

# EQUALITY OF OPPORTUNITY

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## THE MAKING OF THE AMERICANS WITH DISABILITIES ACT



NATIONAL COUNCIL ON DISABILITY

JULY 26, 1997

JULY 26, 2010

*In commemoration of the  
20th anniversary of the ADA*

EQUALITY OF OPPORTUNITY  
The Making of the Americans with Disabilities Act

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The views contained in this report do not necessarily represent those of the Administration, as this document has not been subjected to the A-19 Executive Branch review process.

## **DEDICATION**

*For people with disabilities throughout the nation whose  
pursuit of liberty and justice made the ADA a reality.*

*For those who have since passed away.*

*For those who join the cause of disability rights.*



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The Civil Rights Committee of the National Council on Disability coordinated the development of this project: John Kemp, *Chairman*; Hughey Walker, *Vice-chairman*; Lilliam Rangel Pollo; Rae Unzicker; Marca Bristo, *ex officio*; and Kate Pew Wolters, *ex officio*. NCD Chairperson Marca Bristo reviewed multiple iterations of the manuscript and contributed significantly to its development. Billie Jean Keith was the NCD staff person to the Civil Rights Committee and followed the manuscript from beginning to end. Mark Quigley, NCD Public Affairs Specialist, coordinated publication of the manuscript.

Staff at the NRH Research Center assisted in the general development of the project. Special recognition goes to Rachel Halpern and Ben Wheatley, who helped edit the manuscript, as well as to Phillip Beatty, Olga Elizabeth Hayes, Barbara Maloney-Darbeau, Lee Ann McNnerey, Georgette LaFayette Smith, and Sabrina Smith. Kathy Butler and Antonio de Guzman, at the NRH Research Center Library, were invaluable resources for research. In addition, George Koch provided important access to the law library of his firm, Kirkpatrick & Lockhart. Staff at the House and Senate Libraries and Parliamentarian's offices were indispensable sources of information. Frank Young, Leanne Young, and Bob Atwood provided essential editorial assistance. Personal interviews were transcribed by Ann Rand of Medical Dictation Services, Inc. Mary Flannery designed the cover.

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Special thanks go to the 54 individuals who gave their time and insight in personal and correspondence interviews as sources for this historical account: they are listed in Appendix A. Many of these interviewees also provided access to their personal papers and made themselves available for follow-up fact-checking. Without them this history would have been impossible.

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## FOREWORD, JULY 26, 2010

On behalf of the National Council on Disability (NCD), I am pleased to release this reprint of *Equality of Opportunity: The Making of the Americans with Disabilities Act*. As we convene NCD's National Summit on Disability Policy 2010 and explore the current state of Living, Learning, and Earning for people with disabilities, *Equality of Opportunity* reminds us of our past and urges us to press on with renewed and united sense of purpose to deliver on the ADA's legacy, hope, and promise.

There is a personal dimension to this history of the ADA. My experience as the original author of the manuscript made it possible for me to write now as Chairman of NCD. In 1996, when I began my work on the history of the ADA, I was a doctoral candidate in American history specializing in 19<sup>th</sup>-century American intellectual and cultural history and writing a dissertation on the slavery debates. I was a person with a disability, having broken my neck in a high school wrestling match and living with partial paralysis. But I did not identify as a person with a disability and I did not view myself as part of a disability community. To me, disability was the enemy. I wanted to pass for "normal" as best I could. I had internalized social stigma about disability.

In 1996—ten years after my original spinal cord injury—I had also spiraled downward into depression and gave serious thought to dropping out of my Ph.D. program. Writing a history of the ADA on a contract with NCD was not the low-stress opportunity I was looking for, and I decided to do the project with substantial doubt about my ability to complete it. However, through writing the ADA's history, my life was transformed.

I had only been vaguely aware of the ADA when it passed in 1990—probably much like most of the 43 million people identified in the ADA's findings who similarly lacked identity as a person with a disability and thus took little note of the ADA's passage. However, researching the history of the ADA, and particularly interviewing many of the people who made the ADA's enactment possible, made me rethink the meaning of disability and my own identity. I was riveted by the story of how the ADA came into existence and the gravity of the change wrought through the ADA. My preconception that disability was a debilitating weakness, an enemy to be overcome, ran headlong into the life stories of disability rights advocates whose power and pride both individually and collectively laid the foundation for passage of the ADA.

By the time NCD released *Equality of Opportunity* on July 26, 1997, I had begun to view myself as a person with a disability and as part of the disability community. I had also emerged from a deep depression and regained my self-confidence—no doubt largely because my inability to embrace my identity as a person with a disability had contributed to my depression. In retrospect, the closing line of *Equality of Opportunity*—"The dawn of a new day"—was as much about the impact of the ADA on my life as the ADA itself. Identity as a person with a disability was liberating rather than stigmatizing. It gave my life new purpose and meaning.

This personal story is part and parcel of the ADA's significance in our society. The ADA is a nondiscrimination law. But, much more than that, it is a clarion call for transforming attitudes about disability. The ADA proclaims that all people, including people with disabilities, should participate fully in all aspects of our communities and have opportunities to take risks, to succeed, and—yes—to fail. Equality of opportunity means having a chance to live independently and become financially secure, but it is not a guarantee.

Understanding the history of the ADA is every bit as important as when *Equality of Opportunity* was first published in 1997. Arguably, the urgency is even greater now. Achieving equality of opportunity for people with disabilities depends in large measure on individual transformative experiences like the one I had through writing the history of the ADA. I thus hope that this reprint of *Equality of Opportunity* enables more people to understand the ADA and the outmoded structural and attitudinal barriers it was meant to tear down.

When NCD first published this history, the ADA was still relatively young. Hope abounded. Some of the provisions, such as rules for over-the-road buses, had yet to be finalized. Other provisions, such as the definition of disability and scope of access to public accommodations, had yet to be fully tested in the courts. *Equality of Opportunity* was published amidst what proved to be the longest period of peacetime economic growth in our nation's history. To help mark a point in time, 1997 was also the year that the now-ubiquitous Google first got its name, though the company bearing its name would still not be incorporated for another year.

Times have changed. We celebrate the 20<sup>th</sup> Anniversary of the ADA well after civil rights provisions have been implemented in regulations, tested in court, and even amended by the Americans with Disabilities Act Amendments Act of 2008. We also celebrate amidst our nation's worst economic downturn since the Great Depression. Unemployment is high. People are losing their homes. Access to health care remains elusive. And that is before we begin talking about the individual experiences of millions of people with disabilities, for whom the economic downturn only compounds longstanding disparities in living, learning, and earning.

Unfortunately, the challenges that we face together as a nation are compounded by partisan strife. Although vitriol is no stranger to the history of American politics, something is sorely missing today—the genuine and widespread willingness to set aside ideology to pursue pragmatic solutions that make critical differences in the lives of real people. The explosion in access to 24-hour Internet-based communications exacerbates this trend, even though information technologies and other technologies have provided new levels of access for people with disabilities.

Despite the fast-paced and daunting world we inhabit, tangible marks of the ADA's success surround us—not just regarding the ADA's specific nondiscrimination provisions but symbolically as well. The ADA is the disability community's standard bearer for the disability policy goals of equality of opportunity, full participation, independent living, and economic self-sufficiency. Some of the ADA's impact has been increasingly felt with the march of time as requirements for new and renovated

construction create more livable communities, with physical and telecommunications infrastructures becoming more accessible and usable by more people with disabilities. In other cases we see the symbolic victory of the ADA as people with disabilities assume prominent positions of leadership in government, business, and our communities and more children grow up embracing disability as a natural part of the human experience. But we also know that problems abound, and the hard work of delivering on the ADA's promise still lies in front of us.

The ADA truly was “a watershed public policy,” as Marca Bristo and Gerben DeJong wrote in the original *Foreword*, and the ADA's history still has much to teach us today. “Passage of the ADA is a story of political leaders on both sides of the aisle who put aside personal and partisan differences to do what they thought was the right thing to do,” states the original *Foreword*, and kept the ADA from falling victim to a venomous public debate. There is a long record of bipartisan achievements on disability issues—the ADA chief among them. Recounting the history of the ADA is therefore an opportunity to remind ourselves of the potential for disability issues to help build bridges across partisan divides. Bipartisan collaboration will not be easy in the current environment, but the future of effective disability policy depends on it.

The ADA's history also provides a sober reminder to the disability community about the challenges of and need for cross-community collaboration. The ADA was a unique moment in disability history where diverse individuals and organizations rallied around a common cause. In doing so they showed the power of shared goals and coordinated action. Nevertheless, the years since enactment of the ADA have restored in large measure the longer tradition of a splintered community with myriad—and sometimes competing—priorities. The disability community is anything but homogenous. It is difficult to find a common ground of policy issues that are equally viewed as priorities for different types of disabilities and for discreet policy areas. The ADA reminds us that there is a profound strength that comes in unity of numbers and purpose.

Passage of the ADA also indicates that coordination is both possible and necessary to remedy longstanding barriers. Passage of the ADA required separate review, analysis and coordination of multiple House and Senate committees, as well as support from the White House and executive agencies. It also required coordination among various stakeholders, including with various business groups—even if such coordination was far from harmonious. Many of the barriers to advancing the ADA's disability policy goals revolve around breakdowns in coordination—among federal agencies, across all levels of government, and among various stakeholders. The success of the ADA was never a foregone conclusion any more than solving many difficult disability policy issues is today. But enactment of the ADA reminds us that coordination is possible even if often overwhelming.

I am proud to have an opportunity to join my fellow Council Members and NCD staff in continuing NCD's proud legacy, particularly in light of the extraordinary role NCD played in my personal life through writing the ADA's history. NCD's identity is closely intertwined with the ADA's history. NCD began as a small

advisory body within the Department of Education. In 1984 Congress made NCD an independent agency and charged it with a new mandate to review all federal policies and programs. Two years later, NCD delivered on that charge with its pathbreaking report, *Toward Independence*, which called for enactment of the ADA. NCD later helped rally the disability community around the ADA when NCD offered the first draft in 1988. After the ADA was signed into law, NCD's mission was amended to reflect the national disability policy goals now enshrined in the ADA.

NCD now serves a unique role among federal agencies because its mission reflects the breadth and diversity of the disability community itself. Achieving this mission requires bipartisan collaboration among diverse stakeholders. NCD will continue to seek common ground and help to identify priority issues for a diverse community that can make critical differences in the lives of millions of people with disabilities. In the spirit of bipartisan collaboration, with this reprint NCD is publishing a list not merely of NCD's current Members and staff but a list of all known Members and staff past and present. NCD's role in helping to give life to the ADA and to preserve and strengthen the cause of the ADA has depended on the contributions of all of NCD's Members and staff.

Of course, none of NCD's work would be possible without the continued feedback and support of the disability community and other stakeholders. NCD's National Summit on Disability Policy 2010 is an opportunity to build on NCD's history of community engagement and to continue the difficult challenges of making the principles of the ADA a genuine reflection of opportunities in our communities.

The Acknowledgments are the original acknowledgments from 1997. Since that original publication I had the good fortune to marry Nellie Wild and become the proud father of three beautiful daughters, Bella, Katie, and Julia. I am grateful for all of the ways my family makes me a better person, and reminds me about what matters most in life. I am also pleased that the ADA and my own experiences as a person with a disability enrich my family's life.

I also want to express my gratitude to Marca Bristo, then the Chairperson of NCD, and Gerben DeJong, then the Director of the National Rehabilitation Hospital Research Center, under whose contract I wrote the manuscript. They took a risk in entrusting me with writing the history of the ADA. In doing so they embodied the spirit of the ADA. I hope that President Barack Obama's decision to entrust me with leadership as Chairman of NCD will enable me to provide similar opportunities to deliver on the ADA's promise.

The legacy, the hope, and the promise of the ADA endure, yet much more work must be done to transform law into life. Together, we can be the catalyst for our nation's continued transformation.

*Jonathan M. Young*  
Chairman  
National Council on Disability

## FOREWORD, JULY 26, 1997

Future historians will come to view the Americans with Disabilities Act (ADA) of 1990 as one of the most formative pieces of American social policy legislation in the 20th century. Its enactment codified into law important principles that would henceforth govern the relationship between society and its citizens with disabilities. The ADA is universal. It champions human rights themes by declaring that people with disabilities are an integral part of society and, as such, should not be segregated, isolated, or subjected to the effects of discrimination. The ADA is also distinctively American. It embraces several archetypal American themes such as self-determination, self-reliance, and individual achievement. The ADA is about enabling people with disabilities to take charge of their lives and join the American mainstream. It seeks to do so by fostering employment opportunities, facilitating access to public transportation and public accommodations, and ensuring the use of our nation's communication systems.

*Future generations will look back on the passage of the ADA as a watershed public policy.*

The ADA is much more. The ADA's founding principles, explicit and implicit, also serve as a framework in which other public policies can be tested, challenged, and, if necessary, amended. It has altered our public discourse about disability and about the role of people with disabilities in American society. Future generations will look back on the passage of the ADA as a watershed public policy.

As Major R. Owens (D-NY) wrote regarding the ADA's final passage, the ADA "articulates forcefully and eloquently the purposes which must be embodied in our public policies and in our commitments as individuals and as a nation in order for America to thrive. . . . It embodies a philosophy and constitutes a declaration in support of human possibility and capability." As Owens noted, ours is a nation of interdependence: we do and must rely on one another for success. Because the ADA seeks to build a society "which encourages and supports the efforts of each individual to live a productive life," it promotes the success of our entire nation.<sup>1</sup> The ADA is important for what it says about our national commitments to each citizen. In a long tradition of promoting civil rights, the ADA upholds the principle that each individual has the potential, and deserves the right to participate in, and contribute to, society.

### **Focus and Sponsorship**

*Equality of Opportunity: The Making of the Americans with Disabilities Act* tells a story of how the ADA came about. Other works have explored in great detail what individual provisions of the ADA mean, how they apply to individuals and businesses, and what one must do to be in compliance. This account examines process rather than content. Its defining focus is the transition from a fragmented national disability policy, which often worked to the detriment of people with disabilities, to an affirmation of the basic civil rights of persons with disabilities, as symbolized in the

ADA's passage. To help readers familiarize themselves with the content of the ADA, appendices include descriptions of key concepts in the ADA, a reprint of the text of the ADA, and information necessary for obtaining technical assistance.

*Equality of Opportunity* is the first detailed history of the ADA. It was written for a broad audience, including the disability community, policy makers, academicians, and general readers. Rather than seek to be the final word on the ADA's history, *Equality of Opportunity* hopes to succeed by leading others to explore the rich history of the ADA and the disability rights movement and offer additional information and interpretations. This work can thus serve as an important source document for future researchers.

Writing the history of the ADA is not an easy task. There is not a single or even a handful of founding fathers and mothers around whom a narrative can be

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organized. Nor is there one straight line from first thoughts about implementing a national, comprehensive civil rights law for people with disabilities to the ADA's enactment on July 26, 1990. Rather, thousands of people from all over the nation played roles crucial to the ADA's success, and multiple thematic threads characterize the ADA's development. Unfortunately, each

contribution cannot be fully recognized in the limited space of this work. And maintaining narrative cohesion precludes full coverage of simultaneous activities taking place in Washington and throughout the country. Nonetheless, the spirit of community and cooperation among a large and diverse group of advocates and the complexity and intensity of the ADA's passage are evident in the narration.

Research and writing for this project was conducted under contract with the National Council on Disability at the National Rehabilitation Hospital (NRH) Research Center, a division of the Medlantic Research Institute, in Washington, D.C. Research was based on a lengthy series of personal and correspondence interviews with key participants in the ADA's passage, in addition to traditional documentary sources.

### **Building on Foundations**

The heart of this story begins in 1986, when the National Council on the Handicapped (renamed the National Council on Disability in 1988) presented a breakthrough report titled *Toward Independence*, which included a proposal for a comprehensive, equal opportunity law for people with disabilities—the embryo of the ADA. *Equality of Opportunity* traces the development of the ADA from this report (first as a draft bill, and then as a formal item of Congress in 1988), through the Senate and House of Representatives, and to the desk of President George Bush in 1990.

To understand the ADA one must first understand the decades that preceded it. *Equality of Opportunity* therefore pays considerable attention to the tradition of civil rights established in the 1960s and developments within the disability community during the 1970s and 1980s. Especially important for the ADA's success was the emergence of a disability rights movement molded in the image of the movements that preceded it—the civil rights, women's, self-help, and the deinstitutionalization and normalization movements. The disability rights movement deserves its own book; the following pages seek only to relate its relevance to the ADA's development.

The extraordinary efforts of people with disabilities throughout the nation helped build a grass roots movement that resulted in legislative and judicial successes and the development of crucial coalitions and networks within the civil rights community, Congress, and the White House. The ADA could not have succeeded without this foundation. Equally important was the ADA's legislative foundation in the Civil Rights Act of 1964 and regulatory foundation resulting from the Rehabilitation Act of 1973. By building on tested legal principles, the ADA was able to avert much of the debate that would have accompanied an act developed *de novo*. This is not to say there was no conflict over the ADA. On the contrary, the ADA went through comprehensive review by various interested parties and underwent painstaking revisions. The original draft, for example, was transformed to enlist broad, bipartisan support. But the Civil Rights Act and the Rehabilitation Act enabled the ADA to withstand Congressional scrutiny.

### Some Lessons

The passage of the ADA was a consciousness-changing experience for the 101st Congress and must remain an important analytic point of departure for the development of disability policy both now and in the future. This account therefore has as much to say about our public policy future as it does about our past.

Students of public policy and the American legislative process would do well to examine how the ADA came about. In our age of cynicism about the American political system, where partisan clashes have led to government shut-downs and rampant accusations, the ADA offers a refreshing example of how the legislative process can work when it works well. Passage of the ADA is a story of political leaders on both sides of the aisle who put aside personal and partisan differences to do what they thought was the right thing to do. The ADA was certainly not without its detractors, and debate was at times prolonged and intense. Moreover, near unanimous support in the final voting masks deep divisions that characterized the deliberative process. But members of Congress and the Bush administration demonstrated a remarkable cooperative spirit that resulted in a solid, durable act that has been able to withstand subsequent scrutiny. Furthermore, they maintained a high level of public

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debate that kept the ADA from falling victim to a venomous public debate controlled by spin doctors and political pundits as witnessed, for example, in the Civil Rights Act of 1991. In short, the passage of the ADA provides important lessons about restoring dignity to public debate about the leading issues of our time.

Also important for the enactment of the ADA was the ability of the ADA coalition to close ranks. Historically, the disability community has been divided internally, in part because of conflicts over limited public funding. With the ADA, however, scores of organizations representing thousands of people with different disabilities joined forces to work for a common cause. People with blindness fought the battles of those who used wheelchairs; persons with epilepsy fought the battles of those with deafness. The disability community's abiding commitment to act as one unified voice helped keep the ADA a strong act and prevented the exclusion of specific subgroups of disabilities.

### **In Closing**

Now is the time to preserve a record about the creation and passage of this historic, landmark legislation. We view the present and look to the future based on our cumulative experiences. As we look toward the continued development of disability policy, we must have a firm grasp on how we have reached this point. This is especially important for those who were not direct participants in the ADA's passage and

*The disability community's abiding commitment to act as one unified voice helped keep the ADA a strong act and prevented exclusion of specific subgroups of disabilities.*

for the next generation that is growing up in an America transformed by the ADA. Because disability is usually not passed on from generation to generation, there is not a natural cultural transference about disability. NCD recognizes the crucial role of the past and the need to build our own history as we march into the future. Therefore, we made a commitment to providing a thorough analysis of the ADA's history. Other histories will and must be written, but this one sets the stage.

The National Council on Disability and the National Rehabilitation Hospital Research Center are pleased to make *Equality of Opportunity*, by Jonathan M. Young, available to the public. We believe it is a work in which the disability community and the public policy-making community can take great pride.

*Marca Bristo*  
Chairperson,  
National Council on Disability

*Gerben DeJong*  
Director,  
NRH Research Center

# EXECUTIVE SUMMARY

## **Laying the Foundation: Disability Policy & Activism, 1968-1988**

In retrospect, it seems as if the Americans with Disabilities Act (ADA) passed Congress easily. But most people aware of the proposal in 1987 thought success, at that time, was doubtful. The fact that the ADA did reach President Bush's desk and was signed into law is a tribute to the groundwork that had been laid in the previous two decades. A string of legal precedents expanded upon the foundation of the Civil Rights Act of 1964 and the Rehabilitation Act of 1973. A nationwide disability rights movement emerged from within the disability community. Attorneys in the disability community attained a high degree of legal sophistication. Disability organizations successfully united with the civil rights community to promote disability policy as a civil rights issue. The disability community established extensive networks among its constituencies, Congress, and the White House. Numerous effective and talented leaders emerged from within the disability community to help guide the ADA through Congress. Without these developments, the ADA likely would have failed.

## **Putting the ADA on the Legislative Agenda: The National Council on Disability**

Successful passage of a law depends first on getting a proposal to Congress as a viable policy option. For the ADA, this role as facilitator was performed by the National Council on the Handicapped (now National Council on Disability, [NCD]). In 1984, Congress issued NCD a mandate to review all federal programs relating to disability and offer recommendations on how Congress could best promote the independence of persons with disabilities and minimize dependence on governmental programs. NCD's primary recommendation to Congress was a call for passage of a comprehensive, equal opportunity law for persons with disabilities. Subsequently, NCD decided to take action by drafting its own legislative proposal for congressional consideration. NCD successfully solicited Senator Lowell P. Weicker, Jr. (R-CT) and Congressman Tony Coelho (D-CA) to sponsor the ADA and introduce the bill to Congress. After incorporating recommendations offered by representatives from the disability community at large, Weicker and Coelho introduced the ADA to the Senate and House on April 28 and April 29, 1988.

## **Publicizing the ADA: Advocacy and the Government Response**

ADA advocates introduced their proposal in 1988 not with the expectation of passing the bill that year, but as an opportunity to create momentum by empowering people throughout the nation to advocate for the bill. They planned to use the politics of an election year as a way to publicize the ADA and gain a foothold as a top priority for the next session of Congress. During this year, representatives from the disability

community began to form an ADA coalition to promote passage of the ADA. This coalition worked with members of Congress to solicit cosponsors and encouraged the presidential candidates to endorse the bill. It also effectively used this time to begin mobilizing nationwide grassroots advocacy for the ADA to demonstrate that people throughout the country (not just a few persons from a think tank) demanded its passage. Powerful testimony from persons with disabilities helped document the desperate need for legislation such as the ADA. As a consequence, ADA advocates successfully positioned the ADA for serious introduction in 1989.

### **Creating a Workable ADA: The Senate and the White House**

George Bush, who advocated for the rights of disabled persons in his campaign, was elected president in 1988 and subsequently promoted passage of the ADA. At the same time, however, Lowell Weicker lost his bid for reelection to the Senate. In Weicker's absence, Senator Tom Harkin (D-IA) became the Senate ADA sponsor. In conjunction with Senator Edward M. Kennedy (D-MA) and with the participation of a variety of constituencies, Harkin rewrote the ADA in a form that stood a reasonable chance at passage. On May 9, 1989, Harkin and Congressman Coelho simultaneously introduced the ADA to both houses of Congress. Coelho, Kennedy and Harkin decided to begin deliberations in the Senate. After hearings held in May and June, 1989, the Senate entered a series of negotiations sessions with the Bush administration to craft a bipartisan, compromise bill. On August 2, the Senate Committee on Labor and Human Resources voted unanimously to report the ADA, as amended, to the Senate floor. The Senate passed the ADA by a vote of 76 to 8 on September 7, 1989.

### **Fashioning a Durable ADA: The House of Representatives**

Under the leadership of Congressman Coelho and, later, Congressman Steny H. Hoyer (D-MD), the House began its deliberations by using the bill approved by the Senate. The House process was more complicated than the Senate's, in part because the bill went to four committees and six subcommittees. In contrast to the rapid action in the Senate, the House took nearly nine additional months to analyze and refine the bill. The dynamic was also much different because business organizations, who had deep concerns about the cost burden and the litigation potential of the ADA, lobbied vigorously by applying constituent pressure on members. The disability community now worked to hold the ground it had achieved in the Senate. The main issue in the House was the effect of the ADA on businesses and governments covered by the ADA's provisions; many changes were made to make the ADA more acceptable to entities covered by the ADA. A series of "weakening" amendments were proposed and defeated at the committee level and on the House floor, where the House passed the ADA by a vote of 403 to 20, on May 22, 1990. One controversial amendment, however, did succeed. The Chapman amendment said that employers could legally

remove persons with contagious diseases, such as AIDS, from food handling positions, even where there was no evidence that the disease could be transmitted.

### **Enshrining the ADA: House-Senate Conference and the Signing**

The overwhelming votes in favor of the ADA in both the House and the Senate seemingly destined the ADA for success. But the Chapman amendment passed in the House threatened to kill the bill: the disability community and its congressional sponsors decided not to support an ADA with the amendment. The conflict over food handling and contagious diseases had to be settled by a conference between the House and Senate, where conferees rejected the Chapman amendment, only to have members in both the House and Senate try to put it back into the ADA. After nearly two months of wrangling over the provision, the Senate developed a compromise through the leadership of Senator Orrin G. Hatch (R-UT). The House and Senate then passed the ADA in final form on July 12 and 13, 1990. On July 26, before about 3,000 persons, President Bush signed the ADA into law as Public Law 101-336.

### **Epilogue**

The ADA is unique in the context of civil rights legislation because it requires that businesses and governments do more than just cease discriminatory actions. They must also take proactive steps to offer equal opportunity to persons with disabilities, commensurate with their economic resources. The ADA is distinctive in the context of disability legislation not for its individual provisions, most of which were already established in some form by various state and local governments, but in its comprehensive nature and application to much of the private sector. No single factor can explain the ADA's success. A whole host of circumstances worked in its favor: effective leadership; advocates in key government positions; the rightness of the cause; the mobilization of the grassroots disability community; a string of legislative successes offering momentum; legal and lobbying expertise in the disability community; the willingness of persons with disabilities to unite for a common cause; the cautious support of the business community; and ideological justifications from both the right and the left. The time was right and the cause was just.



# EQUALITY OF OPPORTUNITY

*“The Nation’s proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency.”*

The Americans with Disabilities Act

# VIEWS FROM CONGRESS AND THE WHITE HOUSE

## **Disability Discrimination**

Authorities on disability have often said, and I have quoted them on this floor before, that the history of society's formal methods of dealing with people with disabilities can be summed up in two words: segregation and inequality.

*Senator Lowell P. Weicker, Jr.*<sup>1</sup>

## **Disability Rights**

We know that there is going to have to be accommodations to give us our basic civil rights. We know that. We understand that. There is a cost involved. But isn't there also a cost involved with us not being able to exercise our rights?

*Congressman Tony Coelho*<sup>2</sup>

## **The Disability Community**

Within a few weeks the ADA will become the law of the land because of the vision of the disability community. You knew in your hearts what we now write into law—that discrimination based on fear, ignorance, prejudice, and indifference is wrong. . . . The ADA is first and foremost the outcome of the extraordinary efforts of the disability community. This is your bill, and you earned it.

*Senator Tom Harkin*<sup>3</sup>

## **Changing the World**

We are sent here by our constituents to change the world for the better. And today we have the opportunity to do that. . . . Many have asked: "Why are we doing this for the disabled?" My answer is twofold. As Americans, our inherent belief is that there is a place for everyone in our society, and that place is as a full participant, not a bystander. The second answer is less lofty. It is steeped in the reality of the world as we know it today. If, as we all suspect, the next great world competition will be in the marketplace rather than the battlefield, we need the help of every American. . . . We cannot afford to ignore millions of Americans who want to contribute.

*Congressman Steny H. Hoyer*<sup>4</sup>

## **Americans with Abilities**

The road to enactment of this legislation was not easy. But in the process of reaching this goal, we have all learned something about the evils of discrimination in any form, and the importance of judging individuals by their abilities—not patronizing misconceptions, demeaning stereotypes, and irrational fears about their disabilities.

*Senator Edward M. Kennedy*<sup>5</sup>

### **The Americans with Disabilities Act**

No piece of legislation this Congress will pass articulates more forcefully and eloquently the purposes which must be embodied in our public policies and in our commitments as individuals and as a nation in order for America to thrive in the 1990s. It embodies a philosophy and constitutes a declaration in support of human possibility and capability. . . . With a powerful commitment to building a society which encourages and supports the efforts of each individual to live a productive life, there is no challenge which our Nation cannot meet.

*Congressman Major Owens*<sup>6</sup>

### **The American Dream**

The time has come for the Senate to send a loud, clear message across this country: Individuals with disabilities, no less than all other Americans, are entitled to an equal opportunity to participate in the American dream. It is time for that dream to become a reality.

*Senator Orrin G. Hatch*<sup>7</sup>

### **Independence**

ADA will empower people to control their own lives. It will result in a cost savings to the Federal Government. As we empower people to be independent, to control their own lives, to gain their own employment, their own income, their own housing, their own transportation, taxpayers will save substantial sums from the alternatives.

*Congressman Steve Bartlett*<sup>8</sup>

### **The Time Has Come**

I have supported the ADA because I believe it is a just and fair bill, which will bring equality to the lives of all Americans with disabilities. Our message to America is that inequality and prejudice will no longer be tolerated. Our message to people with disabilities is that your time has come.

*Senator Robert Dole*<sup>9</sup>

### **Finding Balance**

This historic civil rights legislation seeks to end the unjustified segregation and exclusion of persons with disabilities from the mainstream of American life. . . . The ADA is fair and balanced legislation that carefully blends the rights of people with disabilities . . . with the legitimate needs of the American business community.

*Attorney General Richard Thornburgh*<sup>10</sup>

### **The Shameful Wall**

And now I sign legislation which takes a sledgehammer to another wall, one which has, for too many generations, separated Americans with disabilities from the

freedom they could glimpse, but not grasp. Once again, we rejoice as this barrier falls, proclaiming together we will not accept, we will not excuse, we will not tolerate discrimination in America. . . . Let the shameful wall of exclusion finally come tumbling down.

*President George Bush*<sup>11</sup>

## LAYING THE FOUNDATION: DISABILITY POLICY & ACTIVISM, 1968–1988

The Americans with Disabilities Act (ADA) of 1990 raced through Congress. So much momentum drove the bill forward that many members of Congress, caught by surprise, reacted by claiming the bill had come from nowhere, that there was little precedent for such sweeping legislation, and that the deliberative process should be extended to provide time to grasp the novelty of the bill's provisions. Such claims, however, overlooked one crucial fact: the ADA had been long in gestation. Indeed, part of the reason the bill became law with such alacrity is precisely the degree to which the legislation was built on a solid foundation: of policy, legal principle, personal networks, coalition-forming, and an increasingly active disability community. Without this foundation, which was put in place largely over the 1970s and 1980s, the ADA's passage would have been impossible. To comprehend the ADA one must first understand the context in which it developed.

### Contours of Disability in America

Disability has a history. In colonial America, persons with disabilities were often viewed as part of the "deserving poor." They were consequently accepted by local communities, where they contributed however possible and shared in the community's offerings. But with the nineteenth-century industrial and market revolutions and the growth of a liberal individualistic culture, the cohesion of physical and geographic communities began to break down.<sup>1</sup> One consequence was that persons with disabilities, increasingly deemed unable to compete in America's industrial economy, were spurned by society. Growing side-by-side with social structures catering to individual achievement were custodial institutions for those who did not "fit" with the American creed: persons with sensory impairments, reduced cognitive capacities, physical impairments, mental illnesses, or other conditions. Institutions supposedly "protected" these persons from public harm.<sup>2</sup> Institutions also allegedly protected society from those who were feared by many as dangerous and a threat to the gene pool. Some persons with physical disabilities were displayed as "freaks" of nature, to be marveled at like exotic animals.<sup>3</sup> Such literary works as Herman Melville's *Moby Dick* reinforced stereotypes of persons with disabilities as sinister, or even crazy, through such characters as the peg-legged Captain Ahab.<sup>4</sup>

*Justice Oliver Wendell Holmes ruled that it was “better for all the world, if, instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind.”*

Racism, ethnic imperialism, and xenophobia plagued early twentieth-century America. Darwin’s theories about the origin of species gave rise to universal theories about natural selection within humankind and the evolution of society.<sup>5</sup> Many believed it was in the best interest of humanity to eliminate or at least curtail populations considered inferior, as witnessed in the treatment of

African Americans and Jews. These ideas also adversely affected persons with disabilities, displayed most starkly in the 1927 Supreme Court case *Buck v. Bell*.

Carrie Buck argued before the Court that state-imposed sterilization, based on disability, was unconstitutional. The Court disagreed. Instead, the Court sided with “experts” who alleged that persons with disabilities, namely those collectively classified as “the feeble-minded,” were “a menace” to society, threatened society’s “best citizens,” and tended to “sap the strength of the state.” Justice Oliver Wendell Holmes thought it best for society to seek to avoid “being swamped with incompetence.” He thus ruled that it was “better for all the world, if, instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind.”<sup>6</sup> Although sterilization and segregation practices targeted those classified as “feeble-minded” persons—or people with mental retardation, mental illness, and epilepsy—it reflected a general intolerance for those who allegedly did not fit the model for the rugged, individualistic, capitalistic American.

Significant developments over the course of the twentieth century, however, transformed the nature of disability in American life. These included demographic changes among persons and parents of persons with disabilities, the creation of disability organizations, and the growth of rehabilitation as a profession. In the early twentieth century, the demographics of disability changed as thousands of Americans acquired disabilities through industrial, work-place injuries. Moreover, World War I introduced thousands of veterans with disabilities, as did World War II, the Korean War, and the Vietnam War. In addition to the increased numbers of disabilities caused by injuries, Americans also began to live longer. Whereas in 1900 the average life span was 47 years, by 1980 life expectancy had increased to the age of 74. Since disability tends to increase with age, an older population meant an America with greater prevalence of disability.<sup>7</sup> By 1980 at least thirty million Americans experienced disability first-hand. As all Americans, these persons wanted the best life

*Increasing numbers of persons with disabilities made disability a societal challenge rather than a scattered, personal predicament.*

possible and worked to get it. Increasing numbers of persons with disabilities made disability a societal challenge rather than a scattered, personal predicament.

As demographics changed, persons with disabilities began forming organizations to act as advocates for their interests. Early examples include the Disabled Veterans of America (DVA) and the National Mental Health Association (NMHA), both founded in 1920, and the National Federation of the Blind (NFB), founded in 1940. After World War II, this growth accelerated. The Paralyzed Veterans of America (PVA) opened its doors in 1946, the United Cerebral Palsy Associations (UCPA) began in 1949, the National Association for Retarded Citizens (ARC) was founded in 1950, the first Home Office of the National Association of the Deaf (NAD, originally founded in 1880) opened in 1953, and the American Council of the Blind (ACB) started its operations in 1961. These organizations dedicated their existence to improving the lives of their constituencies and gave persons with disabilities a stronger voice. They raised money, identified areas of need, and lobbied to pass legislation that would help solve problems. They looked for ways to achieve employment and to gain better education. By working with Congress and the judiciary to achieve their goals, they also gained valuable legal experience. As a result of these activities, they further imprinted disability on the American landscape.

Throughout the twentieth century a variety of professions developed to attend to the challenges posed by disability. By giving increased attention to persons with disabilities, physicians, researchers, nurses, physical and occupational therapists, and

*Most Americans still understood disability primarily as a problem that resided in the individual. People were to be “rehabilitated” to become “normal.”*

vocational rehabilitation counselors, and other professionals enabled many persons with disabilities to live healthier lives. New technologies, drugs, and devices enabled persons to live longer with lower incidence of secondary disabilities, and with greater control over their daily

activities. It also helped transform disability rehabilitation into a full-fledged industry, which had the concomitant affect of making rehabilitation a commodity to be bought and sold in the marketplace.<sup>8</sup> Moreover, professionals tended to focus their attention on specific disabilities, fostering the compartmentalization and fragmentation of people with disabilities.

As the numbers of persons with disabilities grew, and as they, their parents, organizations, and professionals worked to improve their lives, the attitudes manifest in *Buck v. Bell* came under attack: persons with disabilities, too, deserved to be part of society. National policy developments assisted in this transition. Over the course of the twentieth century, the scope and power of the Federal Government expanded to meet the growing demands of an industrializing nation. New legislative endeavors accordingly addressed disability issues. Reforms directed at corporate America provided benefits to persons injured on the job. By 1941, forty-five states ensured compensation for work-place injuries. The United States Public Health Service

(USPHS), established in 1902, gave new attention to the importance of health care for society. The Veterans' Rehabilitation Act of 1918 established a program for training veterans with disabilities. In 1920, the combined problems posed by industrial impairments and war veterans led to the Smith-Fess Act, which established the vocational rehabilitation program. By 1935, every state had a vocational program in operation, providing vocational training, job placement assistance, and counseling to those with physical disabilities. During World War II, Congress expanded the vocational rehabilitation program to offer "medical, surgical, and other physical restorative services" and to include services for the mentally ill and mentally retarded.<sup>9</sup> Legislatures passed other laws directed toward greater access for persons with disabilities: for example, laws permitting the public use of guide dogs and white canes for blind persons.

The Social Security system also had a profound effect on persons with disabilities. In the 1950s, Congress amended the Social Security Act to provide income benefits to working-age people with disabilities who could not engage in any "substantial gainful activity." In 1965, Congress established the Medicare and Medicaid programs that provided health care coverage to select groups of people with disabilities, as well as to elderly and lower income persons. Persons with disabilities could also be eligible for food stamps, school lunches, and housing subsidies if they met income tests. Although these programs demonstrated a recognition of disability as a matter of national concern, they would later prove to be a mixed blessing. While they provided much-needed income security, they could make paid employment less appealing.

*Advocates of the ADA regularly declared that it was the most sweeping civil rights legislation in a quarter century: that is, since the Civil Rights Act of 1964—one of the most important twentieth-century domestic initiatives.*

Despite many improvements, problems for persons with disabilities were widespread: unemployment, lack of education, low income, and isolation. Moreover, most Americans still understood disability primarily as a problem that resided in the individual. They viewed disability as a "medical" problem that required medical supervision. People were to be "rehabilitated" to become "normal." The public policy approach to disability, however, would be revolutionized in the wake of the 1960s.

### **The Twin Pillars**

Advocates of the ADA regularly declared that it was the most sweeping civil rights legislation in a quarter century: that is, since the Civil Rights Act of 1964—one of the most important twentieth-century domestic initiatives. The aims of the Civil Rights Act were not achieved overnight. But the legislation heralded a revolutionary proposition: it is against the law to discriminate on the basis of race, color, national origin, or religion. The Civil Rights Act was born of a protest movement. In the

decade following the historic 1954 Supreme Court ruling, *Brown v. Board of Education*, African Americans, students, and white supporters participated in nationwide sit-ins to protest segregated eating establishments; bus boycotts to protest segregated bus seating; freedom rides to protest segregation in bus stations; voting registration drives; and numerous demonstration marches supporting, among other things, the enrollment of African Americans in white educational institutions. This movement faced vehement and violent opposition from whites viscerally committed to centuries of white supremacy—first in slavery and then in segregation and disfranchisement. But television coverage of dogs and fire hoses unleashed on peaceful marchers thrust the injustice of rampant racism and racial subordination into the living rooms of Americans throughout the country. Confronted by the flagrant violation of American principles of liberty and equality, American public opinion shifted to support the aspirations of America’s blacks.<sup>10</sup>

President John F. Kennedy and, after Kennedy’s 1963 assassination, President Lyndon B. Johnson, sought to quell the social unrest by submitting to Congress comprehensive civil rights legislation that would protect the rights that millions earnestly pursued. But it was a battle. A protracted and vigorous debate ensued; compromises were made. When the legislation finally reached the House floor, one Representative introduced an amendment that would include women in the coverage of the act by adding sex as a prohibitive category for employment discrimination. His intent, however, was to kill the bill by suggesting what to many was a laughable proposition: equality for women. The amendment was approved, but it did not kill the bill. The resulting Civil Rights Act of 1964, signed into law by Johnson on July 2, 1964, provided numerous protections to racial and ethnic minorities and persons of varied religious faiths.\* The heart of the law was the principle that all persons, regardless of “race, color, religion, or national origin,” are entitled to the “full and equal enjoyment of the goods, services, privileges, advantages, and accommodations of any place of public accommodation.”<sup>11</sup> This was in accordance with one of the central demands of the civil rights movement—equal access. Political realities, however, restricted that access to places of lodging, eating, and entertainment, and exempted private clubs and religious organizations. Additional provisions of the Civil Rights Act included the desegregation of public facilities and public education. Other provisions stipulated nondiscrimination in federally-assisted programs and employment practices. More legislation followed close behind. The Voting Rights Act of 1965 granted the Federal Government the power to ensure that racial minorities could register to vote. In 1968 the Fair Housing Act expanded the scope of the Civil Rights Act by adding Title VIII, which prohibited discrimination in the sale or rental of housing.

