

July 22, 1994

MEMORANDUM FOR CAROL H. RASCO

FROM: STANLEY S. HERR

SUBJECT: The Status of the Americans with Disabilities Act

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Executive Summary

The Americans with Disabilities Act is the leading civil rights law for the 49 million persons with disabilities. The gap between its promise and its practice is wide, but narrowing in some significant respects. The Federal government can take a number of steps independently and in conjunction with private sector actors, to improve ADA implementation in fact and in appearance. Those steps include:

- 1) the staging of a significant White House event to celebrate the anniversary of ADA's enactment and appropriate followup;
- 2) a positive campaign to publicize the importance of the ADA and the values it represents;
- 3) renewed efforts to bring the ADA to fruition through technical assistance, targeted public education, alternative dispute resolution, enforcement, and other means to improve compliance;
- 4) putting the Federal government's "disability rights" house in order so that we can lead by example.

INTRODUCTION

The ADA represents both the symbol and the practical means of ensuring equal rights and full inclusion for the 49 million Americans with disabilities. It is truly a Magna Charta for persons with disabilities.¹ As such it is both a central symbol and a practical means of redress to achieve the aspirations of this huge constituency of Americans with disabilities and their families and friends.

Although Congress adopted a finding in 1990 that there were 43 million such Americans, the Census Bureau now concludes that at least 49 million persons -- nearly one in five Americans -- has a disability. This December 1993 report defined disability as a limitation in a functional activity or a socially defined task.² Other significant demographic facts are that 1) persons with disabilities are the single largest minority in America, 2) their numbers will increase dramatically as the population ages and as medical and rehabilitation advances extend life expectancies, and 3) their ranks will also expand as disability status loses some of its historic stigma and instead affords more positive legal protection and benefits. Already we are witnessing the emergence of so-called "new disabilities," such as chemical and environmental sensitivities, cancer, AIDS, and other health or congenital conditions not traditionally associated with a disability label.³

The Clinton Administration has repeatedly affirmed its commitment to full and aggressive enforcement of the ADA. In Putting People First: How We Can All Change America, the campaign articulated our now famous disability credo, linking it first and foremost to ADA implementation. The Clinton-Gore Administration pledged not to "rest until America has a national disability policy based on three simple creeds: inclusion, not exclusion; independence, not dependence; and empowerment, not paternalism." The first of four action steps then proclaimed that we would:

"Work to ensure that the Americans with Disabilities Act (ADA) is fully implemented and aggressively enforced to empower people with disabilities to make their own choices and to create a framework for independence and self-determination. The ADA is not about handouts -- and it is not a giveaway -- it guarantees the civil rights of American citizens with disabilities."⁴

In his first major address to a disability audience (the May 13th commencement address at Gallaudet University), President Clinton stressed the centrality of the ADA to the rights and aspirations of persons with disabilities, both here and abroad. Per his prepared text, he stated: "For the now more than 49 million

Americans who are deaf or disabled, the signing of the ADA was the most important legal event in history. For almost a billion persons with disabilities around the world, it stands as a symbol of simple justice and inalienable human rights. " Viewing the ADA, as part of the "seamless web of civil rights" protection, President Clinton emphatically proclaimed that "as your President, I pledge to see it is fully implemented and aggressively enforced across America -- in schools, in the workplace, in Government, in public places. It is time to move from exclusion to inclusion, from dependence to independence, from paternalism to empowerment."⁵

For the variations on that theme repeatedly enunciated by President Clinton, see Part II, infra at page 8.

Despite the strong rhetoric, the implementation history of the Act is uneven. Due in part to the complexity of the statute and its regulations, as well as the relative novelty of some of its outcomes, the ADA inspires mixed reviews. There are the "cheerleading reports" such as ADA Watch -- Year One, transmitted to the President by the National Council on Disability on April 5, 1993. This report concluded that the federal government had, "overall, performed well in its ADA implementation responsibilities," that there was substantial progress in the early stages of implementing the ADA, and that no amendments to the law were needed at that time."⁶ In contrast, ideologists from the right, such as the Wall Street Journal, have produced opinion pieces that have sought to erroneously portray the ADA as a threat to public health⁷ or an assault on a profit-minded business.⁸ Although Administration spokespersons have sometimes risen to defend the ADA in the media (such as Kristine Gebbie's unpublished letter to the editor refuting the above charges of public health hazards or Assistant Attorney General Deval Patrick's published and spirited defense of the settlement of the public accommodations case in question⁹), there is a need for consistent responsive as well as affirmative messages to the various interested communities. The White House could continue to encourage such a proactive public relations campaign.

Joseph P. Shapiro, the distinguished author, has identified one of the rationales for such a campaign: unlike African-Americans, disabled people won their rights without a prolonged period of significant consciousness-raising, and now fear that society could roll-back those gains. The general public now needs that consciousness-raising and public education to support progress rather than retrenchment. But what the ADA has indisputably done, according to Shapiro, is to convince millions of disabled people to "see themselves as a class, united in discrimination and empowered by law. Their expanding ranks would give the disability rights movement soaring power, educate others to their issues, and in the end, create a society more hospitable

to all. They are full players now in a civil rights struggle, complete with progress and backlash."¹⁰

Notwithstanding the ideologically charged battle to define the ADA as a success or a hindrance, public and private actors are making real progress in putting ADA's principles into practice. Millions of Americans with disabilities, as well as their families and friends, are now benefitting from the ADA in numerous ways. Here are a few examples:

- . Ramps, curb cuts in sidewalks, and other signs of architectural accessibility are increasingly commonplace.
- . Telephone relay systems now operate in all 50 states and the District of Columbia and TTY machines in offices and airports now aid deaf and hard-of-hearing individuals.
- . Picture menus and illustrated signboards in fast-food restaurants offer practical help for persons with cognitive or speech limitations.
- . In institutions that range from museums to doctors' offices, and from Fortune 500 corporations to small businesses, the issues of inclusion, reasonable accommodations, and barrier removal have become pressing matters for self-evaluation, planning and action steps to meet the needs of employees, customers, and members of the general public.
- . Leaders in business, nonprofit and governmental circles increasingly recognize that compliance with the ADA is not only a legal duty and the ethically right thing to do, but an opportunity to tap the patronage, talents, and loyalties of persons with disabilities as customers, clients, voters, and employees.
- . Employment practices are becoming fairer as the ADA's employment provisions reach a larger proportion of American businesses. As of July 26th of this year, President Clinton will have the opportunity to mark not only the 4th anniversary of ADA's enactment, but the last major milestone in the extension of its employment provisions to businesses with as few as 15 employees. [The current threshold for the Act's coverage under Title I is 25 employees or more. For discussion of a White House event to mark this dual occasion and followup to that event, see recommendations below].

The disability community can take pride in these gains and the recognition of their community marked by the White House event. This community, however, also has real concerns that the bright triumph of the law's enactment may be eclipsed by drift and backlash. They complain of a backlash directed at the ADA that weakens respect for the law and draws no forceful Administration response.¹¹ They note that civil rights

enforcement has been hampered by past vacancies at the top at EEOC and Justice and insufficient staffing at the basic investigative and adjudicatory levels. Their leaders point to needs to better coordinate technical assistance by various agencies, monitor progress, and conduct outreach in terms of public education to under-represented groups of people with disabilities such as the members of minority communities, rural communities and people with mental disabilities. These leaders are distressed that the ADA that they prize as a civil rights law is misconstrued in the NPR report as a prime example of an "unfunded mandate" that should be subject to limiting Presidential directive.¹² They argue, with legitimacy, that civil rights laws such as the ADA advance constitutional imperatives of equal protection that should not be undermined by being cast as merely another underfinanced federal mandate.

We can take a series of steps to reassure this community now. The factors of this constituency's size, important role in mustering support for health care reform, and general harmony with our "people first" agenda all support this recommendation. Thus, we can bolster the Administration's capabilities for immediate and longer-term strategies of vigorous but balanced enforcement. We also need to produce some type of booklet and messages to convey what we have accomplished to date and our plans for the future.

