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Disability in America: A Minority Group for Everyone

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CLAREMONT McKENNA COLLEGE
DISABILITY IN AMERICA: A MINORITY GROUP FOR EVERYONE

SUBMITTED TO
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AND
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BY
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INTRODUCTION

John Bolender enjoyed his job at the public library. He had worked his way up through the organization and was enjoying a steady pay with decent benefits. John had a growing family and down the road there would be diapers to buy and college tuition to pay. John was happy with his work for the stability it gave to him and to his family. But, one fateful day, his outlook on life would change for the worse. John had been experiencing gradual vision loss. At first, he attributed his change in vision to allergies but as the days went on and his vision only got worse he decided to see his ophthalmologist. He was diagnosed with exudative or wet type macular degeneration. His vision was degrading at a rapid rate and eventually he could be fully blind.

John thought his situation was embarrassing, even humiliating. He was experiencing a crippling disease which would ultimately change his identity. He decided to hide his condition from his employers and his family for fear of their reactions. His employers began to question his stability after his work performance began to suffer. He was eventually required to submit to drug testing to keep his job—his employer thought drug abuse was affecting his ability to concentrate at work. Eventually, John was at a place where confrontation was inevitable. He could either tell his employer about his condition or lose his job. John's sister, B.J. Bolender, convinced him to confront his fears and tell his employer everything.

B.J., familiar with the workings of the Americans with Disability Act (ADA), explained to John his options which the public library, covered under the blanket of the ADA, was required to adhere to. John came clean to his employer and a few months later he had received \$170,000 in assistive technology and mobility training. John learned how to cope with his disability and to this date he has received three promotions. John's life changed. His vision loss left him unable to

do some things in life; however, the training he received allowed him to keep his job and even to seek promotions.

John's situation is not an anomaly. There are over fifty-one million Americans who are considered disabled, almost twenty percent of the population. The ADA can be a powerful tool for those who are aware of it. In John's case, the ADA broadened his options. He had the opportunity to take classes at no cost which helped him navigate his job and live a better life. The ADA acted in a proactive and satisfying way for John but this type of support for the disabled community has not always been around.

Support for the disabled is a relatively recent phenomenon. George H. W. Bush signed the ADA into law on July 26th, 1990. The date marks an important step forward for disabled rights. Some historians consider the ADA to be one of the most sweeping bills to pass through Congress. The ADA did not spring up over night, though. It was the product of decades of increasing disability awareness since World War I and was built on the foundation of the civil rights movements of the 1960's. The history of the ADA is ripe with political conflict.

With so many areas of the public and private sector affected by ADA guidelines, it is hard to appease all sides involved. Small businesses often see the ADA guidelines as extra expenses, government facilities see the guidelines as burdensome, and the private sector often treats the ADA with a reactive stance. These are some of the problems present with modern day disability law. In the decades leading up to the ADA, these problems would be the talking points against a comprehensive reformation.

The opportunities disabled individuals have access to have broadened in the 2 decades since the ADA was enacted; however, there is still much work to be done. The political roller coaster that is the history of the ADA will be laid out in the following chapters as well as the

consequences of the act, either foreseen or unforeseen. The culmination of these events will take us to the current state of disability law in the United States of America and provide a glimpse into the future.

CHAPTER 1: REASONS FOR THE ADA

Disability rights in the United States of America are a relatively recent development. The history of disabled individuals is often unsung, that is, there is little description of the disabled living ordinary lives. Instead, disabled persons were often considered second class citizens. Their inalienable rights of life, liberty, and the pursuit of happiness were limited. For the most part of the twentieth century and earlier, most of society accepted the paradigm of treating disabled individuals as a victim of their medical condition and nothing more. These individuals were often treated as a burden on society and a hindrance to everyone else's inalienable rights. Recent developments have pushed away this kind of thinking and, today, the ADA is often regarded as a beacon of freedom for disabled individuals. With recent developments in medical technology and rehabilitation programs it can be said that disabled individuals have come ever closer to their inalienable rights as prescribed by the Declaration of Independence. In this chapter, the reasons behind a comprehensive disability rights act will be demonstrated. Several first hand cases will be examined and will demonstrate what the ADA does. The functions of the ADA can be broken up into three parts: One, greater access to the physical environment, two, increased access to employment opportunities, and three, easier communication and easier mobility.¹ These three functions of the ADA should, in theory, bring disabled individuals closer to their inalienable rights.

The main reason for the ADA is to bring disabled individuals closer to these rights. Reasons for the act are best described in the National Council on Disability's *Voices of Freedom: America Speaks out on the ADA*. The report gives eyewitness accounts of the ADA in action. These anecdotes serve as evidence for the existence of the act. The report personalizes the issue,

something which is often amiss in the dry language of the legislation and gives meaning to the language of the ADA.

Greater Access to the Physical Environment

The first arm of the ADA involves greater access to the physical environment. The act covers public transportation services which include: city buses and public rail transit, subways, commuter rails, and Amtrak to name a few.² The act further states that “Public transportation authorities may not discriminate against people with disabilities.”³ Don Holder an impaired individual from Florida states, “Not too long ago, very few places were accessible to people with disabilities. But today it’s different . . . people with disabilities can now get out into the world.”⁴ Prior to disability law, disabled individuals had little choice in getting around. Often they were at the mercy of their caregivers, if they had them. The report finds that individuals have access to a much wider range of places and are often given the same opportunity of transportation as non-disabled individuals.

Bonnie Johnson of the Arkansas Disability Coalition notes that, “we had paratransit before the ADA but it was on a charitable basis, which meant transportation was available only when there was money to fund it.”⁵ Post-ADA, guidelines were put into place which ensured disabled individuals have access to transportation and can access it equally. Before, the transportation system worked on a priority basis which meant individuals who were using the service for recreational use could be bumped ahead of someone using the service to make a doctor’s appointment.⁶ The guidelines introduced with the ADA ensure that disabled individuals have equal access to transportation.

Increased Access to Employment

Perhaps one of the biggest and most controversial elements of the ADA is the focus on employment opportunities. Title I of the ADA “[...] requires employers with 15 or more employees to provide qualified individuals with disabilities an equal opportunity to benefit from the full range of employment-related opportunities available to others.”⁷ The key element in Title I is allowing equal access to jobs for disabled individuals. Prior to the ADA, certain professional jobs were out of reach for individuals who had an impairment. Today, the ADA makes it possible to access these jobs. Beth Butler, a young attorney with a visual impairment, testified, “Thanks to the ADA and the Alabama Bar Association, I was able to take the bar exam in a large print version, and I was given extra time.”⁸ These types of accommodations are often small but can make a large difference to a disabled individual.

There is an extent to which these accommodations are expected to be carried out and the ADA defines this as a “reasonable accommodation.” A reasonable accommodation may not cause undue hardship for the employer or organization. The ambiguity of an undue hardship will be discussed further in Chapter 4; however, it is important to note that most of the accommodations that can be made are quite simple in nature. Most of the time, a substitution of devices or a larger print worksheet is sufficient. Mike Roselle of New York gives testimony to how simple the change can be. He states, “I used to have to type with my nose. But I got a new type of keyboard, so now I don’t have to. I wouldn’t have been able to get this accommodation if it weren’t for the ADA.”⁹ A simple change allowed Roselle to work more efficiently and to forego the tedious and perhaps humiliating procedure of typing with his nose.

The ADA mandates guidelines for companies and organizations to follow but the very existence of the Act has created an awareness of disability rights. Mary Beth Metzger, a blind personnel administrator, agrees with this sentiment. She states, “There were disability rights in

existence before the ADA, but it took the ADA to ensure that these laws are enforced.”¹⁰ The emergence of the ADA and the community support behind opened up doors that should have already been opened for many disabled individuals. Ann Pal of Alabama shares the same thoughts. She states, “The ADA made my employer aware of assistive listening devices. My employer bought the device, as well as a TDD and a hearing aid-compatible telephone. Without this equipment, I wouldn’t be doing my job as a physical therapist today.”¹¹ This type of equipment can greatly improve a disabled individual’s day-to-day living. Often, these little improvements can mean the difference between a job and a dependency.

Easier Communication and Mobility

The next function of the ADA is for easier communication and mobility. Often times, these two areas are where disabled individuals struggle the most. To function in a social environment a person needs to be able to communicate with those around them. They also need to be able to get to the social setting. These basic elements are often the biggest barriers for disabled individuals. The ADA ensures that individuals can be “participating members of communities.”¹² According to the National Council on Disability, “speakers at town meetings all across the country reported that since the passage of the ADA, communication and mobility have become easier.”¹³ These two ingredients for successful social interaction, and ultimately for work opportunities, are provided for disabled individuals in the ADA.

One example of the ADA in action can be seen with telephone relay systems. These systems allow for those with hearing or speech impairments to better communicate. Michael Zeledon of Minnesota states, “The benefits that Title IV’s requirement for relay services has brought are undisputed. Integration of deaf, hard of hearing, and speech impaired individuals through the telecommunication network brought these individuals increased freedom,

independence, and privacy.”¹⁴ It is both heart-warming and a confirmation of the ADA when individuals like Gwen Winston of Arkansas can use the telephone for the first time. She states, “Now I can talk on the phone all I want.”¹⁵ With the availability of these services, impaired individuals can do more. The ADA enables hearing impaired individuals to communicate with loved ones over the telephone and to seek job opportunities which may have otherwise been off limits. It also establishes some privacy and independence for these individuals who are often used to a dependent life.

Improved mobility often takes the form of increased access to paratransit and public transportation. The guidelines set forth in the ADA allow many individuals across the country to now get to work, see loved ones, and make medical appointments without depending on a third party. Christina Keefer of California states, “The transportation part of the ADA is changing my life. I can visit my 88-year-old Dad, swim, and go to the library all because of transportation called for in the ADA.”¹⁶ The guidelines set forth allow individuals like Christina to seek new employment opportunities, visit loved ones, and participate in social endeavors. The ADA makes it possible for individuals suffering from all kinds of impairments to participate in society. Denise Karuth of Massachusetts states, “Most people would not think that a blind person who uses a wheelchair could travel independently, hold a job, and be a taxpayer. But the transportation access requirements of the ADA allow me to make my 220-mile commute to Boston from my home in Northampton several times a month.”¹⁷ The ADA has made a noticeable difference in Denise’s life. Despite being both blind and in a wheelchair, she is able to hold a job and frequently make a 220-mile commute. Denise’s case is yet another confirmation of the ADA. Without the guidelines established by the Act, she would likely not be able to hold a job, travel to appointments independently, or make her long distance commute.

The ADA may also serve another purpose. America has often been hailed as the melting pot of cultures, races, and ethnic backgrounds. Diversity is a valued trait that colleges, businesses, and organizations strive to achieve. According to the National Council on Disability, the ADA may enable more than just individuals with disabilities. Speaking of the architectural regulations, Rick Tessandore of Alaska states, “[...] ramps and curb cuts are better, not only for people with disabilities, but for many of the non-disabled as well: parents pushing strollers, bicyclists, people with injuries, and elderly people.”¹⁸ These seemingly small improvements can mean a great deal to disabled and non-disabled individuals alike. Michelle Rico points out that the ADA is often seen as a safeguard or safety net for the future. She says, “The ADA is not just for people with disabilities now, but it affects us in the future too. The ADA will keep us from being restricted as we get older. I want the ADA to be there for me down the road if I need it.”¹⁹ The ADA can be seen as a resource for all individuals. Architectural designs can be seen as a boon for the non-disabled and a system which promotes social acceptance of disabilities is an assurance to those approaching their latter years, wherein more disabilities are apt to occur. The anxiety many individuals have when facing a disability can be alleviated by a system such as the ADA.

Public Perception

The ADA also serves to change the public perception of disabled individuals. Often in the past, disabled individuals would have little part in the public. With more job opportunities and increased access to social venues, disabled individuals are seen in a different light. John Roberts of Colorado tells a story of his disability. He states:

I was eating in a Walgreen’s restaurant, and the little girl in the next booth kept turning around and staring at me. Then she walked by me to the bathroom, staring all the while. On her way back, she stopped and asked me what was wrong with me. I explained that I

fell down and broke my back, so I can't walk. Then I heard the girl tell her mother, "See, Mom, I told you there's nothing wrong with him!"²⁰

Social acceptance of disabled individuals can be attributed in part to the ADA. The regulations and guidelines put into place helped change the public perception and helped increase the visibility of disabled individuals as part of day-to-day life. Dawn Caldwell has a similar story of disability awareness. His son, Alex, has cerebral palsy and looking for preschools to attend was an anxious thought. Dawn was surprised, though, to find that he and his son fit in just like any other parent and child. He states, "It's great to see how attitudes have changed. All the preschools we looked at were accepting and eager to have Alex. They have ramps and accessible bathrooms. Thanks in part to the ADA, I can take my son anywhere and he will feel included."²¹ The ADA itself has served as a monumental awareness campaign for disabled rights. Every architectural guideline—each ramp, curb cut, and accessible door—is a physical reminder. To this effect, the ADA serves the purpose of increasing public awareness.

The reasons behind the ADA are numerous; however, there are three key factors which drove the Act to its current condition. The disability rights movement focused on three elements: access to the physical environment, increased access to employment opportunities, and easier communication and mobility. These three items are manifested in the ADA today and serve as the foundation. In keeping with the Declaration of Independence, each item brings disabled individuals closer to their inalienable rights of life, liberty and the pursuit of happiness. The history of disabled rights in America is turbulent and numerous clashes among political and social ideologies created the backdrop for the ADA. The buildup of these clashes shaped the act into how we know it today. In the next chapter, the political history of the ADA will be examined. The prominent court cases and legislation regarding disability rights will be dissected and the buildup to the current ADA explained.

Works Cited

¹ *Voices of Freedom: America Speaks out on the ADA: a Report to the President and Congress*. (Washington, D.C.: National Council on Disability, 1995)

² Margaret C. Jasper, *Americans with Disabilities Act* (New York: Oceana, 2008), pg. #2.

³ Ibid.

⁴ *Voices of Freedom: America Speaks out on the ADA: a Report to the President and Congress*. (Washington, D.C.: National Council on Disability, 1995), pg. #7.

⁵ *Voices of Freedom: America Speaks out on the ADA: a Report to the President and Congress*. (Washington, D.C.: National Council on Disability, 1995), pg. #43.

⁶ Ibid.

⁷ Margaret C. Jasper, *Americans with Disabilities Act* (New York: Oceana, 2008), pg. #2.

⁸ *Voices of Freedom: America Speaks out on the ADA: a Report to the President and Congress*. (Washington, D.C.: National Council on Disability, 1995), pg. #13.

⁹ Ibid.

¹⁰ *Voices of Freedom: America Speaks out on the ADA: a Report to the President and Congress*. (Washington, D.C.: National Council on Disability, 1995), pg. #14.

