514-6193. The BBS can also be accessed through the Internet. The access codes are telnet fedworld.gov Gateway D, choice 1 #9.

The Department also has placed a variety of its ADA materials directly on the Internet, including press releases on ADA cases and ADA regulations and technical assistance materials. These materials can be accessed with gopher client software (gopher.usdoj.gov), through other gopher servers (choose 9 for North America, 5 for USA, 1 for All, and look for Department of Justice, which currently is option 377), with World Wide Web software (http://www.usdoj.gov), or through the White House WWW server (http://www.whitehouse.gov). On the DOJ Home Page on the Web, ADA materials are located under Litigation Organizations, Civil Rights Division and under Justice Department Issues, Americans with Disabilities Act. The Department's press releases are located under the Office of Public Affairs on both the gopher and the World Wide Web. The Department's press releases are searchable on both gopher and World Wide Web. Speeches by senior officials of the Civil Rights Division can be found on the Civil Rights Division gopher and under Litigation Organizations, Civil Rights Division, Civil Rights Gopher Information.

Copies of the Department of Justice's Technical Assistance Manuals for titles II and III and yearly updates can also be obtained by subscription from the Government Printing Office. The subscription fee for the Title II Manual, which includes annual supplements through 1996, is $24. The subscription fee for the Title III Manual with supplements through 1996 is $25. Call the ADA Information Line to obtain an order form.

Copies of legal documents and settlement agreements mentioned in this publication can be obtained by writing to:

Freedom of Information/Privacy Act Branch
Administrative Management Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 65310
Washington, D.C. 20035-5310
Fax: 202-514-6195

IV. Other Sources of ADA Information

The Equal Employment Opportunity Commission offers technical assistance to the public concerning title I of the ADA.

For ordering documents
800-669-3362 (voice)
800-800-3302 (TDD)

For questions
800-669-4000 (voice)
800-669-6820 (TDD)

The U.S. Department of Transportation offers technical assistance to the public concerning the public transportation provisions of title II and title III of the ADA.

ADA documents and general questions
202-366-1656 (voice)
202-366-4567 (TDD)

ADA legal questions
202-366-1936 (voice)
TDD: Use relay service

Complaints and enforcement
202-366-2285 (voice)
202-366-0153 (TDD)

Project ACTION
202-347-3066 (voice)
202-347-7385 (TDD)

The Federal Communications Commission offers technical assistance to the public concerning title IV of the ADA.

ADA documents and general questions
202-418-0190 (voice)
202-418-2555 (TDD)

ADA legal questions
202-634-1798 (voice)
202-418-0484 (TDD)

Complaints and enforcement
202-632-7553 (voice)
202-418-0485 (TDD)

The U.S. Architectural and Transportation Barriers Compliance Board, or Access Board, offers technical assistance to the public on the ADA Accessibility Guidelines.

ADA documents and questions
800-872-2253 (voice)
800-993-2822 (TDD)

The National Institute on Disability and Rehabilitation Research (NIDRR) of the U.S. Department of Education has funded ten regional centers to provide technical assistance on the ADA.

800-949-4232 (voice & TDD)
(call automatically connects to
the closest center)

The Job Accommodation Network (JAN) is a free telephone consulting service funded by the President's Committee on Employment of People with Disabilities. It provides information and advice to employers and people with disabilities on reasonable accommodation in the workplace.

Accommodation in the workplace
800-526-7234 (voice & TDD)

V. How to File Complaints

Title I

Complaints about violations of title I (employment) by units of State and local government or by private employers should be filed with the Equal Employment Opportunity Commission. Call 800-669-4000 (voice) or 800-669-6820 (TDD) for the field office in your area.

Titles II and III

Complaints about violations of title II by units of State and local government or violations of title III by public accommodations and commercial facilities should be filed with -

U.S. Department of Justice
Civil Rights Division
Disability Rights Section
Post Office Box 66738
Washington, D.C. 20035-6738

Urgent!

ADA Backlash

30 A The Dallas Morning News Wednesday, April 19, 1995 H

Disabilities act needs revisions, Armey says

He says law being abused; others skeptical

By Anna Macias and Catalina Camia
Staff Writers of The Dallas Morning News

House Majority Leader Dick Armey told about 700 constituents Tuesday night that he hopes to rewrite the Americans With Disabilities Act to prevent "gold diggers" from using the law to file frivolous lawsuits.

He shared the stage at North Lake College in Irving with about 45 skeptics — wheelchair-using, blind and deaf constituents — who came to defend the law that they called their "Emancipation Proclamation."

They sat on the stage because the auditorium is under construction to meet the law's standards and could not accommodate their wheelchairs.

"The ADA in its current state is a disaster," Mr. Armey said. "I will work to make the language in it tight ... make it focused more on people with genuine disabilities."

In an effort to show that the disabilities act is being misused, Mr. Armey cited the case of a woman with body odor who filed a lawsuit claiming to be disabled.

thrown out

But Ralph Rouse, former chairman of Gov. Ann Richards' Committee on People with Disabilities, said that most people benefiting from the law truly need it.

"I do not believe there are the kinds of abuses that he alluded to," Mr. Rouse said. "By and large, this law is helping people who need to become independent and productive."

Mr. Armey promised to study issues affecting the disabled. Several speakers representing the disabled offered to help draft any new legislation.

Throughout the day, Mr. Armey also continued to talk up his plan for simplified taxation, acting more like a protective father than a legislator with a hot idea.

The Irving Republican, in a speech Tuesday at the Federal Reserve Bank of Dallas, said he is in no hurry for House committees to consider his proposal to replace the nation's complex tax system with a 17 percent flat rate and a postcard-sized form.

Calling Washington a hostile environment for good ideas, Mr. Armey told area business leaders that he wants the political momentum to build for his proposal over the next year. That way, he said, public opinion will be on his side when Congress considers a tax reform bill.

"I wouldn't take a beautiful young baby and put it in the arms of barbarians," said Mr. Armey, expressing concern that the simplicity of his plan would be gone after lawmakers and Washington lobbyists pick it apart during the normal congressional process.

House Ways and Means Committee Chairman Bill Archer, R-Houston, plans to begin comprehensive hearings on overhauling the tax system in June and to offer his own reform plan in early 1996.

Mr. Archer and his Senate counterpart, Budget Committee Chairman Pete Domenici, R-N.M., are leaning toward a consumption-based tax that taxes individuals on what they spend but allows generous deductions to spur savings.

Mr. Armey called this type of plan a hidden tax that burdens retailers. He said that his game plan is intact and that his plan will prevail.

"As long as people are talking, the baby will get stronger," he said.

Under his plan, individuals and companies would pay 17 percent instead of today's varying rates. Individuals would pay taxes on wages and pensions and receive no deductions except for a hefty personal allowance.

To: Rick Douglas
Fr: Justin Dart
4/19/95

Women journalists recognize

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, DC 20507

Office of the Commissioner

FACSIMILE TRANSMISSION COVER SHEET
for
OFFICIAL GOVERNMENT BUSINESS
OFFICE OF COMMISSIONER PAUL STEVEN MILLER

DATE: 6/9/95 NUMBER OF PAGES: 6
(Including Cover)

TO: Diana Fortuna, Domestic Policy Council

OFFICE/COMPANY/FIRM:

TELEPHONE NO.: ( ) 456-5570 FACSIMILE NO.: ( ) 456-7028

FROM: Andy Imparato CONTACT PERSON: me

TELEPHONE NO.: (202) 663-4037 FACSIMILE NO.: (202) 663-7101

COMMENTS/SPECIAL INSTRUCTIONS: I will fax these to Judy Heumann and Liz Savage as well.

TALKING POINTS IN RESPONSE TO COMMON MYTHS AND MISUNDERSTANDINGS ABOUT ADA

Myth: **ADA Has Vague Terms**

Answer:

The ADA's terms are not impossibly broad or vague. In fact, most provisions of Title I are identical to the Rehabilitation Act of 1973, which has been in effect for over two decades. See H. Rep. No. 485, 101st Cong., 2d Sess., pt. 3, at 27, 31 (1990).

The ADA's definition of disability tracks the language of the Rehabilitation Act of 1973. Congress adopted this definition rather than listing specific disabilities because: (1) the definition has "worked well since it was adopted in 1973"; and (2) "it would not be possible to guarantee comprehensiveness by providing a list of specific disabilities, especially because new disorders may develop in the future, as they have since the definition was first established in 1973."

The ADA protects people who have a physical or mental impairment that substantially limits a major life activity, who have a record of such an impairment, or who are regarded as having such an impairment. If an individual cannot make such a showing, s/he is not entitled to the ADA's protections.

Myth: **ADA Is Resulting in Frivolous Claims**

Answer:

There will always be individuals who bring frivolous claims under any statute, including the ADA and other civil rights statutes. This does not mean that a statute is flawed; rather, it means that the claims should be dismissed. EEOC investigators analyze all charges to determine whether they have merit and dismiss those that do not.

Myth: **ADA is Being Misused by Those with "Stress"**

Answer:

Individuals with psychiatric and other mental **disabilities** are protected by the ADA. Such individuals are frequently discriminated against because of the myths, fears, and stereotypes associated with such disabilities. Therefore, the ADA specifically protects individuals with mental disabilities if they are qualified for the job.

On the other hand, general "stress" is not an impairment. Therefore, a person suffering from general stress because of job or personal pressures would not be considered to have an impairment.

Myth: ADA is Being Misused by People with Back "Problems"

Answer:

Only those with disabling back conditions are protected by the ADA. Investigators are trained to close charges by individuals who do not have back disabilities.

The cases EEOC has filed in federal court concerning individuals with back impairments all involve individuals who want to work, but who have been excluded from the workplace because of their disabilities.

Myth: ADA Is not Helping People with Disabilities Obtain Jobs

Answer:

Although only 11% of ADA charges allege hiring discrimination, this is substantially larger than the percentage of hiring charges under some of the other statutes EEOC enforces. For example, only 7.3% of race discrimination charges and 5.1% of sex discrimination charges in FY94 alleged hiring discrimination. [Source: EEOC Office of Communications and Legislative Affairs]

EEOC's litigation in federal court is heavily focused on hiring cases. Approximately 25% of the EEOC's ADA cases in federal court have alleged hiring discrimination. These cases involve a wide range of disabilities, including epilepsy, back impairments, mobility impairments, hearing and vision impairments, heart impairments, and diabetes.

A recent study has concluded that "[t]he ADA has played a significant role in enhancing labor force participation of persons with disabilities and in reducing dependence on government entitlement programs." See Blanck, "Employment Integration, Economic Opportunity, and the ADA: Empirical Study from 1990-93, 79 Iowa Law Review 853, 854 (1994); Senator Bob Dole, "Are We Keeping America's Promises to People with Disabilities -- Commentary on Blanck," id. at 925, 927; Senator Tom Harkin, "The Americans with Disabilities Act: Four Years Later -- Commentary on Blanck," id. at 935-36.

The Wall Street Journal reported a recent study showing that "job opportunities and income levels have climbed significantly for many mentally disabled people since passage" of the ADA. (WSJ 2/2/95)

The unemployment rate for individuals with disabilities is high for a number of reasons, aside from employment discrimination. For example, individuals with disabilities are sometimes discouraged from seeking employment because they have no reliable means of commuting to/from work, or because they are afraid they will lose government-provided medical assistance if they work. ADA is only part of the solution.