This status report has six parts. Part I identifies the main goals of the ADA. Part II recounts President Clinton's statements to date on the ADA. Part III summarizes the statutory duties of the various Federal departments and agencies under the ADA and their main activities so far. Part IV highlights ways that the private sector can and has assisted in training, technical assistance, public education, compliance and enforcement aspects of the ADA's implementation. Part V offers recommendations for us to consider in the narrow context of ADA as well as the broader context of our disability rights objectives. Part VI concludes with some observations on how the ADA can serve as one of the centerpieces of a national disability policy that largely remains to be articulated. Endnotes and appendices are provided as documentation for these conclusions.

I. MAIN GOALS OF THE AMERICANS WITH DISABILITIES ACT OF 1990

Congress articulated four national goals through findings and legislative history to the ADA. In outline form, these goals seek to:

1. provide a clear and comprehensive national mandate to end discrimination against individuals with disabilities;

. The history and ongoing effects of segregation and isolation of individuals with disabilities constitutes a serious social and legal problem.

. This discrimination continues in fields such as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services.

. This discrimination takes the forms of:

a. Intentional exclusion -- this includes refusal to serve persons with a disability in restaurants, refusal to accommodate the users of wheelchairs in theaters, exclusion of children with disabilities from parks and zoos, and exclusion of students from educational opportunities;

b. Exclusionary effects of architectural and design barriers -- this includes the design of larger buildings currently under construction that make no accommodation for the needs of persons with disabilities, such as Braille indicators in elevators and automatic doors, as well as the failure to modify older buildings to make such accommodations;

c. Exclusionary qualifications and standards that bear no relationship to the individual's abilities -- this includes job requirements of height or abilities that bear no relation to the needs of the job, or failure to hire or promote persons with disabilities simply because it would require reasonable modifications of the job.

2. Bring persons with disabilities into the economic, cultural, and social mainstream of American life;

. People with disabilities, as a class, are severely disadvantaged socially, economically, and educationally.

. Men and women with severe disabilities are far less likely to be employed than persons with no disabilities (28% versus 81% employment rate), while those with a non-severe disability lag about 5% below their peers in employment (females 73% versus 67%; males 89% versus 84%).¹³

. Many more persons with disabilities, however, are physically and mentally able to work and are motivated to improve their economic and social conditions, but face the barriers of intentional exclusion, exclusionary effects, and exclusionary requirements, as well as disincentives to work under the existing unreformed systems of health care, welfare and disability benefits.

. The existence of these disincentives and discriminatory barriers denies people with disabilities the opportunity to function in society on an equal basis with other persons.

. The cumulative effects of these barriers and disincentives often lead to dependency, despair and inactivity.

3. Provide enforceable standards capable of remedying discrimination against individuals with disabilities;

. The 49 million Americans with disabilities, notwithstanding their numbers and many allies among families and friends, are often politically powerless to remove the barriers of discrimination or to exert pressure commensurate with the magnitude of their problems.

. The ADA is designed to add the force of the Federal government to their cause and is consistent with the equality imperative -- the Jeffersonian ideal of providing all Americans with equal opportunities to participate in the Nation's government, economy and civic life.

. The ADA has struck an appropriate balance by providing people with disabilities with the necessary legal support to achieve equal opportunity, while not overly burdening the employers, public entities and providers of goods and services of whom the ADA requires reasonable accommodation to the needs of persons with disabilities.

4. Ensure that the Federal government plays a central role in applying and enforcing these antidiscrimination standards;

. The Civil Rights Division of the Department of Justice and the Equal Employment Opportunity Commission have key enforcement obligations under the ADA.

. Federal law enforcers negotiate, mediate and, if necessary, go to court to seek compliance with the Act. Voluntary compliance is the preferred solution, but the ADA does permit the imposition of a range of sanctions, including injunctions, fines, fees, costs, and damages on recalcitrant individuals or entities who continue to discriminate against people with disabilities.

. The Federal government's enforcement powers flow from the broad authority of the Fourteenth Amendment and the Commerce Clause of the U.S. Constitution.

. The ADA is thus emphatically a civil rights law grounded in the constitutional requirement of equal protection, and like other civil rights laws barring discrimination on the basis of race, gender or religion is not to be construed as an

"unfunded mandate" in the terminology of current political debates. Just as the costs of dismantling "Jim Crow" segregation based on race were routinely borne by state and local governments, so should the costs of ending illegitimate segregation based on disability, a status which is an innocent condition of birth, injury or illness.

For the full text of the Act and commentary on its provisions, see pages 265-313 of Implementing the Americans with Disabilities Act: Rights and Responsibilities of All Americans (L. Gostin & H. Beyer, eds. 1993), the book which I presented to you.

II. THE PRESIDENT'S COMMITMENT TO FULL IMPLEMENTATION OF THE ADA

Last year President Clinton marked the anniversary of the ADA by meeting with key disability leaders on July 27, 1993. According to his talking points, he emphatically stated that "our Administration is committed to [the ADA] from top to bottom, as the activities of Attorney-General Reno and many other government agencies yesterday showed."

In October 1993, President Clinton announced "National Disability Employment Awareness Month." In so doing, he emphasized key elements that form the underpinnings of the ADA. President Clinton equated the ADA with previous Civil Rights legislation, stating, "[we will not be satisfied as a Nation until we have fully implemented the laws that offer equal opportunity for Americans with disabilities."

The President also mentioned the enormous social costs of not granting equal rights and equal responsibilities to people with disabilities: a smaller pool of talent from the nation to draw upon; the \$300 billion annual cost of keeping productive citizens dependent upon welfare and forcing them into non-productivity; and lower tax revenues resulting from fewer people in the workforce.

President Clinton emphasized the need for dignity that these Americans want and deserve, but that is too often denied them. In proclaiming October 1993 as National Disability Employment Awareness Month, the President reminded the nation of his commitment to full implementation of the ADA.

As recently as May 13th the President reiterated that commitment -- to aggressively implement and enforce the ADA. Speaking at the Gallaudet commencement, he referred to the ADA as symbolizing the threshold of a new era "for all Americans, those of us with disabilities and those of us without." "The ADA represented a triumph "over partisanship and prejudice" and proved "once again that the right cause can unite us."

III. THE AGENCIES' STATUTORY RESPONSIBILITIES AND ACCOMPLISHMENTS

The Act divides implementation responsibilities among five agencies: the Department of Justice, the Equal Employment Opportunity Commission, the Federal Communications Commission, the Department of Transportation, and the U.S. Architectural and Transportation Barriers Compliance Board [hereinafter the Access Board]. This section highlights the respective duties, accomplishments, and limitations of these five agencies in respect of the President's directive to "fully implement and aggressively enforce" the ADA.

1. Department of Justice.

Duties. DOJ has responsibility for enforcement of Title III (public accommodations) of the ADA, and shared jurisdiction over complaints concerning State and local government actions under Title II. The Attorney General has also promulgated regulations on Title II (other than transportation matters reserved for the Secretary of Transportation). Such regulations are to be consistent and coordinated with Section 504 regulations under the Rehabilitation Act.¹⁵

Accomplishments. DOJ currently allocates Title III work to its Public Access Section in the Civil Rights Division and Title II to its Coordination and Review Section. DOJ now assigns 50 professional staff to ADA matters, but acknowledges that this is too small a complement for the load of complaints they receive. They recently added 10 people to a telephone hotline for advice and technical assistance (circa February 1994), and added 5 attorneys to the Public Access section (circa October 1993). They have entered over 150 Title III and 100 title II formal and informal settlement agreements. Some of their notable successes include:

- . the availability of sign-language interpreters and other auxiliary aids to permit deaf students in review courses for professional licensure to learn and communicate effectively.¹⁶

- . settlement without litigation of a complaint that emergency medical technicians had refused to assist an individual with HIV, with the settlement requiring the training of the technicians and the issuance of a new policy that persons with HIV/AIDS are entitled to benefit fully from emergency medical services.¹⁷

- . settlement of physical accessibility complaints related to ensuring access to public areas of the Empire State Building, including the lobby, observation decks, restrooms and telephones.¹⁸ (A DOJ official quite aptly referred to this as "a high-profile case.").