All of these measures had varying degrees of success. Nondiscrimination in public accommodations resulted in the most change. Retail businesses welcomed this

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\* Protections based on sex applied only to the employment title. Racial and ethnic minorities and persons of various religious faiths were protected by every title.

provision because it translated into more customers and more money. In addition, it eliminated the cost of dual facilities. Gains in education and employment nondiscrimination would come more slowly. The civil rights movement, however, left a crucial legacy to African Americans and other disadvantaged groups, including persons with disabilities. They would seek the same protections and model the protest movement. First, the Civil rights movement legitimated and proved the success of civil protest to demand civil rights. Persons with disabilities, as other groups, would use the same sit-in and marching tactics. Second, the civil rights movement established a vital principle: discrimination according to characteristics irrelevant to job performance and the denial of access to public accommodations and public services was, simply, against the law. Once codified, logical implications extended well beyond race. Finally, the civil rights movement left a body of statutes and case law—models for future legislation. There would be no ADA were it not for the successful protests of African Americans, for their crowning achievement in the Civil Rights Act was also the philosophical foundation of the ADA.

The civil rights movement did not, however, have an immediate, direct impact on the disability community. The Civil Rights Act made no reference to persons with disabilities. The only significant statute increasing access for persons with disabilities, and passed near that time, was the Architectural Barriers Act of 1968. This act was largely the result of the efforts of Hugh Gregory Gallagher. As a legislative assistant, Gallagher had been instrumental in making the Library of Congress and other buildings in Washington accessible. These efforts culminated with his drafting of the Architectural Barriers Act, which required that all buildings constructed, altered, or financed by the Federal Government had to be physically accessible.<sup>12</sup>

The first attempts to merge disability with the civil rights movement were unsuccessful. In 1972, for example, Senator Hubert H. Humphrey, Jr. (D-MN) proposed an amendment to the Civil Rights Act that would incorporate disability as a protected class. But the proposal made little headway. There was no constituent base to support such an endeavor. Moreover, advocates of the Civil Rights Act feared that the addition of “disability” as a “protected class,” similar to ethnic minorities, might dilute the Civil Rights Act. And, once the act was on the table for discussion, members might introduce damaging amendments.

The political climate of the late 1960s and early 1970s worked against the advancement of civil rights for persons with disabilities. In 1968, Richard M. Nixon campaigned for the presidency with pledges to stem the tide of civil rights advances. He won the election in part due to a cultural backlash against the civil rights movement and President Johnson’s War on Poverty. Nixon’s election reflected a breakdown of the New Deal consensus, the splintering of the Democratic party, and the dawn of a conservative shift in American public opinion. In the early 1970s, the nation also faced new

*The legal foundation of the Civil Rights Act of 1964 alone could not adequately buttress as comprehensive a measure as the ADA.*

economic pressures and financial restraint. Many thought welfare measures now exceeded the American budget. It was simply not a friendly time for new civil rights protections.

Ironically, however, a crucial component of the infrastructure of disability law came precisely at this time. The legal foundation of the Civil Rights Act of 1964 alone could not adequately buttress as comprehensive a measure as the ADA. Although ethnic minorities and women had been afforded civil rights protections identical to those for African Americans for identical civil rights protections, disabled people as a class were different and required such unique legal provisions as “reasonable accommodation.” This part of the ADA’s foundation came from Section 504 of the Rehabilitation Act of 1973, a stealth measure in the midst of a backlash against civil rights.

This occurred in spite of President Nixon because Congress continued to promote social legislation. When the Vocational Rehabilitation Act came up for re-authorization, Congress crafted an even broader piece of legislation called the Rehabilitation Act of 1972. Congress sought to expand the program beyond its traditional employment focus by identifying ways to improve the overall lives of persons with disabilities: “the final goal of all rehabilitation services was to improve in every possible respect the lives as well as livelihood of individuals served.”<sup>13</sup> The new law would extend rehabilitation services to all persons with disabilities, give priority to those with severe disabilities, provide for extensive research and training for rehabilitation services, and coordinate federal disability programs. The act would be carried out by a Rehabilitation Services Administration (RSA) housed in the Department of Health, Education and Welfare (HEW). Passage of this legislation, however, resulted in a vigorous battle. Nixon vetoed the bill on two occasions. He claimed that the bill was “fiscally irresponsible” and represented a “Congressional spending spree.” He urged: “We should not dilute the resources of [the Vocational Rehabilitation] program by turning it toward welfare or medical goals.”<sup>14</sup> After failing to override the president’s veto by six votes, the Senate was forced to negotiate with the Nixon administration.

The compromise legislation signed into public law on September 26, 1973, made for a weaker RSA tightly controlled by the Secretary of HEW. It reduced appropriations levels, abolished programs designed to help address certain categories of disability, substituted “emphasis” for “priority” in dealing with persons with severe disabilities, and eliminated a proposed Division of Research, Training and Evaluation. Nevertheless, the Rehabilitation Act fell short of original congressional intent, it was the first legislation designed to improve the overall lives of persons with disabilities. Especially significant was Title V of the act. Section 501 directed federal agencies to develop affirmative action programs for the hiring, placement, and advancement of persons with disabilities. Section 502 established the Architectural and Transportation Barriers Compliance Board (ATBCB), which would ensure compliance with the Architectural Barriers Act of 1968, pursue ways to eliminate transportation barriers, and seek ways to make housing accessible. Under Section 503, parties contracting with the United States were required to use affirmative action to employ qualified

persons with disabilities. Finally, and most importantly, Section 504 stated: “No otherwise qualified handicapped individual in the United States . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”<sup>15</sup>

This phrase was modeled after Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments Act of 1972, which prohibited discrimination in federally-assisted programs on account of race, color, religion, national origin, or sex. Unlike the Civil Rights Act of 1964, Section 504 did not emerge in response to protest. Rather, it was created silently by a group of congressional staff members. No suggestion for such a provision was made at the hearings, and the provision was not in the original draft of the bill. Staff added the section late in the deliberative process without any statement of congressional intent or appropriations to finance it. Not a single member of Congress mentioned the section during floor debate, and President Nixon made no reference to it as grounds for his veto. The section apparently developed out of a fear that persons receiving vocational rehabilitation would later be blocked from employment, thus negating the rehabilitative benefits. It was a way to add an element of civil rights language without the danger of amending the Civil Rights Act.<sup>16</sup>

Although Section 504 was not introduced at the behest of disability advocates, the Rehabilitation Act helped energize the disability community. Persons with disabilities protested each of President Nixon’s vetoes. And, though it appears that many in the disability community were only vaguely familiar with Section 504 as late as 1975, conflict over the regulations for Section 504 culminated with unprecedented demonstrations by the disability community in the spring of 1977.<sup>17</sup>

Three consecutive administrations delayed action in issuing regulations for Section 504. Part of the problem was that Section 504 did not expressly mandate regulations. Accordingly, for the year culminating with President Nixon’s resignation on August 9, 1974, the Nixon administration failed to take any action toward developing Section 504 regulations. President Gerald Ford, however, supported the promulgation of Section 504 regulations and assigned HEW with the responsibility to issue them. HEW’s Office for Civil Rights (OCR) was appointed to write the regulations. This was significant because such regulatory agencies as RSA, a potential alternative for writing the Section 504 regulations, focused mostly on community education and voluntary compliance among recipients of federal assistance. OCR, however, based its regulations on its history in dealing with civil rights and segregation, where firm legal foundations rather than mere voluntary compliance was necessary.

Under the leadership of John Wodatch, OCR prepared regulations that offered a new definition of disability, issued mandates for educating persons with disabilities in public schools, and demanded accessible buildings and transportation. But shortly after presenting the regulations to HEW Secretary Casper Weinberger on July 23, 1975, Weinberger was replaced by David Mathews, who was reputed to be “a

cautious and indecisive man who tended to be more philosophical than pragmatic in running the department.”<sup>18</sup> Mathews did not oppose the regulations outright. But by demanding further analysis of the regulations, rather than taking the usual step of publishing the regulations as a proposal, Mathews delayed action. He even sent the regulations outside of HEW for review by a private firm. On March 11, 1976, OCR resubmitted the regulations with revisions, but two months passed before Mathews presented the regulations to the public.

The failure of HEW to issue regulations for Section 504 began to attract attention. By the fall of 1974, for example, Jim Cherry, a young attorney and disability lobbyist who had a rare, degenerative muscular disease, began writing letters to HEW requesting that the department issue regulations. But nothing came of these efforts. Ultimately, Cherry turned to the legal system and found a firm, Georgetown’s Institute for Public Interest Representation (INSPIRE), to support his cause *pro bono*. After a year of presenting formal petitions demanding that HEW issue regulations, INSPIRE finally filed a case against HEW on February 13, 1976—*Cherry v. Mathews*. Later that spring, a group of people with disabilities demonstrated in Secretary Mathews’s office. The delay also began to catch the attention of Congress, which held oversight hearings on May 5 to determine why no action had been taken.

Mathews finally presented the regulations to the public on May 17, 1976, but he issued them only as an intent to propose regulations, not an actual proposal. Mathews did not issue a Notice of Proposed Rule Making, the standard procedure for soliciting public feedback on proposed regulations, until July 16. Three days later, on July 19, the district court of Washington, D.C., ruled on the *Cherry v. Mathews* case and ordered Mathews to promulgate regulations. In the next six months, HEW solicited public comment. OCR made minor changes to the regulations and presented the revised regulations to Mathews on January 10, 1977. Over three years had now passed since the Rehabilitation Act became public law. But Mathews still stalled. On January 18, instead of signing the regulations, he sent them to the Senate Committee on Labor and Public Welfare for review—an unprecedented action in regulation writing. That same day, the district court ordered Secretary Mathews to cease the delay. But, two days later, Jimmy Carter was inaugurated as president and Mathews left office.

During his campaign, Carter had promised to make people with disabilities “active partners in our attempts to achieve . . . full civil rights” and made a commitment to signing the regulations.<sup>19</sup> As president, he nominated Joseph Califano to be Secretary of HEW. Califano allegedly supported the concept of Section 504, but he too postponed action on the regulations; he wanted to review them before attaching his name. Califano worried especially about the costs associated with the statute and resisted the inclusion of drug and alcohol abusers as a protected class. When he proposed implementing a more limited concept of making individual programs accessible rather than demanding broad, structural changes, however, his actions drew the ire of persons with disabilities.

## DISABILITY PROTEST

Opposition to the delay in signing regulations developed from growing collaboration among people with disabilities. In the early 1970s, the primary gathering place for people with disabilities was the annual spring conference of the President's Committee on Employment of the Handicapped (PCEH). President Harry S. Truman had founded PCEH in 1947 to assist physically disabled veterans in finding employment. In the 1960s, PCEH expanded its mission to include persons with mental retardation and mental illness. In addition to drawing attention to employment for people with disabilities, which naturally led to a broader interest in other disability issues, PCEH became the first central meeting ground where disability advocates, disability professionals, and public officials could share ideas and set agendas for the future.<sup>20</sup>

At the 1973 PCEH meeting, following Nixon's second veto of the Rehabilitation Act and the accompanying disability protest, a group of disability activists discussed the need for an organized, collective disability voice that would unite the disparate disability-specific organizations.<sup>21</sup> Only then, they thought, could they exert effective influence on the Federal Government. The coalition would not disband other disability organizations: they would become its members. In 1974, Fred Fay, Roger Peterson, Dianne Latin, Al Pimentel, Judy Heumann, Fred Schreiber, and others set up a committee to write the constitution and bylaws for such an organization. They named it the American Coalition of Citizens with Disabilities (ACCD): it was the first major cross-disability organization. The purpose of ACCD was to enhance communication among people with disabilities, promote the rights of disabled persons, educate people about their rights, and foster collective political action.

In April, 1975, again at the annual PCEH meeting, representatives from a spectrum of disability organizations approved the ACCD constitution and bylaws and established a governing board. They elected Eunice Fiorito, a blind woman who had become the first director of the New York City Mayor's Office for the Handicapped (the first of its kind) in 1972, to be president. Fiorito was an aggressive and effective disability rights advocate and crucial to ACCD's early development. "If it wasn't for Eunice," said Rubinfeld, who was one of the successors as ACCD President, "I don't think there'd be an ACCD."<sup>22</sup> Schreiber, Heumann, and Fay joined Fiorito as vice president, secretary, and treasurer. In 1976, Frank Bowe, a recent Ph.D. graduate, became the first Executive Director. Scores of disability organizations scurried to join ACCD. Some, such as the Houston Coalition for Barrier Free Living, were established in order to be a part of ACCD.

The fast-growing power and reputation of ACCD positioned it take the lead in coordinating advocacy regarding the Section 504 regulations. ACCD threatened to demonstrate at the 1976 Republican

*The fast-growing power and reputation of ACCD positioned it take the lead in coordinating advocacy regarding the Section 504 regulations.*

convention with black coffins, symbols of the plight of people with disabilities, if the Ford administration did not act. Representatives of ACCD worked with Democrats to have Carter issue statements that he would ensure the signing of the regulations if elected. On the first day of the Carter administration in January, 1977, ACCD sent a telegram to HEW reminding the agency of the 504 regulations and, the next day, showed up at the HEW office to demand signing within 30 days. In addition, ACCD Executive Director Frank Bowe, who worked full time in ACCD's Washington office, organized the production of "Sign 504" buttons to heighten public awareness about the regulatory stalemate.

After it became evident that a signature from Secretary Califano was not forthcoming, ACCD began considering ways to exert additional pressure. Members decided to be dramatic and attract press coverage. "When you put the pressure on, you embarrass politicians," said Rubinfeld.<sup>23</sup> Accordingly, in February, ACCD decided to stage sit-ins at Regional Offices of HEW. On March 18, ACCD wrote a letter to President Carter asserting that disability advocates would resort to political action if the regulations were not signed by April 4. "The disabled are furious over what they see as a retreat by President Carter on his promises" to help people with disabilities, reported *The Washington Post* in an editorial publicizing the planned sit-in.<sup>24</sup> Still, no action came. On Monday, April 4, at 1:30 p.m., Frank Bowe, Dan Yohalem, Deborah Kaplan, and others met with Secretary Califano in his office. Califano tried to explain the delay and expressed support of public demonstrations to urge signing of the regulations. The disability activists, however, stated their demand for immediate signing of the unchanged regulations and then walked and rolled out of the office. Television cameras captured the events on film.<sup>25</sup> The following morning, on April 5, hundreds of disability activists gathered at the Capitol building, where they publicly declared their demand for immediate signing of the regulations. Later in the afternoon, they marched several blocks from the Capitol to the HEW building. Simultaneously, activists staged demonstrations at regional offices in Atlanta, Boston, Chicago, Dallas, Denver, Philadelphia, New York, San Francisco, and Seattle.

In Washington, the HEW demonstration had two components. Most of the activists who marched from the Capitol remained outside the HEW building to make sure the protest stayed in the eye of the media. A second group of about fifty activists, however, stealthily entered the building in small groups and then gathered in the waiting room outside Califano's office. They tried to storm Califano's personal office, but dozens of guards blocked their way. Consequently, they decided to stay in the waiting room until they met the secretary personally. The guards permitted them to stay, but they imposed tight restrictions. When the protesters tried to order food around 5:00 p.m., the guards ripped the phones from the wall. Security also shadowed activists to the restrooms to prevent use of public phones. Guards even prohibited Schreiber, who was the president of NAD, from contacting his wife or leaving the floor to get his heart medication. Eventually, however, the guards recognized the severity of the situation and enabled Schreiber to receive his medication. The protesters went without food and stayed over night—sleeping on couches, desks, and the floor. On Wednesday, April 6, Secretary Califano met with the protesters and asked them to leave. But he would not commit to signing the regulations

immediately. The demonstrators discussed staying and being forcibly arrested, but voted to end the protest that afternoon instead.

The longest demonstration was in San Francisco, where the group refused to leave the HEW building until the regulations were signed.<sup>26</sup> As in Washington, HEW officials initially tried to squelch the protest by starving the demonstrators and cutting off telephone communications. Persons whose conditions required personal attendants, medication, and medical devices such as catheters were thus putting their health and lives at risk. The clamp-down, however, served to motivate and unite the demonstrators rather than discourage and disband them. Moreover, largely due to the intervention of Governor Jerry Brown, protesters were ultimately allowed to stay in the building and receive outside assistance. Within days, the number of people dwelling inside the building grew to well over 100.

The surrounding community, which cherished its tradition of protest, aided the protesters. Area grocers and restaurants donated food. The local Black Panthers prepared and delivered an Easter dinner. And community religious leaders assisted in celebrating Easter and Passover. Congressman Phillip Burton helped win the installation of pay phones. This helped demonstrators maintain their lines of communication with the outside world, which they sustained as well through banners, sign language, and a set of walkie-talkies smuggled in by a local gay activist group, the Butterfly Brigade. On the inside, demonstrators were cultivating “a mini-Woodstock,” as one journalist described it. Rubinfeld called it “a love-fest.”<sup>27</sup> Living in open quarters stimulated close friendships. People with diverse disabilities came to know and understand each other better, which helped cultivate a united vision for their common betterment. The persistence of the demonstrators was a powerful testimony to their determination to achieve their civil rights. And their actions left Secretary Califano little choice but to sign the regulations without change, which he finally did, on April 28.<sup>28</sup> Two days later, the disability activists ended their occupation of the HEW building.

*The battle over Section 504 regulations gave voice to the disability rights movement.*

The Rehabilitation Act of 1973, Section 504, and the 504 regulations were significant for a number of reasons. First, Section 504 eventually helped change the way people thought about disability. As one disability historian explained: “The words we use to define problems, or to evaluate potential solutions to those problems, structure thinking by linking concrete situations to moral categories. Section 504 transformed federal disability policy by conceptualizing access for people with disabilities as a civil right rather than as a welfare benefit.”<sup>29</sup> This was a decisive and important shift. Disability had long been viewed as a condition meriting government assistance, but this elevated disability to the realm of civil rights and gave persons with disabilities access to a new legal vehicle for asserting their place in American society. The regulations affirmed this point: Section 504 “represents the first federal civil rights law protecting the rights of handicapped persons and reflects a national commitment to end discrimination on the basis of handicap.”<sup>30</sup>

*Legislation develops in political, social, intellectual, and cultural contexts. Successful laws are as much about the people that shape them as they are about legislative language.*

Second, the battle over Section 504 regulations gave voice to the disability rights movement. The disability community's minor role in bringing about the original Section 504 legislation is less important than the protests that the regulations spurred. Secretary Califano would have had to sign the regulations eventually. But the protests made it extremely difficult for the secretary to incorporate any changes that might have weakened the regulations. And they left a lasting image of persons with wheelchairs taking over federal buildings—a practice which became a model for future demonstrations.

Third, the Section 504 regulations established legal standards for nondiscrimination tailored to the civil rights needs of persons with disabilities, which would later be replicated in the ADA. The regulations determined that ending discrimination for persons with disabilities meant taking proactive steps to remove barriers and make reasonable accommodations. Additionally, the regulations balanced this need against a limit of “undue hardship” for the federal agencies and contractors covered by the regulations.

The Civil Rights Act of 1964 and the Rehabilitation Act of 1973 would be the principal legal foundation for the ADA: the twin pillars. There could be no ADA without them. It was not enough, however, only to have a legislative foundation. Passing legislation is a complicated process; it is not merely an inevitable and logical development of legal principle. Legislation develops in political, social, intellectual, and cultural contexts. Successful laws are as much about the people that shape them as they are about legislative language. Thus, even with the legal framework of the Civil Rights Act of 1964 and the Rehabilitation Act of 1973 well-established by 1980, the ADA could not have succeeded at that time. The social, political, and cultural contexts necessary to support such legislation were simply not yet in place. While the 1977 protests were the crowning achievement of ACCD and a major rite of passage for the disability rights movement, the movement was still in its infancy. Yet, over the ensuing decade, the disability rights movement bloomed. The disability community attained a new sophistication in legal expertise, developed a political presence in the White House and on Capitol Hill, and established credibility with the broader civil rights community.

### **Growth of the Disability Rights Movement**

As Congress and HEW in Washington were writing civil rights language into federal laws and regulations, important work within the disability community was taking place throughout the nation. A disability rights movement was being born. It was not the first time people had advocated for the rights of persons with disabilities, but the movement that formed in the 1970s was uniquely consumer-driven. Not all constituencies

of the disability community supported the effort to view disability as a civil rights issue with the same vigor. Indeed, great obstacles had to be overcome to establish a meaningful disability rights movement.

*The disability rights movement grew primarily out of personal experiences and the recognition that current quality of life was inadequate.*

Although the disability rights movement developed in the tradition of the 1960s social movements, a number of factors made the rise of this movement much more difficult. “Disability” as a class did not share the same cohesive forces manifest with race and gender. In the 1950s and 1960s, persons who were blind, paralyzed, or mentally ill did not naturally share a common identity. In fact, persons with different disabilities were often in conflict over limited government resources. Moreover, disability transcended and intersected such categories as race, gender, and class that often provided a basis for affinity and identity. Persons with disabilities generally did not inhabit the same physical communities that helped fuel the civil rights movement. And segregation for persons with disability meant not only separation from mainstream society, but also isolation from each other.

The disability rights movement began to take shape during the 1970s in spite of these obstacles. It is difficult, however, to explain its origins neatly, for it derived from multiple sources. While the movement drew on various cultural currents to achieve its ends, it grew primarily out of personal experiences with disabilities and the recognition that current quality of life was inadequate. Even though most persons within the disability community shared similar goals—such as education, jobs, dignity, access, and equal participation—the wide variety of disabilities meant that subgroups of the disability community did not always seek the same objectives. The activities of one group were not only often unknown to others, at times they ran counter to the efforts of others.

One key source of the disability rights movement was the independent living movement. Early threads of the movement can be seen as early as the 1950s, when people such as Mary Switzer and Gini Laurie began to realize that disability services could be cheaper and more effective when provided through personal attendant care at home rather than in institutions. In the 1960s, the independent living movement gained momentum predominantly through the influence of college students. In 1962, for example, four students with disabilities at the University of Illinois at Champaign-Urbana helped start the movement by leaving an isolated facility to reside near campus in a home modified for accessibility. They then began working with the University to improve campus accessibility and gain increased control over their own lives.

A similar and more visible effort took place the same year, when Ed Roberts, who was paralyzed from polio, entered the University of California at Berkeley.<sup>31</sup> The school housed him in the third floor of Cowell Hospital, where he was aided by friends and attendants with eating and dressing. Roberts thrived. He earned not only his undergraduate degree, but also a masters degree in political science. News of his

success spread, and by 1967 twelve students with major disabilities joined him in Cowell. These students, who called themselves the “Rolling Quads,” began holding brainstorming sessions about ways they could increase their self-sufficiency. Rather than be directed by, and dependent on, bureaucrats, they wanted to be able to secure their own funding, find their own jobs, and make their own decisions.

To promote this they secured a grant from HEW, in 1970, to finance a Physically Disabled Students’ Program (PDSP). The goal of the program was independent living. The ramped office provided access to residential counselors, tips on where and how to obtain personal attendants, and a wheelchair repair shop. To meet the growing requests for service from non-students, PDSP leaders joined to incorporate the Berkeley Center for Independent Living in 1972. As one journalist observed: “It would be run by people with disabilities; approach their problems as social issues; work with a broad range of disabilities; and make integration into the community its chief goal. Independence was measured by an individual’s ability to make his own decisions and the availability of the assistance necessary—from attendants to accessible housing—to have such control.”<sup>32</sup>

*The potential of persons with disabilities could not be realized simply by trying to “rehabilitate” the individual. “Society” also had to be “rehabilitated.”*

Shortly after the Berkeley center began its operation, other programs opened their doors: in Boston, Massachusetts; Houston, Texas; Columbus, Ohio; and Lansing, Michigan. The movement also gained support in Congress. The original Rehabilitation Act of 1972 included an Independent Living Program to help promote independent living services around the country. Although it was eliminated as part of the compromise with President Nixon in 1973, the Carter administration afforded a new opportunity. The program was established as part of the 1978 Amendments to the Rehabilitation Act and became known as the Title VII program. Despite its very limited funding, the Title VII program breathed life into the incipient independent living movement. It helped establish standards for independent living programs that ensured a high level of consumer control and the provision of core services. In the ensuing decade, the number of independent living centers around the country grew exponentially.

The independent living movement represented nothing less than a radical transformation in thinking about disability policy. One might call it a paradigm shift.<sup>33</sup> Prior to the 1970s, disability was viewed primarily as a medical issue. Persons with disabilities were considered “sick” or “impaired” and in need of a cure. They were patients who required experts’ instructions about how to “get better.” The problem of disability was seen to reside in the individual, who must be “rehabilitated” and returned to gainful employment.

Advocates of independent living saw things differently. Infused with a rights mentality sparked by the civil rights, women's, and anti-war movements, these individuals wanted to shed the medical model that cast them as passive recipients of professional care.

*The independent living movement represented nothing less than a radical transformation in thinking about disability policy. Advocates wanted to shed the medical model that cast them as passive recipients of professional care.*

Instead they asserted their rightful place in society. They pursued mechanisms for self-help rather than relying predominantly on authorities. They advocated a consumer spirit that established the role of the consumer as the decision-maker and people with disabilities as the experts. And they rejected the idea that persons with disabilities, even persons with severe disabilities, should be isolated in custodial institutions.

Instead they promoted community-based living. Moreover, advocates of independent living hoped to improve the lives of people with disabilities by promoting cross-disability interaction. People with diverse disabilities could help each other through peer counseling and present a stronger voice for policy change.

According to the philosophy of independent living, the problem of "disability" did not reside simply in the individual, but also in society, in the rehabilitation process, the physical environment, and the mechanisms of social policy. The full potential of persons with disabilities therefore could not be realized simply through trying to "rehabilitate" the individual. "Society" also had to be "rehabilitated," by making the physical environment more accessible and destroying the attitudes that rendered persons with disabilities as helpless victims in need of charity.

In this respect, the independent living movement was strikingly analogous to previous movements for civil rights. In the early twentieth century, people widely talked of the "race problem," referring to the presence of blacks in America. The locus of the problem was supposedly the individual black person and his or her supposed inferiority. With the civil rights movement came a new social critique. The problem was not the black person, but pervasive racism. The American economy and social structures tended to exclude blacks, rather than incorporate them as valued citizens. What was needed, therefore, was a transformation of the nature of America's institutions—through legal measures and a gradual erosion of prejudice. Feminists experienced similar problems, as the social and economic frameworks functioned to limit their opportunities. To give women their rightful place in society, fundamental structural change had to occur. And so it was with the nascent disability rights movement. Advocates argued that people with disabilities should not have to accommodate themselves to a society designed to exclude them. Instead they encouraged disabled persons to assert their right to join society and promoted reforms to facilitate participation.

This social critique, however, was not about subverting core American values. Rather, it was about partaking of the American ideology of liberty and opportunity. Persons with disabilities had the same aspirations as other Americans. This mentality also challenged disability professionals. Many disability rights advocates viewed these professionals as accomplices in discrimination because they treated disabled persons as “sick” patients. In addition, advocates thought some special interest organizations contributed to infantile notions of persons with disabilities by appealing to charity for “helpless” children.

The rise of independent living centers was a crucial aspect of the disability rights movement. But other contributions were also significant: for example, those concerning developmental disabilities and mental illness. Organizations such as the ARC, which endeavored to assist persons with developmental disabilities in living better lives, focused especially on two issues: institutionalization and education. Advocates found appalling conditions and subhuman standards in many institutions for people with disabilities. In addition to exploring ways to develop community-based alternatives, they promoted institutional reform. In the early 1970s, the ARC collaborated with a group of Washington-based organizations to pass a law to protect the rights and treatment of persons with developmental disabilities in institutions. By 1975, under the leadership of Paul Marchand of the ARC, the group of organizations formally identified themselves as the Consortium for Citizens with Developmental Disabilities (CCDD). Their efforts culminated in the Developmental Disabilities Assistance and Bill of Rights Act of 1975, which promoted respect for the basic human rights of institutionalized persons. Congress built on this Act in 1980 with the Civil Rights of Institutionalized Persons Act, which gave the Federal Government authority to sue local operators of institutions that consistently violated the constitutional rights of persons in prisons, mental hospitals, and other institutions.

CCDD was also interested in improving educational prospects for persons with developmental disabilities. In this regard they shared the interests of a variety of disability organizations, whose collective efforts assisted in passage of the Education for all Handicapped Children Act of 1975 (more commonly known as Public Law 94-142). This act, supported by persons with disabilities across the spectrum, was a milestone. It had the crucial effect of raising a generation of persons with disabilities who expected to attain a rightful place in American society, not isolation and segregation. This generation would compel its teachers and peers to develop the same

*“DIA was made up of young disabled dreamers who believed that fighting for their rights was their obligation.”*

—Judy Heumann

understanding. A decade later, it would help mold public opinion about the ADA.

In addition to centers for independent living and disability-specific organizations, other important elements of the growing disability rights movement included legal action

centers and organizations devoted to political protest. For example, as an outgrowth of a legal activist project in law school, Robert Burgdorf and several other students at the

University of Notre Dame established the National Center for Law and the Handicapped (NCLH). With support from the university, the American Bar Association, the ARC, and HEW, NCLH pursued cases around the country to help persons with disabilities. Their first work was based on due process and equal protection law, but Section 504 provided a new and stronger legal foundation. It “seemed like manna from heaven,” said Burgdorf.<sup>34</sup> Other legal centers active in promoting the rights of persons with disabilities were the Public Interest Law Center of Philadelphia (PILCOP) and INSPIRE of Georgetown University.

While these organizations concentrated their efforts on the legal front, others focused exclusively on political activism. In 1970, Judy Heumann, who used a wheelchair because of polio, founded Disabled in Action (DIA). It developed out of publicity generated by Heumann’s lawsuit against the New York City Board of Education, which had denied her a license to teach. Heumann and such friends as Denise McQuade, Frita Tankus, and Larry Weisman decided to use the case as a vehicle to heighten attention to disability issues in general. As people with disabilities and their families read and saw the coverage of Heumann’s case, many began calling her about their own experiences: a cry for broader, collective action. Heumann and others felt that existing organizations were not sufficiently politically active: DIA would thus be overtly and exclusively political. It “was made up of young disabled dreamers who believed that fighting for their rights was their obligation,” said Heumann. Two more DIA organizations soon formed in Philadelphia and Baltimore. They were all cross-disability in focus and engaged such issues as transportation, architectural accessibility, television telethons, sheltered workshops, and institutionalization. In 1972, Heumann led DIA to protest President Nixon’s veto of the Rehabilitation Act, culminating with two separate occupations of Nixon’s headquarters just days before the election.<sup>35</sup> DIA was also instrumental in protesting HEW’s delay in issuing the Section 504 regulations.

The experiences with political protest, and especially the 1977 demonstrations, led Robert Funk, Mary Lou Breslin, Pat Wright, and Judy Heumann, who were in varying ways associated with the independent living center in Berkeley, to focus on the absence of a national legal defense fund for persons with disabilities. As a partial solution, Heumann helped found the Disability Law Resource Center (DLRC) as part of the Berkeley Center for Independent Living. The purpose of DLRC was to provide legal services to individuals with disabilities: studies had shown that persons with disabilities were not adequately served by state legal services. Robert Funk and Paul Silver were among its leading attorneys.

To help manage the legal affairs of the organization, Funk and Silver hired a young attorney named Arlene Mayerson. Interestingly, Mayerson had no prior experience in disability law; she was trained in civil rights law. But Funk and Silver selected her over scores of applicants, including persons who recounted stories of working with disabled children in camps. “They wanted someone who didn’t have a lot of preconceived notions about what was best for people with disabilities,” Mayerson explained. “They wanted someone who thought in terms of civil rights and whom they could mold in the disability rights movement’s image.”<sup>36</sup> At DLRC

Mayerson addressed any issue people brought to her—being kicked out by a landlord, getting fired, or being denied entrance to a restaurant—with whatever legal means were available at the time.

DLRC was only a two-year model program. As funding approached its end, Funk, Breslin, and Wright decided that a more comprehensive and long-lasting program was needed: a national legal defense fund in the tradition of those for minorities and women. Consequently, in 1980, they created and opened a new organization called DREDF, the Disability Rights Education and Defense Fund. Wright referred to Funk as “the architect” of the operation, the one who was responsible for its stable foundation. Breslin provided the “vision” and excelled at management. Wright described herself as the “political strategist” and the “brawn” of the organization. Mayerson joined these three and represented “the brains” behind the legal operation. This blend of talent, said Wright, was the key to DREDF’s success.<sup>37</sup>

Through DREDF, Funk, Wright, Breslin, and Mayerson could advocate a national legislative and law reform agenda to provide more leverage for meeting the concerns of persons with disabilities. DREDF had two main goals. The first was “to make disability a real true partner in the civil rights community nationally.”<sup>38</sup> Up until that time, although many persons were increasingly demanding their own rights, neither the civil rights community nor most disability interest groups viewed disability rights primarily as civil rights. Rather, most groups focused narrowly on their own missions shaped by particular diagnoses and impairments. DREDF hoped to change that. The second goal was to pursue law reform that would provide persons with disabilities legal protections equivalent to those available to other minorities and women.

As a first step toward meeting these goals, DREDF leaders sponsored a meeting in San Francisco in the fall of 1980. They invited prominent strategists, organizers, and attorneys from other civil rights causes. The purpose of the meeting was twofold. First, DREDF wanted to educate the civil rights community about disability. They prepared a briefing book that laid out how the education, employment, and voting problems faced by persons with disabilities were similar to those confronting racial minorities and women. The second objective was to provide DREDF with an opportunity to learn from the successes of other civil rights causes and make contacts so that DREDF and other disability organizations could become full partners in the civil rights community.

Funk, Wright, Breslin, and Mayerson learned an important lesson from the meeting. If DREDF were to achieve its goal of being a truly national legal defense fund, it had to have a presence in Washington. Thus, in 1981, they set up an office in the nation’s capital. There they encountered Evan Kemp, Jr., who, since 1980, ran the Disability Rights Center (DRC)—an organization sponsored by Ralph Nader. Although Kemp worked out of just two small rooms, he donated one to DREDF. Kemp had begun making his own imprint on the disability rights landscape. Since 1976, first under the direction of Deborah Kaplan and then under Kemp, DRC focused its efforts on eliminating employment discrimination by disseminating information

and lobbying to retain programs. It also educated the general public about the disability rights movement by submitting articles to newspapers and magazines, and appearing on television shows and radio spots.

One of Kemp's favorite campaigns was assaulting the image of "pity" that dominated public portrayals of persons with disabilities. He focused especially on the Jerry Lewis Muscular Dystrophy Association Telethon, which, Kemp argued, contributed to prejudice against persons with disabilities. "These prejudices

*"These prejudices create stereotypes that offend our self-respect, harm our efforts to live independent lives and segregate us from the mainstream of society."*

—Evan Kemp, Jr.

create stereotypes that offend our self-respect, harm our efforts to live independent lives and segregate us from the mainstream of society," Kemp wrote. Moreover, the telethon reinforced infantile notions of persons with disabilities by showing them as dependent children. It lent credibility to public images of disabled persons as "helpless." It also underscored the notion of persons with disabilities as "sick" and in need of cure. "If it is truly to help," said Kemp, "the telethon must show disabled people working, raising families and generally sharing in community life," and promote independent living programs rather than servile dependence.<sup>39</sup> Kemp also defended efforts to integrate persons with disabilities through barrier removal by arguing how it would benefit all Americans: for example, bicyclists and stroller-users taking advantage of curb cuts and subway elevators.<sup>40</sup>

After joining Kemp in Washington, Wright and Mayerson began introducing themselves to people and groups around Washington "to say we're here to do one thing, and that's civil rights."<sup>41</sup> The early 1980s, however, were not exactly an auspicious time to be heading to Washington to promote civil rights. President Ronald Reagan entered office with the intention of minimizing federal regulations and reducing government's role in society, not establishing new rights and more regulations. This placed most persons in the disability movement in a defensive posture, trying to hold the territory already secured rather than launching new expeditions. But DREDF had other things in mind.

One of the most important contacts DREDF made at the 1980 San Francisco meeting was with Ralph Neas, Director of the Leadership Conference on Civil Rights (LCCR). LCCR was the legislative arm of the civil rights movement and coordinated the legislative side of all civil rights initiatives. It worked by the consensus of all conference constituencies: for example, African Americans and women. DREDF believed that any effective campaign to advance the civil rights of persons with disabilities would need the support of LCCR, which carried over thirty years of experience in civil rights, had extensive relationships in Congress, and had firmly established its credibility. Neas described Wright and Mayerson as "thinking five or six years down the line" in their solicitation of LCCR at the conference. And it was at

the 1980 meeting, he said, that the strategy for achieving comprehensive civil rights for persons with disabilities was first articulated.<sup>42</sup>

DREDF was not the first disability organization to join with LCCR. PVA and ACB, for example, had been long-time members of LCCR. DREDF was unique, however, in seeking a tight alliance with the civil rights community as its central mission. Although Wright and Mayerson established a link with Neas and the LCCR as a result of the San Francisco conference, and Wright eventually represented DREDF on the LCCR Executive Board, they did not think they could count on LCCR's support immediately. First they had to establish their own credibility and get involved in LCCR campaigns as much as any other group. Over the next several years they did precisely that.

### First Victory

Sometimes, as in basketball, the best way to launch an offensive assault is to get a good defensive stop—a steal, a forced turnover. President Reagan's Task Force on Regulatory Relief provided just such an opportunity. No single president since Franklin Roosevelt, wrote one historian, "altered the political landscape so radically and in such a short period" as did Reagan.<sup>43</sup> He entered office on January 21, 1981, with the support of a business coalition dedicated to rescuing a languishing, inflation-ridden economy. To Reagan, government was primarily an "obstacle to personal achievement and opportunity." Alternatively, he promoted the idea of the "self-reliant, self-made individual."<sup>44</sup> For domestic policy, Reagan proposed and obtained the Economic Recovery Tax Act of 1981. This act provided deep personal and corporate tax cuts that primarily benefitted the wealthiest Americans, on the assumption that wealth would trickle down to assist lower-income persons.

By insisting on a combination of tax cuts and vast increases in military spending, President Reagan was able to force a reduction in federal, domestic expenditures. Thus, in addition to freeing up business through tax cuts, Reagan wanted to roll back the development of the welfare state by advocating reductions in social spending. He achieved this aim through the Omnibus Budget and Reconciliation Act of 1981 (OBRA), which cut \$140 billion from the federal budget through Fiscal Year 1985. Reagan also hoped to aid businesses, school boards, and government units through a deregulation campaign: the Task Force on Regulatory Relief. He appointed Vice President Bush to lead these endeavors, who in turn designated his chief counsel, C. Boyden Gray, to take charge. Over 150 different pieces of enacted legislation were targeted for analysis.<sup>45</sup>

As Kemp observed, President Reagan's emphasis on self-reliance and rugged individualism resonated with some aspects of the disability rights movement.<sup>46</sup> But Reagan's initiatives did not generally offer hope to the disability community. Reagan's civil rights record, for example, was cause

*Section 504 was now known by many as "the Civil Rights Law for the Handicapped."*

for concern: he had won his way to the California governorship in part by standing against student and civil rights protests in the 1960s. And his Task Force on Regulatory Relief posed a direct threat to the civil rights gains of the disability community. Three of the early targets of the task force were the Section 504 regulations, the Education for all Handicapped Children Act (P.L. 94-142), and the regulations for the Architectural and Transportation Barriers Compliance Board (ATBCB). Although the ATBCB regulations were relatively technical and non-controversial, changes to Section 504 and P.L. 94-142 regulations had potentially staggering implications.

Section 504 was now known by many as “the Civil Rights Law for the Handicapped.”<sup>47</sup> Any changes to it would be a major defeat and could have dire consequences for other civil rights regulations. As one civil rights attorney explained, persons in the disability community thought the Reagan administration started with disability regulations because “they thought the disability community was the least well organized and they could slip these regulations through and use them as precedents for other regulations.”<sup>48</sup> Deregulation of P.L. 94-142 posed an additional threat to the educational prospects of persons with disabilities, which in turn might jeopardize employment opportunities. The administration also considered introducing legislation limiting the level of service for, and individual attention to, persons with disabilities in the educational process.<sup>49</sup>

Prior to becoming chief counsel to Vice President Bush, Gray had no experience with disability policy. But these regulations immersed him in it, and he gained a new education. The Task Force started with Section 504. By January, 1982, Gray had received a draft of proposed changes from the Department of Justice (DOJ). This draft was leaked, however, and came into the hands of disability organizations, including DREDF. Wright and Funk convened a meeting of nine disability organizations to discuss the proposals, which decided to have DREDF lead the fight.