Myth: **What is ADA For Other Than Hiring?**

Answer:

The ADA helps qualified individuals with disabilities obtain and retain jobs. The 50% of ADA charges alleging discriminatory discharge generally involve individuals who want to continue working, but who are being fired allegedly because of disability. ADA's goal of "allow[ing] individuals with disabilities to be part of the economic mainstream of our society" is also enhanced when individuals fired on the basis of disability challenge such actions. See S. Rep. No. 101-116, 1st Sess., at 10 (1989).

The ADA helps protect qualified persons with disabilities from employment decisions based on myths, fears, and stereotypes about5 their disability, rather than their ability to perform essential job functions.

Myth: **Reasonable Accommodations Cost Too Much**

Answer:

In most cases, an appropriate reasonable accommodation can be made without difficulty and at little or no cost. For example, a recent study commissioned by Sears indicates that of the 436 reasonable accommodations provided by the company between 1978 and 1992, 69% cost nothing, 28% cost less than $1,000, and only 3% cost more than $1,000. See "Communicating the ADA, Transcending Compliance: A Case Report on Sears, Roebuck and Co." at 12. See also The President's Committee on Employment of People with Disabilities' Job Accommodation Network U.S. Quarterly Report at 14 (9/30/94)(78% of reasonable accommodations cost less than $1,000; 17% of reasonable accommodations cost between $1,001 and $5,000); "ADA in Perspective; Business, Disabled Both Prosper Under Act," Capital Times, 1/12/95 (reasonable accommodations have not been costly for businesses).

The relatively minor costs of providing reasonable accommodation are offset by the benefits resulting from increased employment of people with disabilities, reduced dependence on Social Security, increased consumer spending by people with disabilities, and increased tax revenues. See

Senator Tom Harkin, "The Americans with Disabilities Act: Four Years Later -- Commentary on Blanck, 79 Iowa Law Review 935, 937 (1994). See also "Communicating the ADA, Transcending Compliance: A Case Report on Sears, Roebuck and Co." (discussing gains in employee productivity as a result of reasonable accommodations); President's Committee Job Accommodation Quarterly Report, supra, at 14 (51% of responding companies saved between $1 and $10,000 by providing reasonable accommodation; 42% saved between $10,000 and $100,000).

Myth: ADA Encourages Violence in the Workplace

Answer:

The EEOC has consistently maintained that an employer may hold all employees (i.e., those with and without disabilities) to the same conduct standards. This certainly includes rules prohibiting guns, violence or the threat of violence in the workplace. Although an employer may be required to provide reasonable accommodation (when requested in advance) so that an individual can meet conduct standards, an employer would not be required to rescind discipline for misconduct. Cf. Carrozza v. Howard County, 3 AD Cases 197, 199 (D. Md. 1994), aff'd, 1995 U.S. App. LEXIS 357 (4th Cir. 1995) (even though plaintiff's nonviolent misconduct may have been caused by disability, employer was justified "in pursuing adverse employment action against her, up to and including her termination, for her misbehavior in the workplace.")

In Hindman v. GTE, 4 AD Cases 182 (1/27/95), the court ruled that the employer did not violate the ADA by applying its "no gun" rule to the plaintiff and that the employee's alleged mental disability did not constitute an "extenuating circumstance" preventing application of the employer's rule to him.

Myth: The Cook Case and Obesity

Answer:

The Commission has taken the position that individuals who are simply "overweight" or "fat," and do not have an underlying physiological disorder, do not have impairments and are not protected by the ADA. However, a person who is "morbidly" or "severely" obese, medical terminology that refers to individuals who are at least 100 % above normal body weight, do have impairments and may be protected by the ADA if the impairment substantially limits a major life activity, or if the employer regards the impairment as substantially limiting.

Cook, an obesity case recently referred to in a Washington Post article about the ADA, involved a "morbidly" obese woman who was denied employment because the employer erroneously believed that her obesity rendered her unqualified for the job, even though her obesity did not in fact limit any of her major life activities. The court found that the employer had regarded Cook as being disabled and had discriminated against her by refusing to hire her. EEOC had filed an amicus brief in support of the plaintiff.

Myth: The ADA Protects Drug Addicts

Answer:

A current illegal drug user is not protected under the ADA when the employer acts on the basis of the drug use.

An individual with alcoholism has a disability. In addition, a former drug addict who has been rehabilitated (or is in rehabilitation) and who no longer uses drugs has a disability. However, an individual with one of these disabilities is protected by the ADA only if s/he is qualified.

Employers can require that workers not be under the influence of illegal drugs or alcohol in the workplace and can uniformly apply this rule to workers who are alcoholics or rehabilitated drug addicts.

Recovering alcoholics and rehabilitated drug addicts, like other individuals with disabilities, have been subjected to pervasive discrimination because of stereotypes, discomfort, misconceptions and fears. For example, in a recent ADA suit, a high school teacher who is a recovering alcoholic alleged that he was denied a job as a coach, even though he had not had a drink in 10 years.

ADA Backlash

Lawyer's Midnight Musings Become A Surprise Best Seller on Regulation

By SUSAN FERRARO

THE NEW YORK TIMES, FRIDAY, APRIL 7, 1995

Daina - FYI. We can expect calls! Cath

In his cluttered third-floor law office in midtown Manhattan, Philip K. Howard, 46, speaks softly but drops big names.

Mr. Howard, a Southerner who has lost his accent but none of his charm, wrote "The Death of Common Sense: How Law Is Suffocating America," a scathing indictment of regulatory law and a surprise best seller. Now, he says, he is talking "pro bono" about rewriting government regulations with Senator Bob Dole of Kansas, the majority leader, and two Democratic Governors, James B. Hunt Jr. of North Carolina and Lawton Chiles of Florida. He has heard, he said, that California's Governor, Pete Wilson, a Republican, may also want to talk with him.

He has met with Vice President Al Gore, been invited to a White House press conference and recently testified on regulatory horrors before the Senate Judiciary Committee. Reader's Digest and U.S. News & World Report have printed excerpts from his book; since its Jan. 30 publication, the book has gone through 11 printings totaling 250,000 copies and ratcheted to the No. 4 spot on The New York Times best-seller list.

In any other political season, Mr. Howard's book might be dismissed, or enjoyed, as a lawyer's 187-page midlife crisis. "How law works, not what it aims to do, is what is driving us crazy," he writes in a typical passage. And, "Law cannot save us from ourselves."

But as the Republicans' Contract With America unfolds, Mr. Howard has become the man of the moment.

Mr. Howard is a partner of Howard, Darby & Levin, a 40-lawyer firm

Plenty of criticism, but few suggestions for solving problems.

specializing in corporate matters. His evolution into regulatory gadfly began almost four years ago when, in one day, he heard a businessman and a welfare mother complain about constricting regulations with the same impassioned exasperation.

Mr. Howard said he would lie awake at night in his Gramercy Park home thrashing out the premise of his book: that regulatory red tape paralyzes government and citizens alike, and that trying to eliminate risk by regulations is "as effective as Pickett's charge" because "all risks in life are interconnected."

But if Mr. Howard runs long on how the system does not work, he is short on solutions, devoting a scant 16 pages to an almost evangelical last chapter called "Releasing Ourselves." Mr. Howard believes "necessity and self interest" will prod citizens to speak out and compel change — by writing to their Congressional representatives and looking officials "in the eye."

Indeed, providing Americans with a new vocabulary to use in voicing their interests is the purpose of his book.

"If millions of people have this vocabulary," he said in a recent interview, "and millions of people are calling up and saying, 'I now know what's wrong, which is that this law is written without any flexibility, it is intended to be an instruction manual, it shouldn't be that way, the regulator should have to look me in the eye and explain that that's reasonable' — if that happens thousands of times across America, you will see the law change."

Mr. Howard acknowledged that some might resist change; as he writes in his book, "Responsibility is the last thing bureaucrats want." But he insisted that good bureaucrats exist, champing at the bit to take charge: "We don't need thousands of those willing to take responsibility, we probably need hundreds. Those who want it will gravitate toward it. Build it, and they will come."

And he said that those who claimed special rights would also adjust. "There are groups, like the disabled, or parents of the disabled, who will oppose" change, he said. But he believes that most "will gladly give up their so-called rights" because they understand that in one-on-one disputes, rights become a "license for extortion."

So if a woman, for example, feels that she was not promoted because of her sex, she must "show a pattern or practice" of the discrimination. And if there is only one female employee, making it impossible to prove a pattern?

"Law isn't perfect, you know," Mr. Howard said with a beatific smile. "It can't remedy every wrong."

Pressed for details, he first demurred, noting somewhat plaintively that Governor Chiles did not ask for specifics. But he did, finally, sketch a few recommendations.

First, he said, "scrape away at the underbrush of regulatory law to focus on the goal," whether it is a safe workplace or the installation of public toilets.

Next, amend existing regulations by adding "just one line" that will allow responsible officials to make exceptions to general rules. If the officials make bad decisions, the appropriate recourse is public outcry, not litigation.

Lawmakers, he said, must abandon "the naïve notion of 'perfect sameness,'" when defining ideal or optimum standards, because one situation is rarely, if ever, perfectly the same as another.

Third, encourage politicians "to reconsider every law passed in the form of an absolute right, and revise them so that Government officials regain the authority to balance competing interests."

Mr. Howard said he was not suggesting formation of a review corps of superbureaucrats, an idea floated by Justice Stephen G. Breyer before he joined the Supreme Court.

What he is advocating — and even predicting — is amending the Americans With Disabilities Act, for example, which he said "is driving people crazy." Most of the act's regulations deal with wheelchair users, Mr. Howard said, yet "not 2 percent of the disabled are in wheelchairs" — that is less than 860,000 people — and many of those people are in nursing homes.

The greatest change, which he said would save $150 billion a year, would be to get rid of all the procurement procedures in the granting of government contracts. Instead, he

'Law isn't perfect, you know. It can't remedy every wrong.'

said, government should rely on audits and sting operations to keep people honest.

"I hope what comes clear in the book is that I believe most areas of regulatory law are important, but we can't regulate effectively without human judgment on the spot," he said. "I think any system of law should be skeptical of people. It shouldn't be paranoid, however."

ADA Backgrnd

DIANA

THE WHITE HOUSE

WASHINGTON

July 17, 1995

NOTE:

TO: ERSKINE BOWLES
JEREMY BEN AMI

FROM: MARVIN KRISLOV MK

Here are copies of an article attacking the EEOC and the ADA (by the same author of the other anti-EEOC - piece) and a response that we assisted in formulating. I think we succeeded in creating a much better response in the first instance this time.

Attachments

cc: Abner Mikva
James Castello

The Disabilities Act's Parade of Absurd[illegible]

By James Bovard

Gilbert Casellas, chairman of the Equal Employment Opportunity Commission, declared last month that most of the tens of thousands of lawsuits and complaints filed under the Americans With Disabilities Act have merit. The EEOC, the lead federal agency in setting ADA policy, is desperately trying to shore up the law's public image. Unfortunately, the act is producing even more absurd results than most Washington policy makers realize

• Dwayne "Flintstone" Richardson, a 410-pound Bronx subway cleaner, is suing the New York City Transit Authority for refusing to promote him to a subway train operator. The Transit Authority stated that an operator had to be able to climb under a stalled train to make minor adjustments, among other duties. And with his 60-inch waistline, the Transit Authority doubted Mr. Richardson's ability to fit the niche.