Improvements. The past lack of leadership due to the vacant Assistant Attorney General for Civil Rights and deputy posts exposed the Administration to some criticism of our ADA implementation. The appointment of respected ex-NAACP litigator, Deval Patrick, has done a great deal to overcome the appearance of time lost. The initial public reaction to his nomination was quite favorable, with the Washington Post front page of Feb. 2, 1994 trumpeted his interest in "aggressively enforcing civil rights laws against lending and housing discrimination, as well as the protection and expansion of voting rights and enforcement of the Americans With Disabilities Act . . ."¹⁹ Another sign of appropriately vigorous implementation of the ADA is the Wall Street Journal's critique of one recent settlement, and Mr. Patrick's published reply. Most complaints are settled without a lawsuit becoming necessary. However, the Department has shown its willingness to file appropriate lawsuits (such as claims against a police and firefighters pension fund that excluded officers on the basis of disability, or against dentists who refused to provide dental treatment to individuals who test positive for AIDS). As these cases are adjudicated or settled, the Department will have a stronger track record of well-publicized enforcement.

The DOJ is drastically understaffed for its mission and informal role as lead agency for ADA action. For instance, as of October 1993, a staff of 20 professionals (14 attorneys, 3 architects, and 3 paralegals) were responsible for over 950 Title III investigations. The staffing numbers are equally daunting for DOJ's Title II enforcement. Better coordination with EEOC over Title II employment claims may alleviate some of the stress but more staff at Justice in this burgeoning and novel area of civil rights enforcement seems vital. However, recent reports about Congressional action on such appropriation requests are not encouraging.

Public confidence in ADA enforcement is critical for continued progress. Sometimes the ADA achieves dramatic results such as Oregon's decision to revisit its medical rationing plan when it was challenged as imposing discrimination based on disability.²⁰ Most times it does not. Indeed, some critics believe that businesses and other covered entities choose not to comply because the likelihood of enforcement is relatively low. They argue that those entities take corrective actions only when a complainant appears with the backing of a legal advocate. Paradoxically, despite a relatively small number of litigated cases, leaders in the disability community express apprehension that the "other shoe will drop" as business and state and local government react to the ADA in terms of an unfunded mandate and then lobby for some future rollback of the law's requirements through statutory or regulatory amendments.

2. The Equal Employment Opportunity Commission.

Duties. EEOC is charged with the enforcement of the employment sections (Title I) of the ADA, which prohibits discrimination against people with disabilities in private sector employment and in public sector jobs in state and local governments.

Accomplishments.

. Although the underlying law is a bit murky, the EEOC has had some early successes in obtaining consent agreements or preliminary rulings in ADA-based AIDS bias claims against health insurers.²¹

. The EEOC's new Alternate Dispute Resolution (ADR) program seeks to settle ADA and other civil rights disputes in a timely and cost-effective manner, without resort to litigation.

. This pilot mediation program in the private sector involving 398 charging parties resulted in 82% of them accepting the offer, but only 62% of the respondents resulting in 201 sets of parties willing to undertake mediation.

. Despite a seeming hesitancy to litigate, the EEOC scored a notable success in their first ADA court battle.²² That case involved a jury award of back pay, compensatory damages, and punitive damages to an executive in a security investigations firm who was fired because he had cancer notwithstanding his ability to perform the essential functions of his job.²³ The court's judgement also barred retaliation for bringing an ADA claim or assisting another as a witness in a claim, gave notice to other employees of their ADA rights and the employer's violation of this particular executive's rights, and required such notice in the company's employee handbook or training manual.²⁴

. EEOC also filed suit in September 1993 on behalf of a foreman who returned from an approved 13 week disability leave for his back condition, but was not reinstated because of the employer's that would experience difficulty with its insurance coverage. The EEOC alleges that the employee was fired despite his willingness to demonstrate that he could perform the essential functions of his job, and that is considering filing a similar suit against another Michigan employer.²⁵

Improvements. The EEOC, as enforcer of Title I, must vigorously challenge Title I violations. If it is doing so (through ADR, other mediation, or the courts), it must be more effective in getting the word out to employers and the concerned public. If it is not, the EEOC must be reinvigorated. Backlogs in complaint processing are long and said to be growing longer. Such backlogs were mentioned in the course of the confirmation hearings of our EEOC nominees on July 21, 1994. One of their responses was to embrace ADR concepts, but to note that trends may be exacerbated

in the ADA area due to their new expanded jurisdiction over smaller businesses.

3. Department of Transportation.

Federal activities to improve transportation accessibility are one of the least heralded aspects of ADA implementation. The ADA is only one source of statutory authority for such accessibility. The Air Carrier Access Act of 1986 and the Rehabilitation Act of 1973 (Section 504) also undergird efforts to create a barrier-free environment and ensure that travelers with disabilities will be treated without discrimination in mass transit, intercity rail service, inter-city buses, federally aided streets and highways, maritime transport, and aviation. Without access to the nation's transportation system, Americans with disabilities are unable to reach their jobs and places of educational, cultural, and social opportunities.

Accomplishments.

DOT can point to many solid gains, such as:

. every Federally-subsidized mass transit system provides some type of accessible services usable by passengers with disabilities.

. about half of the nation's 52,500 fixed route buses in urbanized areas, i.e., 26,000 buses are now lift- or ramp-equipped (versus 35% pre-ADA).

. all 8,106 rapid railcars are accessible to wheelchair users.

. over 104 of the 540 ADA paratransit areas planned to be in compliance by the end of 1993, with some 440 expecting to be in full compliance by the end of 1996 (only two areas have so far requested a waiver due to financial burden).

. Amtrak service is becoming accessible, with 47 accessible Superliner cars received as of May 1994 and anticipated statutory compliance of the one accessible car per train per the ADA's July 1995 deadline.

. Steps are being taken to improve street and highway accessibility features such as curb cuts, ramps, or other sloped areas, and regulations on signage, emergency road-side call boxes, and other items in public rights-of-way.

Improvements.

Several significant transportation issues remain to be resolved. They include:

. Rule-making on over-the-road bus (OTRB) accessibility that affects some 25,000 buses and 3,500 private companies, sparking controversy over the extent of costs to be incurred in installing lifts and wheelchair storage space and concern in the disability community that their interests were being unduly compromised.

4. The Federal Communications Commission.

The FCC is responsible for assuring that telephone companies provide relay services for communicating by and with people who use TDDs. It is also charged with oversight of television stations that are required to transmit certain public service announcements with closed captioning.

Accomplishments.

- . Telephone relay systems now operate in all 50 states and the District of Columbia.
- . TTD machines are increasingly found in transit facilities and other places to aid deaf and hard-of-hearing individuals.

Improvements.

- . A common 800 number for access to relay systems is being sought by consumers.
- . On the horizon are broad issues of universal design for telecommunications equipment as the National Information Infrastructure is designed.

5. The Access Board.

This Board describes the ADA as its number one priority. Under the ADA, the Access Board has multiple responsibilities: implementing a technical assistance plan on Board guidelines for the transportation and public accommodations ADA titles; developing accessibility guidelines for transit facilities and vehicles, commercial facilities and public accommodations, children's environments, and recreation facilities; and producing technical assistance manuals and guidelines for accessibility of State and local government facilities, and public accommodations.

Accomplishments.

. developing accessibility guidelines (ADAAG) for buildings and facilities, for transportation vehicles, and for automated teller machines at banks.

. technical assistance and training program targeted for architects, designers, the construction industry, and State and local government officials through approximately 75 training sessions, the distribution of 12,600 information packets, and responses to some 18,000 telephone calls.

Improvements.

. The ADAAG for Over-the-Road Buses will provoke considerable debate before it is finally settled.

. ADAAG for recreation facilities, outdoor developed areas, children's environments, water transportation, and other issues may require years before rulemaking is final.

. The Board recognizes the need to revise accessibility guidelines for Federally financed buildings and facilities covered by the Architectural Barriers Act, the so-called UFAS standards (Uniform Federal Accessibility Standards), to make them consistent with the more complete and often high accessibility standards under ADAAG.

IV. THE PRIVATE SECTOR'S ROLES IN TRAINING AND ENFORCEMENT

The Federal government has subsidized significant training activities that are undertaken by independent living centers, disability organizations, university-based programs, business-based programs and other agencies. For instance, the National Institute on Disability and Rehabilitation Research (NIDRR) has a network of regional Disability and Business Technical Assistance Centers and other training projects that annually train some 60,000 persons, respond to 80,000 technical assistance requests, and distribute 540,000 documents, materials either produced or reviewed by DOJ or EEOC.²⁶ Annual costs of this NIDRR project are about \$6.3 million.