In March, the Office of Management and Budget (OMB) supplied DREDF with extra ammunition: a leak of OMB’s proposed changes. OMB’s proposals included a provision that would allow federal grant recipients, in certain cases, to weigh the cost of an accommodation against the “social value” of the person involved. “This was a cost-benefit analysis of how human you are,” said Funk. DREDF worked with such organizations as NCIL and ARC to help mobilize disability groups all over the country to protest by writing letters. For NCIL, which was founded that year, this was one of the first opportunities to join other organizations in national advocacy efforts. In Washington, Wright and Funk met extensively with Gray to discuss the details and ramifications of changing the regulations. They were joined by Kemp,

*Persons in the disability community organized a nation-wide, grassroots letter-writing campaign and flooded the White House with letters—over 40,000 by 1983.*

who brought a trump card to the table: himself. For over a decade, Gray and Kemp had been bridge partners and had become close friends. Kemp built on this relationship to persuade Gray against permitting damaging alterations to Section 504 and P.L. 94-142. Gray

consequently became a mediating force between those rewriting the regulations and the disability lobbyists.<sup>50</sup>

The controversy intensified later in the fall when the Task Force began consideration of the education provisions. Parents of persons with disabilities were outraged and united with other disability advocates to resist President Reagan's actions. Persons in the disability community organized a nationwide, grassroots letter-writing campaign and flooded the White House with letters—over 40,000 by 1983. As part of the review process, Gray held hearings throughout the country. Thousands of persons and parents of persons with disabilities attended to demonstrate their opposition. They presented testimony explaining the harm that would be caused by changing the regulations. One two-inch-tall Los Angeles headline declared: “Parents of Disabled Children Boo Reagan Proposals.”<sup>51</sup> Congress joined these efforts by sending a letter signed by majorities in both chambers urging the president to support the full funding of P.L. 94-142. House Minority Leader Robert H. Michel helped arrange a meeting between Sally Hoerr, president of the Illinois Alliance for Exceptional Children and Adults, and Chief of Staff James A. Baker, III, to enable Hoerr to articulate her opposition.

By January, 1983, Gray had a final draft of the proposed revisions in his hands, but Kemp and Wright pleaded with Gray not to make the changes. Two months later, in part because of Gray's influence, Bradford Reynolds, Assistant Attorney General for Civil Rights, finally agreed to abandon the regulatory efforts.<sup>52</sup> And on March 21, Vice President Bush wrote a letter to Kemp informing him that Section 504 and P.L. 94-142 would be left untouched. Bush explained that conversations with members of Congress and with the disability community made him understand the negative impact such changes would have. Especially helpful, Bush said, were the comments of persons with disabilities and their families. “Your commitment to equal opportunity for disabled citizens to achieve their full potential as independent, productive citizens is fully shared by this Administration,” he told Kemp.<sup>53</sup>

This was a huge victory, a big defensive stop. And it was important not simply for the content of the regulations. What had started out as a threat to roll back years of gains served to unite the disability community. For the first time persons and parents of persons with disabilities and scores of different organizations joined together for a common cause, to defend disability rights. “It showed the disability community that there was a reason to write in all those responses to alerts,” Mayerson said, “and it showed the Administration that there was a political element here as well as a legal righteousness in the cause.”<sup>54</sup> Gray concurred: “One of the things I found is [that] the disability community . . . wanted to be treated as a potent political force just like any other force. [It] was part of the empowerment.”<sup>55</sup>

This two-year process was also crucial for the relationships it fostered. Wright, Funk, and Kemp were now close allies. During the ADA deliberations, Funk and Kemp would be working within the administration instead of lobbying it from the outside—respectively as a White House negotiator and Chairman of the Equal

*The activities of the disability community in the 1980s may largely be viewed as a defensive effort to sustain the gains of the 1970s.*

Employment Opportunity Commission (EEOC). They would be important links for the disability community. Moreover, through the efforts of Wright, Funk, Kemp, Mayerson, and thousands of Americans, Gray and Vice President Bush had earned a valuable education that would prove indispensable during the deliberations over the ADA. Gray marveled at how Bush “intuitively grasped” disability issues.<sup>56</sup> Gray and Bush also became genuinely interested in disability issues. Bush, for example, began asking Kemp to write his speeches when he spoke before disability groups, which enabled him to develop relationships with others in the disability community.<sup>57</sup>

### **Building a Winning Record**

Washington likes winners. Throughout the 1980s, the disability community recorded an impressive string of judicial and legislative victories that helped build the disability movement’s credibility in Washington. In the process, crucial networks continued to develop. The DREDF-arranged San Francisco conference of 1980 laid the foundation for forming an alliance with the civil rights community. Neas reports meeting with Wright and Mayerson at the conference and notes one occasion in which Wright emphasized that it was extremely important to be victorious in the first civil rights battle for people with disabilities. They therefore decided to tackle something comparatively small: the issue of voting accessibility.<sup>58</sup> The goal was to ensure that the principle of the 1965 Voting Rights Act, equal access to voting, encompassed persons with physical impairments. Wright and Neas and others achieved this goal with the passage of the Voting Accessibility for the Elderly and Handicapped Act of 1984. Neas explains that this victory was absolutely crucial: “If we had not won on the Voting Rights extension, . . . I don’t think we would have won any civil rights bills after.”<sup>59</sup> Indeed, many more difficult challenges lay ahead, and that victory was an important foundation for facing them.

The activities of the disability community in the 1980s may largely be viewed as a defensive effort to sustain the gains of the 1970s. In addition to the deregulation efforts of the Reagan administration, the disability community also faced a Supreme Court that did not enforce the disability rights that had been attained and threatened to overturn established provisions. In fact, the preponderance of legal activity within the disability community during the 1980s related to the Supreme Court and its rulings. Things did not start out well. In a 1979 Supreme Court ruling in *Southeastern Community College v. Davis*, the Court questioned the viability of the regulations developed to implement Section 504. The case addressed a nursing school’s responsibility to accommodate the needs of a hearing-impaired applicant. The Court’s conclusion that such accommodations were not required by the school was a significant defeat for the disability community.

The Supreme Court did not take on another Section 504 case for five years, but in 1984 the results were much more encouraging. In *Consolidated Rail Corporation v. Darrone*, the Court affirmed that the Section 504 regulations did indeed apply to employment discrimination. DREDF had taken the lead in arguing the case for the disability community and was pleased to see its efforts pay off: the Court established that courts must give considerable deference to the 504 regulations. This decision reflected the results of a Pennsylvania District Court case, *Nelson v. Thornburgh*, which ruled that the state's Department of Public Welfare was obligated to absorb the costs of readers or electronic devices for visually-impaired employees, because the cost did not constitute an "undue hardship."

*Discrimination cannot be justified by ignorance.*

The Supreme Court's decisions, however, were not all positive for the disability community in the 1980s. From 1984 to 1986, the Supreme Court handed down six cases with, at best, mixed results. In the 1985 decision *Alexander v. Choate*, the Court ruled against a group of Medicaid claimants, alleging the state violated Section 504 by reducing the number of days Medicaid covered for inpatient hospitalization. They argued the policy had a disparate impact\* on persons with disabilities and that the policy should therefore be prohibited. Although the Court decided against the plaintiffs by affirming the policy, it made an important ruling on the nature of disability. The Court stressed that disability discrimination came most often not in the form of direct, conscious discrimination, but rather by unconscious neglect: curbs without ramps for wheelchairs, for example. Laws directed against disability discrimination therefore had to target discriminatory practices deeply embedded in society.

Also in 1985, in *City of Cleburne, Texas v. Cleburne Living Center*, the Court considered whether a state zoning agency could exclude a group home for persons with developmental disabilities. The Court rejected an argument that persons with disabilities should be treated as a "quasi-suspect" class, which would warrant heightened judicial scrutiny for policies treating a group as a class. But it did establish an important principle by ruling that the exclusion was unconstitutional. The Court decided that the group home did not pose any "special threat" to the city's "legitimate interests." Rather, the exclusion was based on "irrational prejudice." Discrimination against persons with disabilities, in other words, could not be justified by ignorance.

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\* "Disparate impact" refers to *indirect* results of policy or action. In this case, plaintiffs alleged that the policy of reducing the number of covered days, while not expressly discriminating against persons with disabilities, would nonetheless have that effect because persons with disabilities were the most likely to require longer hospital stays.

The four remaining cases prompted the disability community to solicit Congress to pass legislation devoted to overturning the Supreme Court's rulings. In 1986 alone, Congress passed three acts to reverse Supreme Court decisions. The Handicapped Children's Protection Act reversed the 1984 ruling *Smith v. Robinson* by ensuring that parents had the right to reasonable attorneys' fees when successful in litigation. The Civil Rights and Remedies Equalization Act overturned *Atascadero State Hospital v. Scanlon* by establishing that states may not be immune from alleged Section 504 violations filed in federal court. And the Air Carriers Access Act overturned *U.S. Department of Transportation v. Paralyzed Veterans of America* by requiring that commercial airlines be subject to the accessibility standards of Section 504, regardless of whether they received federal assistance. Through these cases, the disability community attained a new level of legal sophistication. It also developed important connections. For the Handicapped Children's Protection Act, for example, Wright and Mayerson worked extensively with Robert Silverstein, who later helped orchestrate the ADA deliberations in the Senate.

The most significant Supreme Court decision was the 1984 ruling in *Grove City College v. Bell*. This case concerned Title IX of the Education Amendments Act, which prohibited discrimination on the basis of sex in all programs receiving federal assistance. Although the Court sustained the principle of nondiscrimination, it ruled that the Title IX sanction of cutting off federal funds would be applied only to the particular program in question and not the entire institution. This decision had a profound impact on the entire civil rights community. Since the language prohibiting discrimination on the basis of sex in federally assisted programs or activities was identical to that for discrimination on the basis of race, age, and disability, it affected all groups equally. Consequently, overturning this decision and returning the civil rights statutes to their previous interpretation became the top priority for LCCR and the civil rights community.

This gave the disability community a perfect opportunity to work side-by-side with other civil rights groups as equal members and partners. It took three years for them to see their objective met in the Civil Rights Restoration Act, which had to be passed over President Reagan's veto. Mayerson, the chief attorney for the disability community, explained the significance of this act: "Not only could [the civil rights community] see that we could again do the work as well as they could and do the legal analysis as well as they could, but we were also actually able to open a few doors that weren't traditionally open in the civil rights community."<sup>60</sup> Wright and Mayerson could build on the contacts they had made in their own disability-specific work and bring them to bear on the civil rights community's endeavors. Moreover, as Neas explained, "those four years enabled about thirty or forty people to get to know one another really well, and we went to hell and back [on] a legislative roller coaster ride." Those experiences, while trying, made for meaningful relationships and developed the trust necessary for effective collaboration.<sup>61</sup>

Two further victories are important to understanding the ADA's future success. The first is another Supreme Court case, the 1987 decision in *School Board of Nassau County, Florida v. Arline*. In this case a school board fired a teacher

exclusively because she was found to be susceptible to tuberculosis. Her attorneys tried to gain her protection under Section 504 as a handicapped person. The Court obliged them, ruling that a person with a contagious disease may be deemed a “handicapped person.” Such a decision, however, had to be based on an individual basis to determine whether an individual could do a job with or without a reasonable accommodation and if there were scientific evidence that the person posed a substantial health risk to others. This was a significant victory for the disability community because it made a powerful statement against “fearful, reflexive reactions” to people and confirmed that the discrimination faced by persons with disabilities is often based on fear and misapprehension, not on reality.<sup>62</sup>

A final major victory for the disability community in the 1980s came with the Fair Housing Amendments Act of 1988, which expanded the protections afforded by the Fair Housing Act of 1968 and prohibited discrimination in the sale or rental of housing on the basis of disability. The Fair Housing Amendments Act was significant for several reasons. First, it added to the momentum the disability had been building throughout the 1980s. Its passage in September, following introduction of the ADA in April, gave a big boost to the ADA. Second, it afforded people with disabilities another opportunity to work with the civil rights community on one of its top

*The history of the ADA began “in cities and towns throughout the United States when persons with disabilities began to challenge societal barriers.”*

—Arlene Mayerson

priorities. But now, for the first time, disability was an important component in a major civil rights legislative initiative. Moreover, the disability community formed a close alliance with organizations advocating the rights of persons with the Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome

(AIDS), who were protected under this act as persons with disabilities. Third, the Fair Housing Amendments Act broke new ground with respect to civil rights for persons with disabilities by incorporating provisions that applied to the private business sector as well as to recipients of federal funding. And Fourth, the act provided an important foundation for the ADA by building on the *Arline* decision: it provided that unless an individual with a contagious disease posed a “direct threat” to the health and safety of others, discriminatory practices against such persons was unlawful.

Enactment of the Fair Housing Amendments Act on September 13, 1988, marked the end of a string of national, legislative victories during the 1980s. These accomplishments were crucial for the ADA’s success. As Mayerson explained: “The respect for the legal, organizational, and negotiation skills gained during these legislative efforts formed the basis of working relationships with members of Congress and officials of the administration that proved indispensable in passing the ADA.”<sup>63</sup>

### Grass Roots Activism

Although the legal battles won in Washington were of critical importance, equally important activities were taking place around the nation. As Mayerson writes, the history of the ADA began “in cities and towns throughout the United States when persons with disabilities began to challenge societal barriers that excluded them from their communities, and when parents of persons with disabilities began to fight against the exclusion and segregation of their children. It began with the establishment of local groups to advocate for the rights of persons with disabilities.”<sup>64</sup> While the 1970s witnessed the creation of the disability rights movement, the 1980s experienced its blossoming, which came with a flurry of grass roots activism.

Thousands of people around the country contributed to the disability rights movement. For many people with disabilities, college was a life-changing experience that marked the beginning of political action and underscored the importance of community. Roland Sykes, a student at Wright State University in Dayton, Ohio, was one example. He selected Wright State after his spinal cord injury because the university made concerted attempts to achieve campus accessibility. There Sykes joined with over 20 other students with disabilities who, as Ed Roberts had done at Berkeley, promoted a more accessible campus. This affirmed an important lesson Sykes had learned as a member of United Mine Workers of America: the power of collective bargaining. Joining with others not only provided emotional support, it added leverage in dealing with campus administrators. For example, students at Wright State helped create an adapted athletic program for persons with disabilities. “If it had been one person against [the] system, that never would have happened,” Sykes said.<sup>65</sup> Students also succeeded in starting a pilot program for persons with disabilities. After all, the school was named after the famous Wright brothers who made history by taking to the air. People with disabilities had the same desire to fly.

Another example was the disability community growing at Brooklyn College in New York, where Denise Figueroa gained a better understanding of living with polio by interacting with other students. At Brooklyn College she participated in her first demonstration: a protest against President Nixon’s veto of the Rehabilitation Act. She and her peers were also able to use student government funds to send students to the annual meeting of the President’s Committee on the Employment of the Handicapped. This provided an opportunity to make contacts with students from other college campuses who were also developing their own disability communities and fostering local activism. Even if students did not network directly with disabled students at other campuses, simply knowing that others shared the same goals was empowering.

While Figueroa relished the opportunities college provided, she realized that she could not always rely on its architectural accessibility. “If I ever wanted to leave the campus and be able to participate in the community, we had to change the community too,” she observed.<sup>66</sup> This understanding led many people to take their community-based activism beyond the college campus. In 1976, for example, students at Wright State University sued the city of Dayton under the Urban Mass

Transit Act, which said that public transportation should service all citizens, including people with disabilities and the elderly. Disabled activists won the case and secured a mandate that all transportation vehicles had to be accessible. Had it not been for the mobilization of the disability community, however, the transit authorities simply would not have taken the initiative.

Outside of college campuses, the growing network of independent living centers served as crucial “community gathering places,” as Mark Johnson called them.<sup>67</sup> Among other things, they fostered emotional support through peer counseling and thereby spread the “gospel” of disability rights and local action. Charlie Carr, for example, said that Fred Fay, who visited Carr at a hospital that he resided in while attending Massachusetts Bay Community College, “put a fire under me.” Fay demonstrated that a person with quadriplegia could be mobile, have one’s own apartment, drive a car, get married, have children, and earn a Ph.D.—“all the things that I would lay in bed and look up at the ceiling and think that I would never have,” Carr said.<sup>68</sup> As a founding member of the Boston Center for Independent Living and one of the first to use its services, Carr obtained his own housing, attendant care, and became an ardent activist.

Independent living centers drew on the learning experiences of other centers. In Denver, Colorado, the center known as Atlantis set an example of taking sledgehammers to sidewalks for fashioning curb cuts. Under the

*Perhaps no single group epitomized grass roots activism more than people who considered themselves members of ADAPT—American Disabled for Accessible Public Transportation.*

leadership of Wade Blank, Atlantis members also took busses hostage overnight to demand accessible transportation. Such demonstrations could be an effective tactic, as they were in Tulsa, Oklahoma, for example. After becoming Executive Director of the independent living center Ability Resources, in 1983, Sykes joined with Woody Osburn and others to organize Tulsans for Accessible Public Transportation (TAPT). Since they were unable to find an attorney willing to pursue litigation, they decided to use public opinion as an alternative and pressured local mayoral candidates and members of the transit board to promote accessible transportation. Between 1984 and 1988, by using such dramatic tactics as chaining themselves to buses, members of TAPT helped swing elections to mayoral candidates who supported their cause. TAPT also targeted transit board members, who were volunteers, and had demonstrators follow them around town, compelling many to resign. Progress in achieving transportation accessibility, though slow, was real. And it illustrated the power of community action.

Public demonstrations were fruitful in other contexts as well. Johnson, for example, gained his first taste of activism through the Metrolina Independent Living Center in Charlotte, North Carolina. It was 1980, and Metrolina activists learned that a local mall was developing an inaccessible theater. After seeking to work with the architects to no avail, Johnson and others staged a protest as a media event. Mall

administrators responded in just a few weeks by installing a wheelchair lift. Public, media-oriented protests were not the only manifestation of grass roots activism. Subtler actions included placing warning cards on the windshields of cars illegally parked in spaces reserved for people with disabilities.

Perhaps no single group epitomized grass roots activism more than people who considered themselves members of ADAPT—American Disabled for Accessible Public Transportation. The groundwork for ADAPT was laid by the Atlantis community in Denver in the early 1980s. Atlantis activists decided they wanted to develop a national effort to promote transportation accessibility through public protests. They approached NCIL to coordinate and sponsor the activities. Although NCIL publicly stated its support of accessible transportation, it was unwilling to advocate nationwide civil disobedience. People at Atlantis and other independent living centers, for example Bob Kafka and Stephanie Thomas in Houston, Texas, thus decided to organize their own grass roots organization. They made it radically decentralized. “It’s not incorporated,” Johnson explained: “no board, no president, no budget.”<sup>69</sup> Rather, people from around the country identified themselves with ADAPT informally, based on their trust of others associated with the group. ADAPT’s activities were the product of volunteers and relied on networks of activists who could join its efforts.

ADAPT’s most significant undertakings were its demonstrations at the annual meetings of the American Public Transit Association (APTA), held each fall in a different city. ADAPT targeted APTA because it was singularly most responsible for opposing accessible transportation. APTA had won a law suit against the Department of Transportation and thereby overruled the department’s Section 504 regulations. These regulations had required the purchase of accessible vehicles. But, according to the court decision, each local transit authority could determine the extent to which it made its services accessible. Members of ADAPT basically decided to shadow APTA until federal transportation laws changed. They began by disrupting APTA’s conference in Denver in 1983. ADAPT rallied the following year in Washington, D.C., in Los Angeles in 1985, in Detroit in 1986, and in San Francisco in 1987, coincidentally on the tenth anniversary of the Section 504 protests. ADAPT also surprised APTA by traveling all the way to Canada for one of its meetings. By the 1989 deliberations of the ADA, APTA had largely resigned itself to equipping buses with lifts for public transportation. ADAPT had played a significant role in this change of heart.

ADAPT’s efforts at coordinated action on the national level reflected a significant trend toward establishing vast networks for collective action, which accelerated during the 1980s. ACCD had been the first organization to develop a broad, cross-disability network. Under the authorship of Frank Bowe, ACCD published books to facilitate this growth. *Coalition Building: A Report on a Feasibility Study to Develop a National Model for Cross-Disability Communication and Cooperation* appeared in 1978.<sup>70</sup> The next year, *Planning Effective Advocacy Programs* became available to fledgling organizations seeking integration into the ACCD network.<sup>71</sup> In the 1980s, however, ACCD began to unravel. Fiscal restraint

imposed by the Reagan administration reduced the levels of available grant money, on which ACCD depended. In the absence of private funding, ACCD could not sustain its operations. Member organizations also felt the budget crunch, which caused many to turn inward and focus more on their own survival. Furthermore, internal conflicts over the focus of ACCD's mission, predominantly concerning the degree of attention devoted to advocacy, reduced ACCD's effectiveness. In 1985, ACCD officially closed its doors.<sup>72</sup>

Other organizations tried to fulfill some of ACCD's functions. Shortly after the establishment of the Title VII Independent Living Program in 1978, RSA convened a meeting of all centers supported by the grant. Marca Bristo, Director of Access Living in Chicago, described it as a "magical" time in which people from around the country were able to share their experiences. There was a "sense of excitement," she said, and a "thirstiness" for greater levels of interaction. This laid the groundwork for the founding of NCIL in 1982, by Bristo, Max Starkloff, Bob Williams, Jim DeJong, and others. Starkloff was the first president and Bristo the first vice president.<sup>73</sup> In 1986, Bristo became president of NCIL.

NCIL's main purpose was to facilitate the creation and maintenance of independent living centers. Throughout the 1980s, NCIL, as ADAPT, had no centralized headquarters, but rather coordinated its efforts through networking and the contributions of volunteers from local centers and other organizations. NCIL presented itself as the only cross-disability, national grassroots organization that was run by and for people with disabilities. For example, at least 51 percent of all independent living center staff had to be people with disabilities to qualify for membership. NCIL offered a national voice to the philosophy of independent living by promoting the rights, empowerment, and self-direction of people with disabilities. Its first major challenge involved working with the Federal Government to implement standards for the creation and operation of independent living centers. Consumer control was the major issue, and it took years for NCIL to compel the Federal Government to adopt its proposals. As NCIL battled Washington, it also established grass roots networks throughout the country, through which NCIL could funnel information to members and solicit advocacy for political initiatives.

In 1985, Sykes augmented NCIL's networking by creating a computer network. The network was started as the NCIL Computer Network and received funds from NCIL. Its purpose was to facilitate the information-intensive mission of

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—Arlene Mayerson

NCIL. But as the network grew, the name was changed to DIMENET—Disabled Individuals Movement for Equality Network. DIMENET helped people with disabilities get online at the advent of the information age, giving them easy and inexpensive access to computer networking. By dialing into a local computer, and

paying only for long-distance charges, callers could open electronic mail accounts, join discussion groups, and post files. It gave independent living centers a central clearing-house for information about the experiences of other centers and enabled them to download files. DIMENET was also a means to linking disability advocates in Washington to people with disabilities around the country.

NCIL and ADAPT were not alone in fostering grass roots networking during the 1980s. Other disability-specific organizations, including NFB, ARC, NAD, and PVA, continued to expand their own membership. Consequently, by the time the ADA was introduced in Congress, dozens of mailing lists were available to serve as links between developments in Washington and the rest of the country. Moreover, the face of the disability community was changing. The Education for Handicapped Children Act was helping to raise a generation of persons with disabilities who expected to attain a respected place in society. Technical assistance training contracts such as those with DREDF helped arm individuals with legal knowledge. And such organizations as NCIL, ADAPT, ARC, UCPA, NAD, and NFB helped people with disabilities unite as a collective voice.

### **The Disability Community in 1988**

Although the 1980s began by putting the disability community and the broader civil rights community on the defensive, Wright, Kemp, Neas, Funk, Mayerson, and many other leaders were able to achieve significant victories. “Piece by piece we put together a decade of legislative success,” Neas observed.<sup>74</sup> In fact, he said, while the going was tough in dealing with the policies and practices of the courts and the Reagan administration, in Congress the “the 1980s, in all honesty, . . . were a bipartisan reaffirmation of civil rights and a bipartisan rejection of right-wing philosophy.”<sup>75</sup>

Many people in the disability community, as well as such organizations as DREDF, aimed for the implementation of comprehensive civil rights protections for persons with disabilities. But a record of legislative success, coalition-forming, and grass roots organizing had to be established first. And in the decade between the Section 504 demonstrations and passage of the Fair Housing Amendments Act, the disability community laid the necessary foundation. It earned the respect of the civil rights community. Talented leaders such as Wright proved their negotiation and legislative skills. People with disabilities formed an extensive and indispensable network of contacts with Congress and the administration. Through such disability-rights attorneys as Mayerson, Burgdorf, Feldblum, Weisman, Tim Cook (with the National Disability Action Center), Bonnie Milstein (with the Mental Health Law Project), and Karen Peltz-Strauss (with the National Center for Law and the Deaf), the disability community reached new levels of legal sophistication. And throughout the country, hundreds of communities organized to improve the lives of disabled Americans by winning local battles: pockets of the United States were crafting stronger protections and providing greater access for persons with disabilities. These developments had a profound impact. “By friend and foe alike,” observed Mayerson,

“the disability community was taken seriously—it had become a political force to be reckoned with in Congress, in the voting booth, and in the media.”<sup>76</sup>

No single activity or single event accounts for this success. Rather, it was due to the combined effect of the disability community’s efforts. “No one particular tactic is more valuable than another,” Mark Johnson said of his campaigns to achieve transportation accessibility. “If you’re an activist and an organizer, you have a fully developed strategy.”<sup>77</sup> Indeed, the genius of the disability community’s political mobilization was that it pushed for change in so many different ways, by so many different people. The diverse efforts were not necessarily coordinated, but the cumulative effect was the creation of fertile soil in which an ADA seed could flourish. As Mayerson aptly concludes: “The ADA owes its birthright not to any one person or any few, but to the many thousands of people who make up the disability rights movement—people who have worked for years organizing and attending protests, licking envelopes, sending out alerts, drafting legislation, speaking, testifying, negotiating, lobbying, filing lawsuits, and being arrested—doing whatever they could for a cause in which they believed.”<sup>78</sup>



## PUTTING THE ADA ON THE LEGISLATIVE AGENDA: THE NATIONAL COUNCIL ON DISABILITY

When Senator Lowell P. Weicker, Jr. (R-CT) and Congressman Tony Coelho (D-CA) first introduced the Americans with Disabilities Act in April, 1988, many persons in and out of the disability community did not give it a fighting chance. During the 1980s the disability community was primarily on the defensive—withstanding a number of assaults and hoping simply to maintain its legislative and financial ground. Taking the offensive and introducing comprehensive civil rights legislation, when existing laws were not even adequately enforced, seemed unrealistic. In 1985, for example, when disability activist Duane French encountered people who talked about the need for comprehensive civil rights for people with disabilities, his response was: “Not in my lifetime, pal!”<sup>1</sup> Where did the idea for the ADA come from? How did it make its way to Congress as a viable policy option? And why at this particular moment?

Accounting for why some issues and not others make their way to the legislative agenda is a favorite pastime of political scientists. Although no legislation follows a generic model precisely, one compelling analysis is useful in understanding the ADA’s development. John Kingdon describes the Federal Government as an “organized anarchy.” According to Kingdon, public policies are not created through a systematic, orderly process of establishing goals, identifying problems, analyzing alternatives, and making rational choices. Nor is there an incremental, inexorable development over time. Rather, the process is messy. Kingdon contends that at any given moment three independent “policy streams” are active: problems (conditions that demand corrective attention), policies (proposals made by various academics, government staff members, and lobbying groups), and politics (swings in national mood, elections, a new administration, and ideological distribution shifts). Problems emerge and recede; pet solutions are developed even where there is no concrete problem; and the political landscape constantly shifts. However, at particular, limited moments in time—“windows of opportunity”—each of these streams merge and offer the potential for action: “A problem is recognized, a solution is available, the political climate makes the time right for change, and the constraints do not prohibit action.”<sup>2</sup>

Asked to explain why the ADA succeeded, numerous participants in the deliberative process asserted that the “timing” was right. Indeed, the ADA appears to have occurred during a window of opportunity. We have seen how during the 1980s a disability rights movement blossomed, characterized by grass roots political activism, important networking, and tangible legislative success. This developed fertile soil where a

civil rights seed might flourish. But that was only part of the equation. There needed to be a clearly defined problem (for society, not just isolated individuals), coupled with a concrete solution, and a political climate to legitimate it. This complicated process also took shape during the 1980s. Although numerous sources helped give life to the ADA, the vehicle that united these elements and brought the bill to Congress was a little-known federal agency called the National Council on the Handicapped (NCD).\*

### **National Council on the Handicapped**

The history of NCD dates to 1972, when Congress proposed an Office for the Handicapped as part of the Rehabilitation Act. Its purpose would be to review the programs of the Rehabilitation Services Administration (RSA) and evaluate and coordinate all federal programs affecting persons with disabilities. But Congress eliminated the Office in the compromise with President Nixon. The idea resurfaced in May, 1977, when delegates from every state gathered at the White House Conference on Handicapped Individuals. The participants reviewed federal disability policy and offered legislative recommendations. Among their conclusions was that the incoherence and intrinsic tensions of various disability policies required an agency to bring it to order. The Carter administration afforded Congress to take action. Congress passed legislation creating the National Institute of Handicapped Research (NIHR, now NIDRR), the Title VII independent living program, and the “projects with industries” program to assist disabled persons starting their own businesses. Congress also used the shift in political climate to implement the White House Conference’s recommendation by passing legislation that created NCD.

In addition to directing NCD to establish policies for NIHR and advise the RSA Commissioner about RSA policies, Congress charged NCD to “review and evaluate on a continuing basis all [federal] policies, programs, and activities” concerning persons with disabilities, and to report on its activities.<sup>3</sup> NCD would be composed of fifteen presidential appointees, each serving three-year terms and with five new members each year. NCD could hire up to seven technical and professional staff, conduct hearings, and appoint advisory committees. It was housed in the Department of Health, Education, and Welfare (HEW).

NCD’s activities prior to 1984 are not well documented.<sup>4</sup> But the skeletal framework for the ADA was laid in 1983. After President Ronald Reagan entered office in 1981, he decided to disband the existing council and appoint all new members. On

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\* Prior to November 7, 1988, when Congress changed the title of the National Council on the Handicapped to the National Council on Disability (NCD) to reflect changes in contemporary language use, the appropriate acronym was NCH. But to avoid confusion, since the time period covered in this work overlaps the name change, the latter acronym, NCD, will be used consistently, even for the time during which the agency went by the name of the National Council on the Handicapped.

October 4, 1982, he selected Joe Dusenbury, previously the Commissioner of the South Carolina Vocational Rehabilitation Services and President of the National Rehabilitation Association, as NCD Chairperson. NCD apparently had a mixed record, and the Education Department urged Dusenbury to submit a credible annual report, on time, to help improve NCD's reputation.<sup>5</sup> To help direct NCD activities, Dusenbury appointed two Vice-chairpersons: Justin Dart and Sandra Parrino. Dart was the only NCD member Dusenbury knew before joining NCD; they had worked together on the President's Committee on the Employment of the Handicapped. NCD members turned immediately to the task of the report, and decided that, in meeting NCD duties, they should prepare an ambitious proposal for disability policy.

They also decided that if the report were to have any legitimacy, it needed to be the product of a nationwide effort. Thus began Justin Dart's famous public forums. Authorized by Dusenbury and using his own funds, Dart traveled to every single state to discuss disability policy and obtain feedback for NCD's policy report. Dart, who had contracted polio in his teens, went in his wheelchair and with his trademark cowboy hat. On this campaign he met with over 2,000 people, including persons and parents of persons with disabilities, government officials, and disability professionals. Among the most frequently-cited problems were discrimination and the inadequacy of laws to protect the rights of persons with disabilities.<sup>6</sup> This was by no means Dart's introduction to civil rights issues. On the contrary, Dart had become an impassioned advocate for the civil rights of African Americans as a student at the University of Houston, where he argued that black students should be allowed to attend the all-white university. By the 1980s, Dart viewed disability rights in a broader context of human rights and as a logical and necessary extension of the civil rights guaranteed for African Americans.

Dart and Dusenbury took the feedback obtained at public forums to heart in designing the NCD report, in which the spirit and content of human rights, civil rights, and disability rights are pervasive. Persons throughout the

nation reviewed the various iterations of the document, so the final product was truly national in origin. Issued in August, 1983, the *National Policy on Disability* built on the independent living philosophy: pursuit of "maximum independence, self-reliance, productivity, quality of life potential and equitable mainstream social participation." While individuals must assume primary responsibility for their lives, the report said, the Federal Government had a critical role to play. This included 22 different policy areas in need of attention, ranging from accessibility issues, to employment, education, and research. Part of the government's obligation, contended the report, was "to develop a comprehensive, internally unified body of disability-related law which guarantees and enforces equal rights and provides opportunities for individuals with disabilities," including integrating persons with disabilities into all existing civil rights legislation. "In matters of fundamental human rights," the report declared in vintage Dart form, "there must be no retreat."<sup>7</sup>

*"In matters of fundamental human rights, there must be no retreat."*  
—National Council on Disability

This was not the first call for a comprehensive body of civil rights law protecting persons with disabilities. State and local governments throughout the nation were passing a multitude of laws and constitutional amendments—some amending civil rights legislation, others creating new disability-specific provisions.<sup>8</sup> Others in the disability community had talked about it.<sup>9</sup> The NCD report, however, was a powerful declaration that also had the backing of a federal agency.\*

Unfortunately for NCD, the Reagan administration did not take well to the document. In fact, Dusenbury had to fund the printing and distribution of the document with private funds because the administration would not support it. NCD did not circulate the document widely, distributing it primarily to state and national legislators, and little action was taken by legislatures. Dusenbury subsequently drew the ire of the Reagan administration when he refused to support its introduction of legislation to disband the vocational rehabilitation program. Later that year, the White House asked Dusenbury to step down from the Chairmanship, under the pretext of instituting a one-year term for the Chairperson.<sup>10</sup> In his place, Vice-chair Parrino became the Chairperson.

Yet before Dusenbury stepped down (in spite of the Department of Education's insistence that he have no direct contact with Congress), he and NCD Executive Director Harvey Hirshi lobbied Congress to make NCD an independent agency, so that it would not have its hands tied by the administration, particularly the Department of Education. Congress granted NCD its request in the 1984 amendments to the Rehabilitation Act, claiming that "the Council has not been able to meet congressional intent for an independent body to advise on all matters in the Government affecting handicapped individuals."<sup>11</sup>

NCD's independence, however, also reflected Congress's dissatisfaction with the agency's operation. Some members of Congress had even advocated disbanding NCD. But others saw the potential for a centralized evaluation of a patchwork of disability programs as requested by the White House Conference on Handicapped Individuals.<sup>12</sup> As a result, in addition to making NCD an independent agency, Congress issued a mandate that NCD produce a comprehensive analysis of federal disability programs and policy by February 1, 1986. It was "kind of a test" of NCD's mettle, an ultimatum, and the future of NCD's authorization hung in the balance.<sup>13</sup> Congress demanded a "priority listing" of federal disability programs according to the number of individuals served and the costs of such programs. Congress also requested that NCD evaluate the degree to which federal disability programs "provide incentives or disincentives to the establishment of community-based services for

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\* NCD members at the time were: Joe S. Dusenbury, *Chairperson*; Sandra Swift Parrino, *Vice-chairperson*; Justin Dart, *Vice-chairperson*; Latham Breunig, Robert V. Bush, John Erthein, Budd Gould, Hunt Hamill, Marian N. Koonce, Carmine R. Lavieri, Nanette Fabray MacDougall, Michael Marge, Roxanne S. Vierra, Henry Viscardi, and Alvis Kent Waldrep.

handicapped individuals, promote the full integration of such individuals in the community, in schools, and in the workplace, and contribute to the independence and dignity of such individuals.”<sup>14</sup> Members of Congress wanted to know: was the Federal Government promoting dependence?

Congressman Steve Bartlett (R-TX) appeared before NCD on April 30, 1984, to explain the significance of the challenge that lay ahead. “You are to advise Congress in a whole new approach, a whole new concept,” he said, “on how to decrease dependence and increase independence.” This, he suggested, represented what the disability community knew and that Congress was only reluctantly recognizing: “Sometimes Federal laws or provisions in Federal laws are the worst enemy of independence.”<sup>15</sup> According to NCD’s minutes, Bartlett emphasized that “Congress is not looking for more programs, more maintenance grants, and larger appropriations.” Instead, NCD should “look for ways to convert existing maintenance dollars to help recipients achieve independence.”<sup>16</sup> Disability policy was therefore not only about improving the lives of persons with disabilities; curtailing dependence also helped minimize the federal cost of disability.<sup>17</sup>

By reviewing federal programs NCD might actually *reduce* government expenditures. Thus, while many were surprised by NCD’s subsequent actions, these goals for NCD substantially coincided with President Reagan’s philosophy. Although Republicans and the disability community might seem “strange bedfellows,” wrote Evan Kemp in a compelling *Washington Post* article, “their philosophical similarities are striking.” He explained: “Both have accused big government of stifling individual initiative. Both have advocated that only the truly needy should receive welfare and that others should be given the opportunity to work and to become self-reliant and responsible citizens.” As an example of excessive government, Kemp noted that Social Security benefits for people with disabilities had risen 400 percent in just seven years. If physically and mentally disabled persons became wholly or partially self-sufficient, opined Kemp, there would be “more taxpayers and fewer tax users—the ultimate Reagan objective.”<sup>18</sup> Patricia Owens, Associate Commissioner for Disability in the Social Security Administration, reinforced this link at an appearance before NCD. “The Administration wants a program that encourages people to return to work,” reported NCD’s minutes.<sup>19</sup> Motivations to improve the lives of persons with disabilities intertwined with attempts to reduce dependence on government and federal outlays. The subsequent work of NCD reflected this dual concern.

Although NCD now carried new independence, it remained substantively beholden to both the administration, which held the purse strings, and Congress, which controlled authorization and appropriations.<sup>20</sup> Nevertheless, the establishment of NCD as an independent agency heralded a decisive shift. Congress now prioritized recommendations concerning the entire sweep of disability policy over such specific responsibilities as overseeing NIHR. And NCD’s new identity as an independent “think tank” gave increased stature to disability as a policy. “For the first time, disability as an issue is institutionalized, by statute, in the structure of the Federal Government,” said John Doyle, who left his post on the Senate Subcommittee on the Handicapped for six months to help NCD in its transition.<sup>21</sup> The actions of the

disability community were clearly gaining attention, and the themes of independence and community integration were working their way into national policy directives.

Chairperson Parrino accepted the heightened responsibilities for NCD eagerly and passionately.<sup>22</sup> She was a longtime advocate for people with disabilities based on her experience in raising a child with a major physical disability. In Briarcliffe Manor, New York, Parrino had become a leading spokesperson for parents of persons with disabilities and helped obtain improved transportation and voting accessibility for disabled persons. Under her leadership, NCD met its statutory requirements by holding four quarterly meetings each year. These public meetings rotated around the country, and often met in conjunction with “consumer forums” designed to solicit the views of persons in the disability community. Although NCD attended to the requirements to monitor NIHR, RSA, and explored the ideas of its various members, it increasingly turned its attention to satisfying Congress’s mandate to prepare a report, which imposed heightened work demands. This required hiring new staff.

Parrino and Dart recruited Lex Frieden, who initially agreed to serve for two years as Executive Director. Frieden had founded the Independent Living Research Utilization Program, an independent living technical assistance program, in 1977, and had earned great respect within the independent living community. In the early 1980s, he worked closely with Dart on the Texas Governor’s Committee for the Employment of the Handicapped. And in 1984, coincidentally, he testified before Congress to promote a blue-ribbon panel to evaluate federal programs, which culminated in NCD’s mandate. Meeting that requirement was precisely the kind of task-directed job Frieden relished.

*“The Contribution of this Council and its continued existence will rest almost entirely on the content of our February, 1986, Report to the President.”*

—Sandra Parrino

Frieden assumed NCD’s reins in December, 1984, and immediately turned to the task of finding high-quality staff to support him. He hired Ethel Briggs, who had extensive experience in vocational rehabilitation, as Adult Services Specialist. Attorney

Robert Burgdorf filled the Research Specialist position. Burgdorf had actually sought out the job when he heard of NCD’s new responsibilities. He had devoted much of his career to promoting disability rights, and saw this as an opportunity to continue his campaigns.<sup>23</sup> Naomi Karp joined Frieden as Children’s Services Specialist (on detail from NIHR), and Brenda Bratton became Secretary. Having acquired independence, additional staff, and a \$500,000 budget, NCD was now able to face its growing responsibilities with increased zeal.