• Last month the city of Bellevue, Wash., threatened to levy a $4,500 fine on Papagayo's, a strip club, because it did not have a wheelchair lift attached to the stage for performers. An exasperated representative of the company that hires the strippers condemned the government policy: "It's just asinine. If you can't dance, why should you ever be on stage?" (A similar ADA complaint last year shut down a shower stall on the stage of the Odd Ball Cabaret, a Los Angeles strip club.)

• A motorist who was ticketed by a Topeka, Kan., police officer for not wearing a seat belt claimed that he could not wear the belt because of his claustrophobia and sued the city for violating the ADA.

• A deaf woman in Santa Monica, Calif., sued Burger King, claiming that its drive-through windows illegally discriminated against deaf people. Burger King settled the lawsuit by agreeing to install visual electronic ordering devices at 10 restaurants.

• Aryeh Motzkin, a 60-year-old philosophy professor, is suing Boston University after he was fired for allegedly sexually assaulting a female professor and for sexually harassing three students. Mr. Motzkin denies the charges but claims the tranquilizers and antidepressants he was taking "loosened his inhibitions." Mr. Motzkin sued BU for violating the ADA, claiming that he is mentally handicapped. The Boston Globe reported on April 4. "Once students complained about his behavior, Motzkin alleges, the university was aware of his handicap and had an obligation to help him deal with it."

• Jon Westling, president-elect of Boston University, commented last month that ADA lawsuits and threats have resulted in demands "to keep learning disabled philosophy students safe from the perplexities of Aristotle, to accommodate foreign-language majors who have foreign-language phobia, and to comfort physics students who suffer from dyscalculia, which is, of course, the particular learning disablement that prevents one from learning math." One Tufts University student invoked the ADA to claim that the university was obliged to "accommodate" her aversion to taking tests.

• A government clerk in Howard County, Md., was fired after repeated rude outbursts and loud denunciations of her supervisors. She claimed in a lawsuit last year that the firing violated her civil rights because she was a manic depressive and that the employer was obliged to strip her job of all its inherent stress.

• A Madison, Wis., telephone operator sued her employer in April after it refused to provide reasonable accommodation for her narcolepsy. The woman was routinely late for work, and sought permission to continue arriving late because of her "disability." Numerous "chronic lateness syndrome" disability complaints have been filed across the country.

• A group of older female Delta Airlines flight attendants sued the airline this April claiming that the company's weight restrictions illegally discriminated against them. The Equal Employment Opportunity Commission issued a determination last December that the airline's policy was biased against female flight attendants. The EEOC did not explain how women "of a certain size" could slide around a drinks cart in scandalously narrow airplane aisles.

• A guidance counselor at Stafford High School in Hartford, Conn., sued under the ADA after he was fired following his arrest for cocaine possession. The counselor's lawyer said that since his client's cocaine dependence was a disability, the school discriminated against him, the Hartford Courant reported. What better role model for teenagers than a guidance counselor with experienced nostrils?

• A man who had repeatedly been hospitalized for heart failure and who had a serious risk of losing consciousness from his uncontrolled diabetes invoked the ADA to sue Frederick County, Md., for refusing to retain him as a bus driver. (He was discharged after failing federal and state health examinations required for commercial bus drivers.) A federal appeals court spiked the ex-bus driver's suit on March 29, concluding that the driver would be a risk to himself, his passengers, pedestrians and other motorists.

The ADA, with its "accommodate almost everything" mandate, can pose threats to nondisabled workers. Crain's Chicago Business reported the following case last year: "A factory crane operator was diagnosed with bipolar personality disorder (also called manic depression). He took lithium to control it, and had never exhibited any aberrant behavior on the job. Still, co-workers feared that a manic episode would occur while he was operating the crane, resulting in serious injury to others. . . . However, in this case, the crane operator was protected by the ADA because of his excellent track record on lithium." But a crane operator who forgets his medicine can do far more damage with a 500-pound wrecking ball than a government file clerk with the same condition who goes over the edge and shreds a memo.

Some judges are beginning to lose patience with bogus ADA suits. On March 8, federal Judge Samuel Kent denounced an ADA suit as "a blatant attempt to extort money" after a man who, eight days earlier, had been awarded damages for permanent disability status from the Santa Fe Railroad sued the railroad for refusing to rehire him because of his disability. The judge condemned the suit as "either blatantly fraudulent or utterly ridiculous."

Unfortunately, the ADA parade of absurdities practically promises to get worse. This March, the EEOC issued a ruling expanding the definition of mental disability to include an inability to perform functions such as "thinking, concentrating, and interacting with other people." Under this definition, perhaps a third of the members of the House of Representatives now qualify as disabled.

Mr. Bovard is the author of "Shakedown: How Government Screws You From A to Z," due out from Viking Penguin in September. This article is adapted from the current issue of the American Spectator.

A Rye Look at ADA

By Max Boot

If the editing on this page seems a little sloppy after today, blame the Americans With Disabilities Act.

Well, OK, maybe that's an exaggeration—but only a slight one. Consider this:

Every morning, I take a train from my residence in suburban Westchester County to Grand Central Station, where I catch the subway to the Journal's office in downtown New York City. The commuter trains are run by the Metro-North Commuter Railroad Co., a state-funded agency that faced a crippling strike as soon as 12:01 a.m. today (though it appeared at press time that any labor action would be postponed until mid-July). If the unions walk out, I—along with 106,999 other commuters—will find it difficult, if not impossible, to get to work on time. I hope I'm not flattering myself too much to think that my absence will somehow be felt on this page. Maybe a few commas will be misplaced, at least.

Ah, but where does the ADA come in? Glad you asked.

The primary reason the unions are determined to strike is that they want a bigger pay raise than Metro-North is willing to give—roughly 10%. Metro-North officials protest that, in a year of federal and state budget cutting, they can't afford to give that much. But maybe they *could* afford it, if they weren't forced to spend $45 million—or almost 10% of their annual budget—on just one expenditure that's totally beyond their control. You guessed it: the Americans With Disabilities Act.

At my station, Rye, N.Y., workers have been busy sawing and welding and hammering for months to construct an ADA-mandated overpass complete with elevator. Estimated cost: $7 million. Never mind that another overpass already sits a few hundred feet away, or that handicapped people can reach either side of the station without using any overpass at all. ADA isn't logical, but it is the law.

Similar work is under way at 12 other Metro-North stations in New York and 12 in Connecticut. All have to be made accessible for the "mobility impaired," "vision impaired," and "hearing impaired." "Many of these stations are already wheelchair accessible, but not to ADA specifications," says Kim Smith, who runs Metro-North's compliance program. "ADA has very specific requirements for elevator widths, railings and stair treads."

At the New Rochelle, N.Y., station, Metro-North is spending $3.5 million to build ADA facilities, even though they will all have to be torn down and redone in a few years when Amtrak expands its operations at the station.

Other railroads across the country face similar problems—and unlike Metro-North many of them have stagnant or declining riderships, so they have even less revenue to finance improvements. And of course ADA's reach doesn't stop with railroads. Its burden falls on every City Hall in America. The National Association of Counties estimates that county governments alone will be forced to spend almost $3 billion by 1998 to comply with ADA mandates.

We all have sympathy for the disabled, but this weary commuter is forced to ask: Why don't Ted Kennedy and George Bush pay for the cost of complying with ADA mandates? It's because of them that ADA became law. If these blue-blood millionaires feel so strongly about helping the handicapped, perhaps they should whip out their own wallets to revamp Metro-North stations. The railroad has other, more pressing priorities. Like hiring buses to shuttle commuters to New York during a strike.

Mr. Boot is assistant features editor of the Journal editorial page.

THE WALL STREET JOURNAL THURSDAY, JUNE 22, 1995

Letters to the Editor

Forget Sympathy; We're Talking Justice

James Bovard's attack on the Americans with Disabilities Act ("The Disability Act's Parade of Absurdities," editorial page, June 22) is his second diatribe against the principles of equal opportunity to appear in the Journal in less than two months; and, as noted at the end of his article, it comes only three months before the scheduled release of his latest book.

I would like to dismiss Mr. Bovard's opinion pieces as part of a pre-publication marketing campaign. Unfortunately, I cannot since he misquotes me, trivializes the millions of Americans who need ADA's protections, and challenges the integrity of the U.S. Equal Employment Opportunity Commission.

First let me set the record straight: In my nine months as chairman of the EEOC I have consistently remarked that many of the thousands of ADA claims filed not only have merit, but often represent egregious and inexcusable discrimination. I have also freely acknowledged the obvious fact that some charges do not clear the bar. This in no way denigrates the law. It simply reflects a requirement, common to all of our civil rights statutes, that the agency must accept all filings presented to us. Those that are not valid are dismissed early in our process.

In addition to misquoting me, Mr. Bovard mischaracterizes both the law and its implementation. The ADA does not help people with petty impairments. It does not cover current illegal drug users. It does not require employers to tolerate violence from an employee, disabled or otherwise. And, it does not provide preferences for the disabled. Mr. Bovard's specious shop of ADA horrors fails to disclose that most of the "cases" cited were never filed with the EEOC, and did not go to court. And, in those few cases where a court did rule, in *Carroza v. Howard County*, and in *Myers v. Hose*, for example, the system worked. In *Carroza v. Howard County*, both the District Court and the 4th Circuit found that Ms. Carroza's repeated rude outbursts and loud denunciations of her supervisors were not protected by the ADA and were proper grounds for dismissal.

And in *Myers v. Hose*, the courts concluded that Mr. Myers's high risk of losing consciousness from uncontrolled diabetes made him unqualified to drive a bus. One of the foundations of the ADA is that an employer can hire the most qualified person for the job. The law simply states that a person with a disability must be considered "qualified" if he or she has the skill, education and experience for the job, and can perform the essential job functions either with or without a reasonable accommodation. And, because the bipartisan architects of the ADA were keenly aware of the concerns of business when crafting the law, employers are not required to provide accommodations that pose an undue hardship on the operation of the business. Recent survey data show that 69% of reasonable accommodations by a major employer cost nothing, and another 28% cost less than $1,000.

GILBERT F. CASELLAS
Chairman
U.S. Equal Employment
Opportunity Commission

Washington

* * *

In a statement not unlike "some of my best friends are black or Jewish," Max Boot admits "We all have sympathy for the disabled," ("A Rye Look at ADA"). But when push comes to shove, Mr. Boot would rather have money spent on buses to spare able-bodied commuters minor discomfort during a brief railroad strike than to eliminate hardships the disabled endure every day of their lives.

That's the kind of thinking that makes the ADA necessary. Like it or not Mr. Boot, shallow sympathy alone won't push some magic buttons and provide wheelchair-bound, blind, deaf and retarded individuals with reasonable access to service and jobs.

Keep your "sympathy," Mr. Boot. As for the suggestion that Ted Kennedy and George Bush pay for ADA compliance because they had the temerity to convert sympathy to action, one can only hope Mr. Boot was rushing to meet a deadline and didn't have time to edit his copy.

ROBERT S. COLE

Bronxville, N.Y.

* * *

Mr. Boot misstates fact and misinterprets what people with disabilities want from society. He includes the quote, "ADA has very specific requirements for elevator widths, railings and stair treads." In fact, ADA is very nonspecific about particular solutions. The ADA sets goals for access and rarely specifies the methods to be used to achieve access. The "very specific requirements" typically are promulgated by state and local building codes and by national organizations such as the American Institute of Architects in the form of recommendations and guidelines.