The private sector is also producing a wide variety of educational materials that may hasten ADA compliance. Some of these commercially produced guidebooks and scholarly commentaries are quite useful.²⁷ Others are little more than poor paraphrasing of technical assistance materials available through the Federal government at little or no cost. There is also an outpouring of literature in trade association magazine on how or to comply, or at least how to avoid penalty under the ADA. My favorite item: "Avoid Fines: Adjust Hiring Policies to Meet ADA Requirements: Making Reasonable Accommodations" for Disabled Employees is now required under the Americans with Disabilities Act, 9 Night Club and Bar Magazine 40 (Aug. 1993).

In terms of enforcement activity, private parties have brought many of the most significant ADA cases. These victories include:

. the right of a Little League baseball coach who uses a wheelchair to coach from the coachers box and otherwise participate fully in the responsibilities of a coach as he had been doing quite successfully for the past three years. As the court noted, coach Lawrence Anderson's "significant contributions of time, energy, enthusiasm, and personal example" not only benefitted numerous children, but his work with young people taught them "the importance of focusing on the strengths of others and helping them rise to overcome their personal challenges."²⁸

. the right of a blind person not to be categorically excluded from jury service. Judge Joyce Hens Green correctly reasoned that archaic attitudes and unsubstantiated prejudices should not permit a per se rule of exclusion since the very same court had the service of a blind judge as sole trier of fact, a juror could be excused from a particular trial where documentary evidence would be extensive, a juror could assess credibility based on the auditory correlates to nervousness, and a juror could benefit from reasonable accommodations such as a reader's help. The court also ordered arbitration as method of encouraging the speedy resolution of the case's remaining issues.²⁹

. the right of law school graduates with severe disabilities such as a severe visual disability³⁰ or severe dyslexia to have extra days to take the bar examination (DOJ filed an amicus curiae brief in the latter case that led to a settlement).³¹

. the duty of municipalities to install curb cuts or slopes at intersections with curbs when resurfacing city streets. The Third Circuit has upheld the ruling in Philadelphia that such resurfacing constitutes an "alteration" under Title II of the ADA.³²

. inquiries into past mental health problems for professional licensure have been limited, such as The DC Court of Appeal's 5-year limit on questions about drug or alcohol treatment or hospitalization for mental illness.³³

V. RECOMMENDATIONS

1. Coordination

There is a need for policy coordination, and coordination of overlapping public information, technical assistance, enforcement functions if the ADA is to be part of the truly "seamless web of

civil rights" that the President sketched in his Gallaudet speech.

2. Public Education

Although there have been considerable efforts to educate the American public to their rights and responsibilities under ADA, that effort must be renewed and intensified. Misperceptions still abound. Ignorance of the law is still a common response to complaints. Outright distortions of its costs and purposes are sometimes encountered. Unless those misperceptions and distortions are countered, unless knowledge replaces ignorance, the risks of backlash, delays and intransigence are great. A PSA produced by the Department of Justice may help in this effort, but other PSAs by the President and/or other senior White House figures would be invaluable.

3. Training and Technical Assistance

Training and technical assistance seems somewhat coordinated at an interagency level. As previously noted, Congress funded NIDRR to create a network of technical assistance centers, materials development projects, national training projects, and even a NIDRR ADA Technical Assistance Coordinator. Other voices on training and technical assistance emanate from DOJ and EEOC which provide their own technical assistance and training materials and guides. In addition, a robust, if uneven private sector response spews out a constant array of publications, handbooks, conferences, and consulting services. The result is that good, bad, and mediocre information vies with each other, and the free government-supplied material is often superior to exorbitantly priced, "knock-offs" put out by the unscrupulous. As a result the business and disability communities is understandably confused as to where to turn for the "gold-standard" in reliable information and training.

4. Federal Government as model employer and model of public accommodation

Unless the Federal Government raises its sights and performance as a workplace for persons with disabilities, as a source of accessible recreation, information and other public accommodations, we will be prone to charges of a double standard from the private sector. This may require executive orders and other leadership from senior White House officials.

4. Enforcement

Based on a review of 151 federal cases that make some reference to the ADA, it appears that judicial enforcement of the act is, to date, limited, random, and even a bit haphazard. Many of those cases contain only passing references to the Act, or dismissals

based on the ADA's absence of retrospective application. In short, for all the publicity about it, there is no great wave of cases. Some type of summit meeting between federal law enforcement officials, public interest law firms, and major disability organizations could assist in the development of more strategic approaches to case selection and case sequencing. Whether such meetings are ongoing or one-time, high-profile or low, the point is that scarce enforcement resources need to be pooled, coordinated, and animated by some broader vision than a case-by-case approach based on who is the first or loudest to clamor for attention.

5. Alternative Dispute Resolution (ADR)

While the ADA encourages and everyone agrees that alternative means of dispute resolution are desirable (such as negotiations, factfinding, facilitation, conciliation, mediation and other ADR modes), systematic mapping and reporting on the use of ADR could increase their use in this field.³⁴ At present there seems to be some uncertainty as to the utility of ADR techniques in this field.³⁵

6. White House Event

On July 27th, the planned White House event offers the President the chance to put a Democratic face on the ADA and to energize the entire Federal Government and the disability rights movement to implement it. It will also offer us a good mailing list for publications and follow-up activities at the state and regional level.

7. ADA-Section 501 person in the White House

A GSA audit due to reach us on July 21, 1994 will reveal the extent to the White House Complex needs changes to meet appropriate accessibility standards. Not only is someone or some group needed to oversee timely corrections, but some individual is needed with some permanent status here who can serve as a point of contact with the disability community on their manifold political, public liaison, policy, ADA-Rehabilitation Act enforcement, and communications concerns.

8. Communications about the ADA

ADA should be a short-hand for not only the Act's implementation, but the linked concerns with the Rehabilitation Act's antidiscrimination provisions that cover the federal government, federal contractors, and federally assisted entities. Seen in this wider context, the President, Vice-President, the First Lady, and Ms. Gore can find many opportunities to call for across the board advances in nondiscrimination and a fair playing field for persons with disabilities and their families.

9. Complaint handling

Anecdotal information suggests that the Administration has a long distance to go in improving the ways we handle disability complaints received at EEOC and DOJ. Complainants at EEOC report lack of interest, and lack of responsiveness on the part of investigators. A high proportion of Title III complaints at DOJ receive a form letter that due to the high volume of cases and not the merits of the particular claim, DOJ cannot assist. In the Justice Department's Title II work -- where there is not the same discretion to turn aside complaints without investigation -- it is said that there is a six-year backlog of cases and the Act has only been in force for two years! These problems will only grow more acute as a) the ADA reaches smaller businesses (15-24 employees in size) as of July 26th; b) more and more members of the disability community learn of their ADA rights and become disenchanted with recalcitrant responses to them; and c) a generation of more assertive and self-confident graduates of IDEA rights-based special education problems confront barriers and discrimination. This is a recipe for political fallout. The solutions to avert that include not only more ADR staff, investigators, and advocates, but better engineered and customer-friendly complaint handling processes.

10. International activities

The United States has a marvelous chance to be the world-leader in achieving rights and dignity for its citizens with disabilities. When visitors come to this country, they can also take back the message that here the ADA and other disability rights are taken seriously and deep changes are on the way. What I wrote a year ago remains equally apt in this context:

The outcome of [the struggle to implement the ADA fully] will be closely watched in countries with far fewer resources and less developed civil rights infrastructure than the United States. If the ADA succeeds, other countries may choose to reevaluate the adequacy of their own laws and nonlegal approaches to combatting discrimination. If the ADA falters, the lessons drawn from that experience also may have international reverberations. In the United States, the ADA can be a catalyst to actions at the state and local levels to enable persons with disabilities regardless of the nature and seriousness of those disabilities, to have the "right to enjoy a decent life, as normal as full as possible" (UN Declaration on the Rights of Disabled Persons, 1975). The ADA is a necessary but not sufficient step toward realizing those values and human rights.³⁶

VI. CONCLUDING OBSERVATIONS

Our celebration of the ADA reminds us that this landmark legislation does not constitute the whole of a disability policy we intend to craft. As we recall the 25th anniversary of the moon landing, there is something sobering about a Nation great enough to put a man on lunar ground but not yet able to help each child with a disability to get into a school, or transport such an adult by accessible means to an accessible workplace.