¹¹ Ibid.

¹² *Voices of Freedom: America Speaks out on the ADA: a Report to the President and Congress*. (Washington, D.C.: National Council on Disability, 1995), pg. #16.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ *Voices of Freedom: America Speaks out on the ADA: a Report to the President and Congress*. (Washington, D.C.: National Council on Disability, 1995), pg. #17.

¹⁶ Ibid.

¹⁷ *Voices of Freedom: America Speaks out on the ADA: a Report to the President and Congress*. (Washington, D.C.: National Council on Disability, 1995), pg. #18.

¹⁸ *Voices of Freedom: America Speaks out on the ADA: a Report to the President and Congress*. (Washington, D.C.: National Council on Disability, 1995), pg. #24.

¹⁹ Ibid.

²⁰ *Voices of Freedom: America Speaks out on the ADA: a Report to the President and Congress*. (Washington, D.C.: National Council on Disability, 1995), pg. #25.

²¹ Ibid.

CHAPTER 2: LAW AND DISABILITIES BEFORE THE ADA – A POLITICAL HISTORY

The first trace of established disability rights in the United States of America begins with a school in Hartford, Connecticut. The American School for the Deaf, founded in 1817, is the first institution of its kind in the Western Hemisphere.²² The nature of the institution paints a descriptive picture of disability history in America. The establishment is a school designed to teach deaf children how to better interact with their environment. The School for the Deaf is demonstrative of society's perspective of disabled individuals. First, the school falls under a *treatment* model and, second, the school separates deaf individuals from the rest of society. Disabled children or orphaned individuals would be sent to schools such as these to be treated. Perhaps the best way to describe this phase in disability history would be the concept of separation.

The Treatment Model

Throughout the eighteenth century into the twentieth, individuals would be sent to institutions such as these to be treated. During their treatment they would often be separated from society. This is especially evident with the Perkins Institution located in Boston, Massachusetts. The Perkins Institution, founded by Samuel Gridley Howe, provided the first residential solution for mentally handicapped individuals.²³ While these institutions provided a service for the community, their mission was often misguided. Often these residential institutions would expect their residents to live with them for the entirety of their life. It may have been an improvement of life for the rest of society which did not have to deal with the mentally handicapped; however, the quality of life for the inhabitants of these institutions was often subpar—and in some cases, such as New York's Willowbrook, the living conditions were outright terrifying. An eventual paradigm shift came about due to the eventual discovery of these conditions but it would be false to say the disability rights movement was born of any one thing.

The evolution of how we think about disabled individuals and how the civil rights movement for the disabled community came about cannot be pinned on any one factor; however, the early traces of disability rights in America can be traced back to a medical model. As Douglas Baynton, Professor of History at the University of Iowa, points out, “Disability is everywhere in history, once you begin looking for it, but conspicuously absent in the histories we write.”²⁴ This is due to the *treatment* model. In this phase of disability history, individuals were sent to institutions such as the Perkins Institution and generally isolated from society. Disabled individuals are mentioned in early American history, but there was little to be said for their accomplishments. Instead, the focus was on their diagnosis and treatment.

Harlan Hahn, director of the Program in Disability and Society at the University of Southern California supports these claims. He states that disability was initially defined as a medical issue.²⁵ As such, individuals with a disability were placed in diagnostic categories: blind, deaf, mentally handicapped, et cetera. The focus at the time was to improve functional capabilities.²⁶ While this approach was helpful in integrating some individuals into society, others were often at the behest of their institution. A lifetime of functional therapy with little to no contact with society misses the larger problem: helping disabled individuals better interact with society. Hahn states the focus on functional capabilities hindered a unified disability community. He says, “[...] the issue of disability not only was depoliticized, but the preoccupation with etiological diagnosis also fragmented the disability community by stressing the functional traits that divided them rather than the external obstacles that they faced as a common problem.”²⁷ Instead of identifying a common ground for disabled individuals, disabled persons were separated into their different diagnostic categories. This had the effect of curing the symptoms but not the disease. As Simi Linton, a writer and disability consultant, writes, “[...]”

the focus is on the individual as deviant subject, rather than on the social structures that label difference as deviance and pathology.”²⁸ Disability treatment was fragmented at this point in history and from the eighteenth through the early twentieth century it would remain so. These early institutions, though, would lay the groundwork for future legislation.

The early infrastructure of the disability community is best described by the treatment model. Perhaps the most descriptive word of this epoch is separation.²⁹ The most common type of treatment for the disabled involved being institutionalized, isolated, and ignored. For many, though, this was an improvement. Prior to American independence, the Duke of York declared in 1665 that disabled individuals were subject to charity.³⁰ His orders combined the disabled and the impoverished in one group. Another statute prior to the treatment model ordered impoverished and disabled individuals wear a large Roman “P” on the shoulder of the right sleeve of their garments which they must display at all times.³¹ Some policy was completely intolerant of disabled persons. In Pennsylvania, a 1729 statute allowed public officials to deport disabled persons.³² These types of statutes were discriminatory, harsh, and treated disabled individuals as burdens and little else. It is not until the treatment model that disabled persons are at least treated in a humane manner.

Alongside the American School for the Deaf, several other charitable groups developed which would give rise to a new way of thinking about disabled persons. Thomas Gallaudet founded a school initially called the Connecticut Asylum for the Education of Deaf and Dumb Persons in 1817 and, in 1832, the Perkins School for the Blind was established in Boston.³³ The main difference between these schools and the institutions were their focus on helping disabled individuals better interact with society. This was a radical change from some of the institutions which focused mainly on removing disabled individuals from society. These schools were often

the only organizations which bothered taking responsibility for the care of disabled individuals during a time in which the government did not feel compelled to do so.³⁴ These were the seeds of the disability community and their roots would begin to take hold in the following decades.

In 1840, a profound shift occurred with state and government recognition of disabled individuals. This is due in small part to the charity groups of the early nineteenth century and also the works of Edoard Seguin and Dr. Felix Vosin.³⁵ These two individuals were French educators who opened a series of institutions abroad. Their successes in treatment gained national attention and schools in the United States began to model themselves after their success.³⁶ During the uprising of these institutions, disabled persons were recognized more as humans in the eyes of the state. Instead of being a burden on the state, these individuals were beginning to be seen as just that: individuals.

A Step Backwards

If the nineteenth century was an era of growing disability awareness then the early twentieth century was a step backwards. The early twentieth century delivered a new type of thinking. Henry H. Goddard, a psychologist during the early twentieth century, gave rise to a new paradigm called *hereditary degeneracy*.³⁷ This thinking thought of disabilities as a result of genetic weaknesses passed from one generation to the next. Goddard referred to it as the “cancerous growth of bad protoplasm.”³⁸ Goddard questioned the existence of social equality and famously asked, “How can there be such a thing as social equality with this wide range of mental capacity?”³⁹ The thinking was based largely on the rise of eugenics in the late nineteenth century. Goddard based his conclusions on his study of various families across the United States. One such family was made famous in Goddard’s 1912 publication, *The Kallikak Family: A Study in the Heredity of Feeble-Mindedness*. The Kallikak family had a high incidence of mentally

handicapped children. Goddard, upon further examination, determined that the family had a disposition towards bearing mentally ill offspring due to a generation of family members—several generations removed—having the same tendencies.⁴⁰ Goddard came to the conclusion that a link existed between vice and mental retardation. The Kallikak family tree was supposedly responsible for 143 feebleminded offspring as well as epileptics, prostitutes, alcoholics, and criminals.⁴¹ Goddard concluded that these “defective families” usually lived in poor, rural areas, and continued to pass down their “degeneracy.”⁴² In effect, Goddard described all the symptoms of the neglect of disabled individuals as the cause of a hereditary condition.

Goddard’s message held weight, though, and its influence on disability policy was detrimental. The idea of a hereditary disease which caused the symptoms disabled individuals suffered from became a popular sentiment. The once waning establishment of institutionalization began to gain back its strength. In 1890, there were 20 public, and 4 private institutions for the care of those termed “morons.”⁴³ By 1903, there were 28 public, and 14 private institutions which housed a total of 14,347 individuals.⁴⁴ These individuals could expect poor treatment, isolation from society, and to spend most, if not all, of their lives in these types of institutions. The once prominent ideology of institutionalization gained back its momentum with the teachings of Goddard and also with the rise of eugenics.

Occurring at roughly the same time as Goddard’s dissertations was the rise of eugenics. Eugenics, a term coined by British mathematician Sir Francis Galton in 1883, was an initiative to “improve the quality of the stock.” The basic ideology considered “white, heterosexual, able-bodied Protestants of northern European descent as the pinnacle of human evolution.”⁴⁵ This new ideology did not go over well with the disability community. During the time of eugenics, anyone who did not fit the mold described above was considered a “threat” to human survival.⁴⁶

The eugenics movement in America followed many of the same ideologies which were developing in Nazi Germany.⁴⁷ Edwin Black writes in his article, *The Horrifying American Roots of Nazi Eugenics*, that “Hitler even wrote a fan letter to American eugenic leader Madison Grant calling his race-based eugenics book, *The Passing of the Great Race* his ‘bible.’”⁴⁸ A propaganda video sent out to over 3,000 high schools detailed disabled individuals as “weeds” which should be cut away so the healthy might survive.⁴⁹ Those targeted by the eugenics movement included the “feebleminded.” This included anyone who could not reach a third grade reading level, and those with learning, hearing, vision, and mobility disabilities.⁵⁰ The eugenics movement was beyond discriminatory in theory and in practice was one of the worst violations of human rights against disabled individuals in the United States.

One of the most famous disability court cases, *Buck v. Bell* in 1927, deals with the eugenics movement. Carrie Buck, a then 17 year-old girl and member of the Virginia Colony for Epileptics and Feeblemindedness, was raped. The institution’s board ruled her to be sterilized based on “moral imbecility.”⁵¹ The case appeared before the Supreme Court where it was ruled 8-1 in favor of her sterilization. Without any proper physical examination, Carrie Buck was pushed into a group classified as “[the] shiftless, ignorant, and worthless class of antimonial whites of the South.”⁵² The opinion of the Court did not differ much from the previous sentiment. Chief Justice Oliver Wendell Holmes wrote, “It is better for all the world, if instead of waiting to execute degenerate offspring from crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind.”⁵³ The issue of sterilization was not an anomaly. It is estimated that around 63,000 people were sterilized involuntarily for some “genetically related reason” between 1921 and 1964.⁵⁴ The occurrence of sterilization was the culmination of the eugenics movement in America. The growth of disability

rights was cut short by such thinking and would remain in stasis for some time to come. It was not until 1968 that *Buck v. Bell* was repealed.⁵⁵ It would take America several decades to move past the institutionalization model.

The Willowbrook State School in New York would mark the end of the institution era. Willowbrook opened in 1951 under the institution model. Willowbrook became a popular destination for children and adults with severe mental and physical disabilities. The patient population expanded greatly over the course of its operation. The population ranged from over 3,000 in 1953 to 4,000 in 1955 and to an unstable 6,000 plus in its last years.⁵⁶ The amount of residents at Willowbrook was disconcerting but the conditions of the inhabitants were most worrisome. According to Saul Krugman, a doctor brought in as a third party during the hepatitis outbreaks, the facility housed individuals who suffered from the severest disabilities.⁵⁷ According to Krugman, “The residents [...] were the most severely retarded, the most handicapped, and the most helpless of those being cared for in the New York state system.”⁵⁸ At its peak of over 6,000 inhabitants, seventy-seven percent were “severely or profoundly retarded,” sixty percent were not toilet trained, thirty-nine percent were not capable of extended movement, thirty percent suffered from convulsive seizures, and sixty-four percent were incapable of feeding themselves.⁵⁹ The conditions were ripe for disease to spread and the school was plagued by the transmission of hepatitis, shigellosis, respiratory infections, and parasitic infections.⁶⁰ The estimated rates of infection for hepatitis ranged from every 25 per 1,000 children to every 40 per 1,000 adults.⁶¹ The living conditions at Willowbrook were horrendous. The old saying, out of sight, out of mind, backed the institutional model; however, these conditions would not stay out of sight for long.

In 1972, rumors of the conditions at Willowbrook gave rise to an ABC special television report. A young Geraldo Rivera went undercover to expose these rumors. What he found was televised in the special report. The program portrayed naked children laying in their own filth and in poor condition.⁶² When the living conditions were made public, thousands of angry parents protested for the sake of their children. The mass protests led to a decrease in the populace from around 6,000 to 250 persons.⁶³ The exposure of Willowbrook marked the beginning of the end for the institutionalization era. Several court cases, such as *Pennhurst State School and Hospital v. Halderman* and *O'Connor v. Donaldson*, followed in the wake of Willowbrook.⁶⁴ The end of institutionalization would beckon a new era for disability rights and, with the rise of the civil rights movement of the 1960's, the catalyst for the disability rights movement would appear.

The Beginning of Public Policy

Public policy on disability rights owes much of its success to the civil rights movement. In 1964, the guiding principle of civil rights would lay the foundation for the disability rights movement. The main ideology stated 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.”⁶⁵ While the criteria supported diversity in “race, color, religion, and national origin,” the disabled community was left out. There was hesitation in including such an encompassing minority group. It seems there was no room for the disabled at the time. While little was said pertaining to disabled individuals in 1964, a significant piece of legislation was passed four years later. The Architectural Barriers Act of 1968 would prove to be a critical first step in getting the disabled community's agenda recognized before Congress.⁶⁶ The Act laid out guidelines for accessibility in public buildings.

While a small step forward, the disabled community's voice was growing. Just a few decades earlier, such legislation would not even be considered.

The first attempts to include disability rights in the civil rights movement were unsuccessful. In 1972, Senator Hubert H. Humphrey Jr. (D-MN) proposed to amend the Civil Rights Act of 1964 (CRA) with disabled persons as a protected class.⁶⁷ The proposal, while a tremendous step forward in the right direction, failed. The voice of the disability rights movement was still a whisper and Congress was listening to louder voices. There was also worry among civil rights advocates that the addition of "disability" as a protected class would dilute the entire Civil Rights Act and could cause an inroad for opponents of the Act. The CRA was still in its infancy of implementation. Any amendments added to the act during the time could open the door for opponents to submit their own claims. The political climate was inhospitable to the disability community; however, major legislation would soon come to pass.

Amidst the fight to gain a voice in the civil rights movement, the disability community also faced the political agenda of President Richard M. Nixon. While Nixon supported the civil rights movement, he also took a hard stance on acts which might cause financial hardship for the business sector. Nixon pledged to stem the tide of some civil rights advances and his stance on the issue helped him win the presidential election during an era of backlash against the "war on poverty" and the Civil Rights Act of 1964.⁶⁸ Many at the time thought welfare measures such as the CRA were exceeding the American budget and putting a strain on the economy.⁶⁹ In general, it was an unfriendly time for new civil rights protections such as the inclusion of the disabled community into the CRA.