Mr. Boot laments the illogical waste of money dictated by the ADA for the construction of bridges, elevators and other projects designed to eliminate physical barriers to people with disabilities. Many of these carefully chosen examples are indeed inappropriate results of the ADA, but again, because some individual courts have thrown common sense out the window does not mean the ADA does not make sense.

In his final paragraph Mr. Boot states, "We all have sympathy for the disabled." Therein lies the root of the problem people with disabilities have in our society. I am a quadriplegic, I use an electric wheelchair with a chin control and I use a mouthstick to write and to use a computer keyboard. I am also an assistant vice president of a commercial bank where I have worked for more than seven years. I don't need and I don't want your sympathy.

I do want a ramp to get in the front door of a business, an elevator to get to the personnel office upstairs, a lift on the bus so I can get to and from work. I want to get the job if I can do the job, and not be turned down due to myth, fear or prejudice. That, Messrs. Bovard and Boot, is what I want and is what I have a right to expect as a citizen. How convenient it is to deny entrance with a stair rather than with a sign proclaiming, "No Crips Allowed."

RETT ERICKSON

Santa Rosa, Calif.

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

MEMORANDUM TO CAROL RASCO, Assistant to the President for Domestic Policy

CC: Jeremy Ben-Ami
Stan Herr

FROM: Paul Steven Miller
Commissioner

DATE: November 16, 1994

SUBJECT: Newt Gingrich's Recent Comments on the Americans with Disabilities Act

---

I am not sure if you saw or heard about the comments made by Newt Gringrich and George Will about the Americans with Disabilities Act on "This Week with David Brinkley" (Sunday, November 13, 1994). I think the implications are self-evident and need to be incorporated into overall strategic planning.

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

MEMORANDUM TO GIL CASELLAS, ELLEN VARGYAS, and CLAIRE GONZALES

FROM: Paul Steven Miller
Commissioner

DATE: November 16, 1994

SUBJECT: Newt Gingrich's Recent Comments on the Americans with Disabilities Act

---

Attached, for your information, is a partial transcript from "This Week with David Brinkley" (November 13, 1994) between George Will and Newt Gingrich about the Americans with Disabilities Act.

ADA Backlash

Dialogue between Newt Gingrich and George Will
"This Week with David Brinkley", November 13, 1994

G.W. *"One of the largest expansions of the government's regulatory and intrusive activities in recent years was the Americans with Disabilities Act (ADA). Will the Republican majorities prune that legislation?"*

N.G. *"I want to draw a distinction between more or less in transformation, George. I believe that local communities should have the opportunity to apply local common sense without a Washington bureaucracy. You want to maximize every American's right to participate fully, you want to maximize those with challenges and disabilities. I don't think that ought to be done by a Washington bureaucracy drawing Washington lines to then be enforced across the board everywhere in America."*

G.W. *"That sounds like repeal of the ADA?"*

N.G. *"No, I think you set a goal for the whole country and you ask yourself...(pause)..I trust the American people, I believe that if you said to the American people one of our societal goals is to maximize participation for everybody. Now, can you and your local community do that less expensively, faster and with more common sense than Washington? I think the answer is yes."*

* At this time George Will asks a question concerning cuts in farm subsidies to which Gingrich gives a brief answer. Then....

G.W. *"I may be wrong, but I think I'm hearing that agricultural subsidies are only going to be looked at and that the ADA is pretty safe. Let me give you some cultural..."*

N.G. (Interrupting) *"I thought you said the way I described it, the ADA will be changed substantially."*

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

FAX TRANSMITTAL SHEET

Date: 5/10

TO: Name Diane Fortune

Organization WH DPC 5191

FAX Phone # 456-7431

Office Phone # 456 5570

FROM: Name LIZ SAVAGE

Organization CRT/OAAG

FAX Phone # 202-514-0293

Office Phone # 202-514-4279

SUBJECT: correct version of Howard summary. Sorry for the confusion

Number of pages transmitted (including this sheet) 4

(max. trans. 30 sheets)

3/95

SUMMARY

The ADA and The Death of Common Sense

I. General Concerns

1) Purpose.

Mr. Howard misses the overall point of the ADA. He assumes that the law's only purpose is to extend civil rights protections to persons with disabilities. He ignores the overriding purpose, cited by the Bush Administration and a bi-partisan majority of both houses of Congress -- to eliminate the disastrous impact discrimination on the basis of disability has had on the American economy. More than two-thirds of adult working-age disabled adults are unemployed and receiving welfare benefits. Former President Bush frequently noted that the federal, state and private sectors were spending over $200 billion per year (in 1984 dollars) to keep persons with disabilities dependent.

Congress recognized that a comprehensive approach was needed to address this problem and enable persons with disabilities to become independent, contributing members of society. Therefore all of the components of the ADA are interrelated -- accessible transportation and telecommunications are necessary to insure employment opportunities - which provide the resources to access public accommodations, etc.

2) Rights are "absolute".

Mr. Howard assumes that all non-discrimination laws, including the ADA, grant "absolute" rights. Nothing could be further from the truth about the ADA. The entire structure of the ADA is based on balancing the needs of persons with disabilities for access against the legitimate concerns (including costs) of businesses and government entities. Every requirement in the law is offset by a limitation. For example, reasonable modification to policies is not required if it would fundamentally alter the nature of the program or services. Effective communication (e.g. sign language interpreters) is not required if its provision would result in an "undue burden" (significant difficulty or expense). Even the strictest requirement in the law -- that all new construction be readily accessible to and usable by persons with disabilities -- is limited by the equivalent facilitation exception.

Congress was very concerned about the cost of retrofitting existing vehicles and facilities. Therefore, it enacted a new, but very low standard - requiring architectural barrier removal in existing facilities only when it is "readily achievable" (accomplishable without much difficulty or expense). The law also does not require retrofitting of existing buses - only newly purchased vehicles must be lift-equipped.

3) Society is "drowning" in detailed regulations.

Mr. Howard cites several horror stories of regulators specifying detailed minutiae required for compliance. In contrast, the ADA regulations were drafted to give businesses and governments room to exercise judgment and common sense. For example, with respect to architectural barrier removal in existing government facilities, the DOJ regulations do not require that every facility, or part of a facility, be made accessible. Instead the regulations require access to programs, which allows an entity to utilize non-structural methods to comply (e.g. moving a Town Meeting from an inaccessible town hall to an accessible public school).

Congress required the Access Board to develop ADA Accessibility Guidelines, and the Justice Department to use them as minimum standards for enforcement in new construction and alterations, because the building industry requires specificity. Lack of detail in this area would lead to inconsistencies, inefficiency, and increased costs from safety problems.

II. Sample specific concerns

1) "Doorknobs are now illegal in the workplace".

This is incorrect. Lever handles are required for new construction - therefore door knobs will probably be obsolete 50 years from now. With respect to existing facilities - only public accommodations (stores, hotels, restaurants, etc) are required to remove architectural barriers when it is readily achievable. Other businesses would only have to change door knobs if an employee with a mobility or dexterity problem needed a lever handle as a reasonable accommodation.

Lever handles do not run counter to common sense. They are more easily used by all segments of the population. They are an excellent example of how universal design and common sense go hand in hand.

2) Transportation : Lift equipped buses v. paratransit

Mr. Howard fails to understand the purpose of the ADA's transportation provisions. He states that lift-equipped buses are required in lieu of door-to-door paratransit services because disabled people want to be "mainstreamed". Congress did recognize that accessible transportation is the linchpin to insuring that persons with disabilities are integrated into society's social and economic mainstream. However. the law's emphasis on lift-equipped transportation rather than door-to-door service is purely economic. As noted in the Washington Post on March 6, door-to-door paratransit is very expensive -- averaging from $20 -50 per trip -- clearly a limousine service for disabled adults needing transportation to get to work.

That's why Congress did not choose paratransit as the exclusive transportation option in the ADA. The law limits its use to those who cannot use (board, ride, or disembark) mainline lift-equipped systems. Congress found this dual approach to be far more cost effective than reliance on paratransit.

In an attempt to demonstrate that lift-equipped buses hamper the general public's use of public transportation, Mr. Howard relates a friend's anecdotal experience that is far off the norm. His friend claims that it takes ten minutes for a wheelchair user to board and disembark from a lift-equipped bus in Manhattan. In fact, lift deployment usually takes from one to three minutes, depending on driver training. Ten minutes is extremely rare.

705 New from Liz D 7/17

MYTHS AND FACTS ABOUT THE AMERICANS WITH DISABILITIES ACT

MYTH: The ADA requires businesses to spend lots of money to make their existing facilities accessible.

FACT: The ADA is based on common sense. It recognizes that altering existing structures is more costly than making new construction accessible. The law only requires that public accommodations (e.g. stores, banks, hotels, and restaurants) remove architectural barriers in existing facilities when it is "readily achievable", i.e., it can be done "without much difficulty or expense." Inexpensive, easy steps to take include ramping one step; installing a bathroom grab bar; lowering a paper towel dispenser; rearranging furniture; installing offset hinges to widen a doorway; or painting new lines to create an accessible parking space.

MYTH: The government thinks everything is readily achievable.

FACT: Not true. Often it may not be readily achievable to remove a barrier -- especially in older structures. Let's say a small business is located above ground. Installing an elevator would not, most likely, be readily achievable -- and there may not be enough room to build a ramp -- or the business may not be profitable enough to build a ramp. In these circumstances, the ADA would allow a business to simply provide curbside service to persons with disabilities.

MYTH: The ADA requires businesses to remove barriers overnight.

FACT: Businesses are only required to do what is readily achievable at any given point. A small business may find that installing a ramp is not readily achievable this year, but if profits improve it will be readily achievable next year. Businesses are encouraged to evaluate their facilities and develop a long-term plan for barrier removal that is commensurate with their resources.

MYTH: Restaurants must provide menus in braille.

FACT: Not true. Waiters can read the menu to blind customers.

MYTH: Sign language interpreters are required everywhere.

FACT: The ADA only ensures effective communication -- which in many situations means providing written materials or exchanging notes. The law does not require any measure that would cause an undue financial or administrative burden.

<u>MYTH:</u> The ADA forces business and government to spend lots of money hiring unqualified people.

<u>FACT:</u> No unqualified job applicant or employee with a disability can claim employment discrimination under the ADA. Employees must meet all the requirements of the job and perform the essential functions of the job with or without reasonable accommodation. No accommodation must be provided if it would result in an undue hardship on the employer.

<u>MYTH:</u> Accommodating workers with disabilities costs too much.

<u>FACT:</u> Reasonable accommodation is usually far less expensive than many people think. In most cases, an appropriate reasonable accommodation can be made without difficulty and at little or no cost. A recent study commissioned by Sears indicates that of the 436 reasonable accommodations provided by the company between 1978 and 1992, 69% cost nothing, 28% cost less than $1,000, and only 3% cost more than $1,000.

<u>MYTH:</u> The ADA requires extensive renovation of all State and local government buildings to make them accessible.

<u>FACT:</u> The ADA requires all government <u>programs</u>, not all government <u>buildings</u>, to be accessible. "Program accessibility" is a very flexible requirement and does not require a local government to do anything that would result in an undue financial or administrative burden. Local governments have been subject to this requirement for many years under the Rehabilitation Act of 1973. Not every building, nor each part of every building needs to be accessible. Structural modifications are required only when there is no alternative available for providing program access. Let's say a town library has an inaccessible second floor. No elevator is needed if it provides "program accessibility" for persons using wheelchairs by having staff retrieve books.