And despite passage of the ADA, jobless levels have not changed over the past eight years. Only 31% of Americans with disabilities aged 16 to 64 are working, though the overwhelming majority are eager to find work. The Harris poll released yesterday also shows that Americans with disabilities are more than twice as likely to have incomes below \$15,000 than other Americans (40% versus 18%) and to fail to graduate from high school (25% versus 12%). It is no wonder that only 35% of those surveyed are satisfied with their lives in general, and that only 47% believe that others treat them as equals rather than reacting to them with pity or embarrassment. The good news: compared to eight years ago more people with disabilities are graduating from high school and they are enjoying better access to restaurants, stores and other public places. But much remains to be done to eliminate discrimination and to advance this Administration's disability goals.³⁷

The ADA embodies the themes of greater independence, empowerment, and inclusion that we have articulated. A national disability policy would see that those themes are carried forward in Social Security Administration disability programs, vocational rehabilitation activities, and the various stages of education from pre-school to higher education and in school to work programs. In health care reform and welfare reform, we are on the right track in including people with disabilities in our reform initiatives. However as we press to make generic programs truly inclusive, ADA and the Rehabilitation Act's Section 504 issues will loom larger. And we will also have to take into account programs that cater to persons with severe disabilities, deaf persons or other groups that for one reason or another need, or prefer to have, their own distinctive programs. ADA as the product of a coalition of 133 national organizations offers a good place from which to extend that consensus to the next generation of service and accommodation issues. One of those issues, for instance, is how the National Information Infrastructure will help to ensure the full participation of Americans with disabilities in the commercial, cultural, and social life of the nation.

Compared to the hard work of its implementation, the ADA's enactment was the easy part. The Clinton Administration is now well-positioned to make that authentic implementation its own

shining accomplishment. I would be pleased to offer any further advice or elaboration on any of these points.

Endnotes

1. Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213.
2. John M McNeil, Americans with Disabilities: 1991-92 Data From the Survey of Income and Program Participation [Current Population Reports, Household Economic Studies P70-33, issued Dec. 1993](US Dept. of Commerce, Bureau of the Census, Economics and Statistics Administration).
3. Irving Zola, "The Sleeping Giant in our Midst: Redefining 'Persons with Disabilities'," in Implementing the Americans with Disabilities Act: Rights and Responsibilities of All Americans (Lawrence Gostin & Henry Beyer, eds., 1993) (hereinafter Implementing the ADA).
4. Governor Clinton & Senator Gore, Putting People First: How We Can All Change America 82 (1992).
5. Remarks at the Gallaudet University Commencement Ceremony, 30 Weekly Compilation of Presidential Documents 1061, 1063 (May 16, 1994).
6. National Council on Disability, ADA Watch -- Year One: A Report to the President and Congress on Progress in Implementing the Americans with Disabilities Act 1, 4 (April 5, 1993).

7. E.g., James Bovard, "Disabilities Law, Health Hazard: Regulatory Chokehold," Wall Street Journal, March 23, 1994, at A-14.

8. "Disabilities Dissenter Crushed," (editorial), Wall Street Journal, May 18, 1994, A-17.

9. Letter to the Editor, Deval Patrick, "In Aiding the Disabled, Our Policy is Clear," Wall Street Journal, May 23, 1994, A15. (editorial ignores "our extensive efforts to educate businesses about their obligations under the act in order to help them avoid costly litigation and settlement expenses.

.... I am proud of the work we are doing to aggressively seek full and equal access to our society for individuals with disabilities, and the division will continue its efforts.").

10. Joseph P. Shapiro, No Pity: People with Disabilities Forging a New Civil Rights Movement 332 (Times Books, Random House, 1993).

11. See National Council on Disability, Summary: ADA Watch Planning Meeting at 1 (Feb. 10, 1994, Dirksen Senate Office Building, Washington, DC).

12. Vice President Al Gore, From Red Tape to Results: Creating A Government that Works Better & Costs Less: Report of the National Performance Review 37-38 (Sept. 7, 1993):

"Action: The President should issue a directive limiting the use of unfunded mandates by the Administration.

As the federal deficit mounted in the 1980s, Congress found it more and more difficult to spend new money. Instead, it often turned to "unfunded mandates" -- passing laws for the states and localities to follow, but giving them little or no money to implement those policies. As of December 1992, there were at least 172 separate pieces of federal legislation in force that impose requirements on state and local governments. Many of these, such as clean water standards and increased public access for disabled citizens, are unquestionably noble goals." [emphasis added; the recommendation went on to question how local governments would manage to pay for such mandates].

13. Census Bureau 1993 Disabilities Study, supra note 2, at 11-13.

14. 30 Weekly Compilation of Presidential Documents 1061, 1062 (quoting President I. King Jordan).

15. 42 U.S.C. § 12134(a)-(b) (cross-referencing 29 U.S.C. § 794).

16. U.S. v. Becker C.P.A. Review, 1993 WL 632257 (D.D.C. Dec. 22, 1993) (cross motions for summary judgment denied), CA No. 92-2879 settlement decree (May 13, 1994).

17. Formal settlement with Philadelphia, Pennsylvania, in US Department of Justice, Enforcing the ADA: A Status Report from the Department of Justice 5 (April 4, 1994).

18. Empire State Building, New York City. Id. at 7.

19. Washington Post, Feb. 2, 1994, at 1. (emphasis added).

20. See Shapiro, supra note _____, at 324-28.

21. Milt Freudenheim, "In Minnesota, Settlement is First for AIDS Bias by Health Insurer," N.Y. Times, Dec. 22, 1993, A19. (noting settlement with damages awarded where employer reduced AIDS health insurance coverage from \$300,000 to \$5,000).

22. There are many potential reasons for a reticence to prosecute. EEOC has many competing claims on its prosecution resources and may be waiting to see how committed to the ADA is its incoming leadership. It may wish to keep out of court because of the backlog of complaints it faces and the need to demonstrate ADR restraint and flexibility. A third possibility is that, while eager to prosecute, the EEOC strategically believes it must wait for clear "winners" so as to appear the effective enforcer and deter others into compliance.

23. U.S. Equal Employment Opportunity Commission v. AIC Security Investigations, 820 F. Supp. 1060 (N.D. Ill. 1993) (summary judgment for plaintiff denied), 823 F. Supp. 571 (N.D. Ill. 1993) (jury award of \$500,000 reduced to \$150,000; \$50,000 in compensatory damages and \$22,000 in back pay also awarded).

24. Id. 823 F. Supp. at 581.

25. US EEOC, News Release, "EEOC Files Disability Lawsuit Against H. Hirschfield Sons Co.," Sept. 3, 1993.

26. NIDRR's Americans with Disabilities Act (ADA) Technical Assistance Initiative (briefing paper distributed on July 19, 1994, and attached as Appendix C).

27. E.g., Don Fersh and Peter W. Thomas, Complying with the Americans with Disabilities Act: A Guidebook for Management and People with disabilities (Quorum Books, 1993); Implementing the ADA, supra note 3; ABA Mental disabilities and the Americans with Disabilities Act: A Practitioner's Guide to Employment, Insurance, Treatment, Public Access, and housing (Commission on Mental and Physical disability Law, J. Parry, ed., 1994).