### ***Toward Independence and The ICD Survey of Disabled Americans***

“The Contribution of this Council and its continued existence,” Chairperson Parrino asserted at the quarterly NCD meeting on January 23, 1985, “will rest almost

entirely on the content of our February, 1986, Report to the President and how it is judged by the president and the Congress.”<sup>24</sup> She urged NCD members to unite in common purpose and pledge their highest commitment. In April, as preparation for NCD meetings and consumer forums dominated the better part of NCD’s time, Frieden directed NCD to clear the table and focus almost exclusively on the report.<sup>25</sup>

To make the report manageable, Frieden and Burgdorf presented Council members with a list of 41 potential topics and recommended that they focus on eight to ten of them. Since most of the 1983 council still served as members, the 1983 report was fresh in their collective memory. Building on and narrowing its earlier report, NCD settled on eleven topics. One of them was “Unified disability laws including civil rights.” Some members doubted “whether the subject of civil rights is a topic that should be addressed in the 1986 report, in view of the breadth and complexity of the subject.” But others contended “there is no question about its central importance” and noted that it was consistently discussed at the consumer forums.<sup>26</sup> To make the concept more palatable to reluctant NCD members and ultimately to the Reagan administration, NCD presented the issue as an “equal opportunity law” rather than “civil rights.” The former coincided with independence and self-reliance; the latter smacked of affirmative action.

In June, NCD members held working sessions to sketch out the content of each proposed topic and finally settled on the following ten topics: equal opportunity laws, employment, disincentives to work under Social Security laws, prevention of disabilities, transportation, housing, community-based services for independent living, educating children with disabilities, personal assistant services, and coordination of disability policy and programs. NCD chose to take responsibility for the report rather than simply contracting an outside organization to do it. Because of the logistical problems posed by meeting only four times a year, primary responsibility for designing the report fell to Frieden and Burgdorf. They committed to developing detailed and thorough topic papers to document their findings. The project was a model of teamwork in which staff members and a few consultants wrote most of the essays and NCD members worked with them closely in the review process.<sup>27</sup>

One recurring theme in NCD’s discussion of the papers was the cost of disability policy to the Federal Government. NCD members generally agreed not to recommend any funding increases.<sup>28</sup> Jeremiah Milbank, for example, suggested that any request for federal dollars required anticipation of “massive Federal cost-saving benefits with positive human results.”<sup>29</sup> Indeed, NCD took care not to embarrass the president by presenting recommendations that would require large funding increases. Chairperson Parrino explained that NCD’s recommendations were “designed to improve the ability of persons with disabilities to live with dignity and as independently as possible within their communities.” By following them, she added, “current Federal expenditures for disability can be significantly redirected from dependency-related approaches to programs that enhance independence and productivity of people with disabilities, thereby engendering future efficiencies in federal spending.”<sup>30</sup> This fiscal conservatism was crucially important for securing the later success of the ADA. It demonstrated that efforts to improve the lives of persons

with disabilities could coincide with fiscal restraint, and thus win the support of skeptical members of Congress.

Moreover, NCD rooted the ADA in Republican soil, preventing it from being discarded as a “liberal” bill. In fact, NCD members endeavored to depoliticize their job and focus simply on what was most important for persons with disabilities. Frieden, Burgdorf, and others praised NCD for this approach.<sup>31</sup> Dart captured the spirit in a statement to NCD about the direction of disability policy: “Major emphasis should be given to the absolute necessity for all who believe in the fulfillment of the American dream . . . to rise above the traditional limits of politics and personality and to unite in support of the fundamental human rights of disabled people<sup>32</sup>

Also crucial to the ADA’s eventual success was the approach NCD took in developing the report. As he did in 1982, Dart personally financed another series of public forums, visiting every state to learn what persons with disabilities throughout the country thought were the most important issues. In the same vein, NCD devoted its 1985 “consumer forums” to soliciting feedback about the various topic papers. Moreover, Frieden consulted with disability organizations from around the country constantly. He also developed a list of approximately 50 people from the grass roots that he spoke to on at least a monthly basis. It was, said Frieden, “ironic” that supposedly “elitist” Republicans were so interested in cultivating grass roots collaboration.<sup>33</sup> Nevertheless, this extensive, nationwide involvement helped give the disability community a sense of ownership over NCD’s activities and helped form important links that would pay dividends later. By the end of 1986, NCD had crafted over 400 pages of policy analyses; the disability community had helped to refine them.

The philosophy of the disability rights movement manifested itself in the report’s title. At a brainstorming session, staff reflected on the independent living movement and on Dart’s findings. Facilitating independence through equal participation, they thought, must be the ultimate goal of disability policy and evident in the report’s title. But the goals were yet to be reached, so they focused on policy direction. They thus conceived an appropriate title: *Toward Independence*.

NCD prioritized the advancement of “equal opportunity laws” for people with disabilities as its primary recommendation. Although Congress had enacted several anti-discrimination laws for persons with disabilities, council members noted, coverage for persons with disabilities paled in comparison to those afforded racial minorities and women. Reminiscent of the 1983 report, NCD therefore proposed that Congress “enact a comprehensive law requiring equal opportunity for individuals with disabilities, with broad coverage and setting clear, consistent, and enforceable standards prohibiting discrimination on the basis of handicap.”<sup>34</sup> This time, however, the

*NCD prioritized the advancement of “equal opportunity laws” for people with disabilities as its primary recommendation in *Toward Independence*.*

proposal came with a thorough explanation for why such an approach was necessary to facilitate the employment and general life satisfaction of persons with disabilities. It also delineated what such a law should entail.

With the support of Frieden and newly-hired staff member Andrea Farbman in January, 1986, Burgdorf devoted a weekend to synthesizing the topic papers into a short readable report, which specified over forty different recommendations. Pressed for time, NCD contracted at the Federal Prison Industry to publish the document rather than risk the potential for delay with the Government Printing Office. About a week before the scheduled release, however, with 10,000 copies of *Toward Independence* prepared for distribution, Frieden received a call from Bob Sweet at the White House. Sweet threatened to block the report because the White House allegedly could not support it. "This report is so liberal, Ted Kennedy wouldn't produce it," he told Frieden in reaction to the report's ambitious proposals.<sup>35</sup> But Sweet's superior—highly-respected physician and public health expert, Dr. William L. Roper—quelled the conflict after being persuaded by Frieden that the basic principle of *Toward Independence* was that all Americans should share in society. He simply directed Frieden not to attach the presidential seal to the report.

NCD officially presented *Toward Independence*, accompanied by letters of transmittal, to President Reagan, President of the Senate George Bush, and Speaker of the House James C. Wright (D-TX), on February 1, 1986.\* NCD also scheduled a press release for January 28, 1986. But media attention that day was riveted to the explosion of the Space Shuttle Challenger, leaving few reporters and little time for *Toward Independence*.

The NASA catastrophe also canceled another Council arrangement: a meeting with President Reagan to present the report in person. Consequently, Vice President Bush and Boyden Gray met with Parrino, Dart, Milbank, and Frieden. The White House meeting was noteworthy because Bush exhibited tremendous interest in NCD's report. A ten-minute photo-op evolved into a substantive discussion that lasted nearly an hour. Bush recounted his own personal experience with disability through family members. Evidently, as Frieden recalled, Bush had familiarized himself with the report before the meeting: he talked about some of the issues in detail, namely education and equal opportunity laws. Bush ended the meeting without a single criticism of NCD's recommendations and with a promise that he would pass the report

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along to Reagan. He also said he wished he could do more, but noted that there was only so much he could do as vice president.<sup>36</sup>

Although NCD's press conference and meeting with President Reagan were canceled, the agency's third public relations event went through as planned: a reception on Capitol Hill, where many members of Congress gathered to accept the report. Senator Weicker, Senator Paul Simon (D-IL), and Congressman Steve Bartlett (R-TX), among others, offered remarks.<sup>37</sup>

NCD ultimately distributed over 20,000 copies of *Toward Independence* to legislators, government officials, disability advocates, and disability organizations.<sup>38</sup> DIMENET, the computer network started under the aegis of NCIL, received permission from NCD to type the report and make it available on the Internet.<sup>39</sup> The report "made a big splash," as Bonnie O'Day, at the time the director of an independent living center in Norfolk, Virginia, put it.<sup>40</sup> Thousands of people across the country read it and talked about it. The attraction was not the novelty of the proposals it contained: virtually every issue and recommendation presented by NCD had been initiated or proposed at the state and local level. Rather, the report was significant because it represented a proposal for a *national, comprehensive* approach to disability policy. Moreover, it carried the clout of being the product of a federal agency. Regardless of the content of the report, simply producing a comprehensive analysis of disability programs was significant in the stature it gave to disability as part of the national policy agenda.

With respect to Kingdon's analysis, *Toward Independence* can be seen as a body of policy solutions. Of special importance was NCD's prioritization of a comprehensive equal opportunity law as necessary to achieve functional independence and social participation for persons with disabilities. But at this stage it represented only a *potential* solution. Getting the issue on the legislative agenda would require further documentation that the lack of such a law was a desperate problem. An influential national poll helped this process along.

As NCD deliberated the topic papers comprising *Toward Independence*, one of its members, Milbank, voiced the concern that NCD's conclusions might not adequately reflect what average Americans with disabilities thought. He feared that the forums sponsored by Dart and NCD were too selective. Unfortunately, there was no substantive survey data on how having a disability affected a person's ability to participate in the life of the community. This led Milbank to contact his friends at the polling agency Louis Harris and Associates, namely its president, Humphrey Taylor, who agreed to conduct a study. NCD staff and members contributed to the development of the questions and structure of the survey. The International Center for the Disabled (ICD), where Milbank served as Chairman of the Board, provided most of the funding. Although NCD hoped the results would be available in time for inclusion in *Toward Independence*, it was finished soon after and published in March, 1986, with the title: *The ICD Survey of Disabled Americans: Bringing Disabled Americans into the Mainstream*.<sup>41</sup>

“The purpose of the survey,” explained ICD Executive Director John Wingate, “was to obtain data on disabled people’s experiences and attitudes that would provide a clear information framework of NCD’s recommendations on public policy for disabled people.”<sup>42</sup> The nationwide survey was based on 1,000 telephone interviews with a national sample of non-institutionalized disabled persons aged sixteen and above. In some respects it paralleled the significance of NCD’s report *Toward Independence*. While other organizations had conducted surveys, this was the first comprehensive survey of persons with disabilities that solicited their perceptions of their own quality of life. It provided solid data that could document the extent of problems faced by persons with disabilities and help guide fruitful directions for policy development. Significantly, it suggested that federal disability programs had improved the lives of persons with disabilities, which warranted continued policy development and federal funding.

The Harris poll found that the prevalence of disability for non-institutionalized persons aged 16 and over was 15.2% of the United States, or about 27 to 28 million people. In an analysis of the Harris results, NCD concluded that the

*67% aged 16–64 were not working; 66% of those not working said they would like to be employed.*

addition of institutionalized persons, children, and households that could not be reached by telephone would place the total number of persons with disabilities somewhere near the oft-quoted figure of 36 million.<sup>43</sup> The poll also presented a series of significant, quantified findings about this group of Americans:

- 72% said their lives had been at least “somewhat better” in the past decade.
- 67% said the federal policies had helped at least “somewhat.”<sup>44</sup>
- 40% did not finish high school, compared with 15% in the non-disabled population.
- 50% reported household incomes less than \$15,000, compared with 25% among the non-disabled population.
- 56% reported that disability prevented desired levels of social and community participation.
- 49% identified lack of transportation as a barrier to social and community participation.
- 67% aged 16 to 64 were not working; 66% of those not working said they would like to be employed.
- Employment correlated with levels of education, income, life satisfaction, self-perception as disabled, and perception of life potential.
- 95% advocated increased public and private efforts to educate, train, and employ persons with disabilities.
- 74% supported implementation of anti-discrimination laws affording disabled persons the same protections as other minorities.

For the most part, these findings were not surprising. But they served the crucial role of documenting what were previously subjective assessments. And the survey was a ringing endorsement of initiatives to help disabled Americans find work. Unemployment more than anything else seemed to define disability, and the correlation between employment and life satisfaction cried out for attention. NCD had argued strongly in *Toward Independence* that civil rights protections would help improve accessibility and facilitate employment. The poll affixed numbers to a real and pressing problem and functioned as a nationwide endorsement of NCD's report. With respect to Kingdon's policy analysis, this linked two policy streams: problems and solutions. Frieden asserted: "I doubt that the recommendations in *Toward Independence*, and particularly [those regarding] civil rights, would have been taken as seriously by the policy makers had we not had the data."<sup>45</sup>

### Drafting the ADA

As Frieden's successor Paul Hearne observed in 1988, NCD's preparation of *Toward Independence* and instigation of the *ICD Survey* helped "put the Council on the map."<sup>46</sup> NCD member Michael Marge said of the reports: "We were very well received by both sides of the aisle as a valuable, worthwhile group. Our entree to the Congress was fantastic."<sup>47</sup> Despite the tremendous respect NCD gained, however, Congress took little action—a great frustration to NCD members. Although Congress pointed to *Toward Independence* as "the Manifesto, the Declaration of Independence for people with disabilities," said Frieden, "nobody bothered to do anything about it."<sup>48</sup> NCD members and staff—especially Burgdorf, Dart, Frieden, and Parrino—were frustrated most by the lack of attention to their number-one recommendation, an equal opportunity law.

After waiting for nearly a year, they began discussing what NCD could do. They concluded that the only way to overcome legislative inertia was for NCD to take the lead. Frieden remembers talking about drafting a civil rights proposal as early as December, 1986.<sup>49</sup> There was some early dispute over whether disability rights legislation should come in the form of an amendment to

the Civil Rights Act or whether it should be an independent initiative. At a strategy meeting, Burgdorf and Frieden solicited the input from such disability rights advocates as Marca Bristo, Evan Kemp, and Robert Funk. They discussed whether using the vehicle of a separate law might ironically reinforce discrimination by underscoring the separateness of people with disabilities. But they decided that an adequate foundation for disability rights required unique provisions and that a separate law could serve as an energizing force for the disability community.<sup>50</sup>

*"Congress pointed to Toward Independence as the Manifesto, the Declaration of Independence for people with disabilities," but "nobody bothered to do anything about it."*

—Lex Frieden

The framework for such a law was already sketched out. In *Toward Independence*, Burgdorf specified that the law should prohibit discrimination by the Federal Government, recipients of financial assistance, federal contractors and subcontractors, employers, housing providers, places of public accommodation, persons and agencies of interstate commerce, transportation providers, insurance providers, and state and local governments. He also proposed that the law secure private right to action to remedy discrimination, give the Architectural and Transportation Barriers Compliance Board (ATBCB) the authority to remove barriers according to universal accessibility standards, and establish Protection and Advocacy Systems in each state to protect and advocate for the rights of persons with disabilities. To make nondiscrimination on the basis of handicap meaningful, he stressed, the law would have to be founded on the concept of providing reasonable accommodations and taking affirmative steps to eliminate barriers. Among the proposal's most ambitious provisions was that all existing barriers to accessibility would have to be removed in two to five years, except where a private business or public entity received a special waiver.

Yet it was not an optimal time to introduce new civil rights legislation. The disability community, the civil rights community, and Congress were just beginning their campaign for the Civil Rights Restoration Act, which was introduced on February 19, 1987. Another civil rights measure might adversely affect its passage.

*By August, 1987, Robert Burgdorf had a complete draft of what was now called, at the suggestion of NCD member Kent Waldrep, the Americans with Disabilities Act of 1987.*

Burgdorf nonetheless began putting the law on paper, expecting it could be used eventually, and finished a preliminary draft in February.<sup>51</sup> During the spring of 1987, he and others began holding brainstorming sessions with “important and knowledgeable persons in the disability community” to include them in the process and facilitate the drafting.<sup>52</sup> At the May quarterly meeting, NCD decided to move forward and give official sanction to crafting a legislative proposal, deciding that a comprehensive law, rather than a piecemeal approach, was the best way to protect disabled persons’ civil rights. Staff members Burgdorf and Frieden worked most intensively on the law. And NCD members reviewed draft after draft of the proposal prepared by Burgdorf, who advanced his own vision for the law while helping to put NCD members’ thoughts in proper legal form.

By August, 1987, Burgdorf had a complete draft of what was now called, at the suggestion of NCD member Kent Waldrep, the Americans with Disabilities Act of 1987.<sup>53</sup> Principal strategic planning for the legislative proposal was carried out by Parrino, Frieden, and Burgdorf. They concluded that success required a body of individuals and organizations to support the endeavor and good timing of its introduction so as not to obstruct the efforts of the civil rights community. At the August Council meeting, members hoped that the bill would be passed in the

100th Congress—by the end of 1988. Dart, who was in attendance at the meeting though no longer a Council member, was more cautious. He suggested it would take years to obtain passage. Nevertheless, he fully supported moving forward to initiate the requisite education process.<sup>54</sup>

For congressional sponsorship, Parrino turned first to Senator Weicker, with whom NCD had a longstanding relationship. Weicker was one of the disability community's greatest advocates in the Senate. This was in part because Weicker had personal experience with disability through his

*Senator Weicker officially agreed to be the bill's sponsor: he was absolutely crucial in giving the ADA its life.*

son, who had Down's Syndrome. For Weicker, however, interest in disability issues stemmed from a broader philosophical and political commitment to assisting those in need. "He was a man of very strong principles about the role of government and the responsibility for caring for those who were less fortunate," said Terry Muilenburg who worked on his staff. This applied to elderly persons and people of lower-income as well as to people with disabilities. At times Weicker acted as "the conscience of the Senate" to defend the constitutionality of an active Federal Government, Muilenburg added.<sup>55</sup> Weicker was a fitting congressional contact because he had played a pivotal role in ensuring that NCD stayed alive in 1983. Early in 1987, during a meeting with Parrino, he had indicated a willingness to support disability rights legislation if NCD drafted a proposal. Now Weicker officially agreed to be the bill's sponsor: he was absolutely crucial in giving the ADA its life.

For the ADA to succeed, Senator Weicker emphasized that the bill would have to be introduced simultaneously in both houses of Congress. He recommended that NCD contact Congressman Coelho, who was, coincidentally, a close friend of NCD member Roxanne Vierra's husband, to sponsor the House bill. Coelho also had epilepsy, and was becoming a public advocate for people with disabilities. Although Congressman Coelho's staff cautioned him against sponsoring the bill for fear that it would not win the support of the broader disability community, Coelho agreed to sponsor it.<sup>56</sup> Senator Weicker later encouraged NCD to begin working closely with Senator Tom Harkin (D-IA). Harkin was Chairman of the Subcommittee on the Handicapped, which would likely have jurisdiction over the bill in the Senate.

While NCD's solid reputation with Congress helped in finding congressional sponsors, enlisting the support of the disability community proved more difficult. Many persons in the disability community had been working toward the goals, shared by NCD, of equal opportunity and full participation; some strove for civil rights legislation akin to NCD's proposal. But many people in the disability community viewed NCD with apprehension. While NCD collaborated with persons with disabilities throughout the country, NCD generally did not work closely with leading disability organizations, especially those that had been championing recent legislative campaigns. Moreover, given the context of the Reagan administration's civil rights record, some questioned NCD's motives. Some NCD members, on the other hand,

suspected that others were envious of NCD for being the first to draft civil rights legislation.<sup>57</sup> For these and other reasons, the relationship between much of the disability community and NCD was strained.

Prior to the November Council meeting, Burgdorf met with representatives of the Consortium for Citizens with Developmental Disabilities (CCD)\* to discuss the bill. At a later meeting convened by Terry Muilenburg of Senator Weicker's staff, CCD members stated that they opposed the bill as written. Their greatest concern was that they did not want the ADA to undermine the coverage of Sections 503 and 504 of the Rehabilitation Act. Securing the Section 504 regulations had been a protracted battle, and the regulations had been subsequently assaulted by President Reagan's Task Force on Regulatory Relief just a few years before. CCD feared that if the provisions of Section 503 and 504 were included in the ADA it would mean the regulations were back on the bloc, and an administration unfriendly to disability rights could substantially rewrite and weaken them. As an alternative, CCD proposed what became known as the "donut-hole" approach: leave what was already established alone, and write the ADA around it to cover everything left out.

CCD also argued that the ADA should not enforce standards inconsistent with those afforded to other minority groups. The disability community was in the midst of working with the civil rights community on the Fair Housing Amendments Act. Passage of the ADA would require the full backing of the civil rights community, so it was important to advocate the same protections. For example, while many people in the disability community believed health insurance should be a part of the ADA because people with disabilities often could not find affordable health care, health insurance was not a protection afforded to any other group. In a more general sense, CCD expressed concern about incorporating new language and new terms, such as a revised definition of disability. They urged that NCD use language from Section 504, which would help secure congressional support because it was familiar. At the November Council meeting, members voted on the draft of the ADA and rejected changes proposed by CCD. Three days later, however, Senator Weicker met with a variety of disability groups and decided, together with Senator Harkin, that Sections 503 and 504 and health insurance needed to be dropped from the ADA. Although a variety of factors warranted the exclusion of health insurance, Weicker's representation of Connecticut, where insurance was a major industry, made the inclusion impractical.

Senator Weicker urged NCD to accede to the disability community's changes, but NCD bristled because it was afraid to weaken its legislative proposal.

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\* The Consortium for Citizens with Developmental Disabilities (CCDD) changed its name to the Consortium for Citizens with Disabilities (CCD) in 1989. Since this name change took place midway through the ADA deliberations, and to avoid confusion, CCD will be used consistently throughout this work when identified in relation to the ADA.

Chairperson Parrino suggested getting a broader range of opinion from persons outside Washington at a meeting coinciding with the February Council meeting, on February 9, 1988. In the meantime, NCD was preparing its 1988 report, *On the Threshold of Independence*.<sup>†</sup> The report evaluated progress made since its 1986 report, *Toward Independence*, on each of the ten topics. At the suggestion of Public Affairs Specialist Andrea Farbman, NCD decided to include the current draft of the ADA in its discussion of the equal opportunity law recommendation, hoping to draw further attention to the ADA and enlist grass roots support.<sup>58</sup>

On February 9, representatives from around the country gathered at NCD's quarterly meeting. There they formed working groups and unanimously agreed to remove Sections 503 and 504 and health insurance from the purview of the Americans with Disabilities Act. On the following day, NCD decided to circulate the bill, with these changes, to Congress and the Reagan administration. Negotiations with the

*Discrimination on the basis of disability is "just as intolerable as other types of discrimination that our civil rights laws forbid."*

—Senator Lowell Weicker

disability community continued after the February Council meeting, but Weicker, faced with a string of proposals from the disability community, decided to honor NCD's work in drafting the legislation and forge ahead with its version of the ADA.

On April 28, 1988, Senator Weicker introduced the Americans with Disabilities Act on the floor of the United States Senate. He called the legislation "historic," and said that it "will establish a broad-scoped prohibition of discrimination and will describe specific methods by which such discrimination is to be eliminated." He compared the conditions faced by persons with disabilities to those faced by minorities in the 1960s. Civil rights advocates then argued forcefully and demonstratively that no person, because of race or national origin, should be discriminated against in obtaining access to public accommodations, use of transit, employment opportunities, services of state and local governments, and housing. Laws prohibited this type of discrimination by business owners, employers, and governments, Weicker said. "Yet, today," he noted, "it is not unlawful for these same establishments to exclude, mistreat, or otherwise discriminate against people because of their disabilities." He contended that discrimination on the basis of handicap was

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<sup>†</sup> NCD members at the time were: Sandra Swift Parrino, *Chairperson*; John S. Erthein, Theresa L. Gardner, Marian N. Koonce, Leslie Lenkowsky, Nanette Fabray MacDougall, Robert Muller, Brenda Premo, Harry J. Sutcliffe, Joni Eareckson Tada, Roxanne Vierra, A. Kent Waldrep, and Phyllis Zlotnick. NCD staff were: Lex Frieden, *Executive Director*, Brenda Bratton, Stacey Brown, Ethel Briggs, Robert Burgdorf, Frances Curtis, Andrea Farbman, Kathleen Roy, and Deborah Shuck. National Council on the Handicapped Fellows were: LaVerne Chase and D. Ray Fuller.

“just as intolerable as other types of discrimination that our civil rights laws forbid.”<sup>59</sup> The following day, Congressman Coelho joined Weicker by introducing an identical bill to the floor of the House of Representatives. Civil rights for persons with disabilities had entered the national, legislative agenda.

NCD’s role did not end with Senator Weicker’s final acceptance and introduction of their proposal, but in a very real sense the baton was being passed from NCD to congressional sponsors and the disability community. NCD was in an awkward position. Although NCD could present legislative proposals and justify its recommendations by offering “technical information,” federal law at the time prevented NCD members and staff, as all employees of federal agencies, from personally lobbying members of Congress. In lieu of formal lobbying, NCD members made presentations in their home towns and in their professional circles. Chairperson Parrino met extensively with officials in the White House and helped pave the way for favorable action on the ADA by the Bush administration. She also gave important congressional testimony on multiple occasions.

NCD’s presence was also carried forward as Frieden and Burgdorf resigned to take positions where they could exert more direct influence. Frieden, for example, became Executive Director of the congressional Task Force on the Rights and Empowerment of Persons with Disabilities, which played an important role in documenting the need for the ADA. Some members felt slighted by the transition in ADA leadership. But it was actually a testament to their success—NCD had accomplished its mission. No other single disability organization could have introduced a proposal to Congress with the same authority NCD possessed as an independent federal agency. NCD had performed the crucial function of documenting a problem, crafting a solution, and securing a foothold in Congress. It brought people to the table to develop a workable solution with substantial consensus. Now NCD would join the ranks of other organizations and thousands of individuals in educating America about the ADA.

*NCD performed the crucial function of documenting a problem, crafting a solution, and securing a foothold in Congress.*



## **PUBLICIZING THE ADA: ADVOCACY AND THE GOVERNMENT RESPONSE**

Gallaudet University erupted on March 1, 1988, as an estimated 1,500 alumni, students, faculty, and community supporters rallied to demand the selection of the university's first deaf president. The board of trustees had narrowed its candidate pool to three: Harvey J. Corson and I. King Jordan, both deaf; and Elizabeth A. Zinser, who neither had a hearing impairment nor understood sign language. On the evening of March 6, under the leadership of Chairperson Jane Bassett Spilman, the board selected Zinser as president. Hundreds of students, alumni, and others responded the next morning by shutting down the school: they organized before dawn and blocked every campus entrance. They even searched cars and planned to lie on the ground to prevent a helicopter from landing in the event that Zinser tried to step foot on campus (she never did). They also marched to Capitol Hill and demonstrated at the White House.

Later that day, a ten-person delegation representing students, faculty, and alumni issued four demands to the board: appoint a deaf president; demand Spilman's resignation; protect protestors from punishment; and designate a majority of the board's seats for deaf persons. But the board rejected the demands. At a meeting in the field house that followed, where Spilman appealed to a crowd of protesters to give Zinser a chance, students shouted down Spilman, sounded a fire alarm to obstruct her presentation, and taunted her: "If you could sign, we could hear you."<sup>1</sup> The following day, on March 8, the group hung Zinser and Spilman in effigy; later they cut them down and burned them.

The volatile activity on the campus of the world's only deaf university was front-page news; people from around the world lent their support. Senator Robert Dole (R-KS), Congressmen David E. Bonior (D-MI) and Tony Coelho (D-CA), and Vice President George Bush backed selection of a deaf president. Bonior threatened that the university might lose government funding, which accounted for 75 percent of its budget, unless it met demonstrators' demands.

To students, alumni, and faculty, the selection of a deaf president symbolized deaf persons' attempt to attain full citizenship, equal participation, and self-direction. "The time has come for the plantation mentality, which has for so long controlled this institution and others serving the deaf, to end," psychology professor Allen Sussman said.<sup>2</sup> "We want to be free from hearing oppression," student leader Bridgette Bourne declared. "We don't want to live off the hearing world, we want to live as independent people," she continued. Freshman John Limmidis opined: "We believe

*The Deaf President Now! protest  
“proved, convincingly, that deaf  
people could band together effectively  
for a common cause and succeed.”*

—Jack Gannon

that we have to fight to prove to the world that a deaf person is just as good as a hearing person.”<sup>3</sup>

The presidency of Gallaudet was the highest position in the deaf community; a decision to bypass a deaf person for that office broadcasted the message that

hearing persons were better suited for power and leadership. Consequently, it questioned the potential of deaf persons in other employment and social opportunities. Like racial minorities and women, the deaf community wanted the empowerment and legitimacy that comes with leadership from one’s own ranks.

On March 10, under relentless pressure, Zinser submitted her resignation. The following day the board acceded to the protestors’ demands: it appointed Jordan president, accepted Spilman’s resignation, committed to reconstituting the board, and dismissed repercussions for demonstrating. It was a huge victory for the deaf community. As one historian said, the protest “proved, convincingly, that deaf people could band together effectively for a common cause and succeed.”<sup>4</sup>

The protest also benefitted and strengthened the disability community as a whole. Students’ demands for self-direction, independence, and opportunity echoed the disability rights movement. National coverage of the events confronted many Americans with a foreign image of disability: repudiation of pity and charity, insistence on civil rights. The protest also came at an opportune moment, just over a month before the Americans with Disabilities Act was introduced in Congress. It powerfully symbolized the potential of the disability community, a fitting beginning to a nationwide education about disability and the ADA.

### **Mobilizing the Disability Community**

In 1988, the top priorities for the disability community were the Civil Rights Restoration Act, which became public law on March 22, 1988, and the Fair Housing Amendments Act, enacted on September 13, 1988. The ADA would not get the spotlight until 1989. However, ADA sponsors and the disability community used 1988 as an opportunity to publicize the act, mobilize grass roots support, solicit the endorsement of presidential candidates, enlist congressional cosponsors, and establish the act as a top priority for the next Congress.

The political sophistication attained by the disability community during the 1980s enabled ADA advocates to pursue a multi-pronged strategy to meet its objectives. A Washington-based ADA coalition coordinated these activities in conjunction with the bill’s congressional sponsors. Although this coalition did not fully form until 1989, it began to take shape even before the bill’s introduction in April, 1988. Describing the emerging leadership is extremely difficult, however, because it was not highly structured. There was no body of voting members that

elected officials to formally-defined job positions. There were no department heads. Rather, individuals and a variety of organizations formed a loose (though united) ADA coalition. To facilitate communications, the ADA coalition conducted many of its activities “under the auspices” of the well-established Consortium for Citizens with Disabilities (CCD).<sup>5</sup>

Paul Marchand, Director of the Governmental Affairs Office for the Association for Retarded Citizens (ARC), had founded CCD’s predecessor, CCDD, in the early 1970s to unite federal advocacy efforts of the disability community. By 1988, the consortium represented dozens of Washington-based organizations. Additional groups enlisted their support to CCD’s campaign to pass the ADA. CCD’s operations were carried out through multiple task forces, including the Civil Rights Task Force, which from 1988 to 1990 focused almost exclusively on the ADA. Pat Wright of the Disability Rights Education and Defense Fund (DREDF), Liz Savage of the Epilepsy Foundation of America (EFA), and Curt Decker of the National Association of Protection and Advocacy Systems (NAPAS) were the Civil Rights Task Force Co-chairs. The ADA coalition used the task force as its headquarters and CCD stationary for much of its correspondence. Although most of the ADA coalition leaders were from organizations who were members of CCD, it would be misleading to refer to CCD and the ADA coalition interchangeably, since key participants also came from outside CCD. This applied especially to people with disabilities representing the grass roots: ADAPT and NCIL, for example. And Dart, who was a full-fledged supporter and close ally of CCD, nonetheless did not officially represent a CCD member organization: he served the ADA coalition as a voice of the people.

The ADA coalition organized its efforts according to four major functions: overall strategy development; education and lobbying; grass roots mobilization; and legal writing and analysis. And it creatively exploited all available resources to accomplish the job, varying the approach to meet changing circumstances. For the most part, participants tended to focus on one of these four areas, but there was overlap. At the core was a handful of leaders who were most responsible for guiding the overall effort.

While many people contributed to developing the overarching strategy for passing the ADA, two persons in particular focused their efforts on this area: Pat Wright and Ralph Neas. Wright’s leadership during the ADA’s passage eventually earned her the nickname “The General.” She had attended medical school in the 1960s, but, after a progressive eye disease left her legally blind, she was forced to leave the profession. Temporarily derailed, she found a new interest in assisting persons with disabilities move from institutions to community-based living and gained

*The ADA coalition embraced four major functions: strategy development; education and lobbying; grass roots mobilization; and legal analysis.*

an intimate knowledge of how legal technicalities affected the lives of persons with disabilities. Wright made her first major inroads to the disability rights movement at the San Francisco sit-in of April, 1977, where she had served as a personal assistant to Judy

Heumann and demonstrated her negotiation skills in working with the guards. In her decade of work with DREDF, Wright had refined her extraordinary and tough negotiating techniques.

“She has [more] *hutzpah* than anyone I’ve ever met,” said Eastern Paralyzed Veterans of America (EPVA) attorney Jim Weisman, who worked with her closely during the ADA’s passage.<sup>6</sup> Wright certainly made her presence known. Her rejection of standard Washington attire

*The ADA’s success was due in no small part to Pat Wright’s efforts. “She has more hutzpah than anyone I’ve ever met.”*

—Jim Weisman

stood out among beltway veterans; one journalist said she appeared as if she had arrived directly from the 1960s Berkeley campus.<sup>7</sup> But Wright was so widely respected in Congress and the White House that her apparel and colorful vocabulary were beyond reproach. “She really is brassy,” said Weisman, “but she got it done.”<sup>8</sup> Indeed, the ADA’s success was due in no small part to Wright’s efforts, though some perceived Wright as a “loner” because she took advantage of her contacts and her capabilities to negotiate unilaterally in high-pressured situations.<sup>9</sup>

Neas, an attorney and Director of the Leadership Conference on Civil Rights (LCCR), brought to the ADA coalition unparalleled experience in civil rights legislation. LCCR carried more than three decades of civil rights advocacy, and was “the broadest, the largest, and oldest coalition in the country,” with over 185 organizations and their 60 million dues-paying members.<sup>10</sup> It had either assisted or led the coordination of every civil rights bill since 1957. As Executive Director of the LCCR since 1981, Neas led several civil rights campaigns, including the Voting Accessibility for the Elderly and Handicapped Act, the Civil Rights Restoration Act, and the Fair Housing Amendments Act. (In 1989, he would begin work on what became the Civil Rights Act of 1991.) In the spring of 1988, Wright approached Neas and the Executive Council to obtain an endorsement of the concept of the ADA. She stressed that the disability community would work with Congress to develop a viable bill after the 1988 election; the important consideration was to lend credibility to the general principles. DREDF’s efforts during the 1980s paid off, and LCCR joined the disability community as an indispensable ally. Although Neas did not join the strategy team full-time until he finished with the Civil Rights Restoration Act and Fair Housing Amendments Act, the ADA would become one of his top priorities in January, 1989.

While Wright and Neas were the principal strategists, most strategy development did not take place behind closed doors. For example, Savage and Marchand (who focused on lobbying in Washington), Justin Dart and Marilyn Golden (who focused on the grass roots), and Mayerson and Feldblum (who directed legal strategy) all were regular participants in shaping strategy. Moreover, important strategic contributions came from people such as Mary Lou Breslin of DREDF; National Council on Disability (NCD) Chairperson Sandra Parrino; Lex Frieden of The Institute for Rehabilitation and Research (TIRR) and former NCD Executive Director; Paul Hearne of the Dole Foundation; and Jay Rochlin, Executive Director of

the President's Committee on the Employment of People with Disabilities. These individuals provided additional contacts in Congress and the administration and also contributed specific statutory recommendations.<sup>11</sup> Such organizations as NCIL and ADAPT brought the concerns of consumer-directed organizations to the table. Furthermore, when the CCD Civil Rights Task Force began holding weekly strategy meetings in 1989, out-of-town visitors were active participants.

Crucial for implementation of strategy was the Washington-based education and lobbying effort. In this respect, Wright worked especially closely with Savage—attorney, Assistant Director for Government Affairs of EFA, and Co-chair of the CCD Civil Rights Task Force. Wright and Savage had met in 1985, around the time Savage joined EFA. Together they worked on such landmark civil rights cases as the Handicapped Children's Protection Act, Civil Rights Restoration Act, and Fair Housing Amendments Act. Wright and Savage's strengths complemented one another. Whereas Wright's expertise was in strategy and negotiating, Savage's strength was lobbying. This experience and relationship with Wright naturally evolved into the role of coordinating lobbying activities for the ADA coalition. If Wright was the "General," Savage was one of the principal "Field Commanders."

Marchand also played a key role in the education and lobbying effort. As Director of the Governmental Affairs Office of the ARC, Marchand brought to the ADA coalition the resources of one of the nation's largest disability organizations: 1,200 chapters nationwide, and an Action Alert Network that monitored congressional activities and mustered thousands of letters and phone calls. Advocates for persons with developmental disabilities were a well-established and widely-respected presence in Washington, which effectively positioned Marchand for ADA leadership. Moreover, as Chairman of CCD he had an effective platform for working with members of Congress and the administration.

To aid in the crucial task of educating members of Congress about disability and lobbying them to be ADA cosponsors, which began even before the ADA was first introduced, the ADA coalition relied on a number of lobbying "captains." These included Becky Ogle of the Spina Bifida Association, Bob Williams of the United Cerebral Palsy Associations (UCPA), Denise Rozell of the National Association of Developmental Disabilities Councils (NADDC), Tom Sheridan of the AIDS Action Council, Kathy Megivern of the Association for Education and Rehabilitation of the Blind and Visually Handicapped, Fred Cowell of the Paralyzed Veterans of America (PVA), David Capozzi of the National Easter Seal Society (NESS), Caren Friedman of the Human Rights Campaign Fund, and Curt Decker of the National Association of Protection and Advocacy Systems (NAPAS). These lobbyists in turn worked with members of such organizations as CCD, LCCR, NCIL, the National Organization Responding to AIDS (NORA), and ADAPT. Together they organized lobbying teams to visit senators' and congressmen's offices, which supplemented the efforts of congressional sponsors.

Although lobbying was important, successful passage of the ADA could not be achieved by efforts only within the Washington beltway. Well before the ADA entered Congress, the ADA coalition concluded that success was dependent on

convincing members of Congress, the executive branch, and the general public that the difficulties faced by persons with disabilities were a genuine national problem. The ADA could not be viewed as the brain-child of a coterie of think-tank intellectuals; it had to be correctly understood as an outgrowth of the pervasive experience of discrimination. Victory would be won through the efforts of thousands of advocates across the nation who could humanize and personalize the issues, not by privately wrestling with legal technicalities. NCD had begun this process through “consumer forums,” Justin Dart’s public forums, *Toward Independence*, and *The ICD Survey*.<sup>12</sup> After the ADA was introduced, Marilyn Golden of DREDF and Justin Dart led these efforts. In 1988, the primary goal of the ADA coalition was to get an army ready. In 1989 and 1990, with a communication system in place, Dart and Golden would issue a nationwide call to arms.

*Victory would be won through the efforts of thousands of advocates across the nation who could humanize and personalize the issues.*

There were three main objectives for grass roots mobilization. The first was to educate persons with disabilities about the ADA to prepare them for action. An important part of this process was uniting the fragmented disability community by centering the focus on a common cause. The second was to accumulate evidence of discrimination. This came not only through the standard form of congressional testimony, but also through the novel approach of soliciting “discrimination diaries.” In addition to providing evidence for Congress, preparing these documents would prompt people throughout the country to organize diary parties and foster the empowerment that comes from numbers. Over time, many persons with disabilities had internalized oppression, taken complete responsibility for their situations, and thus turned their backs to discrimination. By writing down their experiences, however, people could face discrimination, recognize society’s role, get “mad as hell,” and lose patience with the circumstances to which they had become acclimated.<sup>13</sup> Third, grass roots mobilization would provide a means to apply pressure on members of Congress and the president. Not only did persons with disabilities write letters, they also joined the lobbying campaign by paying for trips to Washington out of their own pockets.

Golden drew on the extensive contacts she had made through administering DREDF disability rights training projects. In the 1980s, DREDF had brought thousands of persons with disabilities to Berkeley to educate them in their rights and teach them how to mobilize communities for action. These persons in turn shared their knowledge with their local communities. Golden supplemented this network by establishing ties to other organizations, such as NCIL, and the ARC, and their grass roots links. The computer network DIMENET was another avenue for mobilizing people around the country.