<u>MYTH:</u> Businesses must pay large fines when they violate the ADA.

<u>FACT:</u> Courts may levy civil penalties only in cases brought by the Justice Department, not private litigants. The Department only seeks such penalties when the violation is substantial and the business has shown bad faith in failing to comply. Bad faith can take many forms, including hostile acts against people with disabilities, a long-term failure even to inquire into what the ADA requires, or sustained resistance to voluntary compliance. The Department also considers a business' size and resources in determining whether civil penalties are appropriate. Civil penalties may not be assessed in cases against state or local governments or employers.

MYTH: **ADA suits are flooding the courts.**

FACT: The ADA has resulted in a surprisingly small number of lawsuits -- only about 650 nationwide in five years. That's tiny compared to the 6 million businesses; 666,000 public and private employers; and 80,000 units of State and local government that must comply.

MYTH: **The Justice Department sues first and asks questions later.**

FACT: The primary goal of the Department's enforcement program is to increase voluntary compliance through technical assistance and negotiation. Under existing rules, the Department may not file a lawsuit unless it has first tried to settle the dispute through negotiations -- which is why most every complaint settles.

MYTH: **The Justice Department never files suits.**

FACT: The Department has been party to 20 suits under the ADA. Although it tries extensively to promote voluntary compliance, the Department will take legal action when entities continue to resist complying with the law.

MYTH: **Many ADA cases involve frivolous issues.**

FACT: The Justice Department's enforcement of the ADA has been fair and rooted in common sense. The overwhelming majority of the complaints received by the Justice Department have merit. Our focus is on fundamental issues related to access to goods and services that are basic to people's lives. We have avoided pursuing fringe and frivolous issues and will continue to do so.

MYTH: **Everyone claims to be covered under the ADA.**

FACT: The definition of "individual with a disability" is fraught with conditions and must be applied on a case-by-case basis.

MYTH: **The ADA protects people who are overweight.**

FACT: Just being overweight is not enough. Excessive weight is an impairment only if it stems from an underlying physiological disorder or approaches a level of "morbid" obesity (100% above normal body weight). And, the law only protects someone if the impairment substantially limits a major life activity, or if the individual is regarded as having a substantially limiting impairment. Even then, modifications in policies only must be made if they are <u>reasonable</u> and do not fundamentally alter the nature of the program or service provided. The Department has received only a handful of complaints about obesity.

MYTH: The ADA is being misused by people with "bad backs" and "emotional problems."

FACT: Many claims filed by individuals with such conditions are not trivial. There are people with significant back injuries who experience discrimination in the workplace. And there are people with severe depression or people with a history of alcoholism who are judged by their employers, not on the basis of their abilities, but rather upon stereotypes and fears that employers associate with their conditions.

Can't be current [illegible]

7/24/95:DRAFT

THE AMERICANS WITH DISABILITIES ACT: RUMORS AND REALITIES

On July 26, 1995, we will celebrate the fifth anniversary of the passage of the Americans with Disabilities Act (ADA). The ADA, like the civil rights laws that preceded it, is grounded on fundamental national principles of equality, opportunity, and fair play. The ADA affirms our nation's commitment to the ideal that each and every person should have a right to reach their full potential and have an opportunity to participate in the mainstream of American life.

As a civil rights law for the 1990s, the ADA extends the protection of earlier civil rights laws prohibiting the exclusion of minority groups from the mainstream. It prohibits discrimination on the basis of disability in employment, state and local government services, transportation and telecommunications. The federal government agencies charged with enforcing the law include the Equal Opportunity Employment Commission (for private sector employers), the Department of Justice (for state and local governments and public accommodations), the Department of Transportation, and the Federal Communications Commission (telecommunications).

President Clinton is committed to the vision of inclusion, empowerment and independence for people with disabilities at the heart of the ADA, and has made the common sense enforcement of the law a top priority for his Administration. The world is watching the United States to see if our experience with civil rights for persons with disabilities is working, and we in the Administration must recommit ourselves to achieving the law's objectives as we celbrate its fifth anniversary.

Today, the ADA is making a real difference in the lives of Americans with disabilities by increasing employment opportunities, and making public accommodations, tranportation and telecommunications systems accessible. But as in our experience with other civil rights laws, it will take time and effort to change the attitudes which underlie the discrimination.

In recent months, the ADA has been criticized and mischaracterized by people who do not understand it. Goaded by sensationalistic newspaper accounts and isolated anecdotes of extreme attempts to misuse the law, some have called for significant changes int eh ADA. We in the Administration have a responsibility to respond to unfounded attacks on the ADA and to focus on the reality of ADA implementation rther than the rumors that have found their way into press accounts. Included below are ADA facts that will help to tell the real story of ADA implementation.

DRAFT 7/24

[FORMERLY THE INTRO READ...Five years ago, the Americans with Disabilities Act (ADA) was enacted with bipartisan support to prohibit discrimination against people with disabilities in the areas of employment, public services, recreational facilities, telecommunications, and transportation. Under this law, millions of businesses and public agencies are successfully working to meet the needs of people with disabilities. The ADA provides for flexible, common sense enforcement of accommodations standards that recognize that Americans with disabilities have the same rights as people without disabilities.

But now there are those who have begun to question the reason for this law and whether it is appropriate. The recently-published *Death of Common Sense* by Philip Howard and editorials by James Bovard and Max Boot in the *Wall Street Journal* cite extreme examples and anecdotal evidence to argue that the ADA is ineffective. Prominent members of Congress have discussed potential changes in the law. It is critical that we understand how the law really works. The Clinton Administration is committed to the continued vigorous enforcement of the ADA and feels strongly that the misconceptions surrounding the law must be resolved.]

MYTH: **ADA COSTS TOO MUCH.**

immediately to make all facilities

RUMOR: The ADA requires businesses to spend lots of money to make their existing facilities accessible. regardless of cost.

REALITY: The ADA is based on common sense. It recognizes that altering existing structures is more costly than making new construction accessible. The law only requires that public accommodations (e.g. stores, banks, hotels, and restaurants) remove architectural barriers in existing facilities when it is "readily achievable", i.e., it can be done "without much difficulty or expense." Inexpensive, easy steps to take include ramping one step; installing a bathroom grab bar; lowering a paper towel dispenser; rearranging furniture; installing offset hinges to widen a doorway; or painting new lines to create an accessible parking space.

RUMOR: But the ~~government thinks~~ everything ~~is~~ readily achievable.

REALITY Not true. Often it may not be readily achievable to remove a barrier -- especially in older structures. Let's say a small business is located above ground. Installing an elevator would not, most likely, ~~be readily achievable~~ -- and there may not be enough room to build a ramp -- or the business may not be profitable enough to build a ramp. In these circumstances, the

DRAFT 7/24

ADA would allow a business to simply provide curbside service to persons with disabilities.

RUMOR: Accommodating workers with disabilities costs too much.

REALITY: Reasonable accommodation is usually far less expensive than many people think. In most cases, an appropriate reasonable accommodation can be made without difficulty and at little or no cost. A recent study commissioned by Sears indicates that of the 436 reasonable accommodations provided by the company between 1978 and 1992, 69% cost nothing, 28% cost less than $1,000, and only 3% cost more than $1,000.

RUMOR: Maybe most "reasonable accommodations" are inexpensive but the ones that are costly could break an employer.

REALITY: Employers need not worry. The law does not require any employer to provide an accommodation that creates undue hardship on the employer. Employers should know that there are three tax credits designed to help defray the costs of providing accommodations. Concerned employers should call the IRS ar 1-800-829-3676 and ask about:

> Disabled Access Tax Credit (Title 26, Sec. 44)
> Targeted Jobs Tax Credit (Title 26, Sec. 51)
> Tax Deduction to Remove Architectural and Transportation Barriers to People with disabilities and Elderly Individuals (Title 26, Sec. 190)

RUMOR: Accessibility, as required under ADA, is too expensive and is impossible for small businesses.

REALITY: The ADA focuses on making new building accessible, and requires reasonable modifications to existing facilities only when it is readily achievable and not costly to the owner. ADA takes a reasonable approach to compliance. Making new buildings accessible from the start has added only 1/2 of 1% to the cost of construction. To help keep costs even more reasonable, ADA exempts buildings under three stories from installing an elevator unless the building is a medical facility, a shopping mall, or transportation terminal.

9

DRAFT 7/24

RUMOR: Very small businesses can't afford even the smallest accommodation.

REALITY: ADA does not apply to businesses with fewer than 15 employees.

RUMOR: To meet ADA requirements, transportation authorities have to spend alot of money to make all of their vehicles and stations accessible.

REALITY: Buses, vans and passenger sedans acquired before the effective date of the ADA do not require retrofitting. For rail services, ADA requires that only one car per train be accessible.

Under ADA, existing buildings do not need to be retrofitted unless the facility is a key station as identified in consultation with the disability community. are being altered

RUMOR: Regardless of cost, paratransit services must be provided.

REALITY: Paratransit services (door-to-door pick-up) are provided for only for those people who cannot use regular bus services. However, if providing paratransit costs too much, operators can apply for an undue financial burden waiver.

RUMOR: Businesses must pay large fines when they violate the ADA.

REALITY: Courts may levy civil penalties only in cases brought by the Justice Department, not private litigants. The Department only seeks such penalties when the violation is substantial and the business has shown bad faith in failing to comply. Bad faith can take many forms, including hostile acts against people with disabilities, a long-term failure even to inquire into what the ADA requires, or sustained resistance to voluntary compliance. The Department also considers a business' size and resources in determining whether civil penalties are appropriate. Civil penalties may not be assessed in cases against state or local governments or employers.

RUMOR: For businesses, Americans with Disabilities Act is not worth the cost of implementation.

REALITY: The July 2, 1995, Louis Harris Poll of small, medium and large corporations, sponsored by the National Organization on Disability, shows that 82% of corporation executives say that the Americans with Disabilities

DRAFT 7/24

Act is worth the cost of implementation. 70% of these executives indicated that they felt the law should not be changed. And 81% reported having made accommodations for employees with disabilities.

DRAFT 7/24

DPC

MYTH: ADA'S REQUIREMENTS ARE NOT REASONABLE.

RUMOR: The ADA requires businesses to remove barriers overnight.

REALITY: Businesses are only required to do what is readily achievable at any given point. A small business may find that installing a ramp is not readily achievable this year, but if profits improve it will be readily achievable next year. Businesses are encouraged to evaluate their facilities and develop a long-term plan for barrier removal that is commensurate with their resources.

RUMOR: ADA requires restaurants to provide menus in braille.

REALITY: Not true. Waiters can read the menu to blind customers.

RUMOR: ADA requires sign language interpreters everywhere.

REALITY: Not true. ADA only ensures effective communication -- which in many situations means providing written materials or exchanging notes. The law does not require any measure that would cause an undue financial or administrative burden.

RUMOR: Requiring accessible public transportation is excessive because people with disabilities don't use public transportation.

REALITY: If we build it, they will come. People with disabilities have not used public transportation because it was not accessible to them. Now that increasing numbers of systems, stations and vehicles are accessible, we see larger and larger numbers of persons with disabilities using public transportation.

RUMOR: The ADA requires extensive renovation of all State and local government buildings to make them accessible.