28. Anderson v. Little League Baseball, Inc, 794 F. Supp. 342, 345 (D. Arz. 1992).
29. Galloway v. The Superior Court of the District of Columbia, 816 F. Supp. 12, 17 (D.D.C. 1993).
30. D'Amico v. N. Y. State Board of Law Examiners, 813 F. Supp. 217 (W.D.N.Y. 1993).
31. Rosenthal v. N.Y. State Board of Law Examiners, No. 92-CIV-1100 (S.D.N.Y. 199).
32. Kinney v. Yerusalem, 812 F. Supp. 547 (E.D. Pa. 1993), aff'd. 9 F.3d 1067 (3rd Cir. 1993).
33. "Bar examiners respond to the ADA: Spurred by suits or the law, officials grant more test time to disabled applicants," ABAJ 20 (Nov. 1992).
34. 42 U.S.C. § 12212 states: "Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes under this Act."
35. See Loren Allison & Eric Stahlhut, "Arbitration and the ADA: Do the Two Make Strange Bedfellows?," 37 Res Gestae 168 (Oct. 1993).
36. Herr, "The ADA in International and Developmental Disabilities Perspectives," Implementing the Americans with Disabilities Act: Rights and Responsibilities of All Americans 229, 247 (L. Gostin & H. Beyer, eds., 1993).
37. The 1994 Louis Harris & Associates Survey of People with Disabilities, summarized in Spayd, "Poll Finds Harsh Life for Disabled: Employment, Income Well Below Average," Washington Post, July 22, 1994, A21.

U.S. Department of Justice
Civil Rights Division
Public Access Section



April 4, 1994

Enforcing the ADA

A Status Report from the Department of Justice

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

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

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

Title III: Public accommodations and commercial facilities

I. Enforcement

Through lawsuits and both formal and informal settlement agreements, the Department has achieved greater access for individuals with disabilities in over 200 cases. Under general rules governing lawsuits brought by the Federal Government, the Department of Justice may not file a lawsuit unless it has first unsuccessfully attempted to settle the dispute through negotiations. As a result, most complaints filed with the Department will be resolved before a lawsuit becomes necessary. Many cases are settled after an on-site investigation.

A. Litigation

The Department may file lawsuits in Federal courts to enforce the ADA and may obtain court orders including compensatory damages to remedy discrimination. Under title III the Department may also obtain civil penalties of up to \$50,000 for the first violation and \$100,000 for any subsequent violation.

1. Ongoing lawsuits

The Department has initiated, or intervened in, the following pending lawsuits.

Title I

U.S. v. State of Illinois -- The Department sued the State of Illinois, the City of Aurora, and its police and fire pension funds for excluding police officers and firefighters from its pension funds on the basis of disability. Under the challenged system, police officers and firefighters are required to undergo separate physical examinations, after they are hired, to determine eligibility for retirement and disability benefits. The Department's investigation resulted from the complaint of an Aurora police officer who was ruled ineligible for pension benefits because he has diabetes.

Title III

U.S. v. Morvant, Louisiana and *U.S. v. Castle Dental Center, Texas* -- The Department filed lawsuits against a dentist in New Orleans and a dental center in Houston alleging that they had violated title III of the ADA by refusing to provide dental treatment to individuals who had tested positive for HIV. The Department asserts that there is no scientific or medical justification for excluding persons with HIV or AIDS from dental or orthodontic treatment solely on the basis of their HIV+ status. Both cases are in the early stages of litigation.

In *Morvant* the court denied the defendant's motion to dismiss. The court ruled that compensatory damages may be awarded on behalf of a deceased individual who suffered discrimination because of his positive HIV status. The court also held that the defendant dentist may be sued in his individual, as well as his corporate, capacity.

U.S. v. Becker CPA Review, Inc., District of Columbia -- The Department sued Becker CPA Review for failing to take appropriate steps to communicate effectively with students who have hearing impairments. Becker, the nation's largest CPA review course, prepares over 10,000 students a year to take the national certified public accountant exam. The

*Ongoing
Lawsuits*

Department is seeking (1) a permanent change in Becker's policy so that sign language interpreters and other auxiliary aids are provided to those who need them; (2) civil penalties; and (3) damages for the original complainant, several other people with hearing impairments who have reported that they were not accommodated, and any others who may have had similar experiences. Trial is scheduled for July 5, 1994.

Pinnock v. International House of Pancakes (IHOP), California -- Upon notice by the Federal district court that the constitutionality of a Federal law was being challenged, the Department intervened in this case to defend the constitutionality of title III of the ADA. The suit had been filed by a private individual asserting that the California pancake restaurant had failed to undertake readily achievable barrier removal and to provide auxiliary aids and services. The court adopted the Department's views and upheld title III's constitutionality. The defendant has appealed the court's ruling.

Posner v. Central Synagogue, New York -- In a private lawsuit involving alleged discrimination by a nursery school, the Department intervened, upon notice by the Federal district court, to defend the constitutionality of the exemption for religious organizations under title III of the ADA. The court has not yet issued a ruling.

2. Consent decrees

Some litigation is resolved at the time that the suit is filed or afterwards by means of a negotiated consent decree. Consent decrees are monitored and enforced by the Federal court in which they are entered.

Title III

U.S. v. Allright Colorado, Inc., Colorado -- The Department entered into a consent decree resolving its lawsuit against Allright Colorado, a company that owns or operates over 100 parking lot facilities in Denver. Under the agreement, Allright will add well over 400 accessible parking spaces to its facilities and will instruct parking attendants to monitor the slots and ticket cars that are improperly parked in accessible spaces. Allright paid a \$20,000 civil penalty to the United States because of the alleged delay in moving toward compliance.

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

3. Amicus briefs

The Department files briefs in selected ADA cases in which it is not a party in order to guide courts in interpreting the ADA properly.

Title II

Kinney v. Yerusalim, Pennsylvania -- In agreement with an amicus brief filed by the Department of Justice, the U.S. Court of Appeals for the Third Circuit ruled that the ADA requires cities to install curb ramps when they resurface streets. This title II lawsuit was brought against the city of Philadelphia by a group of people with mobility impairments.

Lakes Region Consumer Advisory Board v. City of Laconia, New Hampshire -- The City of Laconia denied the Lakes Region Consumer Advisory Board's application for a permit to operate a facility providing services to persons with mental illness. The Advisory Board sued, alleging that the denial violated title II of the ADA and section 504 of the Rehabilitation Act. The Department filed an amicus brief supporting the Advisory Board's position that zoning decisions are subject to review under title II of the ADA and section 504 of the Rehabilitation Act. No ruling has yet been issued.

Medical Society of New Jersey v. New Jersey State Board of Medical Examiners, New Jersey -- The Medical Society of New Jersey filed suit challenging certain questions on the State medical board's application for renewal of medical licenses. The Department filed an amicus brief arguing that broad questions pertaining to a history of psychiatric illness or a history of drug or alcohol abuse, not drawn to focus on current impairments of a physician's fitness to practice medicine, are discriminatory under title II of the ADA. In a procedural ruling, the Federal district

court agreed that a licensing process that places greater burdens on individuals because of positive responses to the challenged questions would likely violate title II.

Galloway v. Superior Court of the District of Columbia, District of Columbia -- A blind individual filed a lawsuit in Federal district court charging that the District of Columbia Superior Court's policy of categorically excluding blind persons from jury service violates title II of the ADA and section 504 of the Rehabilitation Act of 1973. The Federal district court judge agreed, and awarded the plaintiff \$30,000 in damages. The Department of Justice argued in support of the plaintiff's view that compensatory damages are available remedies under both the ADA and section 504.

Livingston v. Guice, North Carolina -- A person who uses a wheelchair filed a lawsuit in Federal district court against the State of North Carolina and a State court judge charging that they had violated title II of the ADA by preventing her from entering a courtroom through the only accessible entrance known to her. The Department argued in an amicus brief that States may be sued for damages under title II. The court has not yet issued a ruling.

Rosenthal v. State Board of Law Examiners, New York -- A law school graduate with learning disabilities filed a lawsuit charging that the New York State Board of Law Examiners had refused to make reasonable adjustments in its procedures to give her an equal opportunity to pass the State bar exam. In settling the case the State Board agreed to let her take the exam in a separate room, take twice the usual amount of time, and have the assistance of a person to transcribe her answers onto the multiple choice answer sheet. During the litigation the Department of Justice filed an amicus brief arguing that both title II and

Amicus Briefs

title III of the ADA require reasonable modifications in policies, practices, and procedures when necessary to avoid discrimination in testing.

Title III

Cohen v. Boston University, Massachusetts -- A person who has Tourette Syndrome filed a lawsuit against Boston University charging that it violated title III of the ADA by refusing to readmit her to its graduate school of social work because of her disability. The Department filed a brief in support of the plaintiff arguing that the court should not grant summary judgment for the University, because facts concerning the University's actions remain in dispute. The court has not yet issued a decision.