As a result of his public forums, Dart had become famous among people with disabilities around the country, indeed he had become somewhat of a cultural icon for much of the disability community. As he toured the country, Dart kept lists of all the people who attended, which produced a massive list of people he could later contact

for political action. And by spending years touring the country, people in the grass roots felt as if they were part of the ADA's development rather than objects of it. They were thus more willing and eager to join Dart when the time came for action. Dart simply had "no equal" in getting people mobilized, said Maria Cuprill, a staff member of the House Subcommittee on Select Education.<sup>14</sup>

Members of Congress also recognized the need to demonstrate broad-based support for the ADA. Congressman Major R. Owens (D-NY), in particular, devoted considerable energy to empowering the grass roots. Although Owens was a relative newcomer to disability policy, first encountering it after becoming a member of the House Education and Labor Committee in 1983, he brought additional assets. He had experienced the 1960s civil rights movement first-hand, including service as chairman of the Brooklyn chapter of the Congress on Racial Equality (CORE)—an organization central to the movement's success. He had also developed a passion for fostering citizen participation. In 1987, Owens became Chairman of the House Subcommittee on Select Education, which had jurisdiction over many disability issues. When he first learned about the ADA prior to its introduction, he thought of it primarily as a civil rights issue: carrying forward the banner for civil rights from African Americans to women to people with disabilities. Owens wanted to do whatever he could to help energize people with disabilities.

Accordingly, on May 2, 1988, less than a week after the ADA's introduction, Congressman Owens created the Task Force on the Rights and Empowerment of Americans with Disabilities. The group's purpose was twofold: to present to Congress, the executive branch, and the general public evidence of disability discrimination, and to make recommendations. Owens appointed Dart to be the Chairperson. Dart had testified before Owens's subcommittee as Commissioner of the Rehabilitation Services Administration (RSA), which was part of the Department of Education. Owens thereby discovered that Dart shared his philosophy that disability rights were primarily civil rights. But, following his critical testimony regarding the Department of Education and its paternalistic attitudes toward and policies for people with disabilities, Dart resigned as RSA Commissioner. Owens saw his task force as an opportunity for Dart to continue his mission of achieving civil rights for people with disabilities. Owens named Elizabeth

*Justin Dart chaired 63 forums in all fifty states, with over 7,000 people in attendance, and collected more than 5,000 documents supporting the ADA.*

Boggs, of the ARC, as Co-chair with Dart. And Lex Frieden assumed the reins as Coordinator. Thirty-five others from the disability community were selected as task force members.\*

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\* Task Force members were: Elmer Bartels, Wade Blank, David Bodenstein, Frank Bowe, Marca Bristo, Dale Brown, Philip Calkins, David Capozzi, Julie Clay, Susan Daniels, James DeJong, Eliot Dober, Charles Estes, Don Galloway, Keith Gann, James Havel, I. King Jordan, Gordon Mansfield, Paul Marchand, Connie

Dart immediately began organizing another series of public forums. As always, Dart's wife Yoshiko was crucial for the management and execution of Dart's activities, which they paid for primarily with their own funds. Justin met Yoshiko in Japan, where Justin worked as president of Japan Tupperware. Yoshiko was a remarkably successful sales representative for the company. In addition to managing his company, which met with great success, Justin used his position as president to assist people with disabilities in attaining better livelihoods. For example, he sponsored sales campaigns in which the company and employees donated profits to buy wheelchairs for persons with disabilities. Justin also provided employment opportunities to boys who used wheelchairs. And Yoshiko took an active role in training them for work and assisting them in building greater self-confidence as productive citizens. Yoshiko's success, capabilities, and interest in disability attracted Justin's attention, who ultimately hired her as an executive assistant. They married in 1968 and became partners in championing the rights of persons with disabilities.

Between 1988 and 1990 Justin Dart chaired a total of 63 forums in all fifty states, Guam, and Puerto Rico, with over 7,000 people in attendance overall. Attending a public forum was extraordinarily empowering, said Denise Figueroa of New York. When someone has a disability, she said, one tends to "tolerate the discrimination, because it's how you survive." Hearing people talk about their experiences, however, could be a consciousness-raising experience and charge one with a desire to fight for human rights. It was also empowering, said Figueroa, because one realized "you weren't alone."<sup>15</sup>

While traveling throughout the country, Dart collected upwards of 5,000 documents and tape recordings detailing discrimination, offering proposals, and urging passage of the ADA.<sup>16</sup> In addition to people with disabilities, comments came from parents, health care providers, and others who worked with people with disabilities. Virtually every type of disability was represented. Thousands of people filled out petitions titled "A VOTE FOR JUSTICE," which declared support of the ADA and concluded with the invitation: "I HAVE PERSONALLY EXPERIENCED AND/OR OBSERVED THE FOLLOWING DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES:." For example, when Gary Janski, who had a psychiatric disability, tried to rent a favorite, vacant apartment, the owner said: "we won't rent to your kind." When you're "crippled," observed Sheila Sorenson, "you get treated like you're a two year old and can't do anything." "It makes us feel better to [do] things on our own instead of having everything done for [us]," she said. Ree Steidemann described how deaf persons she worked with repeatedly tried to reach hospitals and other institutions through TTY's, where no one answered or people answered and did not know how to

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Martinez, Celane McWhorter, Oral Miller, Gary Olsen, Mary Jane Owen, Sandra Parrino, Ed Roberts, Joseph Rogers, Liz Savage, William Spencer, Marilyn Price Spivack, Ann Vinup, Sylvia Walker, Michael Winter, Pat Wright, Tony Young. Task Force staff were: Douglas Burleigh, Yoshiko Dart, Tsuneko Gozu, Marcia Lee Nelson, Eileen Raab, Kate Reilly, Gwyneth Rochlin, Marnie Sweet, Hisako Takei.

use their TTY devices.\* “Please, please help us,” wrote Frances Murtagh, an exasperated mother of a child with cerebral palsy. “I’m at my wits end trying to fight these people alone.” In a profound poem, Carolyn Schwartz pleaded: “So before you condemn what you don’t understand. Let me reach out to you and come touch my hand.” Debbie Wimmer described how she overheard a security guard announce: “I have a girl in a wheelchair that needs watching.” “I was speechless. I was hurt. I was mad,” wrote Wimmer. Phyllis Geldzalh captured the blunt sentiments of many people with disabilities: “It would be a serious injustice if ADA was not passed.”<sup>17</sup>

In addition to presenting boxes of materials to Congress, the task force issued 11 interim reports to Congress, and prepared 37 statements to leaders in the disability community. Dart also sponsored 14 meetings in Washington and made presentations to various organizations around the country, reaching an estimated 25,000 persons. Moreover, task force members contributed to lobbying efforts by consulting with members of Congress and the executive branch. As a testimony to its dedication, passion for, and personal investment in disability policy, the task force carried out all its efforts without government funding, through volunteered time and money. And it far exceeded Congressman Owens’s expectations.

Although the disability community conducted very little legal work on the ADA in 1988, this was the fourth main objective in addition to strategy development, grass roots mobilization, and lobbying. By mid-1989, a legal team was fairly organized. The lead attorney for the disability community, and the one who most often testified before Congress on behalf of the ADA, was Arlene Mayerson of DREDF. She had worked extensively on the Voting Accessibility for the Elderly and Handicapped Act, Civil Rights Restoration Act, and Fair Housing Amendments Act, and had submitted countless briefs to various committees and courts. Especially significant was her role in passing the Handicapped Children’s Protection Act. Although Mayerson lived in Berkeley, California, during the congressional deliberations on the ADA, Mayerson visited Washington frequently, for weeks at a time, in order to guide legal strategy. Chai Feldblum of the ACLU, who had met Wright while working on the Civil Rights Restoration Act (the first time HIV/AIDS entered a Senate bill for civil rights protections), fulfilled much of the daily responsibilities of legal writing while Mayerson was in California. Although Feldblum specialized in AIDS-related law, and championed the efforts to include persons with HIV and AIDS within the housing provisions, she began developing a firm grasp on general disability law.

Mayerson and Feldblum were hardly alone, however. Robert Burgdorf, the original author of the ADA and now a professor at the District of Columbia School of Law, participated in all modifications to the bill and helped ensure continuity from the

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\* TTY refers to a teletype device for transmitting text over telephone lines. Such a device is often referred to as a TDD—Telecommunication Device for the Deaf.

original version. Tim Cook of the National Disability Action Center offered general guidance as well as his expertise with respect to public accommodations and transportation. Weisman, of EPVA, served as the resident specialist in Transportation. Bonnie Milstein of the Mental Health Law Project offered her expertise concerning mental impairments. Karen Peltz-Strauss, from the National Center for Law and the Deaf, focused on telecommunication provisions. Depending on the issues pressing at any given moment, these and other attorneys worked closely with Congress, disability strategists, and lobbyists to translate disability objectives into proper legal form. Meanwhile, attorneys Robert Funk and Evan Kemp worked on behalf of the disability community within the Bush administration, respectively as a White House negotiator and Chairman of the Equal Employment Opportunity Commission (EEOC).

The massive effort of the disability community was not without its tensions. Many disability organizations had previously been in conflict with one another over limited government resources. As with any coalition, there were tensions between those who held Washington leadership roles and those who worked in the trenches, between inside-the-beltway politicians and persons throughout the rest of the country. Some felt that their views were not being adequately represented in the decision-making process. Others resented claims that persons outside of Washington did not understand the legislative process. There was also tension between persons with disabilities and those without them. It is natural to assume that African-American and women's advocacy groups would be led by African Americans and women. In the disability community, however, one found large numbers of persons without disabilities at the helm. Regardless of the actual impact on policy development and implementation, some persons with disabilities demanded that "their own" be in charge. The important point, however, is not the presence of these tensions, but the way in which the disability community overcame them.

There was something in the ADA for everyone. Virtually all disability sub-groups wanted to, and subsequently did, champion the goals of the ADA. With few exceptions, they were united in the commitment that there would be "no long term legitimation of unequal status for people with disabilities." Full realization of the goals might take decades, but they wanted to

*"No subgroup of people with any type of physical or mental disability, or perceived disability, . . . will be sacrificed."*

— Task Force on the Rights and Empowerment of Americans with Disabilities

undercut any national policies that would promote discrimination indefinitely. The disability community made a second important commitment. There would be no splintering with respect to the ADA: "No subgroup of people with any type of physical or mental disability, or perceived disability, no matter how politically impotent or how stigmatized, will be sacrificed."<sup>18</sup> And they would fight each other's battles. Advocates for persons with mental retardation pushed for ending discrimination against AIDS; people with epilepsy argued for the need for accessible

transportation; and individuals using wheelchairs urged that persons with mental disabilities equally deserved freedom from employment discrimination. Even at the most intense moments in congressional deliberations, the community would stick together.

### **The Government Response**

While persons with disabilities throughout the country were mobilizing to learn about and support the ADA, the general public remained largely unaware of the legislation. Prior to the ADA's introduction, *The Washington Post* pointed to the ADA as a potential rallying point for the disability community. But there was virtually no mainstream press coverage, either of the bill's introduction, or during the rest of 1988. This was due in part to the lateness of the bill's entree to Congress. Since the ADA's advocates were not pushing for immediate passage, the bill drew neither the press coverage nor the opposition it would when the bill became a serious proposal in 1989. Individuals throughout the country, however, helped raise consciousness about the ADA by talking with their circles of friends and family. And scores of disability and non-disability organizations endorsed the ADA and funneled information to their members.

Disability and congressional advocates focused much more on the executive branch and Congress than on the general public.<sup>19</sup> The ADA was first introduced, as Congressman Coelho said, "to just get reaction, to get people to respond."<sup>20</sup> A prominent executive branch voice was Evan Kemp, who approached the issue both as a Commissioner of EEOC and as a disability rights advocate. He made his first public declaration on the ADA before hundreds of people at the Employers Banquet of the President's Committee on Employment of the Handicapped. The event took place in the International Ballroom of the Washington Hilton Hotel, just a week after the bill's introduction on May 5. Kemp wanted a bill that President Bush could support and therefore alerted people to problematic provisions. Kemp spoke primarily about employment issues, of how it made good business sense to tap the market of disabled persons by promoting accessibility, and good government sense to reduce federal spending through employment. For these reasons he applauded the ADA, but he also questioned its current form. Kemp thought the bill needed to be more detailed to avoid control by bureaucratic regulators. He was especially concerned about the definition of "reasonable accommodation" and advocated federal economic assistance to employers to ease the economic burden the ADA might cause. He also thought the proposed limit on reasonable accommodations was "unrealistic" because an employer would have to demonstrate either that the business would be "fundamentally changed" or that it would be forced to file bankruptcy. The definition of "handicap" was also problematic for Kemp. He proposed a restricted definition that focused on what he termed the "truly disabled": the "severely handicapped" and persons "excluded because of myths, fears and stereotypes." Kemp's emphasis on the vagueness of language, limits for accommodation, and definition of disability, foreshadowed several issues that would dominate congressional deliberations.<sup>21</sup>

A vigorous response came from Thomas M. Boyd, Acting Assistant Attorney General, who presented the position of the Reagan administration. While the administration “is deeply committed to the goal of bringing individuals with handicaps into the mainstream of American life,” wrote Boyd, “we have very serious reservations” about the extent and standards of the ADA. Highlighting the potential costs associated with disability rights, and rejecting the link to provisions for minorities and women, Boyd emphasized the need to keep the pursuit of equal opportunity “within manageable bounds.” Especially problematic were the ways in which the ADA departed from Section 504 in two ways: first, by requiring barrier removal uniformly for both existing and new facilities; second, by incorporating the “utterly unrealistic and extreme” provision that a business could defend itself against charges of discrimination only if its basic existence was threatened by the cost of accommodations. The administration objected to the ADA’s novel definitions of “handicap” and “reasonable accommodation,” and questioned the application of reasonable accommodation beyond employment settings. Boyd also repudiated the proposal for requiring all new transportation vehicles to be accessible, and demurred to ordering implementation of universal design in new housing. Finally, the administration proposed a more limited standard of accessibility to public accommodations, and demanded that the effective date for the bill be delayed at least a year.<sup>22</sup>

Although the Reagan administration, as illustrated in Boyd’s letter, was at best cautious in its support of the ADA, the disability community’s sights were set on the next president. In fact, one of the principal reasons for introducing the ADA in 1988 was to use the politics of a presidential election year to solicit candidate endorsement and induce the candidates to outbid one another. People in the disability community correctly believed that presidential support was crucial for the ADA’s success. They worked for both campaigns to encourage disabled persons to vote and make disability a campaign issue. They had some leverage. On June 30, 1988, the Louis Harris polling company determined that the disability community comprised 10 percent of the electorate, was “a force to be reckoned with in the politics of the future,” and could be the deciding factor in a close election.<sup>23</sup>

*The ADA was introduced in 1988 to solicit the endorsement of presidential candidates and induce them to outbid one another.*

Vice President Bush’s personal experience with disability shaped his relationship with the disability community. He had a daughter who died from leukemia, a son with a learning disability, an uncle with quadriplegia, and a son whose cancer required a plastic ostomy bag. In conjunction with his leadership of President Reagan’s Task Force on Regulatory Relief, his support of the disability community had grown steadily since 1983. This was due in no small part to Kemp, who worked with Bush by writing many of his public statements.

In the September issue of the disability magazine *Mainstream*, Kemp faced off with Timothy Cook of the Public Interest Law Center of Philadelphia (PILCOP) to

*“I am going to do whatever it takes to make sure the disabled are included in the mainstream. For too long, they have been left out, but they are not going to be left out anymore.”*

—Vice President George Bush

argue the respective attributes of the two presidential candidates. Kemp noted how, on March 1, 1988, Vice President Bush wrote to the Gallaudet Board of Trustees and urged the Board “to set an example and . . . appoint a president who is not only highly qualified, but who is also deaf.”

A month before the ADA was introduced, on March 31, Bush also pledged to support legislation providing persons with disabilities “the same protection in private employment that is now enjoyed by women and minorities.”<sup>24</sup> Kemp noted how Bush made an even stronger commitment when he participated in the swearing in ceremony of Paul Hearne as Executive Director of the National Council on Disability, on August 12, 1988. Bush’s presence alone, before nearly 100 persons with disabilities and the organization that authored the original ADA, symbolized his support of the disability community. But Bush went further and, while he did not endorse the ADA introduced to Congress, said that he would promote a civil rights act for people with disabilities.<sup>25</sup> Kemp’s efforts in courting Bush also bore fruit at the Republican convention in August, where Bush incorporated the rights of disabled persons into his acceptance speech. He did not say much, but it was the first time disability was included on such an occasion: “I am going to do whatever it takes to make sure the disabled are included in the mainstream. For too long, they have been left out, but they are not going to be left out anymore.”<sup>26</sup>

Cook, a leading disability advocate for Dukakis, focused on Michael Dukakis’s strong record on disability as Governor of Massachusetts. Similar to other states, Massachusetts provided full access for persons with disabilities in all state-assisted programs and activities. It was also one of few states to have an executive-level independent agency to enforce disability civil rights. Cook noted that Governor Dukakis strengthened enforcement mechanisms for accessibility standards, including barrier-free sidewalks and roadways. He also made concerted efforts to recruit persons with disabilities for government offices, including high-level leadership positions such as the Massachusetts’s Rehabilitation Commission. Moreover, Governor Dukakis had augmented Massachusetts’ health insurance, attendant care, and education programs for persons with disabilities.<sup>27</sup>

Yet, while Dukakis promoted accessibility in campaign functions and gave a mild endorsement to the principles of the ADA, he did not court the disability community as vigorously as Vice President Bush. In addition to his personal experiences with disability, Bush’s leadership of the Task Force on Regulatory Relief and the disability community’s defensive effort helped convinced Bush of the power of the community as a voting block: it commanded respect and could pay high dividends. Bush did not let the opportunity escape him. For example, at the suggestion of Kemp he made a point to incorporate disability issues into his presidential debates.

Dukakis, on the other hand, was facing criticism that he and the Democratic party were too beholden to interest groups, which led him to downplay rather than accentuate direct appeals to specific constituencies such as persons with disabilities. He thereby alienated much of the disability community. Some of Dukakis's tempered support of the disability community may in fact be attributed to the disability community itself. Some disability advocates had advised Dukakis not to come out too strong on behalf of the ADA. Their goal was to have both candidates endorse the principles of the ADA so that whoever was elected would be on their side. They thus wanted to encourage Bush to support the ADA by giving him room to outbid Dukakis, rather than make Bush feel as if he needed to contrast himself with Dukakis by being more reserved in his support of the ADA.<sup>28</sup>

ADA advocates also sought the support of members of Congress. The disability community joined congressional staff and members in a cosponsorship drive that began before the ADA was first introduced and continued throughout the entire session of Congress. Cosponsorship is crucial to the success of any bill. It promises affirmative votes and enables advocates to gauge the level of support. Cosponsorship is also important because, if one can achieve a cross-section of party and ideology, it helps thwart reflexive, negative reaction and partisan labeling. Although ADA advocates anticipated a high level of cosponsorship because they presented the ADA as a civil rights bill, the process proved to be very difficult. Members did not take the issue of costs lightly and were reluctant to attach their name simply because someone else had done so.<sup>29</sup> Nevertheless, by the close of the 100th Congress on October 22, 1988, 26 senators and 117 representatives had endorsed the bill.

### Congressional Hearings

The highlights of the 1988 ADA campaign were the congressional hearings held in September and October. On September 27, 1988, the Senate Subcommittee on the Handicapped and the House Subcommittee on Select Education held a joint hearing in the Hart Senate Office Building. On October 24, the House Subcommittee on Select Education held a hearing in the Lafayette Hotel of Boston, Massachusetts. These hearings were not intended to be substantive examinations of the ADA's provisions. "This bill is not going anywhere this year," Senator Tom Harkin (D-IA) said flatly at the joint hearing.<sup>30</sup> Senator Lowell P. Weicker, Jr. (R-CT) also conceded

*The message was clear: persons with disabilities struggled with unequal opportunities; they confronted not only the challenges of their impairments, but also the barriers society erects; federal action was necessary to remedy the situation.*

that the real battle would not begin until Congress reconvened in 1989. But Weicker emphasized the need to get disability discrimination on the table for immediate discussion: "If there is silence now, there will be silence later. If there is indifference to discrimination now, there will be indifference later."<sup>31</sup> The purpose was therefore to establish a record of

discrimination—to humanize the *ICD Survey* data with the lives of real persons—and make congressional inaction on the ADA intolerable.

Of the 95 witnesses at the two hearings, there was not a single technical expert speaking to the details of the bill. Only seven federal and state government officials testified. The remaining witnesses were all from the disability community—persons and parents of persons with disabilities, and people who worked with disabled persons in such settings as independent living centers—who spoke of their own experiences. This was, therefore, the first instance in which a congressional hearing regarding disability was dominated by the presence of people with disabilities. Some of the predicaments identified by witnesses were not even issues that the ADA addressed. But the message was clear: persons with disabilities struggled with unequal opportunities; they confronted not only the challenges of their impairments, but also the barriers society erects; federal action was necessary to remedy the situation.

The joint hearing in the Hart Senate Office Building overflowed with eager spectators, many of them disabled, and many having traveled hundreds of miles to participate. Around 200 people with disabilities came to Washington for the event from New Jersey alone. Senator Weicker actually had to stop the proceedings to attend to space needs; he asked those present to rotate so that others watching on television could have a chance to be in the hearing room. The stories of those who testified were gripping and spoke volumes.

Mary Linden, who had been unable to walk since early childhood as a result of physicians' surgical errors, launched the first panel. She described her struggles with a public school that considered her unworthy of education. It was not until after Linden graduated from a disability-segregated high school in 1951 that she learned how to write, and then only because she taught herself. Subsequently she spent over two decades accumulating 61 hours of college credit. To her dismay, she could not enroll in a four-year college because of inaccessible public transportation. She therefore had to do all of her work through correspondence. Linden said she desperately wanted to finish her degree because it was necessary for attaining what she significantly termed "the most precious thing in the world"—"a paying job!" "I beg you to pass this bill," she pleaded, so that other children will not have to face the same barriers.<sup>32</sup>

Twelve-year-old Jade Caleyory followed Linden's testimony and, compared with Linden, presented the stark contrast of what opportunity could do. Jade praised the Federal Government for passing the Education for all Handicapped Children Act because the act enabled him, with his spina bifida and wheelchair, to join the rest of his community's children in the public school. Jade starred in the movie "Mac and Me," which he described as "terrific because it shows a kid with a disability giving help instead of just getting help, and nobody tries to cure me or take away my disability by the end of the movie. That gives people the idea that it is okay to be disabled and just be accepted for who you are." Jade also described his passion for participating in wheelchair races. But he reported that he would get frustrated when

he tried to ride a bus home. “Most of the buses do not have lifts on them. Some of the drivers are very rude and get mad if I want to take the bus. Can you believe that? I work and part of my taxes pay for public buses, and then they get mad just because I am using a wheelchair.” Accessible buses were important, said Jade, because “it is hard for people to feel good about themselves if they have to crawl up the stairs of a bus, or if the driver passes by without stopping.”<sup>33</sup>

Dan Piper and his mother, Sylvia Piper, illustrated the uncertainty they faced because of Dan’s developmental disability. Although the Pipers were told that Dan’s condition was “hopeless” when he was a young child, and that Dan should be institutionalized, they decided to keep him at home. Ultimately he joined the special education program of an integrated\* public school, where he took courses with non-disabled peers, helped manage the football team, and became the lead performer in a traveling high school lip-sync group. The Pipers were worried, however, about what would happen to Dan when he finished school and wanted to fulfill his dream of getting a job and living in his own apartment. “Will the landlord decide, because Dan has mental retardation, that he is incapable of independent living? Will he be denied access to transportation? Will restaurants refuse service? Will hotels refuse accommodations?” The Pipers viewed the ADA as a much-needed extension in disability policy: “It is now time to expand handicapped antidiscrimination to the private sector so that Dan’s and our visions for his adult life and the lives of many others can finally become a reality.”<sup>34</sup>

Judith Heumann’s polio resulted in paralysis. Despite her remarkably successful career, she was burdened by the psychological impact of discrimination. She described how she could not enter public school as a child because she was considered “a fire hazard.” When she graduated from high school, the principal tried to prevent her from accepting her diploma on stage because of her wheelchair. In college, she was denied her elementary school teaching credentials because of her paralysis: administrators did not think she could teach from a wheelchair. On one occasion, officials at an auction house attempted to remove Heumann and a friend because they were allegedly “disgusting to look at.” People do not emerge unscathed from these experiences, concluded Heumann: “this stigma scars for life.”<sup>35</sup>

Belinda Mason knew stigma first-hand. At the age of 30, Mason had been diagnosed HIV-positive after a blood transfusion. Moreover, a stroke left her partially paralyzed. “I have learned a terrible truth about America,” she said of her subsequent experiences, “that it is not a good place to be different or to be ill, in spite of what we teach in government class.” She related that her 75-person town closed the community pool for a week after she entered it, ostensibly because of a cigarette butt. One neighbor carried around a petition demanding that she move out. Mason

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\* In this context, “integrated” schools are those that did not isolate persons with disabilities in separate educational facilities, as opposed to racially integrated schools.

described another woman who lost her job simply because she decided to have her son, who had AIDS, live at home. She also told of one occasion where police locked a man with AIDS in his car overnight, rather than take him into jail. The next day, people peered through the windows at him as if looking in an aquarium. Mason acknowledged that one cannot simply legislate attitudes and behavior. But she poignantly added: “The truth is that sometimes legislation precedes and enhances humanity.”<sup>36</sup> Mason was the first person with HIV ever to testify before Congress. And her moving testimony earned her an appointment to the President’s Committee on the Human Immunodeficiency Virus Epidemic.

Congressman Owens organized the field hearing in Boston at the request of Dart and others from the New England disability community. The purpose was to solicit an even more extensive demonstration of citizen participation. “It was an unforgettable day,” said Owens, for the range of disabilities represented, the racial and gender diversity, and the united spirit of those in attendance.<sup>37</sup> Everyone wanted the chance to address Congress. To accommodate as many people as possible, the subcommittee met nonstop from 9:00 a.m. to 6:00 p.m.: over 80 witnesses testified in rapid-fire succession, each having but a few minutes to relate his or her experiences.

William Cavanaugh, a consumer of the Massachusetts mental health system, spoke about the “abusive treatment practices and human rights violations” of persons in mental institutions. He described one man, Vincent Veletia, who suffocated and died after being restrained with “a full sensory deprivation hood,” replete with ear phones emitting constant static, and being forced into a fetal position with his hands cuffed behind his knees.<sup>38</sup> Bonnie O’Day described how a prominent disability advocate from Charlottesville, Franz Stiefried, died because of poor accessibility. Impeded by an intersection without curb cuts, Stiefried tried to cross a dangerous, grassy area next to a 50-foot drop. While trying to lower himself over another curb, however, he lost control of his wheelchair and fell over the cliff to his death. He had been traveling to a meeting to demand for greater accessibility.<sup>39</sup>

*“You know, sometimes I almost wish a person would hate me for being disabled. Then at least I would know they knew I was alive.”*

—Anonymous

Nancy Husted-Jensen described how fully-registered disabled persons were turned away from voting booths because they supposedly did not

look sufficiently “competent” to vote.<sup>40</sup> Eileen Healy Horndt similarly recounted how one man with mental retardation was barred from opening a savings account at a local bank because he “did not fit the image the bank wants to project.” She spoke of another gentlemen with quadriplegia who joined her in visiting a presidential campaign office to discuss accessibility, but there was no handicap parking space wide enough for the van lift. Horndt also described her own frustration of having to use a calling card at pay telephones because she could not reach the coin slot.<sup>41</sup>

Only after the Disability Law Center of Boston threatened legal action did Barbara Waters avoid leaving college when administrators said her epileptic seizures represented a “liability risk.” Eleanor Blake was not so fortunate. After being hospitalized for manic depression, college officials denied her graduation from the human services program because, they said, she was not “psychologically fit.” Later, after switching majors, she graduated summa cum laude.<sup>42</sup>

Patricia Deegan further illustrated the excessive discrimination persons with mental illness face, including “the assumption that what we say about our own experiences is an expression of a disordered mind and can therefore be ignored.” Presumed to be crazy, one’s basic civil rights were readily violated. Deegan related how one woman reported to mental health workers that she was pregnant, but the professionals dismissed her claim as delusional. Later she visited an emergency room only to be met with the same response. That evening, while roaming the streets in desperation, the woman miscarried and suffered from serious hemorrhaging.<sup>43</sup>

These examples capture only a small fraction of the testimony presented about lost education and employment opportunities, physical and transportation barriers, social stigma, and violation of basic human rights. But the problem came not only from actions committed, it also came from simple avoidance. Michael Oestreicher related how one frustrated, member of a group discussing beach accessibility poignantly declared: “You know, sometimes I almost wish a person would hate me for being disabled. Then at least I would know they knew I was alive.”<sup>44</sup>

*“We are not asking for pity. We are not even asking for your sympathy. All we ask is that you make real the promises and opportunities that America strives to offer everyone.”*  
—Denise Karuth

In a discrimination diary presented to the committee, Cynthia Miller captured the exasperation evident in these sentiments and those of many other persons with disabilities. “I got home late this evening and did the things most Americans do like cooking, cleaning, feeding the cat,” Miller wrote. Then she prepared a list of things she thought needed to be changed to improve the lives of persons with disabilities.

I thought of doing all these things, but the list seems to grow every day. Instead, I got angry and depressed. I got angry and depressed because after I work all day, fight the barriers to get to work, [and] fight the barriers to do the things all Americans do like shop, I have meetings and phone calls and letters and other things I have to do to fight for my equal rights as an American with a disability. I’m tired of being tired, frightened, angry and depressed every day, fighting for my rights. And now, I’m writing a stupid diary until 2:00 in the morning to prove that discrimination exists to my Congress. Why does Congress think so many Americans are fighting this battle if discrimination doesn’t exist? Does Congress think we enjoy or prefer

to fight for equal rights before we eat or sleep sometimes? . . . I would like to watch The Cosby Show, with slippers on my feet, and time on my hands, like other Americans. I don't want to be Rosa Parks. I just want to be Cyndy Miller.<sup>45</sup>

Denise Karuth, who used a wheelchair because of multiple sclerosis and was legally blind, eloquently stated what people like herself and Cyndy Miller were fighting for. "We are not asking for your money," she explained. "We are not asking for pity. We are not even asking for your sympathy. All we ask is that you make real the promises and opportunities that America strives to offer everyone: the respect and dignity we deserve as free and responsible citizens."<sup>46</sup>

The hearings were captivating and televised on C-Span. Savage used a copy of the proceedings to edit a 30-minute version and make it available all around the country. She became known as the "Girl Scout Cookie-Lady" for her persistence in pushing the video on people. Dart also played a crucial role in spreading the edited hearings by taking copies with him as he traveled around the country for his public forums. People could use the video to explain what disability discrimination was all about and draw on the testimony for examples of how to describe their own experiences.

### The ADA on the Eve of the 1988 Election

*The ADA of 1988 fulfilled its mission. The goal was to get the ADA on the legislative agenda as a congressional priority.*

Although no further action was taken on the ADA in 1988, the ADA did not "die," as some people claimed, when Congress closed its 100th Session on October 22. On the contrary, the ADA of 1988 fulfilled its mission. ADA sponsors never intended it to come to a vote that

year. The goal, rather, was to complete the process begun by the National Council on Disability in getting the ADA on the legislative agenda, not only as a token measure, but as a congressional priority. The disability community reached this objective with a pronouncement from Senator Edward M. Kennedy (D-MA) at the joint hearing. "I just want to give the assurance," he asserted, "that this will be the first order of business" when Congress convenes for the 101st session in 1989.<sup>47</sup>

The disability community had begun its education process, both internally and with members of Congress and presidential candidates. Members were learning more about what it meant to be disabled. They were being exposed to scores of people with disabilities for the first time. Many declared their support by becoming cosponsors of the bill. The disability community was also becoming much more optimistic at the close of 1988. The 1980s had been a decade of struggle against encroachments. But the Civil Rights Restoration Act symbolized the new alliance formed with the civil rights community. And the Fair Housing Amendments Act broke new ground by extending disability policy to encompass the private sector. The Reagan administration was

winding to a close, and the tide was apparently turning. Both presidential candidates had vowed to support legislation akin to the ADA. By the end of 1988, the compelling problem of discrimination had been fused with the solution crafted by the National Council on Disability. The political climate was also changing in a way that would invite, rather than impede, future action.

## CREATING A WORKABLE ADA: THE SENATE AND THE WHITE HOUSE

On November 8, 1988, George Bush defeated Michael Dukakis in the election for President of the United States. Bush's strong statements in support of the disability community, and particularly civil rights legislation for people with disabilities, had swayed many disabled voters, including many Democrats. In fact, a poll of voter intentions on the eve of the election, conducted by Louis Harris and Associates, suggested that the wide margin of persons with disabilities supporting Bush was a deciding factor in the election.<sup>1</sup> Although many persons with disabilities had campaigned for Dukakis and were disappointed by the outcome, Bush's election clearly offered an opportunity to the disability community. His attentiveness to disability issues signaled a change in the political climate and made passage of the ADA seem more promising. Moreover, two days before his inauguration, Bush avowed his intent to follow through on his pledges and push the ADA toward passage. "I said during the campaign that disabled people have been excluded for far too long from the mainstream of American life," Bush noted. "One step that I have discussed will be action on the Americans with Disabilities Act in order, in simple fairness, to provide the disabled with the same rights afforded others, afforded other minorities."<sup>2</sup>

In another respect, however, the election of 1988 was damaging to the ADA cause. Senator Lowell P. Weicker, Jr. (R-CT), a long-time supporter of persons with disabilities and the Senate sponsor of the ADA in 1988, lost his bid for reelection to Joseph Lieberman. As one senate staff member said, Weicker was "one of the five-hundred-pound gorillas" in Congress.<sup>3</sup> His leadership in the area of disability was consistent and strong. Now someone else had to fill the void he left. The chief cosponsor of the 1988 ADA was Senator Tom Harkin (D-IA), who had worked closely with Weicker, the National Council on the Handicapped (NCD), and the disability community in the development of the ADA. Weicker and Harkin had even discussed whether Harkin's position as Chairman of the Subcommittee on the Handicapped placed him in the best position to be the original sponsor in 1988. Harkin also had a personal understanding of the need for the ADA because of his brother, who was deaf. It was therefore natural for Harkin to assume Senate leadership. But it was not a foregone conclusion.

Sponsorship of the ADA was a risky endeavor for the first-term senator. He was up for reelection in 1990, and no Democratic senator from Iowa had ever won a second term. As a relative newcomer to disability policy, Senator Harkin would have to begin his relationship with the disability community by making compromises with respect to provisions in the ADA—potentially alienating the people he was trying to help.

*“I didn’t get elected to get re-elected. My brother is deaf. I understand discrimination. . . . We are doing this legislation.”*  
—Senator Tom Harkin

Moreover, failure to pass the bill rapidly might lead some people to compare the leadership skills of Senators Harkin and Weicker. By sponsoring the ADA, Harkin would also become a target for the opposition, which included employers, transit operators, owners of public accommodations, railroads, telecommunications providers, and state

and local governments. Finally, the prospects for successfully expanding civil rights protections to incorporate an additional “class” of people, while improved with the change in administration, remained uncertain at best.

Sponsoring the ADA and risking failure could potentially jeopardize Senator Harkin’s political career. Although Robert Silverstein, Staff Director and Chief Counsel for the Subcommittee on the Handicapped, cautioned him about the pitfalls, Harkin accepted the challenge. “I didn’t get elected to get re-elected,” he told Silverstein. “My brother is deaf. I *understand* discrimination. I understand what it means and what this country can look like in thirty years. We are doing this legislation.”<sup>4</sup>

### **Master Strategy and the Retooling of the ADA**

Senator Harkin took the lead in preparing the ADA for reintroduction. Success depended on developing a solid strategy for maneuvering the bill through the treacherous terrain of Congress. It also required attaining the complete backing of the disability community.<sup>5</sup> Harkin’s first step was to establish an effective relationship with Senator Edward M. Kennedy (D-MA) and Carolyn Osolinik and Michael Iskowitz from Kennedy’s committee staff. This was important because a bill successfully voted out of Harkin’s Subcommittee on the Handicapped would have to clear Kennedy’s Committee on Labor and Human Resources. Coordination of all legislative activities with Kennedy could improve the possibility of a smooth and quick transition to the Senate floor. The disability community was also courting the support of Kennedy. They hoped his stature as a “heavy hitter” senator with seniority could match the standing of Senator Weicker and augment the efforts of Harkin.<sup>6</sup> Kennedy brought the experience of decades of civil rights leadership. Osolinik, whom Pat Wright described as “one of few people who really saw disability as a civil rights issue,” directed civil rights issues in Kennedy’s office. Moreover, Kennedy had personal experiences with disability through his son who lost a leg to cancer and a sister with a developmental disability. Kennedy’s support, however, depended on making significant changes to the ADA.<sup>7</sup>

*Senator Kennedy brought the experience of decades of civil rights leadership in addition to his stature as a “heavy hitter” senator with seniority.*

Senators Harkin and Kennedy concluded that the bill introduced in 1988 was too ambitious and stood little chance for passage. Therefore, they decided to rewrite the ADA. In accordance with the objectives of the disability community, the senators' primary goal was to achieve the best possible civil rights coverage for persons with disabilities. Toward this end, they and their staffs, in consultation with leaders from the disability community, developed a four-pronged legislative strategy.

First, Senators Kennedy and Harkin made a commitment to achieving bipartisanship. They believed that the ultimate goal of legislation must not simply be to pass a bill, but rather to make an enforceable law. For the bill to be taken seriously, it needed to be widely supported by the business community as well as the disability community, Republicans and Democrats, the Senate and the House, and the Bush administration. Second, Senators Harkin and Kennedy wanted to craft a bill that could withstand the strict scrutiny of Congress. Rather than introduce a bill with aggressive provisions and rely on subsequent negotiations, which ran the risk of permanently labeling the bill "extreme," they hoped to hold extensive discussions and reach important compromises before they even introduced the bill.

The third and fourth strategic commitments followed logically: modesty and parity. The original ADA applied rigorous and rigid standards of accessibility that would be implemented immediately. Senators Kennedy and Harkin instead promoted accessibility at some point in time, and varied provisions according to specific circumstances.

*While the ADA's complete effect would not be immediately apparent, the American landscape would be transformed for subsequent generations.*

While the bill's complete effect would not be apparent immediately following its enactment, the American landscape would be transformed for subsequent generations. Finally, in crafting the actual language of the bill, Silverstein and Osolinik worked with the disability community to build the ADA securely on the

foundation of earlier legislation—especially on the Civil Rights Act, Section 504 of the Rehabilitation Act, and the Fair Housing Amendments Act. Proponents could therefore argue that the bill was an application of tested principles, not a new creation.

With this strategy in place, Osolinik and Silverstein began 1989 by reviewing the bill line by line. Redrafting the ADA was not, however, a solitary endeavor. After developing their own preliminary ideas about what provisions should constitute a new bill, Silverstein and Osolinik turned to others to identify interests in and reservations about the bill, including the disability community, all "covered entities,"\*

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\* "Covered entity," as defined in § 101(2) of the final version of the ADA, means "an employer, employment agency, labor organization, or joint labor-management committee." For the purpose of this work, however, "covered entities" is defined more broadly to mean any entity covered by any portion of the ADA. This

the Bush administration, and members of Congress and their staffs. The principal House contacts were Congressman Tony Coelho (D-CA) and Rochelle Dornatt from his staff. Especially helpful from the business community was Nancy Reed Fulco of the U.S. Chamber of Commerce. Osolinik and Silverstein worked most closely, however, with a group of representatives from the disability community. In addition to the general guidance provided by Pat Wright, Ralph Neas, Liz Savage, and Paul Marchand, Silverstein and Osolinik received technical expertise from attorneys Arlene Mayerson, Chai Feldblum, Robert Burgdorf, Jim Weisman, and others according to specialties. By retooling the bill in close cooperation with this group, Osolinik and Silverstein hoped to earn the backing of the disability community. Then they could present a united front as the bill went through Congress.

From January to March, 1989, Silverstein and Osolinik produced scores of different drafts of the ADA. By March 15 they completed a draft (S. 933), which they circulated privately to representatives of the disability community, the Bush administration, and several members of Congress. The bill duplicated the findings and purpose of the original bill (S. 2345) crafted by NCD. It also covered the same main areas, with the exception of housing (which had been addressed by the Fair Housing Amendments Act). S. 933 even incorporated some language of S. 2345 verbatim. But there were marked distinctions.

The new bill, S. 933, demonstrated the commitment to modesty and flexibility in standards by tailoring definitions, provisions, and enforcement to four main titles—Employment, Public Services, Public Accommodations, and Telecommunications.<sup>†</sup> The dedication to legal precedent was also clear. S. 933, for example, incorporated more than five times as many references to earlier statutes. There was also a difference in tone. Whereas the original bill, S. 2345, emphasized discriminatory practices that should *not* be tolerated—for example, providing unequal services—S. 933 spelled out positive, proactive steps that must be taken to meet nondiscriminatory standards. Several major revisions are worth noting.