REALITY: The ADA requires all government <u>programs</u>, not all government <u>buildings</u>, to be accessible. "Program accessibility" is a very flexible requirement and does not require a local government to do anything that would result in an undue financial or administrative burden. Local governments have been subject to this requirement for many years under the Rehabilitation Act of 1973. Not every building, nor each part of every building needs to be

DRAFT 7/24

accessible. Structural modifications are required only when there is no alternative available for providing program access. Let's say a town library has an inaccessible second floor. No elevator is needed if it provides "program accessibility" for persons using wheelchairs by having staff retrieve books.

RUMOR: Society is drowning in ADA regulations.

REALITY: ADA regulations were drafted to give businesses and governments room to exercise judgment and common sense. For example, with respect to architectural barrier removal in existing government facilities, ADA regulations do not require that every facility, or part of a facility, be made accessible. Instead, the regulations require access to programs, allowing for use of non-structural methods to comply, such as moving a meeting location from an inaccessible Town Hall to an accessible public school.

RUMOR: The ADA makes rights absolute without regard for what is realistic.

REALITY: Nothing could be further from the truth about the ADA. The entire structure of the ADA is based on balancing the needs of persons with disabilities for access against the legitimate concerns (including costs) of businesses and government.

Every requirement in the law is offset by a limitation. For example, reasonable modification to policies is not required if it would fundamentally alter the nature of the program or services. Effective communication (such as sign language interpreters) is not required if the provision would result in an "undue burden" (significant difficulty or expense).

MYTH: ADA HAS LED TO A FLOOD OF FRIVOLOUS CLAIMS

RUMOR: ADA suits are flooding the courts.

REALITY: The ADA has resulted in a surprisingly small number of lawsuits -- only about 650 nationwide in five years. That's tiny compared to the 6 million businesses; 666,000 public and private employers; and 80,000 units of State and local government that must comply.

DRAFT 7/24

RUMOR: Many ADA cases involve frivolous issues.

REALITY: There will always be individuals who bring frivolous claims under any statute, including civil rights statutes. This does not mean that a statute is flawed; rather it means that the claims should be dismissed. EEOC investigators analyze all charges to determine whether they have merit and dismiss those that do not; however, individuals may still bring claims to court even when the EEOC finds them to be without merit.
That claims may be without merit does not mean the law is without merit.

The Justice Department's enforcement of the ADA has been fair and rooted in common sense. The overwhelming majority of the complaints received by the Justice Department have merit. Justice is focused on claims related to accessing goods and services that are basic to people's lives and avoids pursuing frivolous issues.

RUMOR: The ADA is used by people just to get money.

REALITY: The ADA strictly limits monetary rewards received by people who file suit. For suits against discriminatory hiring or employment practices, monetary compensation for suits is limited to $300,000 plus backpay. For suits against public accommodations for noncompliance, the only monetary compensation is for court and attorney fees. Only the Attorney General has the authority to sue for money and only in cases of general public importance.

MYTH: THE ADA PROTECTS PEOPLE WHO DON'T NEED IT

RUMOR: Everyone claims to be covered under the ADA.

REALITY: The ADA protects only people with disabilities. The definition of "individual with a disability" is very restrictive and is evaluated closely with each case.

RUMOR: The ADA protects people who aren't qualified for their job.
REALITY: No unqualified job applicant or employee with a disability can claim employment discrimination under the ADA. Employees must meet all the requirements of the job and perform the essential functions of the job with or without reasonable accommodation. No accommodation must be provided if it would result in an undue hardship on the employer.

DRAFT 7/24

RUMOR: The ADA protects people who are overweight.

REALITY: Just being overweight is not enough. Excessive weight is an impairment only if it stems from an underlying physiological disorder or approaches a level of "morbid" obesity (100% above normal body weight). And, the law only protects someone if the impairment substantially limits a major life activity, or if the individual is regarded as having a substantially limiting impairment. Even then, modifications in policies only must be made if they are reasonable and do not fundamentally alter the nature of the program or service provided. The Department has received only a handful of complaints about obesity.

RUMOR: The ADA is being misused by people with "bad backs" and "emotional problems."

REALITY: Many claims filed by individuals with such conditions are not trivial. There are people with significant back injuries who experience discrimination in the workplace. And there are people with severe depression or people with a history of alcoholism who are judged by their employers, not on the basis of their abilities, but rather upon stereotypes and fears that employers associate with their conditions.

RUMOR: The ADA is unfair to people without disabilities because employers are required to hire the applicant who has a disability.

REALITY: The ADA is not affirmative action legislation. No employer is compelled to hire an applicant with a disability over a more qualified applicant without a disability. The ADA merely prohibits employers from choosing not to hire an other wise qualified individuals because of a disability.

RUMOR: The ADA endangers workers without disabilities because it requires employers to put people with disabilities in jobs they can't handle.

REALITY: The ADA does not ensure people with disabilities the right to do jobs for which they are not qualified. Nor does it protect employees from disciplinary action in the case of behavior that endangers others. The ADA simply ensures that a qualified applicant for a job or a current employee cannot be denied or removed from a job just because they have

DRAFT 7/24

a disability.

RUMOR: ADA asks workplaces to hire people with contagious diseases like AIDS.

REALITY: The Secretary of Health and Human Services has determined that AIDS is not a contagious disease in work environments. In addition, the ADA contains provisions which ensure that the public and all workers are adequately protected from contagious diseases. [what are these provisions?]

RUMOR: The ADA protects substance abusers.

REALITY: An illegal drug user is not protected from disciplinary actions taken by an employer if that action is based on evidence of current use of illegal drugs.

An individual with alcoholism has a disability. In addition, a former drug addict who has been rehabilitated (or is in rehabilitation) and who no longer uses drugs has a disability. However, an individual is protected under the ADA only if he/she is qualified for the job in the first place.

Employers can require that workers not be under the influence of illegal drugs or alcohol in the workplace and can uniformly apply this rule to workers who are alcoholics or rehabilitated drug addicts.

Recovering alcoholics and rehabilitated drug addicts, like other individuals with disabilities, have been subjected to pervasive discrimination because of stereotypes, misconceptions and fears. For example, in a recent ADA suit, a high school teacher who is a recovering alcoholic alleged that he was denied a job as a coach, even though he had not had a drink in ten years.

MYTH: ADA ISN'T WORTH IT.

RUMOR: The ADA doesn't work. It doesn't help people with disabilities get jobs.

REALITY: A recent study has concluded that "the ADA has played a significant role in enhancing labor force participation of persons with disabilities and in reducing dependence on government entitlement programs."

RUMOR: People with disabilities are just a tiny fraction of the American public.

REALITY: 49 million Americans -- or nearly one out of every five Americans-- have

DRAFT 7/24

disabilities. And these people do more than buy disability -related products. They buy groceries, take vacations, open bank accounts and do most other things people without disabilities do. These 49 million people can make a significant contribution to the U.S. economy -- as consumers, as workers, as citizens. The ADA is intended to remove those barriers that prevent people with disabilities from becoming full participants in American life. Besides, being completely free from disability today is no guarantee a person will not become disabled tomorrow.

RUMOR: Providing equal opportunity to people with disabilities is a nice idea, but our society can't afford all the costs involved.

REALITY: In 1984, President Bush noted that the estimated cost to society of the absence of people with disabilities from the workforce was $200 billion per year (in 1984 dollars). The 69% of Americans with disabilities who are unemployed continues to be a significant cost to people who are employed as tax money is spent to support those who are not working.

RUMOR: Making accommodations only benefits people with disabilities.

REALITY: Even people without disabilities can benefit from accommodations. Curb cuts also benefit parents with strollers, installing lifts on buses benefits elderly riders and others who cannot climb stairs, and providing wide sidewalks benefits persons carrying packages. Whether or not a person has a disability, accommodations required under the ADA make our society more livable for everyone.

QUESTIONS

IS ADA MAKING A DIFFERENCE IN THE LIVES OF INDIVIDUALS WITH DISABILITIES.

Is the ADA making a positive and significant difference in the lives of people with disabilities? Are people experiencing meaningful, tangible benefits from the legislation?

people on both sides on aisle

in this room

Sharon

VAGUENESS AND FRIVOLOUS LAWSUITS

Charges have been made that the ADA is too open ended and vague, thereby giving chronic complainers an avenue for legal blackmail and is causing employers headaches without necessarily improving the lives of people with disabilities. One organization stated that "those recovering the rewards from ADA cases are often not disabled at all. They are simply opportunistic parasites who live off the profits and hard work of others."

On the other hand, the author of a recent article about the ADA appearing in Business and Health News (JULY 1995) concluded:

> "To the surprise of some and the relief of many, lawsuits based on claims that are far out of the mainstream have been few and usually unsuccessful."

Please comment.

FOLLOW UP QUESTION: Should we repeal the first amendment guarantees of freedom of religion, freedom of the press, freedom of speech because some people file frivolous claims under the Amendment?

EXPLOSION OF LITIGATION

The recent Lou Harris Poll of corporate executives reported that there has not been an explosion of litigation that some had feared.

A recent report about Sears Roebuck's experience implementing the ADA by Professor Peter Blanck reached an interesting conclusion. He found that "far from creating onerous legal burdens, the ADA can give employers and employees a framework for dispute avoidance and resolution, rather than the explosion of litigation that some observers predicted"?

-Has there been an explosion of litigation as some had feared?

-How many court cases have been filed by private plaintiffs?

-What is the experience of the Justice Department? The EEOC? What approach do you take to settlement and negotiation versus litigation. What kinds of cases do you pursue? Could you share examples of cases settled or resolved?

Commissioner Miller, With respect to the experience of the EEOC, there have been a significant number of complaints filed but many of these complaints are not pursued or found without merit. Could you explain the meaning of these statistics?

Please comment specifically on Professor Blanck's conclusion that far from creating onerous legal burdens, the ADA provides a framework for dispute avoidance and resolution.

COST OF COMPLIANCE

The headline in a recent article in an Iowa newspaper reads: THERE IS LIFE AFTER THE ADA--LOCALLY, ACT HASN'T TRIGGERED ANTICIPATED LAWSUITS OR COSTS."

Terri Hanagan, Vice President of the Bank of America in California has stated "We looked at the things companies gain by embracing the ADA--new business, community goodwill and productive employees--rather than trying to avoid it or do as little as possible."

The recently completed study by the National Organization on Disability report positive reaction to the ADA by corporations. By an 82% to 5% margin, companies reported that the opportunities that the ADA provide are worth the costs of its implementation.

The General Accounting Office found that compliance was far less burdensome and costly than business had feared.

The recent study about ADA implementation at Sears concludes the costs of compliance are reasonable and the benefits far outweigh the costs. This is the clear conclusion of the Job Accommodation Network.

Please share your experiences regarding the costs and benefits of complying with the ADA and please let us know if anyone knows of any company that went bankrupt because of compliance with the ADA.

July 24, 1995

MEMORANDUM FOR DIANA FORTUNA

FROM: Jean Martin

RE: Some Updates on Briefing Materials

I. For the Myth-Fact Document

The JAN statistic to be added to the end of the "Reasonable accomodation is usually far less expensive than many people think..." REALITY (top of p.3 in current draft "rumreal4") is:

"For every dollar spent in making accommodations for people with disabilities, employers save at least $28."

II. For the ADA Summary

There seems to be reason to think that we should add in "Telecommunications" as a fourth item in the ADA Summary. Liz forwarded us the attached briefing materials used for the Attorney General which states: "[The ADA] seeks to ensure equal opportunity for individuals with disabilities in employment, public accommodations and services (including transportation) and telecommunications." (p.1) As pointed out here, it's siginificant in that it is the first guarantee of telecomm relay services for people with speech or hearing impairments.