B. Formal settlement agreements

The Department has resolved a number of cases without filing a lawsuit by means of formal written settlement agreements.

Title II

Philadelphia, Pennsylvania -- The City of Philadelphia entered an agreement resolving a complaint alleging that emergency medical technicians (EMT's) of the Philadelphia Fire Department had refused to assist an individual when they learned that he had HIV. The City agreed to conduct mandatory training of the Department's 2,300 EMT's and firefighters regarding universal precautions to prevent the transmission of HIV/AIDS, as well as to provide HIV/AIDS sensitivity training. The City will also develop and publicize a written policy stating that individuals with disabilities shall be given the opportunity to benefit fully from its emergency medical services. The policy will include disciplinary measures for any individual

who fails to follow the City's guidelines. In addition, the City will provide \$10,000 in compensatory damages and a written apology to the individual denied services.

Hickman County, Kentucky -- Hickman County agreed to develop a compliance plan to provide access to the services, programs, and activities conducted in its courthouse, thus resolving a complaint alleging that a man using a wheelchair was unable to enter the circuit clerk's office to renew his driver's license because the doors were too narrow.

Van Buren County, Arkansas -- Van Buren County agreed to relocate County court activities to an accessible site upon request; develop a self-evaluation and a transition plan; adopt a grievance procedure; and place public notices of its nondiscrimination policy and responsibilities under the ADA on County bulletin boards and in local newspapers.

Harris County (Houston), Texas -- Harris County agreed to make all of the programs offered in each of its 106 courtrooms and jury assembly rooms accessible, to furnish the auxiliary aids necessary to achieve effective communication in all of the county's programs, and to provide staff training.

Scott County, Arkansas -- Scott County agreed to renovate the county courthouse in order to make it readily accessible to individuals with disabilities. Specifically, the county agreed to renovate the courthouse's entrances, restrooms, door hardware, and drinking fountains.

City of Fargo, North Dakota -- The City of Fargo agreed to resolve complaints against its sports stadium and general entertainment facility, the Fargodome. The City will adopt a formal policy

*Formal
Settlement
Agreements*

that provides for ticket prices for individuals with disabilities who need special seating to attend events in the Fargodome that are equivalent to ticket prices charged to others. The City also agreed to publicize its new policy, appoint an ADA coordinator for the Fargodome, develop an ADA grievance procedure, and conduct an evaluation of its policies and practices as required by title II.

Norwood, Ohio -- The City of Norwood agreed to develop a written plan and timetable for making the services, programs, and activities offered at the Norwood City Hall accessible for persons with mobility impairments; submit architectural plans to the Department for review if the City determines that structural changes are needed; and make the agreement available to the public.

Madison County, Florida -- The Board of Commissioners of Madison County agreed to install an elevator, widen doors, renovate toilet facilities and water fountains, and install appropriate signage to make its programs at the Madison County Courthouse accessible for persons with mobility impairments. The County also will submit an interim plan for making its programs accessible until the renovations are completed.

Pinellas County, Florida -- The Sixth Judicial District of Florida entered into an agreement requiring the courts in that district to establish a written policy on providing qualified interpreters for participants, including parties, witnesses, jurors, and spectators, who are deaf or hard of hearing; secure the services of a qualified interpreter when necessary to ensure effective communication; notify the public about the policy; and inform and instruct all appropriate district court officials to comply with the policy.

Salt Lake City, Utah -- The complaint alleged that a State district court in Salt Lake City disqualified or otherwise excluded from jury service individuals who are deaf unless they bring their own interpreters. The agreement with the Utah State Administrative Office of the Courts committed the courts in Utah to provide appropriate auxiliary aids and services, including qualified interpreters, when necessary to provide an individual with a disability an opportunity to serve as a juror. The agency will establish a written policy on jury duty and the provision of interpreting services; notify the public about the new policy; inform and instruct all appropriate district court officials to adhere to the policy; and conduct at least four regional training seminars.

Clearwater, Florida -- The complaint alleged that the police department had failed to provide an interpreter in the arrest of an individual who is deaf. The Clearwater police department agreed to establish and publicize a written policy for providing interpreters whenever necessary for effective communication.

Paulding County, Ohio -- In response to a complaint that the county courtroom was inaccessible to individuals with mobility impairments, the County board of commissioners agreed to relocate court activities to an accessible site upon request, if the request is made in a reasonable period of time before the scheduled court date. The County board also agreed to publicize its new policy.

*Formal
Settlement
Agreements*

Title III

Educational Testing Service, New York, New York -- The Educational Testing Service (ETS) and the College Entrance Examination Board agreed to provide additional opportunities for students with disabilities to take the new version of the Scholastic Assessment Text (SAT-I) in the spring of 1994. Students had complained that the testing schedule set up by ETS and the College Board prevented students with disabilities from taking the SAT-I in May or June 1994 even though virtually all other students were given those opportunities. Approximately 2,600 students with disabilities took an old version of the SAT in March 1994. Under the agreement, ETS will notify them of the opportunity to cancel those scores and take the new SAT-I in June 1994.

Motorcycle Mechanics Institute, Phoenix, Arizona -- A Phoenix trade school agreed to pay \$16,000 to an individual with a vision impairment who had been denied admission to the program. The school also agreed to change its policy of requiring persons with disabilities to submit additional documentation regarding their career goals and proof of employability.

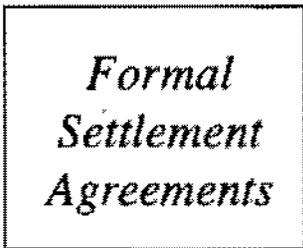
Omaha Zoological Society, Omaha, Nebraska -- The Omaha Zoological Society, a nonprofit corporation that operates and manages the Henry Doorly Zoo, Lied Jungle indoor rainforest, and its Treetops Restaurant, agreed to remove architectural barriers and to provide auxiliary aids and services. Under the agreement the Society will install a wheelchair lift in the Treetops Restaurant; continue to make electric scooters available to persons with mobility impairments to provide access to the Jungle floor path; remove barriers on the Jungle's path; and make modifications to restrooms. In addition, the society will provide a

variety of auxiliary aids and services, including audiotape recordings of the Lied Jungle Trail Guide and information about the rainforest contained on signs located throughout the jungle. Staff will be available to serve as guides to visitors with visual impairments upon request.

Empire State Building, New York, New York -- The owners and operators of the Empire State Building agreed to take wide-ranging measures to ensure access to public areas of the building. The agreement mandates changes to the lobby, entrance, observation decks, restrooms and telephones, but does not cover any privately leased office space in the building. The complaint alleged that the Empire State Building was operating in violation of the ADA because its owners and operators failed to remove architectural barriers where such removal was readily achievable.

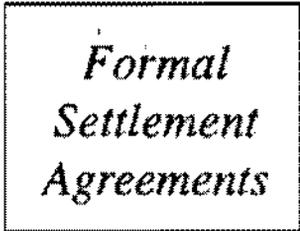
Emerald Lanes, Greenwood, South Carolina -- The owners of Emerald Lanes, a bowling center, agreed to construct a ramp and a new door at the front entrance; build a new, accessible unisex restroom and vestibule leading to it; and add accessible parking. The agreement resolved a complaint from an individual who uses a wheelchair for mobility who could not watch his children participate in a bowling league and banquet because the facility was inaccessible.

Marquee Video, Lacey, Washington -- Marquee Video of Lacey, Washington, agreed to modify its policy of permitting only customers with drivers' licenses to rent videotapes and videotape players. It will now permit people who do not drive because of a disability to rent videotapes and tape players if they have a non-driver State ID card.



Sardi's Restaurant, New York, New York --
Sardi's Restaurant in New York City agreed to resolve a complaint that the restaurant's restrooms were inaccessible for persons who use wheelchairs or other mobility devices. Sardi's will install an accessible unisex restroom and signage indicating the location of the restroom.

Quality Hotel Downtown, Washington, D.C. --
Staff of the Quality Hotel Downtown in Washington, D.C., had not permitted a guest to use a motorized scooter as a mobility device to get to his room. The hotel agreed to pay the complainant \$10,000 in damages and to train all employees on the requirements of the ADA.