One of the most contested aspects of the ADA was the definition of disability. People asked: Who would be protected by the ADA? It was a difficult question because one cannot readily identify disability with the same precision that one can identify, for example, race and gender. It would also be impractical to name, in a statute, each and every type of disability. This would be cumbersome, if not impossible, and require constant adjustment for future, unknown impairments. The challenge, therefore, was to find a definition that was at once inclusive enough to cover diverse disabilities, but not so universal that anyone could claim protection by the ADA. Under the original bill, S. 2345, a disability was defined as “a physical or

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would include, for example, employers, operators of public transit, owners of places of public accommodation, and communications providers.

<sup>†</sup> The bill introduced on May 9 had two more titles in addition to the four main titles. Title I, later deleted in the course of negotiations, included general provisions that applied to most covered entities. Title VI (which became Title V after the deletion of Title I) contained miscellaneous provisions.

mental impairment, perceived impairment, or a record of impairment.”<sup>8</sup> This definition was similar to the three-pronged definition implemented under Section 504, except that it did not limit the first prong to impairments that “substantially limit” major life activities. This meant that anyone with “any physiological disorder or condition, cosmetic disfigurement, or anatomical loss” or “any mental or psychological disorder” was covered.<sup>9</sup> Osolinik and Silverstein instead used the Section 504 standard and restricted the first prong to “a physical or mental impairment that *substantially limits* one or more of the major life activities”—such as seeing, walking, self-care, and learning.<sup>10</sup> This meant that a physical impairment such as an infected finger would not constitute a disability.

The most controversial issue in the redrafting stage was the cost and burden imposed upon covered entities.<sup>11</sup> Legislative endeavors of the 1980s successfully established that, in the area of disability civil rights, equal *treatment* was not enough. The goal had to be equal *opportunity*.<sup>12</sup> That required modifying policies, providing services, and breaking down barriers: “reasonable accommodations”.<sup>13</sup> In other words, it was not enough simply to leave the door open, the door also had to be widened. And this meant that civil rights for persons with disabilities could cost money. But at what point does providing “equal opportunity” become an “unreasonable” burden?

Under S. 2345, the only defensible limits to providing accommodations were actions that “would fundamentally alter the essential nature, or threaten the existence of, the program, activity, business, or facility in question.”<sup>14</sup> Although Burgdorf wrote the provision to assure that compliance would *not* mean shutting down a business, it came to be known pejoratively as the “bankruptcy” provision: interpreted to mean that a business would have to go to the brink of bankruptcy before it could defend against charges of discrimination.<sup>15</sup> S. 933, on the other hand, followed Section 504 in using “undue hardship” as the standard for determining whether employment accommodations were “reasonable.” Undue hardship meant “an action that is unduly costly, extensive, substantial, disruptive, or that will fundamentally alter the nature of the program.”<sup>16</sup> It was not a fixed concept, but rather varied on a case-by-case basis, according to such factors as the size of the business, the type of operation, and the nature and cost of the accommodation.

Concern for cost shaped the new approach to barrier removal. S. 2345 required the retrofitting of all public transportation vehicles and facilities to make them accessible. S. 933, on the other hand, varied its demands according to whether vehicles and facilities were newly constructed or already in operation. The general principle was that all new vehicles and transportation facilities would have to be “readily accessible to and usable by individuals with disabilities”.<sup>17</sup> For used vehicles, transportation operators had to make “good faith efforts” to find accessible vehicles. If a company remanufactured a vehicle to extend its life for at least five years, it had to be made readily accessible to “the maximum extent feasible.” With regard to existing facilities, S. 933 required only that certain “key stations” had to be retrofitted for accessibility.

The approach in S. 933 to barrier removal in public accommodations paralleled the transportation provisions. The original bill, S. 2345, required that nearly every place of public accommodation had to remove all barriers within five years. This provision earned S. 2345 the nickname of the “flat earth” bill. Drafters of S. 933, however, dispensed with the idea of wholesale retrofitting. Instead they required that all *new* construction be accessible. Nevertheless, they did not want to leave existing structures untouched. Consequently, drafters created a new legal term. S. 933 required that businesses make changes to existing structures where accessibility was “readily achievable,” which was eventually defined to mean “easily accomplishable and able to be carried out without much difficulty or expense.”<sup>18</sup> The goal was to create a mind-set of accessibility, to encourage people to look for creative ways to make the world more accessible. “Readily achievable” modifications might include installing grab bars, ramping a few steps, lowering telephones, adding raised letter and braille markings on elevator controls, and adding flashing alarm lights.

S. 933 also required that where structural changes were not readily achievable, covered entities had to make their services available through alternative methods: for example, coming to the doorway of a Laundromat to pick up laundry when a person could not get inside. Moreover, the bill required the provision of “auxiliary aids and services” to persons with disabilities: for example, reading a menu to persons with visual impairments so that they could fully enjoy the benefits of places of public accommodation.

The version of the ADA crafted by Senators Harkin and Kennedy did not only limit initial provisions. In one significant area they significantly expanded the scope of the original bill. Under S. 2345, only those public accommodations (covered under the Civil Rights Act of 1964 had to be accessible. This principally meant places of lodging, eating, and entertainment. Service establishments such as doctors’ offices, retail stores, and private clubs, were not included. S. 933, by contrast, defined within its scope virtually every privately-operated establishment that was used by the general public and affected commerce. This included places of lodging, office buildings, parks, recreation facilities, theaters, retail stores, medical facilities, and restaurants. Although this apparently broke the commitment to parity with the Civil Rights Act, advocates argued that it was consistent in spirit: just as the Civil Rights Act addressed the universe where race discrimination was an issue, the ADA covered the broader universe where disability discrimination was relevant.

The new draft of the ADA also took steps to define the original ADA’s prohibition of discrimination in “broadcasts, communications, or telecommunications.” S. 933 required that communications providers implement telecommunication relay services. A relay service enabled an individual using a Telecommunication Device for the Deaf (TDD)—a machine that transmits typed data over telephone lines—to communicate with someone without such a device, through an operator who would translate text to voice, and voice to text.

Another significant change from S. 2345 concerned legal actions available to remedy discrimination. S. 2345 included both administrative and civil remedies.<sup>‡</sup> It granted administrative agencies the authority to order “all appropriate remedial relief”<sup>19</sup> and gave individuals the right to sue in a district court for both injunctive relief and monetary damages, including punitive damages.<sup>§</sup> Drafters of S. 933, however, viewed these remedial provisions as extreme and politically impossible. Therefore they introduced remedies tailored to each title. Only administrative remedies were available for the public accommodations and telecommunications provisions. Private right to action was granted for employment and public services provisions. For employment discrimination, S. 933 also allowed for punitive damages.

### **Building Support for S. 933**

Before publicly circulating the final draft of the bill, Silverstein and Osolinik submitted it to a group of individuals in the disability community for their approval. On one occasion, the two staff members were grilled for hours by persons with disabilities who objected to the apparent weakening of the bill. Osolinik tried to explain that the bill could not be passed without the proposed changes. Silverstein emphasized that the new bill remained true to the original principles.<sup>20</sup> Some in the disability community, however, were outraged. “Lots of people felt let down,” said Bonnie O’Day about the reactions at the spring, 1989, conference of the National Council on Independent Living (NCIL).<sup>21</sup> Yet most agreed that it was dangerous to include provisions that might endanger the entire bill. Ultimately, the disability community lent its support, persuaded that it was the best that could be achieved politically. This was crucial, for a competing Republican bill might polarize the debate and kill the ADA; unity behind S. 933 made it difficult for an alternative proposal to gain a foothold.

After the disability community backed S.933, the next task for ADA supporters was to enlist the cosponsorship of members of Congress and the endorsement of President Bush. As in 1988, Liz Savage coordinated a cosponsorship drive in conjunction with House and Senate sponsors. This time the drive was even more aggressive, and it continued throughout the entire ADA deliberations. At the same time, Justin Dart, Marilyn Golden, and others throughout the disability

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<sup>‡</sup> Administrative remedies refer to actions taken by the government to enforce regulations. Civil remedies refer to private claims filed in a district court, which can include monetary compensation.

<sup>§</sup> Injunctive relief refers to putting an end to the discrimination, which could include reinstatement to a job or an order to remove a physical barrier. Monetary damages can include back pay or any other expenses incurred as a result of the discrimination. Punitive damages are a penalty for discrimination, that can include awards for “pain and suffering” that surpass any actual financial loss.

community continued to mobilize the national grass roots network. Persons with disabilities began writing letters urging their representatives to support the ADA.

On the Senate side, ADA advocates were especially interested in enlisting the support of Senators Orrin G. Hatch (R-UT) and Robert Dole (R-KS). Hatch's support was extremely important because he was the ranking Republican on the Labor and Human Resources Committee, and the rest of the committee Republicans generally followed his lead in disability policy. In December, 1988, Senator Harkin began meeting with Hatch personally, in addition to consultations between their staffs. Harkin had hoped that Hatch's long and solid record of supporting persons with disabilities would lead to his endorsement of the bill as chief cosponsor. As with Senators Kennedy and Harkin, Hatch had personal experience with disability through his brother, who lost the use of his legs from polio. Hatch, however, had serious reservations about the bill. For example, he proposed more limited remedies and the exemption of religious groups from the public accommodations provisions. He also wanted to coordinate his position with the White House. As a result, he declined Harkin's invitation to be the lead cosponsor.

Instead, Senator Hatch directed his chief counsel, Mark Disler, to draft an alternative bill.<sup>22</sup> Disler had worked for Bradford Reynolds in the attorney general's office during the Reagan administration. During the battles over President Reagan's Task Force on Regulatory Relief, Disler had formed good working relationships with Kemp and Wright and become much more knowledgeable about disability, which

*Senator Dole's support was crucial because, as Minority Leader, he could wield considerable influence over the progress of the ADA through Senate committees and on the Senate floor.*

helped smooth working with Senator Hatch's staff. The bill Disler crafted was similar to S. 2345 in that it was short and focused on general principles of nondiscrimination. Rather than propose strong, detailed requirements as in S. 933, it gave executive agencies the responsibility and authority to create nondiscrimination standards.

Senator Hatch's actions were, nonetheless, ultimately designed to aid in the ADA's passage. A quick endorsement of the Harkin bill might have alienated other Republicans, whose support was necessary for effective implementation. Senator Dave Durenberger (R-MN), whose advocacy for people with disabilities stretched back to his tenure as chief of staff for the Governor of Minnesota in the 1960s, explained that Hatch "in effect had to stay off of the original bill in order to leverage Republican support for the final product." By drafting his own bill, Hatch paved the way for achieving a broader base of consensus and helped prevent filibustering on the Senate floor.<sup>23</sup>

Senator Dole's support was also crucial because, as Minority Leader, he had the power to wield considerable influence over the progress of the ADA through Senate committees and on the Senate floor. For example, he could discourage his

party from requesting that the ADA be referred to multiple committees, which could delay or even kill the bill. He could also help prevent damaging amendments from being introduced on the floor. Similar to Senator Hatch, Dole had a solid record on disability issues. He knew disability first-hand from the paralysis he incurred in World War II. On each anniversary of his injury, April 14, he gave a speech about disability on the Senate floor. In fact, he devoted his first official speech in the Senate, on April 14, 1969, to the needs of the disability community. "It is a minority group whose existence affects every person in our society and the very fiber of our Nation," said Dole. He noted that people with disabilities faced significant problems with employment, income, health care, education, rehabilitation, transportation, and access to public accommodations. Accordingly, he urged Congress to promote collaboration between the public and private sectors to improve opportunities for persons with disabilities. He asserted his commitment to make wise use of financial resources, but he wanted to do what was necessary to achieve for people with disabilities "the independence, security, and dignity" to which they are "entitled."<sup>24</sup> Subsequently, in 1984, Dole established the Dole Foundation, which he dedicated to improving the employment prospects of persons with disabilities.

Nevertheless, Senator Dole had reservations about the ADA. In part, he was ambivalent because he had talked with Senator Charles E. Grassley (R-IA), Senator Harkin's fellow senator from Iowa about introducing his own bill. Dole, however, received a flood of phone calls from the disability community urging him to cosponsor Harkin's bill and abstain from introducing a competing bill.<sup>25</sup> Crucial in shaping Dole's position on the ADA and encouraging him to support it was one of his staff members, Maureen West. Paul Hearne, Executive Director of NCD and a long-time associate of Dole, assisted West in educating the senator about the ADA. Dole refrained from introducing his own bill. But he also continued to withhold his support of S. 933, even though he was one of fourteen original cosponsors of S. 2345.

In addition to Senators Hatch and Dole, ADA supporters were interested in enlisting the support of President Bush and his administration. President Bush had already spoken strongly on behalf of civil rights legislation for people with disabilities on multiple occasions. And Senators Harkin and Kennedy had consulted with the administration throughout the winter and spring of 1989 for input on the development of S. 933. Sometimes these conversations were held person-to-person; at other times they were mediated by members of the disability community, such as Pat Wright and Justin Dart, who had very strong White House connections. The main goal, however, was to encourage the Bush administration take a further step and endorse the version of the ADA developed by Senators Harkin and Kennedy. Faced with the demands of forming an administration and lacking adequate technical disability expertise, however, the White House did not develop a firm position on the bill. Harkin was actually ready to introduce S. 933 in March, but he delayed its introduction at the request of the administration. By April, ADA supporters decided they simply had to move forward with the bill, with or without President Bush. Accordingly, Senator Harkin scheduled the introduction of S. 933 for May 9, 1989, at which time Congressman Coelho would also introduce the companion bill, H.R. 2273. Although ADA supporters were unsuccessful in securing the cosponsorship of Hatch and Dole

and the endorsement of Bush, the congressional cosponsorship drive was effective. By May 9, the bill had acquired 33 Senate cosponsors and 84 House cosponsors.

In consultation with Congressman Coelho, Senators Kennedy and Harkin developed a strategy for maneuvering the ADA through Congress. They decided to begin the ADA deliberations in the Senate. The Senate would be more manageable because of its rules for legislative deliberations. Whereas in the House a bill went to all committees with partial jurisdiction, in the Senate a bill went only to one committee, whichever had the preponderance of jurisdiction (subsequent referrals to additional committees could be requested). Moreover, Kennedy and Harkin were chairmen of the committee and subcommittee with jurisdiction. Kennedy's Committee on Labor and Human Resources also had a comfortable Democratic majority. And the ranking Republicans of both the committee and subcommittee—Senators Orrin Hatch and Dave Durenberger—were strong supporters of disability policy.<sup>26</sup> Furthermore, the Senate had a better working relationship with the administration. Given the importance of bringing the administration on board, it was wise to tailor strategy to its interests.

Senators Harkin and Kennedy hoped to push the ADA through the Senate as rapidly as possible with minimal alterations. They feared that lengthy deliberations would increase the chance of losing control of how the ADA was characterized in public debate. Kennedy thus proposed going to mark-up<sup>\*\*</sup> before the Fourth of July recess and to the Senate floor before the August recess. The House would then proceed with the version passed by the Senate, which would help limit the discrepancy between House and Senate versions and smooth conference deliberations.<sup>††</sup>

Senate sponsors scheduled three hearings for May 9, 10, and 16; they devoted April to preparing for them. They hoped to prevent any surprises by getting the facts

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<sup>\*\*</sup> Mark-up is the final process of committee consideration of a bill. After holding hearings and working to craft an amended bill that all committee members can support, committees go to mark-up. At mark-up, committee members generally begin by voting on all agreements reached prior to the mark-up session as one single amendment. Then, members can discuss and vote on additional amendments concerning unresolved issues. The last action of the committee at mark-up is to vote on the bill as amended by the committee. If the committee approves the bill, it is sent to the Senate (or House) floor for consideration by the entire Senate (or House). If the committee does not approve the bill, the bill basically dies: it cannot be brought up at the floor unless first approved by committee(s).

<sup>††</sup> Both the Senate and House must independently approve a bill for it to be passed on to the president. Unless the two houses pass identical bills (a rarity for such complex bills as the ADA), the Senate and House must send representatives to a conference to fashion an agreement on all differences. Each house must then approve the bill reported out of the conference.

in order and crafting responses to anticipated opposition. Silverstein turned to those who knew disability the best: members of the disability community. He developed a list of about 100 questions and asked representatives of the disability community to explain, based on their experiences at the local level, how various covered entities would respond to ADA provisions. Osolinik and Silverstein then prepared thick briefing books based on the responses. They also worked with the disability community to select witnesses to testify on each aspect of the bill. Unlike the hearings of 1988, the 1989 Senate hearings would include very detailed, technical analyses of the ADA, with a balance of testimony from those who supported the legislation outright and those who promoted changes. Accordingly, the business community and other covered entities were gearing up for the hearings and working with Senate leaders to identify effective witnesses. On May 5, for example, just before the bill's introduction, the U.S. Chamber of Commerce sponsored the first of several meetings for all business organizations to discuss their strategy for the ADA, which culminated in their testimony before Congress. Subsequently, a group of business organizations formed a coalition called the Disability Rights Working Group.

### **Senate Hearings and the Quest for Bipartisanship**

Senate Hearings on S. 933 began in the Dirksen Senate Office Building on Tuesday morning, May 9, 1989. Ranking minority member Senator Hatch set the stage for the hearings in his opening statement. "I support a comprehensive civil rights bill for persons with disabilities," Hatch declared unambiguously. But he also stated he had "serious concerns." Hatch challenged the extension of public accommodations provisions beyond those establishments covered under the Civil Rights Act of 1964. He promoted an exemption for small businesses. He also opposed provisions for remedies that included monetary and punitive damages. Moreover, Hatch stated that his reservations concerning S.933 might compel him to introduce his own bill, or support a different bill, presumably one introduced by Senator Dole.<sup>27</sup>

Traditionally the administration offers the lead testimony on major bills, but by May 9 the Bush administration had still not developed a formal position.<sup>28</sup> In fact, the White House had to cancel a May 1 Rose Garden press conference with Senate leadership, which had been designed to promote the ADA.<sup>29</sup> Consequently, Congressman Coelho was the lead witness. He was selected to open the deliberations not only because he was the sponsor of the identical ADA bill introduced in the House; he also poignantly symbolized the ADA. In his senior year of college, Coelho learned he had epilepsy—reputed by some to be demonic possession. As a result, he was barred from the Catholic priesthood and his familial relationships were severely strained. "I was suicidal and I was down," Coelho said of his experience with discrimination.<sup>30</sup> But Bob Hope took him into his own home and encouraged him to pursue his ministry through public service.

Congressman Coelho met with considerable success after following Hope's advice and beginning a government career. Elected to Congress in 1978, he became

Chairman of the Democratic Congressional Campaign committee in 1981. Five years later, he was elected Majority Whip.<sup>††</sup> He also became a national leader in disability issues, which included service as Director of the Epilepsy Foundation of America (EFA). Coelho therefore spoke not

*“We can be productive, if you will give us that right, give us that opportunity. That is all we ask for, nothing more, but definitely nothing less.”*

—Congressman Tony Coelho

only with the authority bestowed upon him from the Democratic leadership, but also as an example of the potential of persons with disabilities. “Tony was sort of the epitome of what a person with a disability can do,” said Dornatt of his staff, “and what they can achieve given a fair shake and given a chance.”<sup>31</sup> Coelho echoed this theme in his remarks at the Senate hearing: “We can be productive, if you will give us that right, give us that opportunity. That is all we ask for, nothing more, but definitely nothing less.”<sup>32</sup>

In addition to speaking about his personal experiences, Congressman Coelho addressed Senator Hatch’s remarks and stressed the need for bipartisanship: “We very much want you on board and very much need your support,” he entreated. “We would prefer that you not introduce your own bill,” he added, urging Hatch to work toward a common bill instead.<sup>33</sup> Hatch replied by pledging his best efforts to develop consensus. “I would love nothing better” than to cosponsor this bill, Hatch said. “But in its present form, I cannot.”<sup>34</sup> Only minutes into the first hearing, it was clear that considerable work lay ahead to achieve bipartisanship and shepherd the ADA through Congress. The prospect of a competing bill made cooperation much more critical. The hearings were an opportunity to find a solution.

As in 1988, persons with disabilities presented powerful testimony about the need for the ADA by describing their personal experiences. “There is not one disabled American alive today who has not experienced some form of discrimination,” I. King Jordan said.<sup>35</sup> The most vivid imagery came from Justin Dart. In addition to his carefully crafted and eloquent words, Dart brought visual aids. He presented the committee with a box of discrimination diaries and letters that he and others had gathered from around the country. Yet, Dart acknowledged, no document could truly demonstrate the impact of discrimination. As a supplement, Dart thus brought an extra wheelchair. “I submit to you this brand new empty wheelchair,” he said to the committee chairman forcefully. “On January 24, 1988, last

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<sup>††</sup> The Majority Whip is the third-ranking leader of the majority party in the House of Representatives, following Speaker of the House and Majority Leader, and is elected by his or her party. The Whip’s chief responsibility is to rally support behind or in opposition to legislative initiatives. Although the Majority and Minority Whips focus especially on persuading members of their own parties, they also work to get votes from the opposing party.

year, my younger brother, Peter, was faced with the necessity to use, [and] be identified with, this public invitation to discrimination.” But his brother claimed: “I would rather be dead.” Four days later, said Dart, he committed suicide.<sup>36</sup>

Others described specific examples of discrimination. Mary DeSapido described being fired by her employer because of her cancer treatment.<sup>37</sup> Amy Dimsdale, a wheelchair-user trained in journalism at the University of Texas at Arlington, described her experiences of being overlooked by potential employers. “I

*Discrimination “destroys healthy self-concepts, and it slowly erodes the human spirit.”*

have submitted over 300 resumes and more than 100 applications. I have indicated my willingness to be flexible, work at home, relocate, and use my own special equipment—all to no avail. I need virtually no special accommodations to work, as long as I can get in the building.”<sup>38</sup> Lisa Carl, whose cerebral palsy impeded her speech and

required use of a wheelchair, spoke about a time when she went to see a movie at a theater around the corner from her house. But Lisa was told she could not enter. Later the theater explained to Lisa’s mother: “I basically don’t have to let her in here, and I don’t want her in here.”<sup>39</sup> Betty Corey, who took into her home a girl born with AIDS, described having to contact twenty-six different funeral directors before she could find one who would bury the six-year-old without adding surcharges for handling a person with AIDS. Yet, in none of these situations had a law been broken: there was no protection such as that provided for minorities and women.

Disability advocates used numerous arguments to justify the ADA. Many emphasized the loss of human dignity experienced from discrimination. Dimsdale, for example, said she felt “useless, powerless, and demeaned” by her inability to get a job.<sup>40</sup> Discrimination “destroys healthy self-concepts, and it slowly erodes the human spirit,” said Jordan.<sup>41</sup> Others argued that discrimination against the disabled violated one of America’s central tenets: individualism. Dart explained that he addressed the committee as “a fiscal conservative, an active Republican, and, above all, an advocate for the principles of individual responsibility, individual productivity, and individual rights which have made America great.” Social barriers to persons with disabilities, he asserted, undermined an individual’s opportunity to participate in American society fully and equally.<sup>42</sup> Others argued that it was more costly to keep persons with disabilities dependent on government assistance than it was to spend the small amount needed to break down barriers and enable people to support themselves. Senator Harkin, for example, hypothesized that the cost to institutionalize one of his constituents with a developmental disability would cost nearly five million dollars over 65 years.<sup>43</sup>

Another argument on behalf of the ADA was simply that it was nothing new, nothing radical. “These standards are not new, they are not confusing, and they are workable,” Arlene Mayerson of the Disability rights Education and Defense Fund (DREDF) declared in reference to the ADA’s foundation in Section 504.<sup>44</sup> “We tried very hard to avoid any kind of new language,” Senator Harkin explained.<sup>45</sup> Although

transportation was the most controversial aspect of the ADA, many defended it as the linchpin to the entire bill. “The freedom to go to college does not exist without the means to get to the college,” testified Michael McIntyre, Executive Director of Queens Independent Living Center. “The freedom to work does not exist without the ability to get to work. The freedom to organize politically does not exist without people being able to get together in one place. The freedom to date, to go to the movies, to go to the library, to go shopping, to go to a ball game, [to go] anyplace that makes life meaningful, is predicated on the ability to travel.”<sup>46</sup> ADA supporters also emphasized the need to develop solid enforcement provisions to make the bill have a practical effect. “The whole trick is to make it more expensive to break the law than it is to keep the law,” testified Neil Hartigan, the Attorney General of Illinois. “It won’t work without damages.”<sup>47</sup>

Although testimony also came from those proposing changes to the bill, virtually every witness pledged support of the overall ADA concept. The Chamber of Commerce, for example, testified that the chamber “shares the goal of the sponsors of this act,” and pledged to cooperate “in trying to achieve a workable piece of legislation that we can fully support.”<sup>48</sup> Similarly, the National Federation of Independent Business (NFIB) endorsed “the right of every American to have the opportunity to realize his or her full potential.”<sup>49</sup> These sentiments were manifested in the name of the business community’s coalition: the Disability Rights Working Group.

The two dominant reservations about the ADA were cost and litigation. Cost was an issue because the ADA, unlike other civil rights legislation, required businesses and employers to spend money on accommodations and modifications. The second main concern was that, as Lawrence Lorber testified, the “litigation potential of this bill is enormous.” This fear built on the perception that phrases such as “reasonable accommodation,” “undue hardship,” “readily achievable,” “essential function,” and “less effective” were inadequately defined, compelling courts to decide the meaning of the ADA.<sup>50</sup> It also stemmed from the belief that the remedies available under the ADA would invite frivolous law suits. Specific concerns included objections to the public accommodations provisions. William Ball, representing the Association of Christian Schools International, argued that religious organizations and religious schools should be exempt from the public accommodations provisions. The ADA, he argued, would be too costly, might force schools to hire drug/alcohol abusers or homosexuals, and threatened the constitutional separation of church and state.<sup>51</sup> The small business community also argued for an exemption from public accommodations provisions, because of the associated costs and because small business owners were exempt from other civil rights laws.

Careful preparations by Senators Harkin and Kennedy, their staffs, and the disability community paid off in the course of the hearings. Harkin, presiding over the deliberations, was especially deft in handling one of the most controversial issues: mandatory lifts for intercity buses (called “over-the-road” buses because their passengers ride above luggage compartments). In a dialogue with Charles Webb of the American Bus Association (ABA), Harkin creatively used Webb’s testimony to defend

the ADA. Webb testified that a bus lift cost \$35,000, required annual maintenance of \$2,000, and resulted in a 38 percent loss in luggage space and a loss of 11 or 12 seats. Harkin, however, asked Webb whether a technologically-advanced lift that cost less than \$8,000, required little or no maintenance, and resulted in no loss of package space and only one seat, would be acceptable. "Absolutely," Webb replied. "Well, now, I am glad to hear you say that," said Harkin with pride, "because I have a letter here from the Regional Transportation District of Denver, Colorado," which has secured a contract for a lift with exactly those specifications. To the applause of those assembled, Senator Harkin went on to explain that competition and technology would only drive the price further down when lifts were ordered by the thousands.<sup>52</sup>

In addition to their compelling testimony, the Senate hearings were significant for the dialogue concerning bipartisanship and the Bush administration, which was carried out between Senators Kennedy and Harkin, on the one hand, and Senators Dole and Hatch, on the other. On May 10, under relentless pressure from the disability community, Dole made an appearance before the Senate committee to make a statement. On the previous Friday, May 5, he had met with President Bush's chief counsel C. Boyden Gray, Chief of Staff John Sununu, head of the Domestic Policy Council Roger Porter, and others in the White House, to discuss how they could cooperate in working out a bipartisan bill. Dole had also spoken with President Bush on May 9. Before the committee, Dole now asserted that he and the administration hoped to see, before year's end, "a bipartisan piece of legislation passed by Congress, signed by the president, and embraced by, hopefully, the business community and certainly by the disability community." He was "somewhat cautious," however, because he wanted a bill that all affected parties could defend. He feared the potential for litigation and promoted a gradual phase-in to protect small businesses. Nevertheless, he wanted to be a "positive force" rather than "an obstructionist," and urged that the administration needed more time to formulate its position on the bill.<sup>53</sup>

The disability community, however, was growing impatient. NCIL held its annual conference in Washington, D.C., from May 12 to May 14. At the conference, Bonnie O'Day, Chairperson of the NCIL Civil Rights Subcommittee, met with Pat Wright and Liz Savage, whereupon they talked about organizing NCIL conferees to hold a rally at the White House to demand swift action on the ADA. In short order, O'Day and others from NCIL began planning a march for Sunday, May 14—Mother's Day. Committees formed to make signs and work out such details as getting a police permit. They planned to march from NCIL's reception on Capitol Hill to the White House. Several hundred people, including local ADA supporters, joined the march. They left in the evening amidst pouring rain, carrying candles. People using wheelchairs covered themselves with garbage bags, a symbol of their second-class-citizen status.

At the White House, Marca Bristo, President of NCIL, approached the security desk to place a call to President Bush. Although she intended only to mobilize and rally the crowd, an operator actually answered the phone and placed a call through to the Domestic Policy Office. Subsequently, Bristo told a White House representative that she and others were out in the rain, were concerned about the

ADA, and wanted to see the president. In reply, the representative offered Bristo a meeting with White House staff the following morning. The next day, Bristo, Dart, and several other representatives from the disability community met with Dr. William L. Roper, of the

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—A.B. Culvahouse

Domestic Policy Counsel, Chief Counsel Boyden Gray, and EEOC Chairman Evan Kemp to complain about the president’s delays. Although the discussion did not result in a specific commitment, the disability representatives came away feeling as if they had gotten their message through to the administration.<sup>54</sup>

Two days later, at the final scheduled hearing on May 16, the NCIL march appeared to have had an effect. Having consulted with the White House, Senator Hatch said that it was “imperative that this committee hear testimony from the administration on this bill.” Accordingly, he requested that the committee give the administration one more chance. Hatch proposed that the committee delay mark-up for five weeks, hold one additional hearing during the week of June 19, and invite the administration to come forward. If it did not, Hatch pledged that he would not stand in the way of the bill.<sup>55</sup> Although the administration had already possessed a draft of the bill for nearly two months, Senator Kennedy agreed to grant more time, stipulating that if it did not come forward, the committee would move on without its input.

### White House Testimony

*President Bush wanted the ADA “done in a way that was good for the American people . . . this was not going to be a shell promise.”*

—Dr. William Roper

During the next five weeks, executive agencies reviewed the bill to make recommendations for an administration position. Unlike Congress, which follows a fairly organized if messy deliberative process to reconcile the views of two legislative bodies, party

leaders, congressional committees, and individual members, developing an administration position involves an organic process of synthesizing input from senior officials and staff in both the Executive Office of the President and among Cabinet agencies and non-Cabinet agencies. A final administration position is often determined as much the force of personality, influence, and respect of key officials as according to specific position in a decision-making structure.

The key to the ADA in the White House was Chief Counsel C. Boyden Gray, who had previously served as Bush’s counsel for eight years during the Reagan administration. They became close friends and shared similar family backgrounds:

their fathers were golf partners. Their relationship gave Gray considerable influence. “Boyden is the most powerful counsel to a president we’ve had in a long, long time,” said Gray’s immediate predecessor during the Reagan administration, A.B. Culvahouse. Gray was selective in the issues which he engaged. But “on the issues Boyden has chosen,” said Culvahouse, “he is awfully damned influential.”<sup>56</sup> And, based on his friendship with Evan Kemp and following his experience with President Reagan’s Task Force on Regulatory Relief, Gray took a keen interest in the ADA.<sup>57</sup>

White House action on the ADA was framed by President Bush’s declarations in support of disability rights legislation. This was a relatively unique interest for Bush, as he was best known and respected for his expertise on, and passion for, foreign policy. The question, said Dr. William Roper, who worked for Porter on the Domestic Policy Council, was precisely how Bush’s commitments would be translated into specific policy. There were discussions about the extent to which the administration would abide by the campaign promise. But Bush was steadfast in his commitment to getting a solid act passed. “He wanted it done in a way that was good for the American people,” said Roper: “this was not going to be a shell promise.”<sup>58</sup>

Others inside the White House were much less enamored with the ADA, and had substantive reservations. Civil rights was a charged issue in the Bush administration. Kemp explained that the White House would not entertain any concept of “quotas” with regard to the ADA. Officials within the Bush administration emphasized that people with disabilities needed to be qualified for any given job, that the original ADA definition needed to be limited, and that there needed to be a sensible limit to the responsibility of providing reasonable accommodations. If these fundamental issues were settled, said Kemp, the White House could move forward with shaping the details.<sup>59</sup> As White House consultant Robert Funk explained, Funk, Gray, and others reminded skeptics of Bush’s promise.<sup>60</sup> In addition to Gray, Attorney General Richard Thornburgh was a crucial advocate of the ADA and Bush’s aspirations. So was Kemp, who functioned as a vital link between the disability community and the White House.

The Department of Justice (DOJ) organized the various recommendations made by executive agencies, and Attorney General Thornburgh became the point person to represent the administration. Thornburgh, as many others, had personal experience with disability.

*Thornburgh’s testimony was crucial: it demonstrated that the White House was willing to work toward consensus on a bill that President Bush could endorse.*

His son, Peter, had acquired a learning disability from an automobile accident. As parents, Thornburgh and his wife Ginny had moved from caring for the special needs of their own son to working for others with similar conditions. In Pennsylvania, Mrs. Thornburgh had served as county chairperson of the ARC and was a member of President Reagan’s Committee on Mental Retardation. Her work influenced her husband, who used his authority as Governor of Pennsylvania to assist persons with disabilities.<sup>61</sup>

At the Senate hearing on June 22, 1989, it was clear that those in support of the ADA within the White House prevailed in shaping the administration's position, which was presented by Attorney General Thornburgh. "We at the Department of Justice," Thornburgh said, "wholeheartedly share [the ADA's] goals and commit ourselves, along with the president and the rest of his administration, to a bipartisan effort to enact comprehensive legislation attacking discrimination in employment, public services, transportation, public accommodations, and telecommunications." He explained that granting civil rights to disabled persons would help the American economy by promoting employment instead of dependence. Moreover, Thornburgh declared the administration's support of every basic principle, as well as to the overall principle of linking the bill to the Civil Rights Act of 1964 and the Rehabilitation Act of 1973. He also identified areas of concern: drug-abusers should not be covered by the definition of disability; measures should be taken to ameliorate the burden on small businesses; the extension of public accommodations beyond the Civil Rights Act should be carefully analyzed; attempts should be made to minimize litigation; the Secretary of Transportation should be able to grant exemptions to transit systems; and "the most cost-effective and efficient system" of telecommunications should be pursued. Most significantly, however, Thornburgh pledged to begin working, both at the staff and principal levels,<sup>§§</sup> to work toward bipartisan consensus on the ADA.<sup>62</sup>

Although there were pronounced differences between ADA sponsors and the Bush administration, Senator Harkin responded to Attorney General Thornburgh by emphasizing all the areas of agreement. Accordingly, a *Washington Post* headline declared: "Thornburgh Endorses Civil Rights Protection for the Disabled."<sup>63</sup> This statement masked deep divisions, but it effectively identified the ADA's advances and potential.

Attorney General Thornburgh's testimony was crucial because it demonstrated that the Bush administration was willing to work toward consensus on a bill that President Bush could endorse. Senators Harkin and Kennedy eagerly accepted the invitation to open negotiations with the Bush administration. And, as a result of Thornburgh's testimony, Senators Dole and Hatch laid to rest the possibilities of introducing competing bills. The ADA, sweeping in its provisions, emerged from the hearings with virtually every witness supporting the concept of the bill. Every argument against the ADA met with an effective rebuttal. The ADA was sound and it was on the move.

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<sup>§§</sup> "Principals" refer to persons of high-level offices, for example Senators, Congressmen, and top administrators. Traditionally, meetings between the House and Senate and between Congress and the administration require same-level discussions. Thus, a Senator would not open negotiations with a staff member of the administration. Staff members meet with staff members, principals meet with principals.

## Negotiations Between the Senate and the White House

Although Senator Harkin was the Senate sponsor, Senator Kennedy—the full committee Chair and a senior Senator—took the lead in negotiating with the White House.<sup>64</sup> Kennedy’s plan of attack was to get all parties into the same room and essentially stay there until all issues were resolved. These discussions would include the administration, the Senate, the House, both the business and disability communities. House Republicans, however, declined to participate, for they did not want to be bound by any agreements. Moreover, the White House insisted that only representatives of Congress and the administration could join the negotiations. Kennedy and Harkin wanted disability representatives to be at the table because they had so much technical expertise, but they and all other outside constituencies were not allowed into the negotiating room. Thus, only representatives from the Senate and the Bush administration came to the table.

The first meeting took place about a week after Attorney General Thornburgh’s testimony in the anteroom of the Senate Committee on Labor and Human Resources. Roper was the lead negotiator for the administration. He worked especially closely with Robert Funk, a co-founder of DREDF and a disability advocate from the Domestic Policy Council. Osolinik and Silverstein were the leaders for the Senate. At the outset of the meeting, in light of the absence of House Republicans as participants, Osolinik insisted on two main ground rules. First, she emphasized that they needed to come up with a complete settlement: leaving any issue unresolved might undercut the agreements that were made. Second, she argued that the administration had to stand by the negotiated agreements, even if House Republicans later opposed them and looked for administration support. Roper, however, said he could not commit to these stipulations because he had not cleared them with his superior, Chief of Staff Sununu. Osolinik promptly called off the meeting and said she was ready to continue whenever the administration was willing to agree to the conditions. Such actions led Wright to claim that Osolinik was “one of the toughest negotiators I have ever seen.”<sup>65</sup>

Over the Fourth of July weekend, Chief of Staff Sununu telephoned Senator Kennedy to talk about the abruptly-ended meeting. Kennedy repeated the two ground rules submitted by Osolinik, and Sununu agreed to abide by them. Accordingly they made plans to resume negotiations on July 6, 1989, and settled on the times, participants, and location. Over the next two weeks, through July 18, Senate staff and administration staff held ten negotiation sessions. From the Senate, the principal participants were the staffs of Senators Kennedy, Harkin, Hatch, Durenberger, and Dole. Staff from the office of Senator John McCain (R-AZ) joined the discussion regarding telecommunications provisions and were pivotal in shaping that portion of the bill. For the administration, participants came primarily from the White House, including Roper and Funk; the Justice Department, especially the author of the Section 504 regulations, John Wodatch; the Department of Transportation; and OMB.

Although non-governmental constituencies were not allowed in the Senate anteroom, they waited in a nearby conference room where they could be consulted

during breaks. Those present in the meetings devoted several hours to each session, went through the bill line by line, and identified scores of disagreements for discussion. The staffs reached agreement on the vast majority of issues, but a few unresolvable disputes were left for the principals. These more difficult issues included the scope of remedies (namely the inclusion of compensatory and punitive damages), the scope of public accommodations (namely whether the ADA applied to more establishments than those covered by the Civil Rights Act), exemption of religious groups from the public accommodations provisions, the definition of disability, and coverage of drug and alcohol users.

On July 28, ten days after the conclusion of negotiation sessions, Senator Dole sponsored a principals meeting in his conference room. They met there because of the ample space and because the office of the Minority Leader was friendlier terrain for the administration. Those present included Senators Kennedy, Harkin, Dole, Hatch, and Durenberger, Chief Counsel Gray, Chief of Staff Sununu, Secretary of Transportation Samuel K. Skinner, Attorney General Thornburgh, head of the Domestic Policy Counsel Roger Porter, and others representing executive agencies covered by the ADA. The purpose of the meeting was to hammer out agreements on remaining issues. But at one point Sununu lost his temper and began yelling at Silverstein. Kennedy slammed his hand on the table, yelled back that he would not stand for shouting at Senate staff, and threatened to walk out.<sup>66</sup> The discussion resumed, but no official agreements were made: the meeting was cut short.

Three days later, on July 31, Senators Kennedy and Harkin and Attorney General Thornburgh resolved the handful of remaining issues and closed the negotiations. The breakthrough compromise, which facilitated agreement on other issues, was essentially a swap concerning public accommodations and remedies. In the area of public accommodations, the administration had used the parity principle against ADA sponsors by arguing that the ADA should cover only those establishments covered under the Civil Rights Act. With respect to remedies, the administration wanted to exclude compensatory and punitive damages. As a compromise, Kennedy and Harkin agreed to restrict remedies to the standards of the Civil Rights Act in exchange for the administration's consent to apply the ADA to the broad spectrum of public accommodations.