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

TELEFACSIMILE COVER SHEET

DATE: Mon

TO: Jan Martin

PHONE:

FAX: 452 7028

FROM: LIZ SAVAGE
OFFICE OF THE ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION
FAX NUMBER: 202-514-0293
PHONE: 202-514-4279

COMMENTS: Briefing overview - done for AG - if you want a hard copy sent via messenger, pls call me

NUMBER OF PAGES TRANSMITTED (INCLUDING THIS SHEET) ______
(max. 30 pages)

AMERICANS WITH DISABILITIES ACT OF 1990

The Americans with Disabilities Act of 1990 (ADA) provides comprehensive civil rights protections to individuals with disabilities that are similar in scope to those provided to individuals on the basis of race, sex, national origin, and religion. It seeks to ensure equal opportunity for individuals with disabilities in employment, public accommodations and services (including transportation), and telecommunications.

Title I - Employment: **EEOC has regulatory and enforcement responsibilities for private sector employers.** Department of Justice **has enforcement responsibilities for State and local government employers.**

The ADA--

- Outlaws discrimination on the basis of disability in employment by those employers covered by title VII of the Civil Rights Act of 1964, i.e, all employers, public or private, with 15 or more employees, except that for the first two years after the employment provisions of the ADA go into effect (July 26, 1992), only employers with 25 or more employees are covered. The requirements went into effect with respect to entities with 15 or more employees on July 26, 1994.

- Requires employers to reasonably accommodate known physical or mental limitations of a qualified applicant or employee unless such accommodation would impose an undue hardship.

- Prohibits the use of employment tests and other selection criteria that screen out or tend to screen out individuals with disabilities, unless such tests or criteria are shown to be job related and consistent with business necessity.

- Bans the use of pre-employment medical examinations but permits their use after a job offer is made, if the results are kept confidential, all persons offered employment are required to take the exam, and the results are not used to discriminate. Testing for illegal drug use is not considered a medical examination.

- Prohibits inquiries as to whether an applicant or employee is an individual with a disability or as to the nature or severity of the disability, but permits pre-employment inquiries into the ability of an applicant to perform job-related functions.

- Permits employers to reject applicants or terminate employees who pose a direct threat to the health or safety of other individuals in the workplace.

- Permits employers to refuse to assign or continue to assign an individual to a job involving food handling, (1) if the individual has an infectious or communicable disease identified in a list to be published by the Secretary of Health and Human Services as a disease transmittable through food handling, and (2) if the risk of transmission cannot be eliminated by reasonable accommodation.

- Allows employers to take personnel actions against applicants or employees based on the current illegal use of drugs. Drug testing is not affected.

- Prohibits discrimination against a qualified applicant or employee because of the known disability of an individual with whom the applicant or employee is known to have a relationship or association.

- Permits religious organizations to use religious preferences allowed by title VII of the Civil Rights Act of 1964 and to require applicants and employees to conform to the religious tenets of the organization.

- Provides the remedies available under title VII of the Civil Rights Act of 1964.

Title II - Public Services:

Public transportation: Department of Transportation has regulatory and investigatory responsibilities.

Other Public Services: Department of Justice has regulatory responsibilities; eight federal agencies are designated for complaint investigations, including DOJ.

Litigation: Department of Justice has litigation authority upon referral from designated agencies.

With respect to public transportation by bus, or by rapid, light, commuter, or intercity (AMTRAK) rail, the ADA--

- Requires that all new vehicles ordered more than 30 days after the date of enactment of the ADA be accessible to individuals with disabilities, including wheelchair users. The Secretary of Transportation may grant a temporary waiver of this requirement with respect to buses only if the purchaser shows, among other things, that there are no wheelchair lifts available and that a delay in purchasing new buses would significantly impair transportation services to the community.

- Requires that all new buses purchased or leased by entities providing demand responsive services be accessible, unless such entities demonstrate that they provide services to individuals with disabilities that are equivalent to those provided to the general public.

- Requires public entities that provide fixed route bus services (other than commuter bus systems) to provide paratransit or other special transportation services to individuals with disabilities who cannot use the fixed route services, and to persons associated with them. Such services must meet service criteria established by the Secretary of Transportation, except to the extent that the provider shows that compliance would result in an undue financial burden.

- Requires that all new facilities used in public transportation systems be accessible.

- Requires that all existing "key stations" in rapid rail, commuter rail, and light rail systems be made accessible as soon as practicable, but in no event later than three years from the date of enactment, unless the Secretary of Transportation grants an extension of up to 20 years on the grounds that the modifications would be extraordinarily expensive (30 years for rapid and light rail if two-thirds of the key stations are accessible at the end of 20 years).

- Requires that all existing intercity rail stations be made accessible as soon as practicable, but in no event later than 20 years from the date of enactment.

- Requires that, when alterations are made to existing facilities, the altered portions must be made accessible to the maximum extent feasible. When alterations are made involving areas of a facility containing a primary function, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving that area must be made accessible to the maximum extent feasible to the extent that the additional accessibility costs are not disproportionate to the overall cost of the alterations.

- Requires that existing rail systems provide at least one accessible car per train as soon as practicable, but in any event within five years (by July 26, 1995).

With respect to all State and local government services, including mass transportation, the ADA--

- Prohibits discrimination on the basis of disability by State or local governments against any qualified individual with a disability.

- Provides the remedies available under section 505 of the Rehabilitation Act.

Title III - Public Accommodations:

The Department of Justice has regulatory and enforcement responsibilities for all issues. The Department of Transportation has regulatory responsibilities for private transportation.

The ADA--

- Prohibits discrimination against individuals with disabilities in places of public accommodation such as restaurants, hotels, theaters, doctors' offices, pharmacies, retail stores, museums, libraries, parks, private schools, and day care centers, but does not include private clubs exempted under the Civil Rights Act of 1964, facilities controlled by religious organizations, or residential dwellings covered or expressly exempted from coverage under the Fair Housing Act of 1968.

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

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

- Compels the removal from existing facilities of architectural and communication barriers that are structural in nature, if such removal is readily achievable and, if not, mandates provision of services through alternative methods that are readily achievable. Requires removal of barriers from vehicles but does not mandate installation of lifts.

- Requires that, when alterations are made to existing facilities, the altered portions must be made accessible to the maximum extent feasible. When alterations are made involving areas of a facility containing a primary function, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving that area must be made accessible to the maximum extent feasible to the extent that the additional accessibility costs are not disproportionate to the overall cost of the alterations. Elevators are generally not required in a building of fewer than three stories or fewer than 3,000 square feet per floor, unless the building is a shopping center, mall, or a professional office of a health care provider.

- Mandates that all new construction and alterations in public accommodations and, in addition, "commercial facilities" (nonresidential facilities affecting commerce) be accessible, subject to the elevator exception described above.

- Requires public transportation services provided by private entities, other than air transportation (which is covered by the Air Carrier Access Act), to meet the general requirements for public accommodations, e.g., the use of nondiscriminatory eligibility criteria, barrier removal except for lift installation, and the provision of auxiliary aids.

- Requires new over-the-road buses ordered more than six years (seven years for small providers) after the date of enactment of the ADA to be accessible (i.e. by 1997). The Office of Technology Assessment is required to conduct a study on the provision of accessible over-the-road bus service and make recommendations by 1993. The President may extend the deadlines by one year if he concludes that compliance with the deadlines would result in a significant reduction in intercity bus service.

- Mandates that, in certain circumstances, new vehicles, other than over-the-road buses and automobiles, operated by entities primarily engaged in the business of transporting people, be accessible.

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

- Permits the Attorney General, after a public hearing, to certify that a State or local building accessibility code meets or exceeds ADA requirements. This certification is rebuttable evidence that the code meets the ADA standard.

- Prohibits discrimination against an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

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

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

<u>Title IV - Telecommunications Relay Services</u>

The Federal Communications Commission has regulatory and enforcement responsibilities.

The ADA--

- Amends the Communications Act of 1934 to require that common carriers offering telephone service to the general public provide telecommunications relay services that permit individuals who use TDD's or other non-voice terminal devices, because of a speech or hearing impairment, opportunities for communication that are equivalent to those provided to other customers.

- Mandates the Federal Communications Commission to require that relay services operate for 24 hours per day every day and that relay service users pay the same rate as that charged for a functionally equivalent voice call.

Title V - Miscellaneous Provisions:

The ADA--

- Excludes from its protection individuals who are currently engaging in the illegal use of drugs when a covered entity acts on the basis of such use. Amends sections 503 and 504 of the Rehabilitation Act of 1973 to incorporate the same exclusion.

- Excludes the following conditions from coverage as disabilities: homosexuality and bisexuality; transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical disorders, and other sexual behavior disorders; compulsive gambling, kleptomania, and pyromania; and psychoactive substance use disorders resulting from current illegal use of drugs.

- Leaves unaffected the underwriting, classifying, or administering of insurance risks.

- Prohibits retaliation against an individual for asserting rights under the ADA or participating in its enforcement.

- Provides for the award of attorney's fees to prevailing parties other than the United States.

- Requires the Federal Government to establish a program for providing technical assistance to covered entities.

- Covers the activities of Congress and other entities in the legislative branch. (The executive branch is not covered by the ADA, but rather by the Rehabilitation Act of 1973 and the Architectural Barriers Act of 1968. The Federal courts are not covered by the ADA or the Rehabilitation Act. They are, however, covered by the Architectural Barriers Act and a limited Federal statute, 28 U.S.C. 1827, requiring interpreters in cases initiated by the United States.)

To: Becy Ogle
Fr: Justin Dart

6/19/95 2 page(s)

Boston Globe, June 18, 1995
Page 7

Dole promise mayors a review of mandates

ASSOCIATED PRESS

MIAMI - Republican presidential candidate Bob Dole promise big-city mayors yesterday that they can expect greater freedom from federal rules if he is elected.

Dole, Senate majority leader, told the US Conference of Mayors that he wants to review a variety of federal mandates that take up as much as a third of many city budgets. Among those he mentioned were the Clean Water Act, the Safe Drinking Water Act and the Americans with Disabilities Act.

Dole, a Kansan, and a supporter of the disabilities law, said "maybe we've gone too far in some areas" in implementing it. He said he'd like to retool it, "not to devastate the program but to make it work better."

CNN Headline News, June 18, 1995 (1:10 am and 2:10 am)

Republican presidential hopeful Bob Dole is promising the nation's mayors greater freedom from the federal rules if he is elected. At the US Conference of Mayors on Saturday, the Senate majority leader said he wants to review certain federal mandates that take up as much as a third of many city budgets. In particular, he singled out the Clean Water Act and the Americans with Disabilities Act.

Post-it™ brand fax transmittal memo 7671	# of pages ▸ 2
To Jean Martin	From Andy Imparato
Co. WH Domestic Policy Council	Co. EEOC
Dept.	Phone # 663-4037
Fax # 456-7431	Fax # 663-7101

Boston Globe
6/19/95

Dole, disabled at odds over regulatory bill

By Michael Kranish
GLOBE STAFF

WASHINGTON – Bob Dole has had few bigger fans than John D. Kemp, who heads the United Cerebral Palsy Associations. Kemp, born without arms or legs, calls Dole a hero for authoring a landmark 1990 law that bars discrimination against 49 million Americans with disabilities.