Despite the inclement weather the disability community faced, Congress continued to push social legislation through. In 1972, Congress crafted a sweeping piece of legislation: the

Rehabilitation Act of 1973.⁷⁰ The legislation aimed “to extend rehabilitation services to all people with disabilities, give priority to severe disabilities, provide for extensive research and training for rehabilitation services, and coordinate federal disability programs.”⁷¹ The passage of the Act was by no means easy. Nixon vetoed the bill on two occasions and claimed the bill to be “fiscally irresponsible” and a “Congressional spending spree.”⁷² During one revision of the bill Nixon exclaimed, “We should not dilute the resources of [the Vocational Rehabilitation] program by turning it toward welfare or medical goals.”⁷³ Despite the two attempts to pass the bill, Congress was unable to override Nixon’s final veto by six votes.⁷⁴ In order for the Rehabilitation Act to pass, there would have to be some compromise.

The Rehabilitation Act of 1973

President Nixon signed The Rehabilitation Act into law on September 26, 1973. The Act signed into law was weaker than the original draft. Nixon snidely commented in his signing statement, “It is doubly gratifying for me to be able to sign into law today the Rehabilitation Act of 1973--first, because of the good the act will do in helping hundreds of thousands of our disabled citizens attain self-sufficiency, and secondly, because of the encouraging example which our agreement on legislation sets for future executive-legislative cooperation.”⁷⁵ Nixon hoped to set a precedent for future disability rights interactions. The bill endorsed a weaker Rehabilitation Services Administration (RSA) that was also tightly controlled by the Secretary of Health, Education, and Welfare (HEW).⁷⁶ The short term effect was marginal; however, the long term ramifications of the power placed in the secretary’s hands would create another battle for the disabled community. While the act compromised on some issues, it also retained many constructive elements. The act reduced appropriations levels and abolished programs designed to help address certain categories of disability, but it also substituted “emphasis” for “priority” in

dealing with persons with severe disabilities and gave rise to the presence of disability rights.⁷⁷ The act was weakened in many aspects; however, the meat of the bill still existed mostly intact within Title V.

Title V of the Rehabilitation Act was monumental in establishing disability rights and in laying the foundation for the ADA. The main sections, 501-504, focused on a structural overhaul within federal agencies. Section 501 issued affirmative action and nondiscrimination in employment by federal agencies of the executive branch.⁷⁸ Section 502 established the Architectural and Transportation Barriers Compliance Board (ATBCB) which ensured compliance with the Architectural Barriers Act of 1968, attempted to eliminate barriers to transportation, and sought ways to make housing more accessible.⁷⁹ Section 503 required affirmative action and prohibited employment discrimination by federal government contractors and subcontractors whose contracts exceeded \$10,000.⁸⁰ Each of these sections was a step forward for disability rights. The inclusion of affirmative action would later be challenged; however, it is important to note that the existence of the act was enough to help promote employment of disabled individuals.

Section 504

Section 504 of the Rehabilitation Act provided the biggest step for the disability rights movement. Section 504 states, “No qualified individual with a disability in the United States shall be excluded from, denied the benefits of, or be subjected to discrimination under any program or activity that either receives Federal financial assistance or is conducted by any Executive agency or the United States Postal Service.”⁸¹ This particular section was designed after the CRA but in a much quieter manner. The CRA was drafted partly in response to the protest of the people. Section 504 was drafted by Congressional staff members and was a way to

include the disabled community in the civil rights movement without amending the CRA.⁸² Section 504 provided the biggest foray into civil rights but it would not be an easy battle. The Nixon administration's double veto of the bill awakened more support among the disabled community and the community would need all the support it could get in the coming years.

One pitfall of Section 504 was its exclusion of mandated regulations. This would prove to be a costly mistake and one which would set back the section almost five years. Three consecutive presidential administrations delayed action in issuing the regulations for Section 504.⁸³ It was not until President Gerald Ford's administration that the Section received significant attention. Ford supported the regulations and assigned HEW the responsibility to do so in Executive Order 11914.⁸⁴ Under HEW, the Office for Civil Rights (OCR) wrote the regulations. The OCR was chosen because of its legal experience in writing previous civil rights legislation.⁸⁵ The OCR, under the direction of John Wodatch, would prepare the regulations which would later be the source of much strife between the disability community and Congress.

The regulations crafted under John Wodatch offered an opportunity for the disability rights movement to gain momentum. The regulations offered, "A new definition of disability, issued mandates for education for persons with disabilities in public schools, and demanded accessible buildings and transportation."⁸⁶ These regulations were not to be, though, and during their presentation to the Secretary of Health, Education, and Welfare, Secretary Casper Weinberger was replaced by David Mathews. Mathews had a reputation of being a "[...] cautious and decisive man who tended to be more philosophical than pragmatic in running the department."⁸⁷ Mathews did not oppose the regulations but he delayed action. He requested a second review of the regulations and sent them to a firm outside of HEW.⁸⁸ His delay would take up to two months. While the delay may seem appropriate in gauging correct and just regulations,

his decision to outsource the review was a political move. If the regulations were found to be ill-constructed, the onus would fall upon the secretary. Mathews' act was a filibuster to delay any political blowback.

Political Strife: Reluctance to Sign Section 504 Regulations

After two months, the disability community began to take notice of the delay. In the fall of 1974, Jim Cherry, a young attorney and disability lobbyist with a rare degenerative muscular disease, wrote to HEW requesting they issue the regulations.⁸⁹ With little to no response, Cherry decided to turn elsewhere for help. Cherry found a law firm, Georgetown's Institute for Public Interest (INSPIRE), which would support the case pro bono.⁹⁰ After more than a year of petitions to HEW with little response, INSPIRE filed a complaint in *Cherry v. Mathews* in 1976. Cherry stated that he could have gone public but "[...] pursued no media because a lot of progress was being made 'flying under the radar.'"⁹¹ The delay also caught the attention of Congress which began to hold oversight hearings on May 5, 1976 to determine the cause.⁹² Mathews presented the regulations to Congress on May 17, 1976, but he did so with a caveat. He presented the regulations with intent to propose and not as an actual proposal which had the effect of further delaying any political action.⁹³ Three days later the Washington D.C. district court ruled on *Cherry v. Mathews* and ordered Mathews to promulgate the regulations.⁹⁴ Instead of releasing them straight away, Mathews stalled further. The regulations were sent to the Senate Committee on Labor and Public Welfare for further review, an unprecedented action.⁹⁵ The district court ordered Mathews to cease delay again but his filibuster held out. Two days later, President Jimmy Carter was inaugurated and Mathews replaced.

Jimmy Carter's campaign platform promised to recognize the rights of disabled individuals. Carter pledged to make people with disabilities "[...] active partners in our attempts

to achieve . . . full civil rights.”⁹⁶ His commitment to sign the regulations would be ensured by Joseph Califano, the new Secretary of HEW. Joseph Califano was allegedly supportive of the regulations; however, much like Mathews, he would be hesitant to attach his name to them. Califano rejected the inclusion of drug addicts as a protected class.⁹⁷ He further narrowed the power of Section 504 and urged to keep the regulations as selective as possible.

After three years of delay, disability activists such as Cherry were beginning to take a hard stance. The Carter administration promised to make significant advancements for the disabled community; however, Califano’s stance sought only to delay further. Califano would become a common enemy for the disability rights movement to unify against. At the annual spring conference of the President’s Committee on Employment of the Handicapped (PCEH) in 1973, prominent figures among disability groups decided to form a coalition for the disabled.⁹⁸ In 1974, the American Coalition of Citizens with Disabilities (ACCD) was formed. This coalition was unique among other disability organizations. Prior to the coalition, disability groups organized in accordance with their respective disability. The ACCD provided the first homogenized organization for all disabled individuals. This coalition formed the backbone of the movement.

The ACCD wasted no time in ensuring their agenda was recognized by Califano. On the first day of Carter’s presidency, the ACCD sent a telegram petition to HEW which demanded the regulations be signed within 30 days.⁹⁹ The coalition mass produced thousands of “Sign 504” buttons which were handed out to the public. The coalition decided to take a much more active stance in ensuring the regulations were passed. Alongside written petitions and formal letters sent to the White House and HEW, the ACCD also organized several sit-ins at the regional offices of HEW across America.¹⁰⁰ On March 18, 1977, prior to the sit-ins, the ACCD wrote a

letter to Carter warning of political action if regulations were not signed by April 4, 1977.¹⁰¹ The disabled community's ire was beginning to attract the attention of major news conglomerates. The *Washington Post* commented on the fury of the disabled community. They wrote, "The disabled are furious over what they see as a retreat by President Carter on his promises."¹⁰² The unified actions of the ACCD were gaining national attention and Califano had little choice but to pay attention to the coalition.

On April 4, 1977 head members of the ACCD met with Califano. Califano tried to explain the reasons behind the delay; however, the ACCD were in no mood to negotiate. They gave Califano an ultimatum: either sign the unchanged regulations or face protest and sit-ins across the country. Upon the deliverance of their ultimatum, the head members walked out of Califano's office.¹⁰³ The next day, the regulations were left unsigned. In response to Califano's further delay, the ACCD organized sit-ins across the country. On April 5, 1977, hundreds of disability activists gathered at the Capitol building.¹⁰⁴ The group marched from the Capitol to the office of HEW. Several other demonstrations were held at regional offices in Atlanta, Boston, Chicago, Dallas, Denver, Philadelphia, New York, San Francisco, and Seattle.¹⁰⁵ The protests lasted for days in some cities and many disabled individuals put themselves at risk foregoing needed medication and nutrition during the sit-ins. After the disabled community gained the attention of the nation, Califano had little choice but to sign the regulations. On April 28, 1977, Section 504 of the Rehabilitation Act of 1973 was finally put into effect. It was no small victory for the disabled community. As the National Council on Disability (NCD) stated, "The battle over Section 504 regulations gave voice to the disability rights movement."¹⁰⁶ The battle over Section 504 invigorated and unified the disabled community and provided the impetus needed to pass the future ADA.

Equally important as the language of Section 504 was the influence it had on the public. As the NCD states, “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.”¹⁰⁷ The conversion from welfare benefit to civil right had been the aim of the disability community for some time. With Section 504, their dreams were beginning to be realized. It provided a concrete answer to the past discrimination of disabled individuals. The legal standards established by Section 504 would pave the way for the ADA which would be based on the language of the section.

If the disability community thought they were out of the woods with the passage of Section 504, they were mistaken. The next presidential era would present one of the biggest challenges to the disability rights community. The presidency of Ronald Reagan is described by the National Council on Disability as a major political overhaul. They state no president since Franklin Roosevelt “[...] altered the political landscape so radically and in such a short period” as Reagan.¹⁰⁸ For the disability community, this would mean a constant uphill battle in securing their rights.

The Task Force on Regulatory Relief

The main entity responsible for the political hardship of the early 1980’s was the Task Force on Regulatory Relief. Reagan appointed then Vice President George H. W. Bush to oversee the Task Force who in turn delegated the charge to C. Boyden Gray.¹⁰⁹ Under the leadership of Gray, the Task Force targeted over 150 separate pieces of legislation for analysis and revision.¹¹⁰ These included three prominent pieces of disability policy: the Section 504 regulations, Education for All Handicapped Children Act (P.L. 94-142), and the Architectural

and Transportation Barriers Compliance Board (ATBCB). The Task Force started with these pieces of legislation thinking that they would be the weakest opponent. Once they revised these pieces of legislation, they could use it as a precedent to tackle more strongly established regulations such as the CRA.¹¹¹ The ATBCB regulations were quickly dismantled but this change was welcomed by the disability community. Gray states, “[...] it was great fear and trepidation that I do [dismantle the regulations] . . . I learned to my great, great surprise that this was welcomed by the disability community because of the flexibility that a new start would afford.”¹¹² The disabled community would prove to put up more of a fight than the Task Force was expecting.

In 1982, Gray received a draft of the proposed changes to Section 504. The draft also leaked to disability groups across the nation including the Disability Rights Education and Defense Fund (DREDF). An additional leak by the Office of Management and Budget (OMB) revealed a provision which would allow federal grant recipients to weigh the cost of an accommodation against the “social value” of the person involved.¹¹³ In essence, the provision was a “cost-benefit analysis of how human you are.”¹¹⁴ This leak provided a smoking gun that the disability rights community desperately needed. Armed with the leaked provision as leverage, a flood of protest letters from disability groups across the nation crashed upon the White House.

The disabled community had another trick up its sleeve. Evan Kemp Jr. of the Disability Rights Center was an old friend of Gray. Their relationship would ultimately be a crucial factor with regards to disability rights. Kemp contacted Gray and was able to persuade him against altering Section 504 in a damaging way.¹¹⁵ Kemp’s renewed friendship with Gray would prove to be invaluable. Gray became a mediator between the reduction-hungry government and the

disabled community. Even though their friendship would be an invaluable asset, the disability community would still face problems upholding the Education for all Handicapped Children Act. Through a vast show of support from parents across the country—over 40,000 letters were sent to the White House—and the support of Gray, the disabled community was able to convince the White House that the legislation in place was not a “Congressional spending spree.”¹¹⁶ In 1983, the Assistant Attorney General for Civil Rights agreed to abandon regulatory efforts on the act. Vice President Bush told the disabled community, “Your commitment to equal opportunity for disabled citizens to achieve their full potential as independent, productive citizens is fully shared by this Administration.”¹¹⁷ The disability rights community had won a monumental victory. Regulations which upheld the rights of disabled persons were left widely untouched during an era of stringent budget control.

A Series of Legal Battles

The remainder of the decade consisted of a frenzy of legal battles regarding disability law. Several prominent court cases appeared before the Supreme Court which tested the strength and validity of the claims made in the Rehabilitation Act of 1973 and previous legislation. In *Consolidated Rail Corporation v. Darrone* in 1984, Section 504 regulations were confirmed. The case established that courts must give considerable deference to the 504 regulations.¹¹⁸ In *Nelson v. Thornburgh* in 1983, the court ruled the state’s Department of Public Welfare was obligated to pay the costs of electronic devices for visually-impaired employees which did not cause “undue financial hardship.”¹¹⁹ In *City of Cleburne, Texas v. Cleburne Living Center* in 1985, the court ruled a group home for persons with developmental disabilities did not pose any “special threat” to the city’s “legitimate interests” and therefore could not be left out of zoning sanctions.¹²⁰ The

court stated that “discrimination could not be justified by ignorance.”¹²¹ These court cases reaffirmed existing disability law and solidified the existence of the disability rights community.