There were several other major agreements included in what Senator Kennedy termed a "fragile compromise."<sup>67</sup> First, with respect to employment, negotiators incorporated a two-year delay of the effective date for operations with 25 or more employees, and a four-year delay for operations with 15 to 24 employees. Establishments with fewer than 15 employees were already exempted from the employment title. They also introduced stronger language to ensure that current employees who abused drugs and alcohol would not be a protected class. Second, concerning public transportation, the agreement included

*The breakthrough compromise, which facilitated agreement on other issues, was essentially a swap concerning public accommodations and remedies.*

authority for the Secretary of Transportation to waive the requirement of bus lifts for fixed-route systems when lifts were unavailable. For private intercity bus transportation, the agreement delayed implementation of lift requirements for at least five years and mandated a study to explore how best to make intercity buses accessible. Third, regarding public accommodations, the negotiated agreement delayed implementation for 18 months, exempted religious organizations and private clubs, and specified that elevators were required only in buildings with at least three stories or more than 3,000 square feet per floor.

### Senate Approval

After reaching a final agreement with Attorney General Thornburgh on July 31, 1989, Senators Kennedy and Harkin continued to push the ADA forward, scheduling the Labor and Human Resources committee mark-up for August 2. This gave Senate staff only a couple of days to translate every agreement into appropriate legislative language. They did not finish writing the substitute bill until about 3:00 in the morning on the day of the mark-up. The committee mark-up itself was rather uneventful—it lasted less than an hour.<sup>68</sup> This was mainly because the intense and detailed negotiations had settled most issues. Moreover, committee Democrats and Republicans gave deference to Senators Kennedy and Harkin, and Senators Hatch and Durenberger, all of whom supported the rewrite of S. 933. Accordingly, the committee voted unanimously, 16 to 0, to report the ADA to the Senate floor for final consideration. The Senate, the Bush administration, and the disability and business communities had truly come a long way since January to achieve unanimous, bipartisan support. It was “one of the most extraordinary legislative accomplishments I’ve ever seen,” said Neas.<sup>69</sup> For the disability community, it was a remarkable victory. Moreover, the compromise empowered President Bush, who had previously supported the principles of the ADA, to endorse a specific version of the bill.

The Senate closed for recess just two days after the mark-up, on August 4. But while many members and their staffs went on vacation, Senators Harkin and Kennedy continued to drive the ADA forward to keep the momentum alive. They wanted to make the ADA one of the first items of business when the Senate resumed on September 6.

This meant that the committee report had to be filed by August 30 in order to give Senators and their staffs ample time to review the issues. For three weeks Democratic and Republican Senate staff worked intensively with the administration, the disability community, and the business community to develop a report that established an accurate historical record reflecting the various negotiated agreements. They completed a draft by August 22, and submitted the report to accompany the substitute version of S. 933 on August 30.

*The Labor and Human Resources Committee voted unanimously, 16 to 0, to report the ADA to the Senate floor for final consideration—a remarkable victory for the disability community.*

The speed with which the Labor and Human Resources Committee moved the ADA shocked many senators and staff members. When the ADA came up for a vote on September 7, just a day after the Senate reopened for the fall, some senators complained that things had happened too quickly, that they did not have enough time to review the legislation.<sup>70</sup> Others opposed the bill outright. Humphrey (R-NH) called it “one of the most radical pieces of legislation I have encountered.”<sup>71</sup> Senator Jesse Helms (R-NC) cynically suggested the bill should be called the “Lawyers Relief Act of 1989.”<sup>72</sup> For the most part, however, senators applauded the concepts of the ADA. In fact, by September 6 more than 60 senators had signed on as cosponsors.

Debate on the Senate floor lasted late into the night, totaling over fourteen hours. Although the fundamentals of the bill were never threatened, several divisive issues emerged. The first was a proposed amendment by Senator Hatch, which would provide a \$5,000 tax credit to businesses for making accommodations and modifications—an alternative to a complete exemption for small businesses from the public accommodations provisions. Hatch warned that the government was a potentially “oppressive” institution and said that it was unfair to burden small businesses with the costs of implementation without placing any of the responsibility on the government.<sup>73</sup> Senator Lloyd Bentsen (D-TX), however, argued that the amendment was a “killer amendment” because all bills affecting revenue are constitutionally required to come from the House.<sup>74</sup> Hatch disagreed with Bentsen, as did a majority of the Senate. But since the Budget Act required a two-thirds majority for such revenue amendments, the tax credit proposal failed.<sup>75</sup>

Near the end of the floor debate, shortly before 10:00 p.m., Senator Grassley introduced an amendment that brought Congress under the purview of the ADA. Senator Hatch had raised the issue during the committee mark-up, but Senator Kennedy had cautioned Hatch that the provision might kill the bill if introduced too early.<sup>76</sup> On the Senate floor, Grassley argued that it was unfair for the Senate to impose a burden on the American people without sharing it. Senator Wendell H. Ford (D-KY), however, argued that such an amendment blurred the constitutional balance of powers by giving the executive branch administrative control over Congress. Ford agreed with Senators Harkin and Kennedy that the ADA should apply to Congress. But he thought the issue should be considered more carefully in conference, not passed hastily because people were tired and wanted to go home. Despite his objections, the Senate approved the amendment (by counting the number of Senators standing in favor of and against it) with the supposition that the amendment only articulated intent: details would be worked out in the House or in conference.

A much more acrimonious debate centered on the definition of disability. Senator William L. Armstrong (R-CO) argued that the definition of disability in the ADA was too broad. He was especially concerned about the inclusion of “mental disorders” and disorders with a “moral content.” He questioned whether senators thought homosexuality, bisexuality, exhibitionism, pedophilia, voyeurism, and kleptomania should be protected by the ADA.<sup>77</sup> Senator Jesse Helms shared Armstrong’s concerns, especially with respect to homosexuality, and feared that employers would no longer be allowed to maintain “moral standards” in their

businesses.<sup>78</sup> Senator Kennedy, however, argued that prohibiting discrimination against persons with HIV was crucial if the epidemic was to be controlled, because people would otherwise be less likely to reveal their illness. And Senator Pete V. Domenici (R-NM) cautioned against excluding persons with mental illness, noting the recent recognition that such legends as Abraham Lincoln and Winston Churchill struggled with bipolar disorder. Although Senators Kennedy and Harkin opposed unduly restricting the definition, it appeared that the bill would not go forward unless specific conditions or impairments were expressly excluded from the bill. They thus worked with Armstrong and Hatch for hours, in consultation with the disability community, to prepare a list. Senator Hatch typed the amendment himself, and the Senate approved it by a voice vote.

With these and several other smaller amendments considered and resolved, the Senate finally voted on the ADA. In a remarkable demonstration of bipartisanship, the Senate voted affirmatively by a count of 76 to 8.<sup>79</sup> This bipartisanship was crucial for the ADA's success, because the bill consequently

*“If it had become a Democratic bill, we would have lost. . . . It had to be bipartisan.”*

—Congressman Tony Coelho

entered the House deliberations as a coalition bill with the indispensable support of President Bush. Without the negotiations that had culminated in the support of Senators Hatch and Dole and President Bush, the ADA might have been labeled as a partisan initiative. “If it had become a Democratic bill,” said Congressman Coelho, “we would have

lost. . . . It had to be bipartisan.”<sup>80</sup> The ADA had indeed achieved a broad base of support from both parties, but a difficult battle in the House of Representatives lay ahead.



## FASHIONING A DURABLE ADA: THE HOUSE OF REPRESENTATIVES

The overwhelming affirmative vote in the Senate contributed to the ADA's remarkable momentum. The intense negotiations with the White House had resulted in a bill that earned President Bush's endorsement, which essentially guaranteed passage of the bill in some form. The Senate Committee on Labor and Human Resources had been unanimous in its support of the ADA. A grassroots disability community had made its presence known on Capitol Hill by uniting to advocate aggressively for the ADA. Meanwhile, no considerable opposition had organized. By the time the Senate voted on September 7, 1989, nearly half the House had cosponsored the bill—almost enough votes to pass it.<sup>1</sup> These factors led many senators and the Bush administration to anticipate and hope for swift passage in the House before year's end. Other factors, however, pointed to a more challenging process.

*Much more work had to be done to achieve the bipartisan support that ADA advocates sought. Hopes for quick passage were dashed; debate in the House took nearly nine more months.*

Whereas 185 Democrats signed on as cosponsors (88 percent of all House signatures), only 25 Republicans attached their names to the bill. Moreover, while House Democrats had worked with the Senate in redrafting the ADA and were kept informed about the negotiations with the administration, House Republicans had kept their distance. They did not contribute substantively to the redrafting process; they also declined from participating in the White House negotiations to avoid being bound by them, and because they wanted to convey “that they were trying to look out for [the] needs” of the business community.<sup>2</sup> Consequently, though the Senate crafted a breakthrough compromise bill, House deliberations would have to cover the same issues all over again. Much more work had to be done to achieve the bipartisan support that ADA advocates sought. Hopes for quick passage were dashed; debate in the House took nearly nine more months.

### Early Actions in the House

Compared with the Senate, where there were powerful and passionate advocates of disability in leadership positions on both sides of the aisle, Republican and Democratic leadership in the House, with the exception of Majority Whip Tony Coelho (D-CA), were much more cautious. House Speaker James C. Wright, Jr.

(D-TX) and Majority Leader Thomas S. Foley (D-WA) were skeptical of the ADA's wide-ranging impact and viewed the bill more as a private agenda of Congressman Coelho than an issue of national policy importance.<sup>3</sup> "I had the leadership unwilling to tell me no because it was me," Coelho said. But they were not openly supportive and would have "killed" the ADA, "if it hadn't been [for] my making it so personal."<sup>4</sup> Although in time the ADA would come to be viewed as a leadership bill, largely because of Coelho's status as Majority Whip, the initially weak support of Democratic leadership placed Republicans in a position to shape the ADA to their interests.<sup>5</sup>

Congressman Coelho was the first member of the House to join the campaign to pass the ADA. He was the bill's sponsor both in 1988 and in 1989. He also collaborated with Senators Tom Harkin (D-IA) and Edward M. Kennedy (D-MA) to rewrite the ADA and craft a master strategy for passage. House Republicans did not demonstrate significant interest in the ADA until it entered Congress for the second time in the spring of 1989. The leader among Republicans was Congressman Steve Bartlett (R-TX). He had played an integral role in recasting disability policy in terms of independence and in issuing a mandate to the National Council on the Handicapped (NCD) to review federal programs and make recommendations. Although he generally supported the proposals in *Toward Independence*, Bartlett was cautious about the lead recommendation pertaining to an equal opportunity law. Throughout 1988 he had watched the ADA from a distance. But after President-elect Bush promised support of an act similar to the ADA at a pre-inaugural event on January 19, making passage seem imminent, Bartlett decided to become involved to ensure that it was a reasonable bill.<sup>6</sup>

In April, 1989, Congressman Bartlett joined with Minority Leader Robert H. Michel (R-IL) and Congressman William F. Goodling (R-PA) to propose a partnership with Congressman Coelho. "We would like to work with you to develop a good bipartisan bill," they wrote to Coelho on April 25. "By working together, we hope to develop language that we can agree upon, support, and introduce together."<sup>7</sup> But the revised draft was already completed and Bartlett, Michel, and Goodling did not cosponsor the ADA at the time of its introduction. Michel also wrote a letter to President Bush, on April 26, urging him to join in the efforts of working toward a bipartisan bill. Such an effort, Michel said "is appropriate, definitely warranted, and most importantly, deserved by individuals with disabilities and others who will be affected by it."<sup>8</sup> Bush fulfilled this request by working with the Senate to develop a compromise bill.

Shortly into the House deliberations in the spring of 1989, ADA supporters received a significant blow that paralleled the 1988 defeat of Senator Lowell P. Weicker, Jr. (R-CT). While House Speaker Wright was under scrutiny for alleged ethics violations, some members accused Congressman Coelho of violating House ethical standards by investing in certain bonds. Unlike Wright, however, who dragged out his own investigation before leaving Congress, Coelho promptly submitted his resignation, effective June 15. His commitment to the ADA influenced this decision. Coelho had become a national leader for disability policy. And, though he flatly denied the charges against him, he feared that an investigation might, by association,

embarrass the disability community and consequently hurt its prospects for success on the ADA.<sup>9</sup>

Although Congressman Coelho's career as a U.S. Representative drew to a close, his advocacy for the ADA did not. According to Ralph Neas, "he played a key role, if not a crucial role, on many different occasions with Democrats in the House and the Senate, with Republicans in the House and the Senate, and with President Bush, pushing the calendar on a number of occasions, really helping get us through some difficult times."<sup>10</sup> For example, he took the lead in the House cosponsorship drive and capitalized on his personal attachment to the bill and the trust he had cultivated among colleagues. Moreover, though he was a partisan Democrat, Coelho was well known for his desire to bring opponents to his side by working to empower them with shared ownership and finding common ground, rather than pitch battles.<sup>11</sup>

*"There was always the possibility that having to go through four committees . . . could endanger some of the best and strongest provisions."*

—Ralph Neas

Accordingly, Congressman Coelho joined with Democratic Congressman Major R. Owens (D-NY), and Republican Congressmen Silvio O. Conte (R-MA) and Hamilton Fish, Jr. (R-NY), to

facilitate cosponsorship. In a letter to the rest of their colleagues on June 1, they emphasized the Republican origins of the bill through NCD and the problem of paying persons with disabilities not to work. "Persons with disabilities want to be productive, self-supporting, and tax-paying participants in society," they wrote. "This bill will grant them that dignity and that right."<sup>12</sup> Because the ADA was a civil rights bill, ADA supporters anticipated that members would readily support it. Yet, despite the bipartisan effort, the process of enlisting House cosponsors was slow: the issue of costs caused people to hesitate. Whereas members often cosponsor a bill when certain colleagues do, in this case they wanted to scrutinize the bill individually.<sup>13</sup>

The House cosponsorship drive was less successful than that in the Senate—33 percent of all senators and 19 percent of all representatives were cosponsors on May 9. But Congressman Coelho secured a crucial commitment from Congressman Steny H. Hoyer (D-MD). The two members had become close friends since Coelho, as Chairman of the Democratic Congressional Campaign Committee, had assisted Hoyer in his first campaign. At Coelho's request, Hoyer assumed the role of managing the ADA in the House. This meant organizing committee deliberations, serving as the principal negotiator, and leading floor deliberations. Out of respect for Coelho's commitment to the ADA, Hoyer called himself "chief cosponsor," and continued to identify Coelho as the ADA's sponsor. Like so many other members of Congress, the ADA had personal significance for Hoyer: his wife had epilepsy. He became a zealous advocate for the ADA.

### A Bird's Eye View of the House Deliberations

By the time the ADA reached the House committees, the basic goals of the bill had been widely affirmed. Many members, however, viewed the legislative process as an incremental one, whereby major policies would be assembled step by step over many years. Passing the ADA was especially challenging because, as Rochelle Dornatt of Coelho's staff observed, "we were creating a whole new set of rights . . . a whole new set of civil rights." The principal focus in the House was not the needs of persons with disabilities, which had already been well-established by the Senate, but, rather, the bill's effect on "covered entities."<sup>\*</sup> As Melissa Schulman of Congressman Hoyer's office explained: "What the House was doing . . . was making the bill more acceptable to business."<sup>14</sup> Coelho often noted that "the trick" in the legislative process was "to find that magic number, that 218, to get the bill passed."<sup>15</sup> With the ADA, advocates were trying to get much more than that, but it required extensive work at the committee level to satisfy members concerned with covered entities in their districts.

House consideration of the ADA was different and more complicated than the Senate's for several reasons. First, the committee structure was more complex. In the Senate, the bill went only to one committee and one subcommittee. There it was considered primarily as a civil rights bill and did not undergo the technical scrutiny of the commerce and transportation committees. In the House it went to four committees (Education and Labor, Public Works and Transportation, Energy and Commerce, and Judiciary), and six subcommittees (Select Education; Employment Opportunities; Surface Transportation; Telecommunications and Finance; Transportation, Tourism, and Hazardous Materials; and Civil and Constitutional Rights). In addition, the Committee on Small Business held a non-legislative hearing to generate information that could be used by other committees or during floor deliberations. These multiple committee referrals meant that the ADA would have to withstand the scrutiny of various technical experts, especially with regard to transportation. Moreover, 164 representatives, compared with 16 senators, and many more House staff than Senate staff reviewed the bill in committee. This increased the chance of a committee altering, delaying, or even killing the bill and posed a major challenge to coordinating the deliberative process and keeping the bill intact. All indications suggested that a bill would pass. But, as Neas explained, "there was always the possibility that having to go through four committees . . . could endanger some of the best and strongest provisions."<sup>16</sup> According to Arlene Mayerson, it was "an overwhelming strategic nightmare."<sup>17</sup>

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\* "Covered entity," as defined in § 101(2) of the final version of the ADA, means "an employer, employment agency, labor organization, or joint labor-management committee." For the purpose of this work, however, "covered entities" is defined more broadly to mean any entity covered by any portion of the ADA. This would include, for example, employers, operators of public transit, owners of places of public accommodation, and communications providers.

A second factor also complicated the House deliberations. In the Senate, the chief sponsors of the bill, Senators Kennedy and Harkin, were chairmen of the full committee and subcommittee with jurisdiction. In the House, however, Congressman Hoyer was not even a *member* of any of the committees reviewing the bill. He was “responsible for shepherding . . . the bill through the process,” explained Schulman, even though he had to do it without committee authority, relying on forming relationships with chairmen who often guarded their committee jurisdiction jealously. Keeping everything together was a challenging task indeed. But Hoyer rose to the challenge. As Neas said, he “put on one of the best legislative shows of all time.”<sup>18</sup> One cannot underestimate Hoyer’s importance. “Unless you have somebody who is going to take responsibility for seeing that it all gets done and there is some cohesion in the process,” Schulman said, “it never would have happened.”<sup>19</sup>

Congressman Hoyer and staff member Schulman were central players, if not the leaders, in every aspect of the bill’s development in the House—cosponsorship, hearings, committee review, negotiations, committee and floor amendments, interactions with the White House, floor deliberations, conference proceedings, and crisis management. They feared that the committees might significantly weaken the bill, and that the disability community might walk out of the process in frustration.

*“Unless you have somebody who is going to take responsibility for seeing that it all gets done and there is some cohesion in the process, it never would have happened.”*

—Melissa Schulman

Hoyer thus committed to meeting with any member who wanted to discuss the bill. He even walked through a Giant Food store with concerned parties to explore the practical impact of the ADA.<sup>20</sup> Schulman remained confident that the bill would pass. But at times, she said, “it just looked next to impossible.”<sup>21</sup>

The legislative process in the House also differed in a third respect: the roles assumed by the business and disability communities and the Bush administration. The ADA went through the Senate like a “blitzkrieg.”<sup>22</sup> This had compelled many business lobbyists essentially to throw in the towel with respect to the Senate and strategically focus their efforts on the House. The disability community, on the other hand, had been very much on the offensive throughout the Senate deliberations, seeking to persuade senators and the Bush administration to support its goals for an accessible America. Although many compromises had to be made to achieve presidential and Senate support, the disability community had been generally satisfied with an ADA that emerged from the Senate. And with respect to the Bush administration, it had been an active participant in hammering out a compromise bill that could win the endorsement of President Bush, which Bush granted on August 2, 1989.

The circumstances were much different in the House. While business groups worked extensively with the Senate and the Bush administration in developing a compromise bill, activity was primarily in Washington: there were only limited efforts

to apply pressure on members from their constituents at home. But, during House deliberations, the business community vigorously lobbied the House by mobilizing constituent pressure. By the time the ADA reached the House, Mayerson said, the National

*Persons with disabilities were now more on the defensive. Their chief goal was to hold as much ground as possible, amidst an onslaught of proposed revisions.*

Federation of Independent Business (NFIB) was distributing “millions of flyers to every business across the country.”<sup>23</sup> Moreover, because of President Bush’s endorsement of the ADA, outright opposition was futile and apathy was dangerous. Barring an unexpected calamity, the bill was going to pass, at least in some form. If businesses wanted their voice to make a difference and meet some of their objectives, they had to support the overall concept of the bill. Persons with disabilities, on the other hand, were now more on the defensive. Their chief goal was to hold as much ground as possible amidst an onslaught of proposed revisions.

The disability community continually reminded opponents that a Republican president backed the ADA.<sup>24</sup> Indeed, President Bush was a strong advocate of the ADA and had been in the forefront of promoting civil rights legislation for people with disabilities. By endorsing the negotiated version of the ADA on August 2, 1989, President Bush set the stage for the House deliberations, where passage consequently seemed imminent. Attorney General Richard Thornburgh most actively articulated the Bush administration’s support. For example, on September 19, Thornburgh wrote a powerful letter to the editor of the *New York Times* on behalf of the ADA. He underscored his and the president’s support of the ADA. In particular, he challenged the errors of a *Times* article—for example, its allegation that there had been “surprisingly narrow public scrutiny” of the ADA. Thornburgh described how the Bush administration, the Senate, and interested parties had entered “painstaking negotiations” that resulted in “a carefully balanced measure.”<sup>25</sup>

On October 12, Attorney General Thornburgh testified on behalf of the administration, before the House Subcommittee on Civil and Constitutional Rights and gave a ringing endorsement of the ADA. He noted that many people with disabilities continue to live “in an intolerable state of isolation and dependence” and argued that the ADA could be “the vehicle that brings persons with disabilities into the mainstream of American life.” It was a “historic opportunity,” he said, to have the chance to help move the ADA through Congress.<sup>26</sup> Thornburgh’s testimony was important because it demonstrated the Bush administration’s continued support of the ADA and reflected President Bush’s desire to see the ADA passed quickly.

For the most part, however, compared with its intense and consistent interaction with the Senate, the Bush administration participated in the House deliberations only intermittently. Proponents of the ADA widely assumed that the administration stayed in the background because the administration was willing to let the House modify the bill and perhaps implement proposals the administration had been unable to negotiate with the Senate.<sup>27</sup> House Republicans, for their part,

preferred that the White House let them have the freedom to conduct their own analysis and revisions of the bill. House Democrats wanted the administration to speak out more authoritatively on behalf of the negotiated ADA, but they would settle for not having the administration advocate any weakening amendments.<sup>28</sup> President Bush satisfied all parties by remaining outside the fray.

The House deliberations were also characterized by ideological distinctions. ADA supporters widely hailed the bill as bipartisan legislation.<sup>29</sup> Indeed, in the final analysis the ADA received overwhelming support from both parties—93 percent of the vote in each chamber and at least 86 percent of the vote in each party.<sup>30</sup> There were also key advocates on both sides of the aisle, especially in the Senate, where Senators Harkin, Kennedy, Orrin G. Hatch (R-UT), Dave Durenberger (R-MN), and Robert Dole (R-KS) were deeply committed to the ADA. Moreover, Republicans and Democrats found common ground: they agreed “that it was a bad idea to pay people not to work, to stay home.”<sup>31</sup> Nevertheless, an ideological fault line emerged between the interests of the business and disability communities. Republicans tended to vote in favor of easing the demands imposed on business. This became evident during the Senate floor deliberations. For example, Senator Hatch’s amendment to include a tax credit for businesses (the only vote to be recorded) split along party lines. Whereas 71 percent of Republicans supported the amendment, 64 percent of Democrats opposed it.<sup>32</sup> In the House, the division was even more clear. For example, whereas 85 percent of Democratic committee members were cosponsors of the ADA, only 10 percent of Republican committee members were.<sup>33</sup> In the committees, members tended to split along party lines regarding amendments that most viewed as helping businesses.<sup>34</sup>

It is important, however, not to lose sight of the enormous area of agreement on the ADA, which was established in the course of negotiations. Although Republicans and Democrats had their differences, it is a testament to their talents and commitment to a laudable objective that they were largely able to put aside partisanship to find common ground.

### **Lobbying & Grass Roots Activities**

For business organizations such as NFIB, the Senate deliberations represented a failure. “The reason we failed in the Senate,” said Wendy Lechner, the NFIB point person for the ADA, “was we didn’t have time to educate” the members. The ADA was “pushed through as motherhood and apple pie before we had a chance to do anything.” In the House, therefore, the objective was to “slow it down long enough for education.”<sup>35</sup> NFIB was not alone. Largely under the direction of Nancy Reed Fulco of the U.S. Chamber of Commerce, business groups formed the Disability Rights Working Group to help mold the ADA. Different organizations focused on different provisions: NFIB and the U.S. Chamber of Commerce devoted considerable attention to public accommodations; the American Bus Association (ABA), the American Public Transit Authority (APTA), and Greyhound examined transportation issues; the National Restaurant Association (NRA), the Chamber of Commerce, and the National

*“We really weren’t trying to deep-six it. We were really trying to get a better bill, a more livable bill.”*

—Wendy Lechner

Association of Manufacturers dealt with employment. But they banded together to lobby members of the House about their common concerns. As illustrated in the Senate testimony, business groups were not completely opposed to the bill. “We really weren’t trying to deep-six it,” said Lechner. “We were really trying to get a better bill, a

more livable bill.”<sup>36</sup>

To create a more “livable” bill, representatives of covered entities developed a list of about 20 to 30 amendments. Throughout the House deliberations they continually updated this list, removing those changes that were accomplished, and adding others as new issues arose. And they lobbied members of Congress to argue the need for those amendments by issuing various position papers and visiting members’ offices. In addition to lobbying inside Washington, organizations such as NFIB sent out action alerts to their members urging people to write their representatives, especially those serving on committees. Some opponents of the ADA took their concerns about the ADA to the mainstream media.

Business groups had a number of overriding concerns. One was the “vagueness of language” contained in the ADA. Business lobbyists argued that such phrases as “undue hardship,” “readily achievable,” and “readily accessible,” were inadequately defined, and would therefore invite frivolous law suits. Businesses, they argued, would not be able to know whether they were in compliance. A second concern was the potential cost of accommodations. One proposed solution was to have the government share some of the burden through tax credits and other mechanisms. Third, numerous covered entities lobbied to have a more concrete definition of disability, ideally one that listed every covered disability instead of relying on a flexible definition. Fourth, small businesses argued that they should be exempt from the public accommodations requirements, or at least be phased in more gradually, because small businesses were exempt from other civil rights legislation. Fifth, scores of organizations protested the enforcement mechanisms available under the ADA, especially private litigation and the availability of punitive damages. Sixth, many business groups proposed that the ADA should preempt all other disability laws, so that there would be no confusion between different statutes, and no possibility for bringing multiple law suits for one violation.

The business community, however, faced a significant problem in educating and lobbying Congress: it had a much more difficult time than the disability community in keeping its coalition together. By the end of the fall of 1990, the coalition had begun to break down, as organizations focused on those provisions that affected them most. They were, therefore, unable to present a united front to Congress. Nevertheless, during the course of the House deliberations, business groups succeeded in obtaining many of the changes they sought.

In response to a variety of objections posed by business groups, some House members took the initiative in undertaking vigorous publicity campaigns against the ADA. Congressman Dan Burton (R-IN), for example, sent out a flyer in which he enumerated “some of the more onerous provisions” of the ADA. According to Burton, the ADA would “federalize American private enterprise,” “wreak havoc in the workplace,” “crush small and medium-sized businesses,” and “confer federal approval on homosexual/ heterosexual ‘domestic partners.’” He also attached an editorial by Gene Antonio that characterized the ADA as “the last ditch attempt of the remorseless sodomy lobby to achieve its national agenda before the impending decimation of AIDS destroys its political clout. This bill simply must be stopped . . . and will become law unless there is a massive public outcry immediately.”<sup>37</sup>

Similarly, Congressman Ron Marlenee (R-MN) issued a flyer to all the postal patrons in his district. The headline read: “Americans With Disabilities Act: Washington’s Latest Way to Crush Businesses, Schools, While Hurting The Disabled.” A subheading announced: “ADA Bill To Give Federal Endorsement For Homosexual ‘Partners’ and ‘AIDS.’”<sup>38</sup> Congressman Chuck Douglas (R-NH) distributed a letter that pictured a man pointing a gun at the reader. “Berserkers: Time Bombs in the Workplace,” the headline declared. Douglas favored the general idea of the ADA, but said the bill “needs dramatic rewriting.” He was especially with preventing persons with mental illness from endangering their coworkers and thus proposed excluding such persons from protection under the ADA.<sup>39</sup>

*“The beauty of the ADA was it was an effort where people in the grass roots were just as important, if not more important, than people in Washington.”*  
 —Liz Savage

The disability community was more unified than the business community, but the heightened activity of the business community during House deliberations demanded a strong response from the disability community. “The beauty of the ADA,” said Liz Savage, “was it was an effort where people in the grass roots were just as important, if not more important, than people in Washington.”<sup>40</sup> To facilitate disability grass roots involvement, leaders such as Marilyn Golden developed regional coordination networks: it was too complicated for one or even a handful of people to manage the calls for an entire nation. While in some cases there was a coordinator for an individual state, most states were organized in groups under a regional coordinator. The regional coordinators were selected because they were well known in their states. They came from a variety of organizations, often from independent living centers.

During the House deliberations, the ADA coalition coordinated its lobbying efforts with each of the scheduled committee mark-ups. As the bill went through each committee, members of the legal team responded to virtually every business position paper by issuing rebuttals. They would proceed point-by-point through amendment lists and either show how claims were in error or why the disability community took a

different position. ADA Lobbyists used this information in visiting members of the House, presenting a “Disability Rights 101” education course. Lobbyists were not just Washingtonians. Often at their own expense, persons with disabilities flew and drove in from around to be part of the Washington effort. The National Council on Independent Living (NCIL), for example, ensured that at least one of its representatives resided in Washington throughout the congressional deliberations. On many occasions, Liz Savage offered her apartment as a sort of boarding house for out-of-town visitors. Once they arrived in Washington, grass roots advocates met with leaders in the ADA coalition to get weekly briefings and plot strategy. They also coordinated their lobbying techniques to ensure that they were presenting a unified message to members of Congress.

Grass roots participation in lobbying helped humanize the ADA. Many members were seeing persons with disabilities for the first time and viewing them as assertive citizens. This helped break down the stereotype of persons with disabilities as dependent children. It also illustrated that disabled people could make a difference and offer valuable contributions to society—if only given the chance. Only a minority of people with disabilities, however, could make personal trips to Washington. Others did what they could in their local communities. Kathleen Kleinmann, for example, wanted to do whatever she could do from her home in rural Pennsylvania. She felt she simply had to be a part of the action. “We had that urgency about us,” she said. “It was contagious. It spread through the whole country.”<sup>41</sup> For Kleinmann and many others, NCIL was the crucial link to activities taking place in Washington. Through it they could learn when and to whom they should write letters. Moreover, people in various local committees applied pressure on the local offices of their representatives. They also contested erroneous public statements about the ADA by calling into local radio shows and making local television appearances.<sup>42</sup>

The largest single letter-writing campaign took place between the 100th and 101st Congresses, during the winter of 1989–90. The campaign was directed at members of the House of Representatives, who were frustrating many in the disability community by taking

*“The President has endorsed it. The Senate has overwhelmingly passed it. Now it’s up to you. Don’t weaken a law that will strengthen America.”*

—New Year’s Postcard

so much longer than the Senate and proposing “weakening amendments.” Thousands of “New Year’s” postcards were mailed throughout the country with a cover letter from James S. Brady, soliciting individuals to mail to them to their congressman. The front of the card printed “ADA” in giant letters for a background. Set over it was the statement: “Our New Year’s Wish For Congress: Open the Doors to America. Pass the Americans with Disabilities Act.” On the back it said: “The President has endorsed it. The Senate has overwhelmingly passed it.” And in larger letters: “Now it’s up to you. Don’t weaken a law that will strengthen America.” Space was provided for people to add their own personal messages. They were encouraged to

send cards to their own Congressperson, committee members from their states, Speaker of the House Foley, and Minority Leader Michel.<sup>43</sup>

In addition to lobbying, sending letters, and making phone calls, persons in the disability community, both inside and outside Washington, served the important function of presenting testimony at congressional hearings. As with the hearings of 1988 and the Senate hearings of 1989, the House’s ADA hearings included powerful testimony about the need for civil rights protections for persons with disabilities. Persons from the disability community also offered their technical expertise on specific issues and countered the claims of those who proposed weakening amendments.

A final way in which the disability community exerted pressure on Congress and the Bush administration was through demonstrations. One of the most significant protests was organized by ADAPT in September, 1989. In a long ADAPT tradition, the demonstration coincided with the annual meeting of APTA in Atlanta, where Secretary of Transportation Samuel K. Skinner was expected to present an address. On Sunday, September 24, about 100 people throughout the U.S. and Canada, most of whom were in wheelchairs, protested at the entrance of the Hilton Hotel convention site. Stephanie Thomas, a spokesperson for ADAPT, said they were protesting APTA because of its opposition to the ADA.<sup>44</sup>

At about ten o’clock the following morning, on September 25, more than 100 disability activists occupied the main floor of the Richard B. Russell Federal Building and blockaded the main entrances. Some attached chains and bicycle locks to their necks and locked them to door handles so that security could not simply lift them from their wheelchairs. ADAPT demanded that Secretary Skinner sign an executive order requiring the purchase of accessible vehicles for all new transit buses, which would take effect immediate. “We’re here until the order gets signed,” said Michael W. Auberger, one of the co-founders and leading organizers for ADAPT. “They’ll have to carry everybody out or arrest them.”<sup>45</sup>

*“We’re here until the order gets signed. They’ll have to carry everybody out or arrest them.”*

—Mike Auberger

Later that day, at around six o’clock, Atlanta police and security officers from the General Services Administration (GSA) did just that. They used bolt cutters to remove demonstrators from the building.

About two hours later, only a few protesters still remained in the building. From inside the building, Marca Bristo contacted Evan Kemp, who told her to call Boyden Gray directly. As she was on the phone with Gray, a police officer insisted that she leave the building. Bristo left, but only after she handed the phone to the officer to prove she was talking to Gray from the White House. Gray subsequently contacted President Bush. Within minutes, police and other security officers began letting the disability activists back into the building. After speaking with Gray, President Bush had personally intervened to inform Gary C. Carson, Regional General Services Administration (GSA) administrator, that the protesters should be allowed to

stay.<sup>46</sup> Carson attributed Bush's action to the president's "deep commitment to the handicapped and their right to protest." Apparently, Bush was also concerned about the alternative of having them stay overnight outside the building in a chilling rain.<sup>47</sup> Auberger and others welcomed Bush's intervention, but threatened to stay until Skinner signed the executive order they demanded.

The sit-in ended the following afternoon subsequent to an agreement between the Urban Mass Transportation Administration (UMTA) and leaders of ADAPT. UMTA agreed to help facilitate a process of identifying and interfering with transit operators that were rushing to buy inaccessible buses before the ADA was enacted. UMTA also agreed to relay to Secretary Skinner ADAPT's desire to see more effective implementation of the Air Carriers Access Act of 1986, which required accessibility for air travel. The agreement fell short of ADAPT's demands. Yet it appeared to be the best possible action, since UMTA explained that Skinner did not have the authority to issue such an executive order.

ADAPT, however, was not finished with its demonstrations. The next day, Wednesday, September 27, protesters effectively shut-down the Atlanta Greyhound terminal for several hours by encircling the terminal and blocking buses. They chanted: "We Will ride!" "Access is our civil right!" One protester even climbed into the bus, sat in the driver's seat, and chained himself to the steering column. Only four buses carrying about 80 passengers left the terminal during the protest, compared with a typical 20 buses carrying 600 passengers. The purpose of the demonstration was to urge Greyhound and other intercity bus services to begin purchasing lift-equipped buses. The protest ended, however, with the arrest of over 20 activists, who received \$75 fines the following day.

Five-and-a-half months later, amidst seemingly stalled House deliberations, ADAPT organized another demonstration—the "Wheels of Justice" campaign.<sup>48</sup> Disability activists from around the country gathered on Sunday night, March 11, to plan the week's events. Wade Blank and Michael Auberger, co-founders of ADAPT, were there. Other leading ADAPT organizers included Bob Kafka, Mark Johnson, Stephanie Thomas, Dianne Coleman, Ben Freeman, and Bernard Baker. At noon the following day, hundreds of activists associated with ADAPT and other disability organizations assembled at the White House. From there they marched and rolled to the Capitol, where they gathered at the west front to listen to speeches from ADA supporters. On the way, they chanted: "What do we want?" "ADA!" "When do we want it?" "Now!"

At the Capitol, Justin Dart, now Chairman of the President's Committee on

*"We are American citizens  
and we will be part of the  
American dream."*

—Justin Dart

the Employment of People with Disabilities, addressed the crowd as "pioneer patriarchs of the twentieth century." He likened the ADA to the Declaration of Independence and urged those assembled to "go forward, in the spirit of Ghandi and Martin Luther King, with love, with reasoned truth, with unyielding

insistence on respect for the sacred value of each human life.” Concluding with a demand for immediate passage of the ADA, Dart declared: “We are American citizens and we will be part of the American dream.”<sup>49</sup> Congresswoman Patricia Schroeder and Congressman Major Owens also spoke in support of the ADA, likening the disability rights movement to the civil rights movement of the 1960s. Additional speakers included I. King Jordan, President of Gallaudet University, Evan Kemp, Chairman of the EEOC, and James Brady, former press secretary for President Ronald Reagan.

Auberger was the final speaker. He, too, likened the efforts of those gathered to earlier movements for equality. He described the plight of people with disabilities and urged that disability activists must remain steadfast in demanding civil rights. Then, sitting in his wheelchair at the base of the Capitol steps, Auberger observed that the steps “were a symbol of discrimination against the disabled.” Yet, he said, he would not let them continue to be an obstruction. “We will not let any barrier prevent us from the equality that is rightfully ours.”<sup>50</sup> As he concluded his speech in front of television cameras, many individuals left their wheelchairs behind to climb the Capitol steps—a symbol of their fortitude in surmounting barriers.

On Tuesday, March 13, ADAPT continued its campaign by meeting with House Speaker Foley (who assumed the House leadership position after Congressman Wright’s resignation), Republican Leader Michel, and Congressman Hoyer in the Capitol Rotunda. Leaders of the protest insisted on immediate passage of the ADA. When Foley informed the crowd that two months was a likely time frame, more than 100 demonstrators began chanting: “ADA Now!” Foley and Michel subsequently departed. Hoyer stayed a little longer and departed with a thumbs-up signal. Then, Capitol police told the demonstrators to leave, as demonstrating in the Capitol is against federal law. Most demonstrators refused, however, and formed a tight circle; many chained their wheelchairs together. They chanted: “Access is a civil right!” and “The people united will never be defeated!” But police officers, many protected with riot gear, began using chain-cutters and torches to break through the links demonstrators had fashioned. For about two hours, police reportedly arrested 104 people whom charged them with demonstrating in the Capitol building.<sup>51</sup> The next day, Wednesday, March 14, protesters assembled in Congressmen Shuster and Fish’s offices. Others crowded the Energy and Commerce Committee mark-up session. Numbers dwindled over the rest of the week, however, as many were appearing in court.

The “Wheels of Justice” campaign did not bring immediate passage of the ADA. And the ADAPT demonstration in Atlanta did not result in an executive order that required the purchase only of accessible transit buses. Yet the protesters were more concerned with demonstrating the lengths to which persons with disabilities would go to secure their rights. In that sense they succeeded. The events were also an indication that further demonstrations could follow if the ADA got stuck in a quagmire. Combined with the other education and lobbying efforts of the ADA coalition, these activities underscored the nationwide, grass roots demand for passage of the ADA.

Although such demonstrations reflected unity within the disability community, there was not complete unanimity among all people with disabilities. The National Federation of the Blind (NFB), for example, was outspoken in its reservations about the ADA. At its 1989 convention in Denver, Colorado, NFB passed a resolution declaring that if the ADA “could not be amended to cure its weaknesses, it should be opposed.” Early in 1990, Kenneth Jernigan of NFB wrote a brief, “Reflections on the Americans with Disabilities Act,” to explain NFB’s position. The primary concern, he said, was that the ADA might create additional problems for blind people as it attempted to eliminate other problems. In particular, NFB feared that the ADA might force people with disabilities “to accept the special accommodations mandated by the bill and . . . [prevent people] from using the same facilities and services that are available to others.” Such accommodations, Jernigan said, may themselves become discriminatory, and make the ADA “a source of unintentional discrimination against some persons with disabilities.”<sup>52</sup>

For instance, NFB cautioned that the provision of specially-equipped rooms in hotels might require blind persons to use specific rooms and prevent them from staying near friends. To NFB, the alleged need for this accommodation (or for street corners with audible sounds for crossing and specially-designated seats on buses) was based on “the false assumption that sight is essential for successful performance of most tasks.” Blindness, said Jernigan, “is not generally disabling.” Consequently, unwanted accommodations falsely portrayed blind people “as limited in ways that they are not” and imposed unfair and unequal restrictions.<sup>53</sup>

As a solution, NFB proposed an amendment stipulating that people with disabilities had the right not to participate in programs or activities specially designed for disabled persons. During the fall of 1989, NFB worked with John Wodatch of the Justice Department to elicit the backing of the administration. Following a meeting with White House staff on January 19, 1990, NFB representatives were confident that they would obtain their proposed amendment. But, Jernigan said, if the amendment is rejected, “we must oppose the bill as vigorously as we can . . . we will do anything we can to slow it down and block [the ADA’s] passage.” He concluded his “Reflections” with the cautionary statement: “Simply because a thing calls itself civil rights, that does not mean that it is civil rights.”<sup>54</sup> NFB eventually attained its goal through an additional clause to the ADA: “an individual with a disability shall not be denied the opportunity to participate in . . . programs or activities that are not separate or different.”<sup>55</sup> Subsequently, NFB did not oppose the ADA.