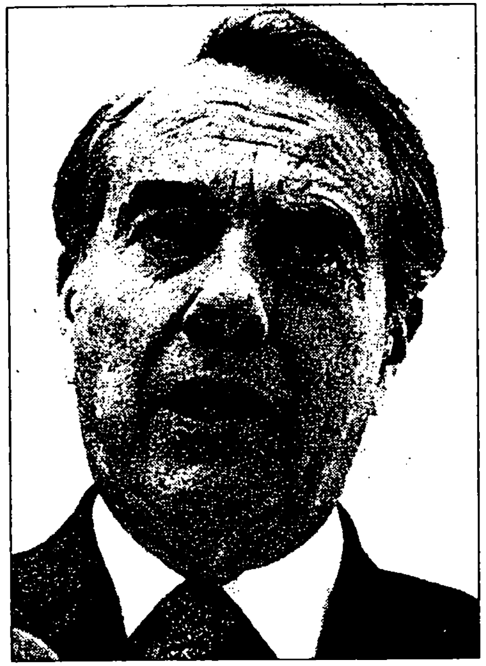
But now, Kemp and a coalition of advocates for the disabled are battling with the Senate majority leader. The coalition asserts that Dole, at the behest of business interests, is sponsoring a "regulatory reform" bill that could devastate the Americans with Disabilities Act as well as an array of health, safety and environmental laws. The bill could come to the floor for a vote as early as this week.

■ **Dole says Clinton 'late' on budget. Page 4.**

"We are not going to accept going backwards," said Kemp, who said he wonders whether Dole, who has had a disability since his wounding in World War II, realizes the legislation might undermine the act, which requires businesses and government to make workplaces accessible.

The regulatory reform bill is the top priority of business alliances whose support Dole, a Kansas Republican, needs for his presidential campaign. The business groups enthusiastically back Dole's bill because it potentially allows a company to require a federal agency to justify any regulation, including a detailed cost-benefit analysis.

Business lobbyists said this would eliminate countless unnecessary and burdensome regulations, but critics said Dole's measure goes too far. President Clinton has said the



SEN. BOB DOLE
"Reform will benefit all Americans"

Dole bill, which is similar to a measure passed by the House in March, is extreme and may be vetoed.

Dole declined to be interviewed. But in a statement to the Globe, Dole said that he has "looked closely" and doesn't believe the disabilities act would be undermined. "I'm a strong supporter of ADA, and disability is an issue I care a great deal about . . . regulatory reform will benefit all Americans, including those with disabilities."

On Saturday, before the US Conference of Mayors, Dole repeated his intention to review federal mandates, which he said take up as much as a third of many city budgets. He

specifically mentioned the disabilities act.

Advocates for disabled people admit that the regulatory bill does not target specific legislation like the disabilities act, and that may explain why Dole doesn't think it would be affected. But a coalition of groups [illegible] measure is so broad and allows for so many challenges that disability laws would be affected.

The coalition includes such nonpartisan groups as the United Cerebral Palsy Associations, the Paralyzed Veterans of America and the Spina Bifida Association.

Becky Ogle, a registered Republican who sits on a Democratic advisory council on disabilities, lobbies from a wheelchair and worked with Dole's office on the disabilities act. Ogle said she has tried to air her concerns about the act to Dole's staff but is dissatisfied with the response and has requested to meet with the senator.

"It really baffles me, if he is aware of this, because it is such a contradiction," Ogle said. "It is a lot different now that he is running for president. I think he is getting some very, very bad advice."

It poses a dilemma for Dole as he runs for president: He is trying to balance his past support of major regulatory measures such as the disabilities act and the Clean Air Act with his current drive to win support from skeptical business groups that are against government regulation.

"Bob Dole has been a major regulator," said Edward Hudgins, director of regulatory policy at the libertarian Cato Institute. "If it were not for George Bush and his congressional ally, Dole, these regulations probably would not have been passed."

Dole has gone to lengths in recent weeks to reverse that image.

Dole recently told the National Association of Manufacturers that he is outraged about a recent study that found that regulations cost the average family $6,000 a year. But Dole did not mention that he supported much of the legislation behind the regulations.

The study, by Professor Thomas D. Hopkins of Rochester Institute of Technology, cites five recent major pieces of legislation that have led to a dramatic escalation in the cost of regulation. Dole supported four of the five bills. These include the disabilities act, the Clean Air Act of 1990, the Oil Pollution Act of 1990 and the Civil Rights Act of 1991. The only one of the five Dole did not support was the 1989 increase in the minimum wage.

Christa McAuliffe teacher fellowships facing cut under US House budget

CONCORD, N.H. – The Christa McAuliffe Fellowship program honoring the late Concord teacher would be eliminated under the budget adopted by the US House of Representatives.

A spokesman for Sen. Judd Gregg, Republican of New Hampshire, said Gregg is proud of the fact that McAuliffe came from New Hampshire, but that cost-cutting requires that every item be looked at.

The program has dispersed about $2 million a year to teachers nationwide. In the past decade, there have been about 600 McAuliffe fellows. The federal government gives the states money to allocate to qualified teachers.

The federal budget is still being developed and even if the resolution passes as is, specific programs such as the McAuliffe fellowships can only be eliminated by specific vote, the spokesman, Kristin Hyde, said.

Robert Kennedy, state director of the division for educational improvement, said even if the federal program is abolished there will be a federal Christa McAuliffe fellowship in New Hampshire next year.

"We already have the money" for the 1996 award, Kennedy said. "Of course, if the budget passes as is, that may be the last."

Hyde said the McAuliffe program grants money to teachers nationwide, so New Hampshire should not feel singled out.

Kennedy said the state education department administers two Christa McAuliffe fellowships, the federally funded one and a state-funded program.

"If we lost the federal program we would still have the state program, but what we would lose is the opportunity for a teacher to take a sabbatical for a year and work on a specific educational improvement project," he said.

McAuliffe died when the space shuttle Challenger exploded in 1986.

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.

FAX

TO: Diana Fortuna

RECEIVER FAX NUMBER: (202) 456-7431

FROM: Marca Bristo

SENDER FAX NUMBER: (312) 226-0487

SENDER TELEPHONE NUMBER:

(312) 226-5900 voice (312) 226-1687 tdd

DATE: 6/22/95

COMMENTS: Per your request
RE: ADA Backlash Responses

NUMBER OF PAGES INCLUDING THE COVER 3

1331 F Street, N.W. ■ Suite 1050 ■ Washington, D.C. 20004-1107
(202) 272-2004 Voice ■ (202) 272-2074 TT ■ (202) 272-2022 Fax

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.

ADA: RUMORS AND REALITIES

May 31, 1995

July 26, 1995, will mark the fifth anniversary of the passage of the Americans with Disabilities Act (ADA). The Act has been a great success in bringing people with disabilities into the mainstream—at work and in every other domain of American life. Yet misperceptions persist about the nature of ADA. The reality, though, is that the Act benefits all of us, people with and without disabilities alike.

RUMOR: People with disabilities are just a tiny fraction of the American public.

REALITY: 49 million Americans—or 19.4% of the entire U.S. population—have disabilities. And these people do more than buy disability-related products. They buy groceries, take vacations, open bank accounts, and do most other things people without disabilities do. These 49 million people can make a significant contribution to the U.S. economy—as consumers, as workers, as citizens. The ADA is intended to remove those barriers that prevent people with disabilities from becoming full participants in American life. Besides, being completely free from disability today is no guarantee a person will not become disabled tomorrow.

RUMOR: The ADA's requirement that restaurants, hotels, grocery stores, doctors' offices, and other facilities used by the public be accessible is too expensive and does not take into consideration the cost concerns of small businesses.

REALITY: The ADA focuses on making new buildings accessible, and requires modifications to existing facilities only when it is readily achievable and not costly to the owner. And making new buildings accessible from the start has added only 1/2 of 1% to the cost of construction. To help keep costs even more reasonable, ADA exempts buildings under three stories or under 3,000 feet per story from installing an elevator unless the building is a medical facility, a shopping mall, or transportation terminals.

RUMOR: The ADA is unfair to people without disabilities because employers are required to hire the applicant who has a disability.

1331 F Street, N.W. ■ Suite 1050 ■ Washington, D.C. 20004-1107
(202) 272-2004 Voice ■ (202) 272-2074 TT ■ (202) 272-2022 Fax

RUMOR: The ADA makes workplaces hire people with contagious diseases like AIDS.

REALITY: The Secretary of Health and Human Services has determined that AIDS is not a contagious disease in work environments. In addition, the ADA contains provisions which ensure that the public and all workers are adequately protected from contagious diseases.

RUMOR: With so many laws and regulations to prohibit discrimination, the ADA is just one more piece of legislation that the public must contend with.

REALITY: Discrimination against individuals with disabilities is pervasive in our society, according to a Lou Harris poll, as well as the Civil Rights Commission and the National Council on Disability. The historic Civil Rights Act of 1964 does not cover persons with disabilities. And the Rehabilitation Act of 1973 provides protection for people with disabilities only in programs that receive federal funds. Clearly, there is a need for the ADA, which extends civil rights protections for people with disabilities to private sector employment, transportation, public accommodations, state and local government services, and telecommunications.

RUMOR: The ADA may be good for those with disabilities, but it doesn't benefit the rest of us who have to pay for it.

REALITY: By contributing to the economy, by enabling almost 1/5 of our population to participate meaningfully in all aspects of life, the ADA benefits all of us. Besides, being completely free from disability today is no guarantee a person will not become disabled tomorrow.

RUMOR: Putting disabled Americans to work is a nice idea, but our society can't afford all the costs involved.

REALITY: The estimated cost to society of the absence of people with disabilities from the workforce is $200 billion per year, according to the President's Committee on Employment of People with Disabilities. Among the 69% of working age Americans with disabilities who are unemployed, the number one reason these people cite for not working full-time is that employers won't recognize their capabilities.

REALITY: The ADA is not affirmative action legislation. No employer is compelled to hire an applicant with a disability when a more qualified applicant without a disability is available. The ADA merely prohibits employers from choosing not to hire an otherwise qualified individual because of a disability.

RUMOR: The ADA is too costly for employers because of the expense of providing accommodation for employees with disabilities.

REALITY: "Reasonable accommodation," called for in Title I of the ADA, is usually far less expensive than many people think. The President's Committee on Employment of People with Disabilities' Job Accommodation Network found that 17% of all reasonable accommodations cost nothing; 68% cost $500 or less; 84% cost $1,500 or less; and only 4% cost more than $5,000. Clearly, reasonable accommodation makes good business sense.

RUMOR: Maybe most "reasonable accommodations" are inexpensive, but the ones that are costly could break an employer.

REALITY: Employers need not worry. The law does *not* require any employer to provide an accommodation that creates undue hardship on the employer. Employers should also know that there are three tax credits designed to help defray the costs of providing accommodations. Call the IRS at 1-800-829-3676 and ask about:

* Disabled Access Tax Credit (Title 26, Sec. 44)
* Targeted Jobs Tax Credit (Title 26, Sec. 51)
* Tax Deduction to Remove Architectural and Transportation Barriers to People with Disabilities and Elderly Individuals (Title 26, Sec. 190)

RUMOR: Even with the low cost of most accommodations and with tax credits available to help with the cost of more expensive ones, employers with only a few employees could still face undue hardship in complying with ADA.

REALITY: The employment provisions of the ADA apply only to businesses with 15 or more employees. Those businesses with fewer employees are not covered by the law.