Amidst these court cases, Congress was also active in passing legislation which overturned previous rulings. The Handicapped Children’s Protection Act of 1986 reversed the 1984 ruling in *Smith v. Robinson* and ensured that parents have the right to reasonable attorney fees when successful in litigation.¹²² The Civil Rights and Remedies Equalization Act of 1986 reversed *Atascadero State Hospital v. Scanlon* and established that states are not immune from Section 504 violations filed in federal court.¹²³ The Air Carrier Access Act of 1986 overturned *U.S. Department of Transportation v. Paralyzed Veterans of America* and required commercial airlines to be subject to the accessibility standards of Section 504 regardless of federal assistance.¹²⁴ The passage of legislation by Congress showed that Congress now considered disability rights a prominent issue. The disability rights movement now held a significant position in society.

Two of the more prominent pieces of legislation during this period include the Voting Accessibility for the Elderly and Handicapped Act of 1984 (VAEHA) and the Fair Housing Amendments Act of 1988 (FHAA). The VAEHA was crucial to the voice of the of the disability community. It established voting accommodations for the disabled and ensured that all disabled individuals had the ability to vote.¹²⁵ The FHAA expanded the protections put in place by the 1968 Fair Housing Act and prohibited discrimination in the sale or rental of housing based on disability.¹²⁶ The Act incorporated for the first time individuals with HIV and AIDS in the classification of disabled individuals.¹²⁷ The FHAA also issued provisions for the private business sector alongside recipients of federal funding for the first time.¹²⁸ The VAEHA and FHAA provided a strong foundation for the ADA. With the momentum of the disability rights

movements, the initial version of the ADA would follow the FHAA the same year. While this momentum would prove an important factor in passing the ADA, the battle to pass the ADA would not be an easy process.

Works Cited

²² Disability Studies, Temple U., "Disability Rights Timeline," *Disability Studies, Temple U.* (web log), accessed November 12, 2010, <http://isc.temple.edu/neighbor/ds/disabilityrightstimeline.htm>.

²³ Ibid.

²⁴ Paul K. Longmore and Lauri Umansky, *The New Disability History: American Perspectives* (New York: New York University Press, 2001).

²⁵ Jacqueline Vaughn Switzer, *Disabled Rights: American Disability Policy and the Fight for Equality* (Washington, D.C.: Georgetown University Press, 2003), pg. 13.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Paul K. Longmore and Lauri Umansky, *The New Disability History: American Perspectives* (New York: New York University Press, 2001), pg. 7.

²⁹ Jacqueline Vaughn Switzer, *Disabled Rights: American Disability Policy and the Fight for Equality* (Washington, D.C.: Georgetown University Press, 2003), pg. 31.

³⁰ Jacqueline Vaughn Switzer, *Disabled Rights: American Disability Policy and the Fight for Equality* (Washington, D.C.: Georgetown University Press, 2003), pg. 32.

³¹ Ibid.

³² Ibid.

³³ Jacqueline Vaughn Switzer, *Disabled Rights: American Disability Policy and the Fight for Equality* (Washington, D.C.: Georgetown University Press, 2003), pg. 33.

³⁴ Ibid.

³⁵ Jacqueline Vaughn Switzer, *Disabled Rights: American Disability Policy and the Fight for Equality* (Washington, D.C.: Georgetown University Press, 2003), pg. 34.

³⁶ Ibid.

³⁷ Jacqueline Vaughn Switzer, *Disabled Rights: American Disability Policy and the Fight for Equality* (Washington, D.C.: Georgetown University Press, 2003), pg. 35.

³⁸ Ibid.

³⁹ Henry Friedlander, *The Origins of Nazi Genocide from Euthanasia to the Final Solution* (Chapel Hill, NC: Univ. of North Carolina Press, 2000), pg. 6.

⁴⁰ Jacqueline Vaughn Switzer, *Disabled Rights: American Disability Policy and the Fight for Equality* (Washington, D.C.: Georgetown University Press, 2003), pg. 35.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Jacqueline Vaughn Switzer, *Disabled Rights: American Disability Policy and the Fight for Equality* (Washington, D.C.: Georgetown University Press, 2003), pg. 36.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Edwin Black, "The Horrifying American Roots of Nazi Eugenics," History News Network, November 24, 2003, <http://hnn.us/articles/1796.html>.

⁴⁹ Jacqueline Vaughn Switzer, *Disabled Rights: American Disability Policy and the Fight for Equality* (Washington, D.C.: Georgetown University Press, 2003), pg. 36.

⁵⁰ Jacqueline Vaughn Switzer, *Disabled Rights: American Disability Policy and the Fight for Equality* (Washington, D.C.: Georgetown University Press, 2003), pg. 37.

⁵¹ Ibid.

⁵² Jacqueline Vaughn Switzer, *Disabled Rights: American Disability Policy and the Fight for Equality* (Washington, D.C.: Georgetown University Press, 2003), pg. 38.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Saul Krugman, "The Willowbrook Hepatitis Studies Revisited: Ethical Aspects," *Reviews of Infectious Diseases* 8, no. 1 (January/February 1986), <http://www.jstor.org/stable/4453816>.

⁵⁷ Saul Krugman, "The Willowbrook Hepatitis Studies Revisited: Ethical Aspects," *Reviews of Infectious Diseases* 8, no. 1 (January/February 1986), <http://www.jstor.org/stable/4453816>, pg. 158.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Jacqueline Vaughn Switzer, *Disabled Rights: American Disability Policy and the Fight for Equality* (Washington, D.C.: Georgetown University Press, 2003), pg. 40.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 10.

⁶⁶ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 11.

⁶⁷ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 12.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 13.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Richard Nixon, "Richard Nixon: Statement on Signing the Rehabilitation Act of 1973," The American Presidency Project, September 26, 1973, <http://www.presidency.ucsb.edu/ws/index.php?pid=3979>.

⁷⁶ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 13.

⁷⁷ Ibid.

⁷⁸ Margaret C. Jasper, *Americans with Disabilities Act* (New York: Oceana, 2008), pg. 61.

⁷⁹ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 13.

⁸⁰ Margaret C. Jasper, *Americans with Disabilities Act* (New York: Oceana, 2008), pg. 61.

⁸¹ Margaret C. Jasper, *Americans with Disabilities Act* (New York: Oceana, 2008), pg. 62.

⁸² Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 14.

⁸³ Ibid.

⁸⁴ Gerald R. Ford, "Gerald R. Ford: Executive Order 11914 - Nondiscrimination With Respect to the Handicapped in Federally Assisted Programs," The American Presidency Project, April 28, 1976, <http://www.presidency.ucsb.edu/ws/index.php?pid=23675>.

⁸⁵ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 14.

⁸⁶ Ibid.

⁸⁷ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 15.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ James L. Cherry, "Cherry v. Mathews: 25 Years and Counting," A Ragged Edge Online, July 2001, <http://www.raggededgemagazine.com/0701/0701cov.htm>.

⁹² Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 15.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 16.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 18.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 19.

¹⁰⁷ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 20.

¹⁰⁸ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 30.

¹⁰⁹ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 31.

¹¹⁰ Ibid.

¹¹¹ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 32.

¹¹² Richard Himelfarb and Rosanna Perotti, *Principle over Politics?: the Domestic Policy of the George H. W. Bush Presidency* (Westport, CT: Praeger, 2004), pg. 159.

¹¹³ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 32.

¹¹⁴ Ibid.

¹¹⁵ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 33.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 35.

¹¹⁹ Ibid.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 36.

¹²³ Ibid.

¹²⁴ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 37.

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 38.

¹²⁸ Ibid.

CHAPTER 3: POLITICS AND THE CREATION OF THE ADA

Disability rights history before the ADA is limited. Social policy developed only after a significant paradigm shift in the way disabled individuals were treated. This occurred after the institutionalization era of the early nineteenth century and especially with the rise of disabled veterans after World War I and II and with the growing life span of the average American. With the passage of the Civil Rights Act of 1964 and the Rehabilitation Act of 1973, the stage was set for the ADA. These two pieces of legislation created the momentum needed to get disability rights on the legislative agenda. The vehicle for the creation of the ADA was also conceived during the establishment of the Rehabilitation Act. The National Council on the Disabled (NCD), a federal agency, was responsible for drafting the bill and getting it onto the legislative agenda.

The NCD was founded as an oversight agency. Its primary agenda was to review programs of the Rehabilitation Services Administration and to evaluate and coordinate all federal programs which dealt with disabled individuals.¹²⁹ During the Nixon era, the agency was abolished as part of a deal with the White House. The NCD resurfaced, though, and in 1977 several sub-agencies were created under its control.¹³⁰ The NCD would begin to publish annual reports on the status of the disability community. The purpose for these reports was twofold. First, surveys and reports on the disability community were generally lacking during the time and, second, the NCD needed a legitimate claim to its existence and this provided a substantial hook.

The NCD Annual Report

Justin Dart, of the NCD, spearheaded the first report. Dart, who had contracted polio in his teens, made the report a nationwide effort.¹³¹ Dart travelled across the country and held public forums to open a dialogue with disabled individuals. He observed frequent complaints. Discrimination was still a major factor in many disabled individual's lives.¹³² Along with

discrimination came the inadequacy of the laws which were supposed to protect the rights of disabled individuals. The Rehabilitation Act, for the majority of those in the forums, was not enough.

President Ronald Reagan's response to Dart's first report was critical. The conclusion drawn from Dart's report was that the current legislation was insufficient. The need for a comprehensive act was necessary. The Reagan era, famous for its crusade against federal spending, was apprehensive in accepting any new legislation which had the potential to drastically increase spending. Dart and the NCD had a tactical response. If disabled individuals could lead self-sufficient lives the nation would be better off. Self-sufficient disabled individuals meant more tax payers and less tax users.¹³³ This sentiment would later be echoed in the ADA and would be the impetus for any legislation regarding disability rights during the Reagan era.

Towards Independence and the ICD Survey

The NCD continued to release annual reports but none would be as important as *Towards Independence* in 1986. *Towards Independence* was the culmination of the previous reports and provided a comprehensive report on the sentiment and state of disabled individuals in America. The report was given to Reagan on February 1, 1986 and built on the idea of more self-sufficient tax payers equaling less tax dependencies. The report showed that disabled individuals wanted to be independent and focused on ten aspects in need of reformation. These were: 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.¹³⁴ Any mention of an increase in federal spending was reinforced by making disabled individuals more independent and therefore less of a burden on the state. Justin Dart

demonstrated the weight that the report had before a House oversight committee. He stated, “We stand at a historic crossroads. We are approaching foundational decisions about the future of rehabilitation and the fundamental rights of people with disabilities.”¹³⁵ The report would not be enough by itself; however, and hard data would also be needed to make a convincing proposition for a comprehensive disability rights bill.

The International Center for the Disabled (ICD) would fill this gap with their publication of the *ICD Survey of Disabled Americans: Bringing Disabled Americans into the Mainstream*. The survey included a sweeping set of questions which would back up the claims made in the NCD’s *Towards Independence*. John Wingate, the executive director of the ICD stated that, “The purpose of the survey 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.”¹³⁶ The poll was unique in that it gathered the sentiment and condition of the disabled community in a comprehensive manner. No other institution provided such a comprehensive survey at the time.

The survey itself was based on a new set of criteria. The survey focused on non-institutionalized persons with disabilities aged sixteen and over which was found to be around fifteen-point-two percent of America or around twenty-seven to twenty-eight million individuals.¹³⁷ This was consistent with the estimated thirty-six million disabled individuals in America at the time. The difference was in those who were considered able to work and those who were currently incapable of work. Previous surveys may have had a distorted view by including this portion of the disability community in their sample population. The findings are below:

- 72 percent said their lives had been at least somewhat “somewhat better” in the past decade

- 67 percent said federal policies had helped “somewhat”
- 40 percent did not finish high school, 15 percent of non-disabled individuals said they did
- 50 percent reported household incomes less than \$15,000, 25 percent of non-disabled individuals said they did
- 56 percent reported that a disability prevented desired levels of social and community participation
- 49 percent identified a lack of transportation as a barrier to social and community participation
- 67 percent aged 16 to 64 were not working; 66 percent 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 percent advocated increased public and private efforts to educate, train, and employ persons with disabilities
- 74 percent supported implementation of anti-discrimination laws affording disabled persons the same protections as other minorities¹³⁸

These findings gave the hard evidence needed to back up the claims made in *Towards*

Independence. Perhaps the most striking of the findings was of the sixty-seven percent aged sixteen to sixty-four and not working, sixty-six percent of wanted to be employed. This finding pointed to a flaw somewhere in the system. The proponents of disability rights pointed to this finding as the basis for a comprehensive piece of legislation. According to the finding, some form of societal barrier was impeding the opportunities of disabled individuals.

The Americans with Disabilities Act was born of these findings. The ICD survey and NCD annual report was the bedrock from which the act was built. As Lex Frieden of the Institute for Rehabilitation and Research pointed out, “Congress pointed to *Towards Independence* as the manifesto, the Declaration of Independence for people with disabilities.”¹³⁹ The report recommended a broad change to the current anti-discrimination policy. It recommended the prohibition of discrimination by the Federal Government including recipients of financial assistance from the government and federal contractors and subcontractors.¹⁴⁰ Discrimination was also to be addressed in places of public accommodation, among transportation providers, insurance providers, and state and local governments.¹⁴¹ In order to provide an effective anti-

discrimination policy, architectural and accessibility barriers must also be addressed. These barriers were recommended to be removed within two to five years of the legislation's implementation.¹⁴² These stipulations would be the backbone of the first draft of the ADA. The content was now established; however, the method by which the draft would be proposed was still an issue.

Gathering Political Support

In their quest to find political support for the early ADA, the NCD would find an ally in Senator Lowell P. Weicker (D-CT). Weicker was a strong advocate for disability rights in the Senate. His son had Down syndrome and disability was a prominent issue for the senator. Weicker accepted sponsorship of the bill with little hesitation.¹⁴³ Weicker would provide valuable insight into the politics of Congress. Two decades later, Weicker would be honored as a founding father of the bill. One supporter stated Weicker's work, "[...] not only created ramps on buildings, it also helped to create ramps to people's minds."¹⁴⁴ Weicker suggested a dual approach to introducing the bill. He stated that a two-pronged attack—the introduction of the bill into the Senate and House of Representatives at the same time—would be the best opportunity for the bill's success. The next task would be finding a suitable sponsor in the House. The NCD found their man in Tony Coelho (D-CA). Coelho was another strong advocate for disabled rights in congress. Coelho suffered from epilepsy and his condition led him to miss many opportunities in life.¹⁴⁵ With two strong advocates for disability rights as sponsors, the early ADA may have a chance in the political arena.