### **The ADA and the House Committees: Three Phases**

Part of the master strategy for passing the ADA involved organizing the committee deliberations in the House. Leading ADA supporters among Democrats, including Congressmen Coelho, Hoyer, and Owens, wanted to start the bill in a committee that was familiar with and favorable to civil rights. In consultation with each of the committee Chairs—Augustus F. Hawkins (D-CA), for Education and Labor; John D. Dingell (D-MI), for Energy and Commerce; Glenn M. Anderson (D-

CA), for Public Works and Transportation; and Jack Brooks (D-TX), for Judiciary—they decided to begin with Education and Labor. Several factors made this a logical choice. First, most of its Democratic members supported disability rights. Second, Democratic leadership included Congressman Owens, Chairman of the Subcommittee on Select Education, who had created the Task Force on the Rights and Empowerment of People with Disabilities and was a strong advocate of civil rights and grass roots activism. Third, the ranking Republican for the Subcommittee on Select Education was Congressman Bartlett, who had a strong record on disability policy and was instrumental in shaping the mission of NCD. Bartlett, in fact, urged Republicans on other committees to promote letting Education and Labor go first. Fourth, Pat Morrissey, a leading Republican staff member, had also worked extensively with disability policy and, in addition, had a disability.<sup>56</sup> Ideally, the Education and Labor Committee would complete its review of the ADA as a starting point for the rest of the committees.

Although committees operate differently, they tend to follow a similar process of deliberation. The committee chair and committee members give overall guidance to their staff regarding what they would desire to achieve. Then, hearings are scheduled, designed, and held. The purpose of hearings is to solicit justification and document the need for the bill, as well as to hear and discuss reservations about the bill. As much as possible, staff try to settle issues raised by the hearings on their own, which is generally the vast majority of a given bill. For issues that remain unresolved, however, there is a ladder of conflict resolution. Usually, the first step the staff take is to prepare memos for their congressmen about the issues in dispute and then obtain the member's feedback, which can be used in negotiations. If this proves inadequate, members meet directly with one another. Finally, issues that members cannot settle get carried to committee mark-up sessions where they can be introduced as amendments for member voting. Typically, mark-up sessions begin with the consideration of one collective amendment that incorporates all the agreed upon changes. Then, members proceed to discuss and vote upon individual amendments concerning the disputed issues.<sup>57</sup>

Although the activities of all four committees often overlapped, there were three distinguishable phases in the committees' review process. Deliberations by the Education and Labor Committee marked the first phase. A focus on transportation provisions by two committees, the Energy and Commerce Committee and the Public Works and Transportation Committee, constituted the second phase. Activities by the Judiciary committee represented the third and final phase before moving the deliberations to the House floor.

#### PHASE I: EDUCATION AND LABOR COMMITTEE

The Education and Labor Committee conducted the most thorough evaluation of the bill, at least with respect to the volume of testimony received. Two subcommittees had jurisdiction over the bill: Select Education, chaired by Congressman Owens, and Employment Opportunities, chaired by Matthew G.

Martinez (D-CA). In the interest of facilitating rapid consideration of the ADA, Owens negotiated with Martinez to have Employment Opportunities yield to Owens's Select Education Subcommittee. Moreover, Congressman Hawkins, Chairman of the full committee, essentially deferred to Owens for leading the committee's consideration. In addition to the two hearings held in 1988, the Subcommittee on Select Education hosted four hearings between July 18 and October 6, 1989, two of which were joint hearings with the Employment Opportunities Subcommittee.

Perhaps the most significant of the four hearings was the field hearing of the Subcommittee on Select Education held on August 28, in Houston, Texas. Lex Frieden and Justin Dart had recommended such a hearing to Congressman Owens due to concerns that Congressman Bartlett might not be fully supportive of the ADA because of his close associations with such business groups as NFIB. Owens

*Congressman Owens welcomed Hoyer as the leader in committee negotiations, because it gave Owens an opportunity to be a "Watch Dog" for the disability community.*

approved of the idea and enjoyed playing the role of bringing the U.S. Congress to local communities. The purpose of the field hearing was to demonstrate to Bartlett that his own constituents strongly supported the ADA. Hundreds of persons with disabilities attended the hearing and an open forum that followed.

At the hearing, businessmen, government officials, and transit authorities gave a ringing endorsement to the ADA. And dozens of people with disabilities spoke about their personal experiences at the forum. The proceedings appeared to have a significant impact on Bartlett. Later that evening, he told Frieden and others that he had been "kind of a skeptic" of the ADA. But the day of discussions "made me a believer," and he pledged to do what he could to support the legislation.<sup>58</sup>

Contrary to the typical committee process, where staff settle most disagreements following the hearings, negotiations for the Committee on Education and Labor were led by Congressmen Hoyer and Bartlett in a lengthy series of member-to-member meetings. This was also a unique circumstance because Hoyer was not even on the committee. Although Chairman Hawkins could have exercised his authority over the full committee, he "graciously," as Ralph Neas described it, allowed Hoyer to take the lead. This gave Hoyer, the House manager of the ADA, an opportunity to set the tone for the rest of the House deliberations. Congressman Owens welcomed Hoyer as the leader of committee negotiations, because it gave Owens an opportunity to be a "Watch Dog" for the disability community: he could help ensure that negotiations did not result in a net loss for people with disabilities.<sup>59</sup>

Congressmen Hoyer and Bartlett represented different parties and different clientele—Hoyer spoke mostly on behalf of Democrats and the disability community, Bartlett mostly on behalf of Republicans and the business community. But they

shared enough in common to produce extraordinarily productive negotiations.<sup>60</sup>

Bartlett wanted to foster business development. His position as Republican point man was to prepare a bill that could gain the support of Republicans and the business community. Hoyer shared similar goals. As Schulman explained: “we weren’t interested in creating a new right

*Congressman Hoyer spoke mostly on behalf of Democrats and the disability community, Congressman Bartlett mostly on behalf of Republicans and the business community. But they shared enough in common to produce extraordinarily productive negotiations.*

and doing it in such a way that it would have been impossible for the private sector, for employers and businesses, to meet their responsibilities.”<sup>61</sup> Rather, in meeting the needs of persons with disabilities, Hoyer wanted to ensure that businesses knew what was expected of them, that language was clear and fair, and that the bill did not impose an undue burden on business.<sup>62</sup> By working together, the two congressmen were able to help craft legislation that would be acceptable to both sides of the aisle and foster a level of bipartisanship comparable to what had developed in the Senate. The meetings were “the most productive and satisfying legislative negotiations that I had ever been involved with,” said Bartlett.<sup>63</sup>

Throughout October, Congressmen Hoyer and Bartlett met extensively and negotiated fourteen amendments that would later be brought up for a vote in committee. Although the committee had jurisdiction mainly over portions of the Employment and Public Accommodations titles, some of their proposed amendments affected the entire bill. The most significant amendment concerned the application of “undue hardship” and “readily achievable.” Business lobbyists wanted precise dollar figures to determine *exactly* how much businesses had to spend on accommodations and modifications. Rather than offer a price cap, the Senate bill specified that three factors should be evaluated in determining whether an accommodation was “reasonable” or a structural modification was “readily achievable”—the size of a business, the type of operation, and the cost of the accommodation. Although this provision fell mainly under the jurisdiction of the Judiciary Committee, and was ultimately settled there, Hoyer and Bartlett began discussions about “site-specific” factors.<sup>64</sup> They suggested that in determining whether an accommodation was “reasonable” a court should consider the financial resources of the local facility as well as those of the entire covered entity. Thus, a local K-Mart in financial difficulty would not be evaluated only according to the resources of the entire K-Mart corporation. Hoyer and Bartlett also clarified that an employer’s obligation to provide a reasonable accommodation was *always* limited by the standard of “undue hardship”: there would be no loopholes.

Congressmen Hoyer and Bartlett addressed another persistent concern of employers by adding tougher language for drug and alcohol abuse. They agreed that past drug users who had completed, or were actively engaged in, drug rehabilitation treatment were protected under the ADA. They also decided that covered entities

*The meetings with Congressman Steny Hoyer were “the most productive and satisfying legislative negotiations that I had ever been involved with.”*

—Congressman Steve Bartlett

should be free to administer drug tests and exclude individuals who used drugs and had not sought treatment.

Congressmen Hoyer and Bartlett also worked to help minimize the potential for excessive litigation. They added language

requiring that all complaints filed under the ADA or Sections 503 and 504 of the Rehabilitation Act must be coordinated so that only one case could be brought against the covered entity; a claimant could not file two claims under two different statutes. They also developed a procedure whereby the attorney general could certify state or local building codes that met ADA accessibility standards, which would be a defense against discrimination charges. In cases where the attorney general exercised authority to pursue monetary damages for aggrieved persons, the two congressmen proposed to exclude punitive damages. They also suggested that when courts considered assessing civil penalties, they must consider the “good faith” efforts of the covered entity. Finally, Congressmen Bartlett and Hoyer incorporated into the bill requirements that executive agencies prepare technical assistance manuals to be disseminated to those with rights and responsibilities under the ADA.

These changes were brought before, and approved by, members of the Committee on Education and Labor at the mark-up sessions on November 9 and 16. Eight additional amendments came up for consideration.<sup>65</sup> Among other things, these amendments would have:

- linked the determination of reasonableness for accommodations and modifications *exclusively* to the resources of a local facility;
- reduced the penalties the attorney general could assess;
- substituted “significant risk” for “direct threat” as the standard according to which persons with contagious diseases could be discriminated against;
- capped the amount a business had to spend on “readily achievable” modifications to 5 percent of a company’s profits;
- delayed implementation until regulations were completed; and,
- limited nondiscrimination protection for association with someone who had AIDS to one’s family members.<sup>†</sup>

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<sup>†</sup> According to the ADA, an individual is protected not only from discrimination because of having a disability but also from discrimination based on being associated with a person with a disability. Thus, one could not be fired because one’s spouse had a disability such as AIDS. This amendment would have restricted the types of associations that were protected by the ADA to biological and legal

Except for the package of amendments introduced by Congressmen Hoyer and Bartlett, all amendments introduced at the committee mark-up were voted down, predominantly along party lines. The Democratic position was a “no” vote on all amendments besides the Hoyer-Bartlett package.<sup>66</sup> In the final vote, the committee voted unanimously, 35 to 0, to report H.R. 2273 to the House, as amended by the committee. Despite the contested amendments, this was another strong endorsement of the ADA, and gave the bill a boost similar to that given by the Senate vote. Tough battles lay ahead. But the Hoyer-Bartlett compromises positioned the ADA for future success, and Hoyer and Bartlett would continue to play central roles in the negotiations of other committees.

## PHASE II: ENERGY AND COMMERCE & PUBLIC WORKS AND TRANSPORTATION COMMITTEES

Although the Committee on Education and Labor reached a significant compromise that drew the support of many members, it accomplished little with respect to transportation and telecommunications provisions. These responsibilities fell to two committees: Energy and Commerce, and Public Works and Transportation. Their deliberations constituted the second phase of the House process of committee review.

From the beginning of the ADA campaign, advocates worried most about the transportation provisions. Transit authorities had historically posed vigorous challenges to accessibility for persons with disabilities. When the Department of Transportation issued its original Section 504 regulations, APTA responded with a lawsuit—and won. The court ruled that requiring lifts on every bus went beyond the purview of Section 504 and left it up to transit authorities to decide whether to have accessible buses, provide paratransit service, or use a mixture. As a result of this so-called “local option,” transportation operators throughout the country provided widely varying levels of accessible transportation. Cities such as New York and Seattle had achieved nearly 100 percent accessible buses, while Chicago had virtually none. Railroad systems had other problems. Accessibility standards for Amtrak, for example, had been in effect for nearly two decades; the regulations simply were not being enforced. By proposing fully accessible public transportation vehicles, the ADA would thus face resistance from such powerful lobbying groups as the ABA, Greyhound, Amtrak, and APTA.

Working the transportation provisions of the ADA through the committee was also challenging because the scope was so broad. The ADA covered all public transportation by both public and private entities, with the exception of air travel, which had been addressed in the Air Carriers Access Act. This included: fixed route

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relationships. As a result, one would not have been protected by the ADA if discriminated against because a friend had AIDS.

systems<sup>‡</sup> (including buses, light and rapid rail<sup>§</sup>), paratransit service<sup>\*\*</sup> (which applied only to public entities), demand responsive systems,<sup>††</sup> intercity rail,<sup>‡‡</sup> commuter rail,<sup>§§</sup> over-the-road buses<sup>\*\*\*</sup> (which applied only to private entities), and transportation facilities. To avoid presenting executive agencies with any ambiguity, the transportation committees prepared extraordinarily detailed provisions. Given the memory of the regulatory nightmare of Section 504, where lack of detail in the statute resulted in intense conflict over the regulations, many people in the disability community welcomed the specificity promoted by the transportation committees. Although the two transportation committees upheld the basic principles of the Senate bill, they made the most changes—nearly tripling the amount of space dedicated to transportation provisions.

The two committees operated simultaneously, but the Energy and Commerce Committee was the first to complete its review. It held its hearings on September 27 and 28, 1989 and met for mark-up six months later on March 13, 1990, at which time it reported the ADA, as amended, to the House. The ADA's fate in the transportation committees was largely a function of personalities. Working with the Energy and Commerce Committee was difficult for the disability community. Chairman Dingell was notorious for jealously guarding his committee's jurisdiction, and he was one of Amtrak's greatest advocates. Over the course of the 1980s, funding for Amtrak had plummeted, and Dingell was reluctant to impose any new demands on the struggling public service. This made for a much different dynamic than the other three House committees, where Democrats generally sided with disability advocates to prevent any

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<sup>‡</sup> A fixed route system is one where public transportation is provided by vehicles that follow prescribed routes according to a fixed time schedule.

<sup>§</sup> Light and rapid (or heavy) rail are categorized according to the volume of passengers carried, and have nothing to do with weight. An example of a light rail vehicle is a street car like those in San Francisco. An example of a rapid (or heavy) rail vehicle is one used for the Washington Metro subway system.

<sup>\*\*</sup> Paratransit service is door-to-door service provided to qualified persons according to the inability to use standard public transportation. Use must be scheduled in advance, sometimes as much as a week, and can be restricted only to certain destinations, like doctors' offices.

<sup>††</sup> Demand responsive transportation means any system of providing transportation to the general public that does not operate according to a fixed schedule: for example, a hotel or rental car company running an airport shuttle.

<sup>‡‡</sup> Intercity rail, as defined in the ADA, refers exclusively to transportation provided by the National Railroad Passenger Corporation (Amtrak).

<sup>§§</sup> Commuter rail refers to any rail service, provided by public or private entities, used by the general public primarily for commuter purposes, as opposed to rail systems with dining and sleeping cars. Some routes may be "intercity" in nature: for example, commuting from Baltimore to Washington.

<sup>\*\*\*</sup> Over-the-road buses are those where passengers are elevated above a luggage compartment: for example, Greyhound buses.

“weakening” amendments. In this case, Democrats tended to side with the public rail company and were thus more skeptical of the ADA’s objectives. The principal staff person for the Energy and Commerce Committee was Alan Roth. By the end of the process he became a hero of sorts for the disability community, but in the beginning Roth posed a great challenge. He thought things had happened too quickly in the Senate, where there was little expert review of transportation provisions, and he wanted to conduct a thorough review of the bill’s provisions within his committee’s jurisdiction. This had the effect of extending the deliberative process.

Unlike the Education and Labor Committee, and its open negotiations, the Energy and Commerce Committee began its consideration privately, without consulting the disability community. The relationship between disability advocates and the committee was not improved when Pat Wright and Ralph Neas worked with Michigan constituents to apply pressure on the Chairman. It was not until the committee circulated a draft of its own version of the bill, which invited a 30-page rebuttal from the outraged disability community, that Congressman Hoyer could persuade the committee to work with him in developing a bill that the disability community could support.<sup>67</sup>

Although the Energy and Commerce Committee could introduce amendments that affected the entire bill, its jurisdiction over the ADA centered on two main components: telecommunications and railroads. Telecommunications provisions were the least controversial of the ADA’s four main titles. Karen Peltz-Strauss and Sy Dubow were the principal attorneys from the deaf community who worked with congressional staff. The National Association of the Deaf (NAD), Telecommunications for the Deaf, Inc., and Self-Help for the Hard of Hearing (SHHH) were active in demonstrating broad support for changes in the nation’s telecommunications system. Peltz-Strauss described Congressman Edward J. Markey (D-MA), Chairman of the Subcommittee on Telecommunications and Finance, as the deaf community’s “chief advocate” in the House. He was “very interested in expanding telecommunications access for people with disabilities.”<sup>68</sup> This made for “smooth and harmonious” deliberations, as Congressman Bob Whittaker (R-KS) later described them.<sup>69</sup> “There was striking cooperation among industry, commerce, and Congress,” said Peltz-Strauss, which produced provisions “that met the needs of people who were deaf and hard of hearing.”<sup>70</sup>

Historically, three of the main telecommunications issues for the deaf and hard of hearing were hearing-aid compatibility, teletype devices, and television decoding. During the 1980s, the deaf community succeeded in passing legislation that required employers to provide hearing-aid compatible telephones, which were equipped to transmit electromagnetic signals to certain hearing aids. In 1988, the Hearing Aid Compatibility (HAC) Act expanded this requirement such that nearly all telephones manufactured or imported into the country had to be compatible. The issue the ADA addressed most directly were teletype (TTY) devices, often called a Telecommunication Device for the Deaf (TDD). Under the original bill introduced to the House and Senate, the ADA required states to establish telecommunications relay services that would allow people to communicate, through an operator, with people

who did not have TTY devices. During House deliberations, the basic requirement was affirmed, though the implementation date was extended from two to three years. The most significant change was the removal of the “undue burden” limit on the mandate to provide relay service. The committee also addressed the issue of closed captioning for televisions. Earlier legislation required public television to broadcast with closed captioning. During the House deliberations, Congressman Markey’s subcommittee stipulated that all public service announcements partly- or fully-funded by the Federal Government must be produced with closed captioned text.

The Subcommittee on Telecommunications and Finance was the first of all House subcommittees to complete its action, on October 12, 1989. Subsequently, the Energy and Commerce Committee devoted several months to deliberating

*“The perpetuation of prejudice and discrimination against persons with mental disorders in a vehicle designed to end discrimination is sadly ironic.”*  
—American Psychological Association

transportation provisions. The committee held the preponderance of jurisdiction over railroads and had absolute jurisdiction over Amtrak. It began its deliberations with the Senate bill, which required that all new rail cars had to be accessible, and mandated that at least one car per train had to be accessible within five years. Since Amtrak was standardized throughout the nation, the committee could be extraordinarily detailed about what accessibility meant for Amtrak. For example, the committee delineated distinctions between single- and bi-level cars. It also designed separate provisions for sleeping, dining, and passenger cars. For Amtrak, the Energy and Commerce Committee even developed a formula to determine precisely how many spaces had to be available for persons using wheelchairs, including space to store wheelchairs. Perhaps the most important decision coming out of this committee, however, was that it sustained the Senate’s one-car-per-train rule *and* the stipulation that all new cars had to be accessible. This was significant because the Public Works and Transportation Committee shared partial jurisdiction over railroads, and wrestled with whether all cars had to be accessible.

Although negotiating over transportation provisions was difficult, the most controversial and intense negotiations in the Energy and Commerce Committee had

*“We in the House felt an obligation to . . . fine tune” the ADA “in a way the transit authorities could embrace” the act “and make it work.”*

—Roger Slagle

nothing to do with structural transportation accessibility. Members of the Energy and Commerce Committee were concerned that the ADA’s protection of persons who were mentally ill could result in uncontrollable train disturbances, where train operators would be unable to ask meddlesome riders to leave. Consequently, their initial draft of the ADA excluded persons

who were mentally ill from the definition of disability. This caused an uproar in the disability community. “Persons with mental disabilities, among all the disabled, have suffered the greatest stigmatization and resulting discrimination,” said the American Psychological Association. “The perpetuation of prejudice and discrimination against persons with mental disorders in a vehicle designed to end discrimination is sadly ironic.”<sup>71</sup>

The committee ultimately removed the exclusion, but the issue came back up at mark-up. Congressman William E. Dannemeyer (R-CA) proposed an amendment that would have supplemented the established exclusion of compulsive gambling, kleptomania, and pyromania by prohibiting all “behavior disorders.” Based upon his belief that the ADA was “a homosexual rights bill in disguise,” his amendment also proposed the exclusion of anyone with a contagious or sexually transmitted disease.<sup>72</sup> These proposals posed a major threat to the ADA, for they applied not just to transportation, but to the entire bill. Although the committee rejected the Dannemeyer amendment, these issues were only temporarily put to rest.

The Public Works and Transportation Committee held its hearings on the ADA before Energy and Commerce, on September 20 and 26, 1989. But it held its mark-up several weeks after the Energy and Commerce Committee, on April 3, 1990. For disability advocates, the Public Works and Transportation Committee was much easier to work with than the Energy and Commerce Committee, but it ultimately posed a significant threat to their objectives. Chairman Anderson was a strong supporter of the ADA and charged staff member Roger Slagle, whom he appointed to take the lead on the ADA, with a clear mission: “Get the people on the bus.”<sup>73</sup> Slagle was not a detached mediator; he strove for optimal accessibility. From the disability community, he worked especially with attorney Chai Feldblum, whom he described as “one of the brightest people I’ve ever worked with in my life.”<sup>74</sup> But Slagle had one major reservation: unwarranted litigation against transit authorities. Slagle said people on the House side referred to the Senate bill as the “we’re-going-to-sue-your-ass” bill. They feared that under the Senate bill a person with a disability might be able to sue a transit authority simply because a lift-equipped bus was late. “We in the House felt an obligation to . . . fine tune” the ADA, said Slagle, “in a way the transit authorities could embrace [the act] and make it work.”<sup>75</sup>

The Chairman of the Subcommittee on Surface Transportation was Congressman Norman Y. Mineta (D-CA). Congressman Coelho, who was a close friend of Mineta’s, vigorously lobbied Mineta to be more than a passive supporter of the ADA; Coelho wanted him to be an active advocate. The fact that Mineta was indebted to Coelho for crucial help on one of his own legislative endeavors helped persuade him. And Congressman Mineta came through: he was “absolutely wonderful,” said Coelho.<sup>76</sup>

Although there were strong advocates for the ADA on the Public Works and Transportation Committee, there was also a powerful counter-voice in Congressman Bud Shuster (R-PA). Shuster repeatedly referred to his mother, who was “a double amputee in a wheelchair,” and how he “skinned my knuckles more times than I can

count trying to jiggle her wheelchair through a door that should have been wider . . . or trying to lug a wheelchair up a set of stairs where there should have been a ramp.”<sup>77</sup> There was no reason, he thought, that she would ever want or need to get on a bus, and he outright opposed equipping all buses with lifts. Many persons in the disability community, however, thought Shuster was out of touch with their sentiments. Persons in wheelchairs did not *want* to be pushed around and transported; rather, they wanted to control their own mobility and travel as independently as possible—which required accessible vehicles.

The Public Works and Transportation Committee had jurisdiction over transit: that is, transportation used primarily for commuter purposes. One of the biggest issues the committee faced was whether to include a lift on every transit bus. Eastern Paralyzed Veterans of America (EPVA) attorney Jim Weisman, who served as a transportation expert for the disability community, was amazed that some members were opposed to putting lifts on buses. It seemed “ridiculous to me,” he said, “because it was academic. . . . Transit authorities had just about given this up. [Everybody] who was anybody knew transit authorities knew that the handwriting was on the wall.”<sup>78</sup>

The alternative to equipping buses with lifts was providing paratransit service. Congressman Shuster emphasized that persons with disabilities in his district preferred paratransit over fixed-route buses. So might most people, given a chance to have door-to-door transportation. The problem with paratransit service was that its expenses were unlimited, whereas for fixed route systems the primary cost was a one-time lift installation. Fixed-route buses collected money with every ride; each ride on paratransit cost the operator substantial money. Consequently, paratransit service was unable to meet the demand of its clientele. Transit authorities such as APTA, as Weisman observed, were becoming convinced that it was more cost-effective for them to purchase lift-equipped buses and were thus very moderate in their reservations about the ADA. Members of Congress were the most vigorous opponents. Ultimately, however, the committee sided with its constituents who pushed for lift-equipped, fixed-route bus systems and a supplemental paratransit service for those unable to use standard service.

Debate about what to do with intercity bus services such as Greyhound was much more contentious. Senators had responded by removing the original lift mandate and requiring that a three-year study assess the most effective and cost-efficient accessibility. Greyhound and the ABA argued that people who could not manage the steps into an intercity bus should simply be carried onto the bus. The difference with intercity (“over-the-road”) buses was that a lift potentially took away seats and luggage space. Companies such as Greyhound were in many cases the only transportation serving rural areas. They argued that the loss of revenue from lift-installation would necessitate reduced service areas, and that many people would thus be deprived of their only form of transportation. The disability community used the same evidence to make the opposite point: since buses were in some cases the only available form of transportation, it was imperative that persons with disabilities be able to use them. They also argued that it was unfair for Greyhound, which was

struggling financially, to point to accessibility as the cause or potential cause of its problems. Ultimately, the committee agreed with the Senate's provision requiring a study and thereby delayed the final decision.

The Public Works and Transportation Committee's primary responsibility with respect to the ADA was bus transit, subways, paratransit, and intercity buses, but it had jurisdiction over rail systems operated by transit authorities. Thus, certain commuter rail routes—for example, from Baltimore to Washington—fell under its jurisdiction. This meant that two different committees had the opportunity to craft rail requirements. The bill the Public Works and Transportation Committee brought before the mark-up, like that of the Energy and Commerce Committee, endorsed the Senate requirements for one car per train, and accessibility for all new vehicles. But an amendment was introduced at the Public Works and Transportation Committee mark-up that removed the accessibility requirement for all new vehicles. Proponents of the amendment contended that trains should be approached like airplanes, where only designated seats, not the entire plane, had to be accessible. The amendment attracted a small number of Democrats whose districts had made little headway in rail accessibility. Combined with the votes of Republicans, who almost unanimously supported the amendment, these Democrats' votes helped give the amendment a majority. It was a significant defeat for the disability community, since the provision violated one of the community's main principles: accessibility for all new vehicles.

The matter was not, however, settled. The amendment created a jurisdictional conflict that had to be settled by House leadership, the House Parliamentarian, and the Rules Committee. Chairman Dingell characteristically and vigorously argued that his committee's jurisdiction should prevail. Democratic leadership on the Public Works and Transportation Committee, on the other hand, especially Congressman Mineta, subtly revealed to Congressman Hoyer and the House leadership that they supported the Energy and Commerce version of the ADA. To the relief of the disability community, the House Parliamentarian and the Rules Committee ruled in favor of Energy and Commerce.

### PHASE III: JUDICIARY COMMITTEE

After surviving review by the first three committees—Education and Labor, Energy and Commerce, and Public Works and Transportation—the ADA's final committee hurdle was the Judiciary Committee. This final phase of the House committee process was also a symbolic one: the last chance for opponents of the bill to offer unrestricted amendments. Once the bill went to the House floor, the Rules Committee would allow only certain amendments for consideration. Similar to the Education and Labor Committee, where Subcommittee Chairman Major Owens effectively led the committee's deliberations, Don Edwards (D-CA), Chairman of the Subcommittee on Civil and Constitutional Rights, essentially took the lead in the Judiciary Committee's consideration of the ADA. Moreover, as with the Education and Labor Committee, Congressman Hoyer played a central role in shaping the

Judiciary Committee's negotiations and Congressman Bartlett continued to represent the Republican party.

The Judiciary Committee held three hearings, on August 3, October 11, and October 12, 1989. The Subcommittee on Civil and Constitutional Rights met for mark-up on April 25, 1990. The full committee held mark-up sessions on May 1 and 2, at which time it reported the ADA favorably to the House, as amended.

One of the hottest issues for the Judiciary Committee, which had jurisdiction over portions of the employment and public accommodations titles, was remedies. Prior to the Judiciary Committee's consideration of the ADA, the Senate and the White House had reached a breakthrough compromise on the issue of remedies: the Senate agreed to restrict available employment and public accommodations remedies to those in the Civil Rights Act, which omitted punitive damages. As a result of this agreement, the Education and Labor Committee never even considered changing the available remedies. A crucial development during the Judiciary Committee's deliberations, however, made them a live issue once again.

On February 7, 1990, Senator Kennedy and Congressman Hawkins introduced the Civil Rights Act of 1990. This bill amended the Civil Rights Act of 1964 by allowing courts to award compensatory and punitive damages at jury trials, to persons who successfully proved they were victims of discrimination. Because the ADA merely incorporated the remedies of the Civil Rights Act by reference, this proposed change to the Civil Rights Act would also apply to the ADA. Representatives from the disability community contended that this was consistent with earlier agreements with the White House, that the principle all along had been parity with the Civil Rights Act of 1964, regardless of whether those provisions were strengthened or weakened over time.

The Bush administration, however, felt betrayed and argued that their negotiated agreement expressly excluded punitive damages from the bill. On March 12, *The Washington Post* reported rumors that President Bush might withdraw his endorsement of the bill if the ADA did not expressly limit its remedial provisions to injunctive relief, reinstatement, and back pay. That same night, Attorney General Richard Thornburgh wrote a letter to Congressman Steny Hoyer. He said the administration opposed the link to the Civil Rights Act of 1964 and proposed that the conflict be resolved by specifying the current standards of the Act.<sup>79</sup>

When the committee introduced an amended version of the ADA to the Subcommittee on Civil and Constitutional Rights on April 25, it sided with the disability community and retained the cross-reference to the Civil Rights Act of 1964. Congressman F. James Sensenbrenner, Jr. (R-WI), however,

*The most significant contribution of the Judiciary Committee concerned "site-specific" factors for the determination of "reasonable accommodation" and "readily achievable."*

introduced an amendment to eliminate the reference. Some people with disabilities suggested giving up on the remedies issue in order to save the rest of the bill, but the disability community generally lobbied vigorously to oppose this and all other “weakening amendments.” To the relief of disability activists, the Sensenbrenner amendment failed. Sensenbrenner tried to pass the amendment a second time when the full committee met on May 1 and 2, but it was voted down again. In its report on the bill, the Judiciary Committee argued that the Sensenbrenner amendment was “antithetical” to the very nature of the ADA. It also referred directly to the Civil rights Act of 1990 and stated that any changes there would be applied to the ADA.<sup>80</sup> Sensenbrenner joined five colleagues in authoring “Additional Views” for the report, where they continued to insist on the need for the Sensenbrenner amendment. They also cryptically threatened that a failure to pass it might jeopardize the entire ADA.<sup>81</sup>

The most significant contribution of the Judiciary Committee concerned “site-specific” factors for the determination of “reasonable accommodation” and “readily achievable”. Discussions on the topic had begun in earnest between Congressmen Hoyer and Bartlett during the Education and Labor Committee’s deliberations and continued throughout the House deliberations. For the most part, the Judiciary Committee introduced the same changes proposed by the Education and Labor Committee. But the Judiciary Committee rearranged the factors for clarity and for different emphasis. It was primarily concerned with avoiding a determination that sided *either* with the local facility *or* the covered entity. Rather, the committee stressed that, on a case-by-case and flexible basis, *both* entities should be evaluated. Moreover, it emphasized that the *relationship* between the parent company and the local facility should be taken into consideration.

The committee made many other changes, most of which were technicalities compared with earlier, more sweeping compromises. In addition to clarifying the cross-referencing on remedies and site-specific factors, the Judiciary Committee added a new section to the bill that encouraged alternative dispute resolution through reconciliation before moving to litigation. And it made technical changes to the interim standards of accessibility. The final amendment accepted by the Judiciary Committee was a package of six amendments introduced by Congressman Fish, based on negotiations that included the disability community, the White House, and Congressmen Hoyer and Bartlett. Essentially, three of the amendments came from the disability community, and three from the administration. For the administration, the committee added language clarifying: the meaning of “direct threat,” the standards by which “anticipatory discrimination” were valid, and that an employer’s view of what constituted “essential functions” would be considered by courts. For the disability community, the package included clarification about which entities were covered in the public accommodations title and what was meant by “commercial facilities.” It also provided that places where exams were administered had to be accessible.<sup>82</sup>

Additional amendments were introduced, but they failed. Two of these failed amendments—a proposal to cap an employer’s obligation to provide accommodations at 10 percent of an employee’s salary, and a proposal to enable employers to remove persons with contagious diseases, such as AIDS, from food handling positions—

would reemerge on the House floor. On May 2, the Judiciary Committee concluded its deliberations by favorably reporting its version of the ADA to the full House.

### **Moving to the House Floor**

The ADA proceeded rapidly to the House floor after the Judiciary Committee completed its work. On May 14 and 15, 1990, the four committees submitted their reports, which included four different drafts of the ADA. It was then the task of the Rules Committee to produce a bill that synthesized the four versions. A bipartisan staff working group collaborated to sort out the different texts. The only conflict was between the transportation committees over whether new rail vehicles had to be accessible. Otherwise, it was a matter, albeit a challenging one, of piecing everything together. The staff working group crafted a new bill, H.R. 4807, which they substituted for the text of H.R. 2273. On May 16, the Rules Committee submitted its own report that included the new version of H.R. 2273 and a resolution, H. Res. 394. This resolution provided that, at any subsequent time, the Speaker of the House could take up H.R. 2273, the Americans with Disabilities Act, for consideration on the House floor.

Floor deliberations are somewhat of a free-for-all in the Senate: a senator may introduce virtually any amendment, even one that is not germane to the bill, and also filibuster—dominating the floor for unlimited time. The House, by contrast, conducts its floor proceedings according to rules established by the Rules Committee. In the case of the ADA, H. Res. 394 submitted a modified closed rule, meaning that general debate would be restricted and that only specific amendments would be allowed for consideration. The resolution provided that at any time after adoption of the resolution the Speaker of the House could resolve the House into the Committee of the Whole House on the State of the Union for consideration of the ADA and the proposed amendments.<sup>†††</sup> There would be two hours of general debate: 30 minutes for each committee, split equally between majority and minority members. Eight amendments were approved for consideration.

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<sup>†††</sup> For most minor legislative initiatives that make it to the floor of the House, as in the Senate, there is only brief consideration, there are no amendments, and members approve the bill unanimously or by a voice vote. For major legislation such as the ADA, however, members generally want to debate the bill and offer amendments. In the House, such extensive consideration usually takes place by the House resolving into the Committee of the Whole House on the State of the Union, where fewer members are required to be present to conduct business and all amendments unrelated to the legislation in question are prohibited. Final passage must take place after reporting the bill, as amended, back to the House, where the amendments approved in the Committee of the Whole must be approved either en bloc or individually. Before the final vote, members have the option of requesting that the bill be recommitted back to committee for further consideration.

On May 17, only one day after the Rules Committee presented its resolution, the House met to consider passage of the ADA. The first order of business was to accept the closed rule. Minority congressmen protested. Congressman Robert S. Walker (R-PA) called it a “totalitarian rule” and said the committee used “a process which is both undemocratic and . . . sad.”<sup>83</sup> Congressman Bill McCollum (R-FL) said the rule was “an abomination” and “ridiculous” and suggested that the lack of House activity that session provided plenty of time for free debate.<sup>84</sup> Congressman Lynn Martin (R-IL) complained that only 8 of the 45 amendments proposed to the Rules Committee were accepted, and noted that a proposal to have an open rule was defeated on a strict party line vote.<sup>85</sup> Congressman Newt Gingrich (R-GA) said the ADA was an “extraordinarily important bill” and that consideration of every amendment submitted to the Rules Committee was therefore appropriate.<sup>86</sup> Congressmen in the majority, however, generally supported the rule and argued that allowing open debate would undermine all the agreements made in the committees and defeat the basic purpose of committee deliberations. As is customary, the House passed the rule on virtually a straight, party-line vote.<sup>87</sup>

Immediately following the vote, the House resolved itself into the Committee of the Whole. Congressman Hoyer took the lead for ADA supporters throughout the deliberations and frequently entered debate to clarify various aspects of the ADA. The general debate provided members an opportunity to make basic statements about the virtues and problems of the bill, review the history of committee deliberations, and note key accomplishments. Hoyer drew special attention to how the ADA was “truly the product of thousands and thousands and thousands of people.”<sup>88</sup> Similarly,

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Congressman Owens thanked “all of the members of the community of people with disabilities, who 43 million strong raised their voices across the Nation, and it was their push, their sense of empowerment, that has brought us to where we are.”<sup>89</sup> Hoyer also emphasized how much business interests were taken

into consideration: “We have worked closely with them, and adopted numerous amendments, to ensure that American business can work with the ADA.”<sup>90</sup>

Others, however, thought more work needed to be done. Congressman Bartlett was Congressman Hoyer’s counterpart in coordinating the efforts to amend the ADA. Congressman McCollum said the issue was not *whether* to bestow civil rights, but how to “minimize costs to the employers while still doing that.”<sup>91</sup> Back and forth across the aisle, Democrats emphasized the bill’s balance and the need to reject “weakening” amendments, and Republicans stressed the potential pitfalls of the bill and the need to fine tune it with further amendments.

The House considered four of the seven amendments on May 17. Two were non-controversial. Congressman John J. LaFalce (D-NY), based on the Small Business Committee hearing he chaired, proposed postponing the time at which civil

actions could be brought against a covered entity. Republicans and Democrats united in unanimous support.<sup>92</sup> The House also approved, by voice vote, Congressman James V. Hansen's (R-UT) amendment to allow wheelchair use in wilderness areas.

Congressman Jim Olin's (D-VA) amendment, to impose a 10 percent salary cap on the amount of accommodations an employer had to provide an employee, was more contentious. The NFIB strongly endorsed the amendment, and Congressman McCollum called it "the small business amendment in this legislation." He suggested that a vote against it would be a vote against small business—a position no member was eager to take.<sup>93</sup> The bill would have put a finite dollar cap on accommodations. But, according to ADA supporters, there were two main problems. First, as Congresswoman Patricia Schroeder (D-CO) said: "It is great for Donald Trump. It is lousy for the person who is cleaning up after Donald Trump."<sup>94</sup> The amendment would mean that persons with similar disabilities would not be given individualized treatment—a central premise of the ADA. Rather, they would be grouped according to income level.

Second, as Congressman Bartlett stated forcefully, the amendment "would in fact be harmful both to those who are disabled and to the employers themselves." By setting a dollar cap, persons with disabilities might insist on 10 percent of their income as a mandatory level of accommodation, when much less might be needed. "The Olin amendment attempts to set a ceiling," said Bartlett, "but in fact it sets a floor."<sup>95</sup> Members on both sides argued that they had the White House's support. Congressman Fish, on one hand, said the Bush administration had tried to negotiate a similar amendment at the committee level but concluded that the principle was unacceptable. Congressman Olin, on the other hand, said he had called the White House during the course of deliberations and was told the administration "very much favors" the amendment.<sup>96</sup> Bartlett put an end to the discussion by declaring that the White House had *no* position. The final vote was close. The 32 members who did not vote could have passed the amendment, which failed 187 to 213. As with each of the contested amendments, votes split along party lines. Whereas 71 percent of Democrats voted no, 74 percent of Republicans voted yes.<sup>97</sup>

The most controversial amendment to reach the floor was the Chapman amendment, which would enable employers to remove persons with contagious diseases, such as AIDS, from food handling positions. The issue of AIDS was not new. It had always been covered by the ADA. From the beginning, many organizations supported the bill precisely because it offered protection to persons with HIV and AIDS. Moreover, the provisions in the ADA that protected persons with AIDS essentially replicated what had already been settled in the Fair Housing Amendments Act. Nevertheless, the Chapman amendment posed a significant challenge to members, most of whom would have preferred the issue did not exist. By this time, in May, 1990, it appeared the ADA would pass; few wanted to stand in its way. But members also feared that being forced to vote on an "AIDS" amendment during an election year could be damaging: a perfect ten-second sound bite. Moreover, the Chapman amendment was precisely the kind of issue that could kill the



































































