While the NCD would prove to be an important vessel in the inception of the ADA, the agency was not without its political flaws. The NCD was in relatively poor standings with the disability community. The agency focused on oversight of federal programs dealing with

disabled individuals; however, there was little overlap with other disability organizations. Many considered the NCD a rogue agency for its first draft of the ADA, but some consider this an envious reaction for the NCD “getting there first.”¹⁴⁶ Some in the disability community also questioned the motives of the NCD. The NCD was a federal agency under the Reagan Administration. Some thought they could be secretly working with Reagan to create a subterfuge bill, one which promised comprehensive reform on its face but did little in actuality.¹⁴⁷ These concerns hindered the amount of support the early draft of the ADA received from the disability community. Through negotiations with prominent disability organizations and an unyielding promise to improve disability rights the NCD eventually gained the trust and support of the community.

Negotiations with the CCD

The NCD presented an initial draft to the Consortium for Citizens with Developmental Disabilities, later known as the Consortium for Citizens with Disabilities (CCD), to prove their commitment to the community. The CCD had several concerns with the initial draft. First, the CCD opposed the inclusion of Section 503 and 504 regulations in the bill. The inclusion of these sections could potentially open them back up for debate.¹⁴⁸ The CCD preferred a method equitable to the “if it works, don’t fix it” colloquialism. This was known as a “donut-hole” approach which left alone anything already established by prior legislation and instead focused on anything uncovered.¹⁴⁹ The donut-hole approach was a tactical decision. It would allow established legislation to remain untouched while also supporting the business community. If redundant sections were added to the legislation, potential defendants in litigation could be subject to enormous lawsuits. A Section 504 violation could also mean an ADA violation and the

fiscal damages could amount to much more than if there was only one charge against the defendant.

The CCD had further concerns with the language and consistency of the initial draft. There was some worry that the standards proposed were inconsistent with those afforded to other minority groups.¹⁵⁰ The initial draft of the ADA included a healthcare option for the disabled. This was unprecedented. The proposal, while good for the disabled community, would hinder the bill's progress in Congress. The CCD also had concerns about the language of the bill. They suggested working more closely with an established foundation of legislation such as Section 504.¹⁵¹ Further complicating the healthcare option was Senator Weicker's connection with the health insurance industry. Weicker's constituency was an insurance capitol. Any provisions which included healthcare for the disabled could also hurt those he represented. The healthcare option was thus taken off the table. The rest of the concerns were widely shared by the rest of the disability community and the NCD listened.

The NCD's decision to seek the counsel of the disability community in drafting the ADA paid dividends. The disability community was now a force to be reckoned with after the successful implementation of the Rehabilitation Act of 1973 and their steadfast commitment to Section 504. The CCD would later state that, "While significant physical and social barriers remain, changes brought about by the ADA have made it possible for more people with disabilities to be out in the world: working, shopping, eating in restaurants, seeing movies, getting to and from the doctor's office."¹⁵² The disability community was behind the bill. The community was no stranger to a political fight and their support would give the ADA the momentum it needed for a swift passage through the Senate. Similar to the unification of disability groups before the Rehabilitation Act, the community unified once more in an "ADA

Coalition.”¹⁵³ Disability organizations from across the country and representing numerous disabilities banded together. The coalition consisted of the United Cerebral Palsy Associations, National Association of Developmental Disabilities Councils, AIDS Action Council, Association for Education and Rehabilitation of the Blind and Visually Handicapped, Paralyzed Veterans of America, National Easter Seal Society, Human Rights Campaign Fund, and the National Association of Protection and Advocacy Systems.¹⁵⁴ The coalition had three main goals. These were to increase awareness of the ADA among the disability community, to accumulate evidence of discrimination, and to apply pressure to Congress and the President by sending letters, protesting, and holding meetings and forums.¹⁵⁵ The disability community proved once again that their presence was a significant factor in passing legislation. Their community outreach and grassroots activism provided the necessary impetus to slingshot the ADA through the Senate.

A New Presidency

The first draft of the ADA was completed and submitted to Congress in 1988. The timing of the submission was crucial to the ADA’s success. The era of Reagan would soon be at an end and a new President meant an opportunity to pass comprehensive social policy. The NCD’s release of the ADA made it into a hot topic among presidential candidates. Michael Dukakis and George Herbert Walker Bush would have to declare their positions on the ADA. The voting power of the disability community was now a prominent force. According to a Louis Harris poll, the disability community comprised ten percent of the electorate.¹⁵⁶ Whichever candidate won one would be held to their position on the issue. This provided a position of leverage for the disability community and would work to their advantage.

The favored presidential candidate of the disability community was already a strong ally to the cause. George H. W. Bush had strong ties to 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.¹⁵⁷ Bush's previous work with the Task Force on Regulatory Relief also produced an alliance between him and Evan Kemp.¹⁵⁸ Bush went on the record to say, "I am going to do whatever it takes to make sure the disabled are included in the mainstream."¹⁵⁹ Bush was the dream ally for the ADA. His position as President would immediately put the ADA on the legislative agenda and his Republican ties would create the perfect bipartisan sentiment that the bill would need to survive.

The ADA was off to a strong start by the end of the 1988 Congressional session. It was important for the bill to gain bipartisan support so as not to polarize the issue. With both political parties supporting the bill, it would be hard for opponents to completely strike down the bill. By the end of the 100th Congress on October 22, 1988, the ADA had the endorsements of twenty-six senators and 117 representatives.¹⁶⁰ The 1988 congressional hearings produced a sympathetic glimpse into the life of disabled individuals at the time. Denise Karuth, who uses a wheelchair due to multiple sclerosis and is also legally blind, provided a strong testimony. She stated, "We are not asking for pity. We are not even asking for your sympathy. All we ask is that you make real promises and opportunities that America strives to offer to everyone."¹⁶¹ Her words and many others like her would convince Senator Edward M. Kennedy (D-MA) to make the bill a priority. Kennedy stated at the close of the 100th Congress, "I just want to give the assurance that this will be the first order of business."¹⁶² The stage was set for the ADA. The bill was the first order of business for the 101st Congress and was already gaining strong support. The result of the next battle would rely on the upcoming elections.

On January 20, 1989, President George H. W. Bush was sworn into office. It was a momentous victory for the disability community. Bush a proven ally, would provide needed

bipartisan support. With his influence as president, the bill's chances of passing improved exponentially. The elections meant the support of a Republican president; however, they also meant the loss of the original Senate sponsor. Senator Weicker lost reelection to Joseph Lieberman (D-CT). The loss was a setback but it was not a disaster. The ADA would soon find support from Tom Harkin (D-IA) who took over sponsorship of the bill in 1990.¹⁶³ The sponsorship was risky for Harkin, who was up for reelection; however, his willingness to accept the burden of sponsorship only further proved his commitment to the bill.

Deliberation in the Senate

Under the leadership of Harkin and the guidance of Edward Kennedy, the ADA was ready to be introduced to the 101st Congress. The introduction to Congress was not without its fair share of revisions. Harkin and Kennedy felt the bill was too ambitious.¹⁶⁴ The ADA was retooled with the aim of gaining the support of business and the disability community and remaining as bipartisan as possible.¹⁶⁵ The political strategy was to reach compromises before the actual negotiation of the bill in order to avoid an extreme label.¹⁶⁶ Some small substantial changes were made at this point. Some provisions were changed to a delayed action. Instead of the new building requirements taking effect immediately, there would be a lag period. Additionally, the language of the bill was restructured after Section 504 and the Fair Housing Amendments Act.¹⁶⁷ This was an "application of tested principles."¹⁶⁸ One contested issue was the definition of disability. This would define the entire scope of the ADA and decide who was covered. The leadership decided it would be impractical to name every type and variation of disability and settled on a broad definition. This was supported by the nature of disability. Unlike other minority groups, disability cannot be identified with the same ease as race, gender, age, et cetera.¹⁶⁹ The consensus was to accept a broad definition which would protect only those who

needed it. Deborah Kaplan relates the ADA's definition to that of the United Nation's definition. It states, "[a] handicap is the loss or limitation of opportunities to take part in the life of the community on an equal level with others."¹⁷⁰ The broad definition aimed to help those who needed it while excluding those who might abuse it. This would prove to be easier to do in theory than practice; however, the ADA defined a disability as "A physical or mental impairment that *substantially limits* [sic] one or more of the major life activities; a perceived impairment; or a record of impairment."¹⁷¹ The dispute over the definition of disability would come up again later but Harkin and Kennedy were ready to address other issues.

The architects of the ADA wanted strong support from both sides to make any opponents think twice about completely opposing the bill. The Senate would be the easiest house of Congress to win. The bill passed with the support of Senators Bob Dole (R-KS), Harkin, and President Bush with a vote of seventy-six to eight.¹⁷² The strong support of the bill left opponents with little time or ammunition and the momentum built in the Senate would help push the bill in the House.

Political Battle in the House

The House would be a political hurdle for the ADA. The political strategy was to once again gain the support of both Republicans and Democrats. This would prove much harder in the House than in the Senate. House Republicans tended to be more divided on issues with Democrats at the time and a bipolar atmosphere was present.¹⁷³ Initially, 185 Democrats and only twenty-five Republicans supported the bill.¹⁷⁴ Any hope for a strong bipartisan alliance seemed slim and negotiations would take over nine months.¹⁷⁵ The bill was passed through four committees and six subcommittees in the House as opposed to one committee and one subcommittee in the Senate and at the end of the nine months 164 Representatives had reviewed

the legislation as opposed to only sixteen Senators.¹⁷⁶ The deliberation taken in the House would test the political durability of the ADA. In the nine months it took to pass the bill, several issues were raised and compromises were made.

The ADA's main opposition developed during the House deliberations. The business community was given a chance to organize as opposed to the passage in the Senate. It was clear, though, with the President's support an outright opposition would be near impossible. The bill was bound to be passed. It was up to the business community to mitigate the damage. As Thomas Frederick Burke points out in his work, *Lawyers, Lawsuits, and Legal Rights the Battle over Litigation in American Society*, "The National Association of Manufacturers, the Chamber of Commerce, Labor Policy Association, American Society of Personnel Administrators (big business) – worked to smooth the bill's edges rather than oppose it fundamentally."¹⁷⁷ The opponents of the ADA faced a tough battle but they were determined to mitigate as much damage as possible. The lack of a cohesive alliance similar to the disability community's would also provide difficulties for the opponents. Burke states, "One reason for business acquiescence of the ADA was that many larger corporations had learned to live with disability rights requirements because they were federal contractors and subject to 504."¹⁷⁸ Of the few that were aggressively pursuing the ADA was the National Federation of Independent Business (NFIB) under the direction of Wendy Lechner. Lechner stated, "The reason we failed in the Senate was we didn't have time to educate."¹⁷⁹ The House was a different story. The NFIB sent out "millions of flyers" to businesses across the country to try and gain support.¹⁸⁰ Along with Lechner, Nancy Reed Fulco of the U.S. Chamber of Commerce and various business groups like the NFIB would form the Disability Rights Working Group (DRWG).¹⁸¹ This organization would focus on shaping the ADA. They reached out to the American Bus Association, American Public Transit

Authority, and the National Restaurant Association.¹⁸² Lechner points out, “We really weren’t trying to deep-six it [the ADA]. We were really trying to get a better bill, a more livable bill.”¹⁸³ To this extent Lechner and the DRWG would succeed. Many concerns business organizations had with the bill were addressed. The nine months that the ADA spent in the house proved to be a transformational process.

The business community worried about the vagueness of the language and new costs. One problem with the ambiguity in the “reasonable accommodations” clause was the frivolous lawsuits it could lead to.¹⁸⁴ Furthermore, businesses may not be fully aware of their compliance. The ambiguous nature of the clause meant a court case adjudicating on such an issue was bound to be more subjective. The business community worried that disabled individuals generally made a very sympathetic plaintiff. Nancy Fulco pointed out, “Leaving reasonableness to the discretion of the courts is scary, and it's a mistake to think it's not going to cause litigation. We're going to see litigation all over the place. It's a certainty, a given.”¹⁸⁵ The lawsuits which might ensue could cost businesses a fair deal of money. The vagueness of the definition of disability was another point of contention. Opponents of the ADA wanted a list all covered disabilities. This would leave less room for error and give businesses a more objective sense on who was classified as disabled. The business community also worried about the cost of some accommodations and proposed some of the burden being shared by the government. Moreover, no other civil rights legislation had public accommodation requirements at the time.¹⁸⁶ This extra burden needed more justification. The last sticking point was with other disability laws that existed. The business community proposed that the ADA should preempt all other disability laws so multiple lawsuits could not be brought up for one violation.¹⁸⁷ As Thomas Burke points out, “The business lobbyists’ top priority was to limit the awards that ADA plaintiffs could win in

court. Under the Civil Rights Act of 1964, plaintiffs in employment discrimination cases were eligible to win an injunction giving them back their jobs, back pay, and attorney's fees."¹⁸⁸ This would be the main job of business lobbyists. Fighting the ADA outright seemed an impossible task. The next best option was to mitigate the financial strain it could put on businesses.

By the end of 1990, the business coalition broke down. Fragmentation within the party led each organization to worry about what affected them most. The loss of a unified front against the ADA meant little stood in the way of the bill's passage. After nine months of deliberation, the House bill H.R. 2273 was passed. Overwhelming bipartisan support meant ease of passage. Of the 423 voting members of the House, 403 or 95% voted for the bill.¹⁸⁹ Both Houses of Congress passed the bill yet two different versions existed. The next stage of reconciliation would be another uphill battle for the ADA.

One ADA, Two Different Bills

The House presented eight amendments to the ADA. The most prominent and contentious of these was the Chapman Amendment. Proposed by Representative Jim Chapman [TX-1], it was "An amendment to allow employers to move an employee with a communicable or infectious disease of public health significance out of a food-handling position, provided that the employer offers the employee an alternative employment opportunity for which the employee is qualified and for which the employee would sustain no economic damage."¹⁹⁰ The disability community, despite being so close to passage, was troubled by the implications the amendment had. The community pledged to stand by all persons of disabilities. Backing down now could damage their commitment. The amendment, mainly targeting persons with AIDS or HIV, would become the topic of debate for the month that the bill went through reconciliation. Eventually, a compromise was reached. An annual report from the Department of Health and Human Services

would list communicable or contagious diseases through food handling. Anyone with these conditions would then be under the scrutiny of their employer.¹⁹¹ More fighting would ensue but the disability community held firm on the compromise.

The bill eventually passed reconciliation with sweeping bipartisan support. Ninety percent of the House and ninety-three percent of the Senate voted for the bill.¹⁹² After years of hard work, a comprehensive disability policy was passed. As President George H. W. Bush stated at the bill's signing ceremony, "The ADA is the world's first 'declaration of equality' for persons with disabilities. Every man, woman and child with a disability can now pass through once-closed doors into a bright new era of equality, independence and freedom."¹⁹³ The efforts of the NCD and disability organizations across America paid off. With a solid set of regulations in place for the disabled, life for those individuals should reach that prescribed in the Declaration of Independence: the rights of life, liberty, and the pursuit of happiness. There was more work to be done, though, and the implementation of the ADA would result in many foreseen and unforeseen consequences.

Works Cited

¹²⁹ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 48.

¹³⁰ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 49.

¹³¹ Ibid.

¹³² Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 50.

¹³³ Ibid.

¹³⁴ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 55.

¹³⁵ Justin Dart, "Statement by Justin Dart, Jr.," Baylor College of Medicine - Houston, Texas, accessed November 11, 2010, http://www.bcm.edu/ilru/html/about/Dart/statement_of_conscience.htm.

¹³⁶ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 59.

¹³⁷ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 60.

¹³⁸ Ibid.

¹³⁹ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 61.

¹⁴⁰ Ibid.

¹⁴¹ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 62.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ Mark Davis, "Conn.'s Weicker Honored for ADA Legacy," Connecticut Breaking News, Weather and Traffic, July 26, 2010, http://www.wtnh.com/dpp/news/hartford_cty/conn.'s-weicker-honored-for-ada-legacy.

¹⁴⁵ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 62.

¹⁴⁶ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 64.

¹⁴⁷ Ibid.

¹⁴⁸ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 65.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² Consortium for Citizens with Disabilities, "FAILING TO FULFILL THE ADA'S PROMISE AND INTENT: THE WORK OF THE COURTS IN NARROWING PROTECTION AGAINST DISCRIMINATION ON THE BASIS OF DISABILITY," Consortium for Citizens with Disabilities, September 2006, http://www.c-c-d.org/task_forces/rights/ada/ADA%20cases%20memo-Fulfilling%20the%20Promise.pdf.

¹⁵³ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 75.

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

¹⁵⁶ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 83.

¹⁵⁷ Ibid.

¹⁵⁸ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 84.

¹⁵⁹ Miller Center of Public Affairs, "American President: George H. W. Bush: Domestic Affairs," Miller Center of Public Affairs, Domestic Affairs, accessed November 16, 2010, <http://millercenter.org/academic/americanpresident/bush/essays/biography/4>.

¹⁶⁰ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 87.

¹⁶¹ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 91.

¹⁶² Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 92.

¹⁶³ Ibid.

¹⁶⁴ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 97.

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

¹⁶⁸ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 98.

¹⁶⁹ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 99.

¹⁷⁰ Deborah Kaplan, "The Definition of Disability," Center for An Accessible Society, accessed November 9, 2010, <http://www.accessiblesociety.org/topics/demographics-identity/dkaplanpaper.htm#05>.

¹⁷¹ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 100.

¹⁷² Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 122.

¹⁷³ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 123.

¹⁷⁴ Ibid.

¹⁷⁵ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 127.

¹⁷⁶ Ibid.

¹⁷⁷ Thomas Frederick Burke, *Lawyers, Lawsuits, and Legal Rights the Battle over Litigation in American Society* (Berkeley, CA: University of California Press, 2002), pg. 81.

¹⁷⁸ Ibid.

¹⁷⁹ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 131.

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 132.

¹⁸⁵ Neal R. VanZante, "A Manager's Guide: Americans with Disabilities Act of 1990," All Business, January 1, 1993, Page 5, <http://www.allbusiness.com/human-resources/workplace-health-safety/385725-1.html>.

¹⁸⁶ Ibid.

¹⁸⁷ Thomas Frederick Burke, *Lawyers, Lawsuits, and Legal Rights the Battle over Litigation in American Society* (Berkeley, CA: University of California Press, 2002), pg. 82.

¹⁸⁸ Ibid.

¹⁸⁹ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 164.

¹⁹⁰ "Amendments For H.R.2273," THOMAS (Library of Congress), section goes here, accessed November 19, 2010, <http://thomas.gov>.

¹⁹¹ Jonathan M. Young, *Equality of Opportunity: the Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), pg. 179.

¹⁹² Ibid.

¹⁹³ Ibid.

CHAPTER 4: FORESEEN AND UNFORESEEN CONSEQUENCES

The Americans with Disabilities Act passed both houses of Congress with significant bipartisan support. President George H.W. Bush signed the act and marked it as a momentous time for the disability community. The disability community fought as hard as any other civil rights group to secure their rights and the ADA was a culmination of their effort. With a comprehensive disability policy signed into law, the next course of action was implementation. The legislative battle over the ADA was over; however, the next decade would determine the actual strength of the bill. The ADA succeeded in many areas but the scope and efficacy of its provisions were reduced during the 1990's. Major provisions such as equal opportunity to employment were challenged and societal barriers and loopholes allowed, and still allow, businesses and organizations to sidestep regulations.

Reasonable Accommodations

Despite the efforts of the ADA, companies and organizations have found ways around the regulations. Chai R. Feldblum, Professor of Law at Georgetown University, discusses several issues with the policy in *Implementing the Americans with Disabilities Act*. One issue revolves around the vagueness of "reasonable accommodations." On the topic of reasonable accommodations, the ADA states, "If an individual is qualified to perform the essential job functions, except for certain limitations caused by their disability, the employer is obliged to consider whether the individual could perform these functions if 'reasonable accommodations' are provided."¹⁹⁴ Feldblum states that this portion of the legislation has received some undue scrutiny. According to a survey conducted by the Society for Human Resource Management (SHRM), reasonable accommodations may not be the fiscal burden that business were afraid of. The survey asked a select number of companies if they had received a request for a reasonable

accommodation, if so, how they were resolved, what modifications had been made without a request, and what difficulties the company foresaw in providing the accommodations.¹⁹⁵ The survey reported on sixteen companies which had received requests and twenty which had not. Of the twenty which had not received a request, eleven had made modifications regardless.¹⁹⁶ The survey revealed a common ground among accommodations. It identified seven types: modifying the physical layout of a job facility, restructuring a job, establishing modified work schedules, moving a person to a vacant position, acquiring or modifying equipment or devices, modifying policies, and providing readers or interpreters.¹⁹⁷ These accommodations would prove to be less of a fiscal burden than most expected.

The SHRM unveils a variety of workplace accommodations. In the survey, four of the companies dealt with modifying the physical layout of the workplace. These varied from installing a wheelchair lift, to repositioning a workstation to cut down on noise for a hearing impaired individual, to relocating to a different desk to deal with a vision problem.¹⁹⁸ Two of the companies reported restricting the manner in which a job was done. This included various tasks such as adding additional people to assist with lifting objects which were non-crucial to the job.¹⁹⁹ Modified work schedules were reported by three companies who had changed shifts of employees, added different time limits for tasks, and made extra break time for an employee with diabetes.²⁰⁰ Modification of equipment was also observed by five companies who had added new computers and CCTVs, a TDD system for a deaf employee, a trackball mouse for a person with limited hand movement, and phone headsets and speaker phones.²⁰¹ Two companies also reported implementing an interpreter, one for a preexisting employee and another for an applicant.²⁰² Of the companies surveyed, almost all of them noted that the previous accommodations cost them either nothing or a minimal amount. The accommodations ranged

from \$0 to \$6,000.²⁰³ Of the companies that paid more, they also reported that state agencies and insurance companies helped subsidize the costs.²⁰⁴ The findings of the SHRM survey point to a working system. The accommodations that were needed often cost little to nothing on the part of the employer and those accommodations that tended to cost more were often subsidized.

Another survey carried out by the Job Accommodation Network (JAN) provided a wider test sample. The JAN survey took place from April 1 to June 30 of 1993. It collected data from 111 employers and found that among these nineteen percent reported an accommodation to cost nothing, fifty percent to cost under \$500, and twelve percent to cost between \$501 and \$1000.²⁰⁵ The survey also found a significant amount of companies had implemented workplace modifications without a formal request.²⁰⁶ Some companies expressed some foreseeable difficulties with the reasonable accommodations clause. Of these, the majority were worried about cost.²⁰⁷ Those who voiced concern over the cost were also more likely to have neither made modifications nor to have received requests to do so.²⁰⁸ For those who had made an accommodation, they were generally inexpensive. Companies also voiced a concern with future costs regarding accommodations. For some accommodations, such as providing an interpreter, it was hard to discern the limits of the requirement and the foreseeable costs could amount to a substantial amount.²⁰⁹ Other companies found the definition of "reasonable" difficult to discern and were worried their accommodations or lack thereof could be cause for a complaint despite their efforts.²¹⁰ There was also a concern of how to balance competing interests among coworkers. Companies reported that coworkers sometimes saw accommodations as an unfair advantage or treatment.²¹¹ It was also felt that the accommodations often needed to be a "team effort" and required the support of an entire wing or office of employees.²¹² This could put a strain on employee relations. Despite these concerns, the clause was generally well received.

The 2001 Supreme Court case *PGA Tour, Inc. v. Martin*, reinforced the efficacy of the reasonable accommodations clause. Martin, a talented golfer, was born with Klippel-Trenaunay-Weber syndrome, a rare and degenerative circulatory disorder which caused severe leg pain and made walking for extended periods of time difficult.²¹³ Martin tried to join the PGA and Nike tours but the organizations would not let him use a golf cart. They alleged it gave him an unfair advantage over other golfers in the tour.²¹⁴ The Supreme Court ruled differently, though, and in a seven to two decision ruled that allowing him to use a golf cart did not give him a considerable advantage, especially since Martin was still walking roughly twenty-five percent of the course.²¹⁵ Martin was met with much public scrutiny during the tours but his right to a reasonable accommodation was preserved.

Overall, the implementation of the reasonable accommodations clause has met little resistance. The SHRM survey asked one employer to state any difficulties they foresaw in providing reasonable accommodations. The employer responded, “None really. At first, the entire issue was a little scary but as you get into it, you find that they aren’t asking for the world, but rather minor, relatively inexpensive renovations that are easily enough done. We also have a great source of support here in our area in terms of people who can offer good sound advice about how to accommodate something.”²¹⁶ For the most part, the ADA achieved what it set out to do with reasonable accommodations. It has met with little resistance from the community and those that do voice a concern are likely to not have implemented an accommodation or to have received a complaint. Other regulations in the same vein have not had such luck.

Health Insurance and Employer Discrimination

The issue of health insurance and employer discrimination has been a contested issue. The ADA did not completely resolve the issue of health insurance discrimination. The ADA

prohibits an employer from refusing to hire someone for fear of increased health insurance costs. Insurance costs are generally much more substantial than “reasonable accommodation” costs. For this reason, some companies and organizations look for ways to get around providing health insurance. One such example is illustrated in *Gifford v. Spartan Tool and Manufacturing Inc.*²¹⁷ Bruce Gifford was a fourteen year veteran at Spartan Tool and Manufacturing. He was poised to take over the company when he was diagnosed with sinus lymphoma and later sarcoma of the sinus. Eight months after the president found out about Gifford’s condition, the president reduced Gifford’s weekly pay from \$1,250 to \$670 to pay for the new health insurance costs. Gifford, who remained qualified for the job, sued the company under the ADA for unequal access to the employer’s health insurance plan.²¹⁸ The court ruled in favor of Gifford and claimed he had unequal access. This decision set a precedent for future cases. Companies could not subtract from an employee’s wage to offset health insurance costs.

Limitations on coverage and treatment are another workaround to the ADA. Some companies have limited their health insurance policies to compensate for high costs and to deter disabled individuals. These types of limitations include limiting the amount of procedures a person may have per year or paying less for excessive operations.²¹⁹ This has the effect of making employment less attractive for disabled individuals and is legal because it applies to all individuals. Since a disabled person is more likely to utilize health insurance benefits, this system is an indirect penalization. The main provision in the ADA states that there must be a disability-based distinction for litigation to ensue.²²⁰ Another potential workaround exists in location biased services. In this model, a company can give better coverage to those born in a specific state.²²¹ Because there are disabled individuals in all states, this is not seen as a

“disability-based distinction.” If the company has a majority of non-disabled individuals from one state they can offer better services to that group and offer a lesser service to everyone else.

The ADA has also had its fair share of “lunatic claims” made under it. For the business community, these claims exemplify the “barrage of frivolous” lawsuits that they were concerned about during the passage of the act. Examples include an aging stewardess who sued Delta Airlines over employee weight guidelines, a 300 pound woman who sued a movie theater for \$1.5 million dollars because the seats were not accommodating, and a professor who claimed his institution denied tenure because he suffered from an illness which results in lethargy and decreased productivity.²²² While there has not been a drastic increase in such claims, businesses still worry these claims may be more exaggerated with the ADA. Once again ADA opponents point to the vagueness of its language as the culprit. A specific definition of disability listing what is covered would ameliorate these problems. These extreme cases do not happen often, though, and when they do it is rare that the plaintiff wins.²²³ As Justin Dart points out, “The remedies provided . . . are so reasonable that no money hungry lawyer or client would give a court action a second thought. You sue the local pizza shop for not having a ramp. You win. You get a ramp. No million dollar judgment. No money judgment at all. Not even a pizza. Just a ramp.”²²⁴

Some unintended side effects came about due to the ADA. Public transportation and paratransit saw a massive increase in disabled individuals using the service. According to David Koffman in his report, *Improving ADA Complementary Paratransit Demand Estimation*, the ADA has produced “[...] major increases in participation by people with disabilities in activities of all types as a result of steadily increasing accessibility of the built environment as well as greater educational and employment opportunities.”²²⁵ Koffman also cites an increase of per-

capita personal income and a decrease in average household sizes as reasons for the increased utilization and dependency on paratransit systems.²²⁶ Fred Pelka discusses in his article, "Bashing the Disabled: the Right-wing Attack on the ADA - Americans with Disabilities Act," the effects this surge has had on the system. He relates a personal anecdote in which, "[...] a disabled woman . . . out of 20 round trips she [had] scheduled for chemotherapy, the local paratransit service had managed to deliver her to just two of her appointments."²²⁷ Problems with paratransit services is perhaps the most commonly mentioned failure of the ADA. The surge in usage has created a rickety service which many disabled individuals rely exclusively on to get to medical appointments and for access to society.

The failure of the paratransit system is demonstrated in a class action suit brought against the Los Angeles County transit system by the Western Law Center for Disability Rights, Protection and Advocacy Inc., and the American Civil Liberties Union of Southern California. The complaint alleges that the county does not provide a paratransit system that is comparable to its regular public transportation.²²⁸ One of the major issues includes allowing riders to schedule an appointment only twenty-four hours in advance. If a rider needs a 6:00 AM appointment he or she cannot call in at 7:00 PM the night before. This time window makes it easier on the transportation system but much harder on the rider. Medical appointments and errands must be planned out ahead of time. This regulation is unfair to individuals who may need a more immediate solution. The regular transportation system does not have such guidelines. Another evident issue arises in the paratransit system's estimate on late appointments. The county declares that ninety percent of the service is on time as compared to the regular public transportation rate of more than ninety-nine percent.²²⁹ The complaint also alleges that these failures have resulted in disabled individuals: "Being stranded in dangerous locations because of

no-shows by paratransit vans,” “Being late to school, work, and doctor's appointments because of vans that are late, sometimes by hours,” and an increased “aggravation of serious medical problems, such as multiple sclerosis, because of waiting outside in hazardous conditions when vans are late or fail to show up at all.”²³⁰ The paratransit system was left in shambles after the implementation of the ADA and, even after legal action like this class action suit, continues to be a burden rather than a boon for many disabled individuals.

Narrowing the Scope of the ADA

In the twenty years following the passage of the ADA, numerous lawsuits have narrowed the scope and efficacy of the ADA regulations. One of the more damaging cases to the ADA was *University of Alabama at Birmingham Board of Trustees, et al. v. Patricia Garrett* in 2001. Garrett was a nurse at the University of Alabama and was diagnosed with breast cancer in 1994. She underwent extensive chemotherapy and radiation therapy and required four months leave. When she returned to her position she found out she had been demoted and was receiving a significantly lower salary. Garrett sued for financial damages after being threatened with replacement or a transfer.²³¹ The Supreme Court consolidated *Garrett* with a similar case, *Ash v. Alabama Department of Youth Services* in 2003. In *Ash*, Milton Ash, who worked as a security officer in the Alabama Department of Youth Services, informed his supervisors that he had chronic asthma and that his doctor recommended avoiding carbon monoxide and cigarette smoke.²³² He was also diagnosed with sleep apnea and he requested reassignment to daytime shifts. The facility where he worked did not support a no-smoking policy and did not service its vehicles to keep toxic emissions from aggravating his condition. Ash filed a complaint and alleged that his performance evaluations declined immediately after doing so. The Supreme Court consolidated these cases and in a five-to-four ruling declared that employees of the state

may not recover monetary damages in employment discrimination suits against state governments due to the Eleventh Amendment and state sovereignty.²³³ The ruling effectively voided the discrimination protections for state employees that the ADA ensured.

Lawyers representing Garrett and Ash argued that the ADA was a constitutionally appropriate measure to remedy past discrimination against disabled individuals.²³⁴ The Supreme Court refused to recognize a history of past discrimination as an appropriate reason for suing the state. Justice Breyer, who wrote the dissenting opinion, agreed with the history of discrimination and noted that the Court did not consider state histories, only federal cases of discrimination. Glaring examples were presented before the court, such as a class of Down syndrome students who were turned away from a zoo as to not excite the monkeys, yet these claims were put aside and the ruling turned into a federal question.²³⁵ The narrowing of the ADA's applicability did not stop there.

The ADA left room for error in its definition of major life activities (MLAs). In 2002, the Supreme Court delivered a unanimous ruling in *Toyota Motor Mfg. v. Williams*. Williams was diagnosed with Carpal tunnel syndrome and had trouble operating tools in her position at Toyota. She was relocated to another position but wanted her old job back and filed a complaint.²³⁶ The Supreme Court ruled unanimously in favor of Toyota citing that carpal tunnel syndrome can be temperamental and that Williams was still able to perform the major life activities as described by the ADA such as get out of bed, brush her teeth, and otherwise care for her self.²³⁷ Justice Sandra Day O'Connor wrote in her majority opinion:

If Congress intended everyone with a physical impairment that precluded the performance of some isolated, unimportant or particularly difficult manual task to qualify as disabled, the number of disabled Americans would surely have been much higher. The manual tasks unique to any particular job are necessarily important parts of most people's lives. It is insufficient for individuals attempting to prove disability status under this test to merely submit evidence of a medical diagnosis of an impairment.²³⁸

O'Connor conveyed that significant medical testing was needed in order to prove Williams' impairment and that her ability to perform MLAs placed her in a temperamental class of disabled individuals which were not covered under the ADA. In correlation to O'Connor's opinion, the number of Americans with disabilities did drastically increase after the passage of the act. Between 1990 and 2000, the number of disabled Americans increased twenty-five percent.²³⁹ These findings may show a period of over-diagnosing disabilities but—with disability awareness at an all time high—they may also show that Americans who had disabilities but were not publicly declared as such came forth.

Another Supreme Court case in 2002 further narrowed the scope of the ADA. *Chevron U.S.A. Inc. v. Echazabal*, opened up a possible loophole to employment discrimination. Mario Echazabal, worked for Chevron and applied for a job promotion. His promotion was contingent on a physical examination which Echazabal underwent. After his examination, Echazabal was diagnosed with Hepatitis C. Chevron promptly withdrew their job offer after learning of his condition and Echazabal sued for employee discrimination under the ADA.²⁴⁰ Chevron argued that a provision under the Equal Employment Opportunity Commission allowed them to bar employees from the workplace by demonstrating that the job poses a direct threat to their health.²⁴¹ The Supreme Court upheld Chevron's defense in a unanimous ruling. The harm-to-self defense further narrowed the scope of the ADA and left equal employment opportunity for the disabled at risk.

The ADA Amendment Act of 2008

On September 25, 2008, some of these concerns were addressed. President George W. Bush signed into law the Americans with Disabilities Amendments Act (ADAAA) which proposed to “restore the intent and protections” of the original bill.²⁴² The bill, sponsored by

Tom Harkin, reformed the rules to determine a disability, expanded the definition of major life activities, and addressed the “regarded as disabled” issue brought up in *Williams*. The changes to the rules, established by the EEOC, include:

- An impairment need not prevent, or significantly or severely restrict, performance of a major life activity to be “substantially limiting.”
- An individual’s ability to perform a major life activity is compared to “most people in the general population,” often using a common-sense analysis without scientific or medical evidence.
- An impairment need not substantially limit more than one major life activity.²⁴³

The *Williams* case is addressed by these regulations. The EEOC makes the distinction between a permanent and temporary disability a non-issue. These provisions eliminate some of the trappings found in the *Williams* case. The EEOC also expanded the definition of MLAs to include: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, sitting, reaching, interacting with others, and working.²⁴⁴ These improvements should help individuals in the position that *Williams* was in; however, a new classification of disabled individuals was introduced. The “regarded as” category follows:

- Employer regards an individual as having a disability if it takes a prohibited action based on an actual or perceived impairment that is not transitory (lasting or expected to last for six months or less) and minor. For example, taking an adverse employment action based on a sprained wrist and broken leg expected to heal normally does not amount to regarding an individual as having a disability, because these impairments are transitory and minor. Taking an adverse action based on carpal tunnel syndrome or Hepatitis C, or on a 2-day virus that an employer perceived to be heart disease, would amount to regarding an individual as having a disability.
- Reasonable accommodation is not available to someone only covered under the “regarded as” prong of the definition of “disability.”²⁴⁵

These regulations create a new classification for disabled individuals. The “regarded as” category is not covered under the reasonable accommodations clause of the ADA; however, if the malady is bad enough for a specific person and medical examinations are provided, a person

such as Williams who suffers from carpal tunnel syndrome may be eligible for protection. This adds an extra task that legitimate sufferers under the “regarded as” category will have to endure; however, it also protects businesses from a barrage of complaints regarding transitory or minor disabilities.

Societal Barriers in Action

The ADAAA of 2008 clears the water for some disability issues; however, many hold the opinion that it is not enough. B. Jefferson Bolender, an Assistive Technology Training Coordinator at the Arizona Center for the Blind and Visually Impaired, believes there is still much work left. In her words, “A law wouldn’t be a law if people did the right thing,” and in her experience, plenty of people have avoided doing the right thing.²⁴⁶ Bolender states that loopholes to ADA regulations are still in place and that private organizations and even the Federal Government has ways to get around them. On top of this, enforcement of the ADA is an overburdened system and often little is done.

In the state of Arizona, where Bolender resides, there are several significant barriers for disabled individuals. A common method for small businesses to work around the ADA is by the numbers they employ. The ADA requires fifteen employees at a minimum for a business to be covered. Smaller businesses can use the requirement to their advantage by using full-time equivalency (FTE). FTE equates part-time workers to full-time. A local convenience store may hire thirty employees but still be out of the range of the ADA due to FTE.²⁴⁷ Since not all of the employees work the equivalent hours of a full-time employee their “worth” is divided. A part-time worker may be worth one third or less of a full-time worker. Due to this, smaller companies which hire many employees part-time may not be obliged to follow employment discrimination guidelines or the reasonable accommodations clause. Franchises, as compared to nationally

owned establishments fall under this category as well. If a franchise is small enough, they can operate under the FTE loophole. Popular chains such as McDonalds, Starbucks, and so forth can avoid ADA regulations as long as their full-time equivalence is less than fifteen.

Bolender points out that some regulations still trump others. A city court in Arizona is one example. The court is a busy public center which many would expect to follow ADA guidelines. One of the unique architectural designs of the building includes massive concrete spheres spread out around the building. These spheres may appear to be for aesthetic purpose; however, they were put in place in accordance with the Department of Homeland Security to thwart potential terrorist attacks. While serving a security purpose, these spheres leave no room for accessibility ramps and the building's entrance does not comply with ADA standards.²⁴⁸ The majority of state buildings in Arizona do follow ADA guidelines but some federal institutions do not. According to a provision in the ADA, federal buildings still follow Section 504 of the Rehabilitation Act of 1973.²⁴⁹ The architectural specifications in Section 504 are outdated and many federal buildings escape the stricter architectural provisions in the ADA. Furthermore, the specifications in 504 are not strictly architectural. A city or state court must provide interpreters for the disabled while a federal building may not.²⁵⁰ These are significant problems that need to be addressed.

Another issue Bolender raises is the freedom organizations have to choose reasonable accommodations. There are certain specifications which must be met—for instance a blind office worker may need a text-to-speech program to read emails and documents—but the organization has authority over which accommodation it chooses.²⁵¹ In the example of text-to-speech software, not all programs are created equal and some are better or more efficient than others. Organizations can choose to implement a cheaper version of such software which saves costs but

may not be the most efficient or accurate software.²⁵² If the employee still does not perform adequately they may then be demoted or fired without being able to file a complaint under the ADA since the organization adhered to the basic guidelines.

Bolender cites the lack of enforcement as one of the biggest issues the ADA faces. Bolender relates several cases in which a lack of enforcement means companies and organizations can often do as they please. One example is with a company looking for a secretarial position. The job specifications stated normal functions related to a secretarial position but also included the requirement of a valid driver's license. Whether intended or not, this specification automatically excludes many disabled individuals. The company was contacted and eventually changed the specification but the fact that such a detail was recognized is unusual.²⁵³ Many companies intentionally or unintentionally add these provisions and hear little complaints. It is rare that a disabled individual will be aware enough of ADA provisions to even say anything. In the rare cases where individuals do file a complaint, there is very little public support.

The State of Arizona currently employs six attorneys at its Center for Disability Law (CDL). The CDL is the main source for these complaints and for public representation. Six employees may seem to be a sufficient number but put in context with the thousands of complaints the center receives every year it is no surprise that there is often a long waiting list for litigation. Depending on the nature of the case, some can expect up to a two year wait before the center reaches their case.²⁵⁴ The long wait can deter many from taking any action, especially if the complaint is small enough. The CDL generally seeks the bigger cases first and architectural complaints, if seemingly minute, are often passed over.

Bolender relates a personal anecdote relating to enforcement. A client at the Arizona Center for the Blind, Fernando, planned a trip from Arizona to California using a bus service. Fernando, a blind individual, used a guide dog to help him maneuver. Upon his arrival at the bus station, Fernando was denied entry unless he left his dog behind. The company stated that no animals were allowed. Fernando's protests were unheard and he called the one place that might help him, the Arizona Center for the Blind. The Center explained to the company the ADA's policy on service animals but to no avail. Fernando had two retroactive options: he could either hire a private lawyer or file a complaint with the CDL. Fernando could not afford attorney's fees so he would have to place his trust in the CDL. Fernando had an event planned in California and filing with the CDL would entail him missing his trip entirely. Luckily, a police car was dispatched to Fernando's location for a non-related issue and the bus company, scared the call might be for them, let Fernando on the bus with his guide dog. Despite Fernando getting on the bus, the story epitomizes the problem with enforcement. If the company was not scared into letting him on, he would have little recourse and the immediate problem, his trip to California, would be left unsolved.

There has been much advancement in disability rights since the beginning of the civil rights movement. The ADA provides protection for disabled individuals who seek employment and equal opportunity. While these provisions sound good in writing, their implementation has not been without fail. The ADA Amendments Act of 2008 corrects some of the problems with the implementation of the original; however, there is still much to be done. As B. Jefferson Bolender points out, there are still many loopholes and societal barriers that companies and organizations employ. The lack of a sustainable enforcement model also lessens the weight that the ADA regulations hold. Until these concerns are realized, the ADA will remain obsolete. The

past two decades have shown great increases in equality for the disability community. There is still much work to be done.

Works Cited

¹⁹⁴ Margaret C. Jasper, *Americans with Disabilities Act* (New York: Oceana, 2008), pg. 9.

¹⁹⁵ Jane West, *Implementing the Americans with Disabilities Act* (Cambridge, MA: Blackwell Publishers, 1996), pg. 102.

¹⁹⁶ Ibid.

¹⁹⁷ Ibid.

¹⁹⁸ Jane West, *Implementing the Americans with Disabilities Act* (Cambridge, MA: Blackwell Publishers, 1996), pg. 103.

¹⁹⁹ Ibid.

²⁰⁰ Ibid.

²⁰¹ Jane West, *Implementing the Americans with Disabilities Act* (Cambridge, MA: Blackwell Publishers, 1996), pg. 104.

²⁰² Ibid.

²⁰³ Ibid.

²⁰⁴ Ibid.

²⁰⁵ Ibid.

²⁰⁶ Ibid.

²⁰⁷ Jane West, *Implementing the Americans with Disabilities Act* (Cambridge, MA: Blackwell Publishers, 1996), pg. 105.

²⁰⁸ Ibid.

²⁰⁹ Ibid.

²¹⁰ Ibid.

²¹¹ Jane West, *Implementing the Americans with Disabilities Act* (Cambridge, MA: Blackwell Publishers, 1996), pg. 106.

²¹² Ibid.

²¹³ Jacqueline Vaughn Switzer, *Disabled Rights: American Disability Policy and the Fight for Equality* (Washington, D.C.: Georgetown University Press, 2003), pg. 221.

²¹⁴ Ibid.

²¹⁵ Ibid.

²¹⁶ Jane West, *Implementing the Americans with Disabilities Act* (Cambridge, MA: Blackwell Publishers, 1996), pg. 106.

²¹⁷ Jane West, *Implementing the Americans with Disabilities Act* (Cambridge, MA: Blackwell Publishers, 1996), pg. 115.

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰ Ibid.

²²¹ Jane West, *Implementing the Americans with Disabilities Act* (Cambridge, MA: Blackwell Publishers, 1996), pg. 119.

²²² Fred Pelka, "Bashing the Disabled: the Right-wing Attack on the ADA - Americans with Disabilities Act," BNET | News Articles, Magazine Back Issues & Reference Articles on All Topics, accessed November 12, 2010, http://findarticles.com/p/articles/mi_m1374/is_n6_v56/ai_18844578/?tag=content;coll.

²²³ Ibid.

²²⁴ Ibid.

²²⁵ David Koffman, *Improving ADA Complementary Paratransit Demand Estimation* (Washington, D.C.: Transportation Research Board, 2007), pg. 40.

²²⁶ Ibid.

²²⁷ Fred Pelka, "Bashing the Disabled: the Right-wing Attack on the ADA - Americans with Disabilities Act," BNET | News Articles, Magazine Back Issues & Reference Articles on All Topics, accessed November 12, 2010, http://findarticles.com/p/articles/mi_m1374/is_n6_v56/ai_18844578/?tag=content;coll.

²²⁸ ACLU of Southern California, "Civil Rights Groups File ADA Suit Against MTA For Paratransit Failures," ACLU of Southern California, November 16, 2000, <http://www.aclu-sc.org/releases/view/100332>.

²²⁹ Ibid.

²³⁰ Ibid.

²³¹ Jacqueline Vaughn Switzer, *Disabled Rights: American Disability Policy and the Fight for Equality* (Washington, D.C.: Georgetown University Press, 2003), pg. 3.

²³² Ibid.

²³³ Jacqueline Vaughn Switzer, *Disabled Rights: American Disability Policy and the Fight for Equality* (Washington, D.C.: Georgetown University Press, 2003), pg. 215.

²³⁴ Jacqueline Vaughn Switzer, *Disabled Rights: American Disability Policy and the Fight for Equality* (Washington, D.C.: Georgetown University Press, 2003), pg. 212.

²³⁵ Jacqueline Vaughn Switzer, *Disabled Rights: American Disability Policy and the Fight for Equality* (Washington, D.C.: Georgetown University Press, 2003), pg. 216.

²³⁶ Jacqueline Vaughn Switzer, *Disabled Rights: American Disability Policy and the Fight for Equality* (Washington, D.C.: Georgetown University Press, 2003), pg. 224.

²³⁷ Ibid.

²³⁸ Ibid.

²³⁹ Disability Funders Network, "Disability Stats and Facts," Disability Funders Network, accessed November 14, 2010, <http://www.disabilityfunders.org/disability-stats-and-facts>.

²⁴⁰ Jacqueline Vaughn Switzer, *Disabled Rights: American Disability Policy and the Fight for Equality* (Washington, D.C.: Georgetown University Press, 2003), pg. 226.

²⁴¹ Ibid.

²⁴² OpenCongress.org, "S.3406: ADA Amendments Act of 2008," OpenCongress, accessed November 12, 2010, http://www.opencongress.org/bill/110-s3406/show#bill_list.

²⁴³ "EEOC's Notice of Proposed Rulemaking (NPRM) to Implement the ADA," US EEOC Home Page, accessed November 15, 2010, <http://www.eeoc.gov/laws/regulations/adaaa-summary.cfm>.

²⁴⁴ Ibid.

²⁴⁵ Ibid.

²⁴⁶ B. Jefferson Bolender, interview by author, August 27, 2010.

²⁴⁷ Ibid.

²⁴⁸ Ibid.

²⁴⁹ Ibid.

²⁵⁰ Ibid.

²⁵¹ Ibid.

²⁵² Ibid.

²⁵³ Ibid.

²⁵⁴ Ibid.

CONCLUSION

On July 26, 2010, the Americans with Disabilities Act celebrated its twentieth anniversary. There have been many changes in the two decades since President Bush signed the ADA into law. Technological advancements have made lives easier for millions of disabled individuals; however, they have also opened up another avenue of debate. Disability access on the internet is an emerging debate. The internet now serves millions of citizens. State and federal institutions use the internet as an avenue to connect with citizens. Yet, disabled access to all websites is not a guarantee. The future of disability law will likely be rooted in emerging technologies such as the internet; however, the roots of the ADA should not be forgotten. As B.J. Bolender points out, there is still much work to be done with the original legislation.

Still, the ADA has improved the lives of many disabled individuals across America. Tom Harkin reflects upon the progress of the act twenty years later. He relates the story of Danette Crawford in a press release:

“I will always remember a young Iowan named Danette Crawford,” Harkin said. “In 1990, she was just 14. She used a wheelchair, and lived with great pain. But she campaigned hard for the ADA. When I told her that the ADA would mean better educational opportunities, and prevent workplace discrimination, Danette said: “Those things are very important. But, you know, what I really want to do is just be able to go out and buy a pair of shoes like anybody else.”

“Two decades later, people with disabilities can do that -- and so much more. The ADA has changed America in ways largely invisible to most citizens, but profoundly transformative for tens of millions of Americans with disabilities.²⁵⁵

The twentieth anniversary serves as a confirmation for what the ADA has done. Millions of disabled individuals, like Danette Crawford, have more opportunities now than two decades ago.

DiversityInc released a survey after the twentieth anniversary of the ADA. The survey asked human-rights activists and corporate leaders what they thought of the progress so far.

Deborah Dagit, Vice President and Chief Diversity Officer of Merck & Co., states “I am pleased

with the progress made in housing, transportation and public accommodations. I am dismayed that so little progress has been made with respect to access to meaningful employment. We have so much more to do.”²⁵⁶ Lori Beck Golden, an Associate Director at Ernst & Young, echoes Dagit’s sentiment. She states, “To me, the ADA is a promise that's not yet fully realized. It says we recognize the worth of every individual whatever their physical or cognitive abilities and our society has a responsibility to ensure every person can fully participate in and contribute to all aspects of life.”²⁵⁷ Great strides have been made but there is still much left to be done.

Disability in America is a growing trend. As of 2004, thirty-seven-point-nine million Americans, excluding group homes and those under four years old, are considered disabled.²⁵⁸ Technological and medical advancements over the years have helped many disabled individuals better interact with society but with these technological advancements also comes an increased lifespan. As America gets older, the prevalence of disabled individuals rises. The issue of disability rights will only become more significant for citizens of America as the years go on. Significant legislation will need to be considered to address the holes. The ADA, as described by Justin Dart, is a “Declaration of Independence” for disabled individuals. In the coming years, a constitution and bill of rights will need to be addressed.

Works Cited

²⁵⁵ "On ADA 20th Anniversary, Harkin Reflects on Transformation Under the Law," Tom Harkin, Iowa's Senator, accessed November 21, 2010, <http://harkin.senate.gov/press/release.cfm?i=326712>.

²⁵⁶ DiversityInc, "ADA 20th Anniversary: How the Disability-Rights Law Impacts Lives," DiversityInc, July 26, 2010, <http://diversityinc.com/article/7914/ADA-20th-Anniversary-How-the-DisabilityRights-Law-Impacts-Lives/>.

²⁵⁷ Ibid.

²⁵⁸ Marilyn J. Field and Alan M. Jette, *The Future of Disability in America* (Washington, DC: National Academies Press, 2007), pg. 69.

BIBLIOGRAPHY

- ACLU of Southern California. "Civil Rights Groups File ADA Suit Against MTA For Paratransit Failures." ACLU of Southern California. November 16, 2000. <http://www.aclu-sc.org/releases/view/100332>.
- "Amendments For H.R.2273." THOMAS (Library of Congress). Accessed November 19, 2010. <http://thomas.gov>.
- Black, Edwin. "The Horrifying American Roots of Nazi Eugenics." History News Network. November 24, 2003. <http://hnn.us/articles/1796.html>.
- Bolender, B. Jefferson. Interview by author. August 27, 2010.
- Burke, Thomas Frederick. *Lawyers, Lawsuits, and Legal Rights the Battle over Litigation in American Society*. Berkeley, CA: University of California Press, 2002.
- Cherry, James L. "Cherry v. Mathews: 25 Years and Counting." A Ragged Edge Online. July 2001. <http://www.raggededgemagazine.com/0701/0701cov.htm>.
- Consortium for Citizens with Disabilities. "FAILING TO FULFILL THE ADA'S PROMISE AND INTENT: THE WORK OF THE COURTS IN NARROWING PROTECTION AGAINST DISCRIMINATION ON THE BASIS OF DISABILITY." Consortium for Citizens with Disabilities. September 2006. http://www.c-c-d.org/task_forces/rights/ada/ADA%20cases%20memo-Fulfilling%20the%20Promise.pdf.
- Dart, Justin. "Statement by Justin Dart, Jr." Baylor College of Medicine - Houston, Texas. Accessed November 11, 2010. http://www.bcm.edu/ilru/html/about/Dart/statement_of_conscience.htm.
- Davis, Mark. "Conn.'s Weicker Honored for ADA Legacy." Connecticut Breaking News, Weather and Traffic. July 26, 2010. http://www.wtnh.com/dpp/news/hartford_cty/conn.'s-weicker-honored-for-ada-legacy.
- Disability Discrimination: Employment Discrimination Prohibited by the Americans with Disabilities Act of 1990*. Washington, D.C.: United States Equal Employment Opportunity Commission Technical Assistance Program, 1995.
- Disability Funders Network. "Disability Stats and Facts." Disability Funders Network. Accessed November 14, 2010. <http://www.disabilityfunders.org/disability-stats-and-facts>.
- Disability Studies, Temple U. "Disability Rights Timeline." *Disability Studies, Temple U.* (web log). Accessed November 12, 2010. <http://isc.temple.edu/neighbor/ds/disabilityrightstimeline.htm>.
- DiversityInc. "ADA 20th Anniversary: How the Disability-Rights Law Impacts Lives."

- DiversityInc. July 26, 2010. <http://diversityinc.com/article/7914/ADA-20th-Anniversary-How-the-DisabilityRights-Law-Impacts-Lives/>.
- "EEOC's Notice of Proposed Rulemaking (NPRM) to Implement the ADA." US EEOC Home Page. Accessed November 15, 2010. <http://www.eeoc.gov/laws/regulations/adaaa-summary.cfm>.
- Field, Marilyn J., and Alan M. Jette. *The Future of Disability in America*. Washington, DC: National Academies Press, 2007.
- Ford, Gerald R. "Gerald R. Ford: Executive Order 11914 - Nondiscrimination With Respect to the Handicapped in Federally Assisted Programs." The American Presidency Project. April 28, 1976. <http://www.presidency.ucsb.edu/ws/index.php?pid=23675>.
- Frieden, Lex. *NCD and the Americans with Disabilities Act: 15 Years of Progress*. Washington, D.C.: National Council on Disability, 2005.
- Friedlander, Henry. *The Origins of Nazi Genocide from Euthanasia to the Final Solution*. Chapel Hill, NC: Univ. of North Carolina Press, 2000.
- Himelfarb, Richard, and Rosanna Perotti. *Principle over Politics?: the Domestic Policy of the George H. W. Bush Presidency*. Westport, CT: Praeger, 2004.
- The Impact of the Americans with Disabilities Act: Assessing the Progress toward Achieving the Goals of the ADA*. Washington, DC: National Council on Disability, 2007.
- Implementation of the Americans with Disabilities Act: Challenges, Best Practices, and New Opportunities for Success*. Washington, DC: National Council on Disability, 2007.
- Jasper, Margaret C. *Americans with Disabilities Act*. New York: Oceana, 2008.
- Jolls, Christine M., and J. J. Prescott. *Disaggregating Employment Protection the Case of Disability Discrimination*. Cambridge, MA: National Bureau of Economic Research, 2004.
- Kaplan, Deborah. "The Definition of Disability." Center for An Accessible Society. Accessed November 9, 2010. <http://www.accessiblesociety.org/topics/demographics-identity/dkaplanpaper.htm#05>.
- Koffman, David. *Improving ADA Complementary Paratransit Demand Estimation*. Washington, D.C.: Transportation Research Board, 2007.
- Krieger, Linda Hamilton. *Backlash against the ADA: Reinterpreting Disability Rights*. Ann Arbor: University of Michigan Press, 2003.
- Krugman, Saul. "The Willowbrook Hepatitis Studies Revisited: Ethical Aspects." *Reviews of*

- Infectious Diseases* 8, no. 1 (January/February 1986): 157-62.
<http://www.jstor.org/stable/4453816>.
- Longmore, Paul K., and Lauri Umansky. *The New Disability History: American Perspectives*. New York: New York University Press, 2001.
- Miller Center of Public Affairs. "American President: George H. W. Bush: Domestic Affairs." Miller Center of Public Affairs. Accessed November 16, 2010.
<http://millercenter.org/academic/americanpresident/bush/essays/biography/4>.
- Nixon, Richard. "Richard Nixon: Statement on Signing the Rehabilitation Act of 1973." The American Presidency Project. September 26, 1973.
<http://www.presidency.ucsb.edu/ws/index.php?pid=3979>.
- "On ADA 20th Anniversary, Harkin Reflects on Transformation Under the Law." Tom Harkin, Iowa's Senator. Accessed November 21, 2010.
<http://harkin.senate.gov/press/release.cfm?i=326712>.
- OpenCongress.org. "S.3406: ADA Amendments Act of 2008." OpenCongress. Accessed November 12, 2010. http://www.opencongress.org/bill/110-s3406/show#bill_list.
- Pardeck, John T. *Social Work after the Americans with Disabilities Act: New Challenges and Opportunities for Social Service Professionals*. Westport, CT: Auburn House, 1998.
- Pelka, Fred. "Bashing the Disabled: the Right-wing Attack on the ADA - Americans with Disabilities Act." BNET | News Articles, Magazine Back Issues & Reference Articles on All Topics. Accessed November 12, 2010.
http://findarticles.com/p/articles/mi_m1374/is_n6_v56/ai_18844578/?tag=content;coll.
- Switzer, Jacqueline Vaughn. *Disabled Rights: American Disability Policy and the Fight for Equality*. Washington, D.C.: Georgetown University Press, 2003.
- VanZante, Neal R. "A Manager's Guide: Americans with Disabilities Act of 1990." All Business. January 1, 1993. <http://www.allbusiness.com/human-resources/workplace-health-safety/385725-1.html>.
- Voices of Freedom: America Speaks out on the ADA : a Report to the President and Congress*. Washington, D.C.: National Council on Disability, 1995.
- West, Jane. *Implementing the Americans with Disabilities Act*. Cambridge, MA: Blackwell Publishers, 1996.
- Young, Jonathan M. *Equality of Opportunity: the Making of the Americans with Disabilities Act*. Washington, D.C.: National Council on Disability, 1997.