Inter-Continental Hotel, New York, New York --
The Department entered a wide-ranging formal settlement agreement with the Inter-Continental Hotel in midtown New York, a member of a chain of prestigious hotels in major cities. The hotel will make numerous changes to its 691-room facility and procedures over the next five years, including removing physical barriers in public areas such as the front entrance, lobby, and ballroom, as well as in 21 guest rooms; providing television decoders, telephone handset amplifiers, visual smoke alarms, and visual door knock and telephone indicators in 35 guest rooms; making elevator modifications to provide access for persons with vision impairments; and modifying reservation and room assignment policies to ensure that accessible rooms are made available to those who request them.

Municipal Credit Union, New York, New York --
A branch office of the Municipal Credit Union in New York City was inaccessible to people with mobility impairments. The Credit Union agreed

to install a ramp at the entrance, to notify its customers of the ramp, to post appropriate signs, and to instruct the staff to provide assistance when requested by an individual with a disability.

C. Other settlements

The Department resolves numerous cases without litigation or a formal settlement agreement. In some instances, the public accommodation or commercial facility promptly agrees to take the necessary actions to achieve compliance. In others, extensive negotiations are required. Following are some examples of what has been accomplished through informal settlements.

Title II

Access to facilities

- A Missouri county agreed to install an elevator and make other structural modifications to make its courthouse accessible. In the interim, it will provide alternative means for providing services to individuals with disabilities.
- A Tennessee city agreed to move all city meetings from the inaccessible second floor of the town hall to the city's accessible library. It also built ramps at two entrances to the town hall and remodeled restrooms in the town hall and library.
- Various cities and towns in the East and Midwest agreed to install elevators in their city halls/courthouses and to undertake other structural actions, such as adding ramps and remodeling restrooms and entrances, or to make these buildings accessible by moving their programs (e.g., town meetings and services) to alternative accessible locations.

- A Washington county installed an intercom on the first floor of its courthouse annex so that persons can contact offices located on the second floor when they need to have the services provided on the first floor.
- A New England town agreed to build a roof over the ramp leading to its 150-year-old town hall to ensure that the ramp does not become blocked by snow.
- A small town in Oklahoma agreed to formulate and enforce a written policy prohibiting the misuse of accessible parking spaces at its town hall by nondisabled town officials.
- In Iowa, a board of elections agreed to move a polling place to an accessible location.

*Other
Settlements*

Policies and procedures

- A Texas police department agreed to change its policies and procedures on public contact after an individual with severe physical disabilities was treated in a demeaning manner at the scene of an automobile accident. The police officer involved received a reprimand and was required to attend sensitivity training.
- A State board of law examiners agreed to allow an individual extra time (time and one-half over two days) to take the State bar examination as an accommodation for his learning disability.
- A west coast State board of behavioral science examiners agreed to provide extra time (time and one-half) for an individual with a learning disability taking the oral examination for licensed clinical social worker.
- An Arizona police department agreed to allow an individual with a mobility impairment to use his motorscooter on roads and sidewalks within city limits anywhere that conventional wheelchairs are allowed.
- A State department of corrections agreed to relocate an inmate with a disability to a facility 400 miles closer to his mother's home so that his mother could visit him and monitor his medical condition.
- Two midwest State prisons agreed to modify security and visitation procedures to allow wives with disabilities to visit their inmate husbands.
- A county in Washington State agreed to include individuals with disabilities in developing its self-evaluation and transition plans.

Effective communication

- A western State department of corrections agreed to provide a sign language interpreter for a deaf inmate's parole hearing.
- A Michigan State district court agreed to provide an assistive listening device for an upcoming court date for an individual who is hard of hearing.
- A city in Texas agreed to provide additional microphones during city council meetings to ensure more effective communication with persons who have hearing impairments.
- A committee of bar examiners of a west coast State agreed to allow a severely visually impaired individual to use a personal computer with a high resolution monitor to take the bar exam.

- A Pennsylvania county court agreed to provide accommodations for an individual with a learning disability, including daily transcripts and extra time to ask questions, during court proceedings.

Employment

- A Tennessee county agreed to separate its medical and personnel records, as required by the ADA.
- A city in Illinois agreed to reinstate an individual with epilepsy to his position as custodian.

Title III

Other Settlements

Access to facilities

- A Louisiana fast food restaurant, a Texas grocery store, a health care facility, a shopping mall, an Oregon shopping center, and a retirement community have all agreed to provide accessible parking in their parking lots. The grocery store and shopping center also agreed to install the curb ramps that a person who uses a wheelchair needs to get from the parking lot to the front door.
- Two other fast food restaurants agreed to relocate their accessible parking spaces to make them closer to the front door.
- A California convenience store of a well-known franchise agreed to make three of its checkout aisles, including one express lane, accessible for people who use mobility devices.
- A Utah bank, an Illinois bowling center, an office building, and a Maryland cable television company have all agreed to install ramps to make their entrances accessible for people who use mobility devices. The bowling center, office building, and cable TV company also agreed to provide accessible parking in their parking lots.
- A credit union agreed to lower an ATM machine to make it accessible for persons who use wheelchairs.
- An Illinois bank agreed to install automatic doors at its front entrance to make it easier for people with visual, manual, and mobility impairments to gain access.
- A health club agreed to install a lift to enable a wheelchair user to participate in an arthritis rehabilitation program in the club's swimming pool.
- A national retail chain agreed to provide accessible parking at its stores nationwide, and a major rental car company agreed to provide accessible parking at a major metropolitan airport and to institute valet parking service when needed by customers with disabilities.
- A 12-theater complex in Colorado agreed to provide additional seating throughout its theaters for people who use wheelchairs.
- A California department store agreed to make its restrooms and fitting rooms accessible for people with manual or mobility impairments, to lower the height of its public telephones and drinking fountains to make them accessible for people who use wheelchairs, and to upgrade its elevators and install signage to make the store accessible for people who have vision impairments.

- A motel in Louisiana agreed to provide accessible parking, to make its front desk and lobby restrooms accessible, and to make six guest rooms accessible for guests with mobility impairments, including converting to roll-in showers in two of the rooms.
- A Louisiana steamboat company agreed to improve accessibility for passengers with mobility impairments on two of its boats. It eliminated access barriers in its dining and entertainment areas and made its restrooms accessible.
- Organizers of the Mississippi Delta Blues Festival, which draws some 10,000 to 20,000 spectators each year, took a number of steps to make its parking, seating, restrooms, and festival grounds accessible for people with disabilities when the 1993 festival was held in Greenville, Mississippi.
- A baseball stadium agreed to make its ticket counters, seating, restrooms, and concessions accessible for people who have mobility impairments.

*Other
Settlements*

- A hospital agreed to change its policy of providing sign language interpreters only for patients and not for family members. It provided an interpreter for a man who is deaf so that he could attend his wife's Lamaze classes and serve as her coach during the birth of their child.
- Several movie theaters in Florida have agreed to provide assistive listening devices for patrons who have hearing impairments.
- A famous entertainer, who was performing in New York, allowed a man with a hearing impairment to move closer to the stage so that he could read the entertainer's lips during the concert and provided him with printed lyrics for all of the songs to be performed.
- An Arizona hotel agreed to purchase additional TDD's and closed-captioning decoders and to implement a better system for responding to guests with hearing impairments who request the use of this equipment during their stay in the hotel.

Effective communication

- A variety of public accommodations, including a practicing attorney in California, a midwife service, a psychiatric hospital in New York, a famous entertainer, an alcohol and drug counseling program in Washington, D.C., and a program to reduce domestic violence in Colorado, have agreed to provide sign language interpreters to communicate effectively with clients who are deaf or hard of hearing.

Policies and procedures

- A North Carolina mortgage company agreed to pay damages to a complainant who alleged that the company rejected his application for refinancing his mortgage loan because of his disability. The mortgage company paid to the complainant direct expenses that were sustained as a result of refinancing his mortgage elsewhere, and other damages, with a total payment of \$6,000.
- A national rental car company revised its policy relating to cash qualifications for rental car customers. Previously, customers who did not have credit cards could only rent a car with cash if they had a verifiable em-

ployment history. A person with a disability who was unemployed due to the disability, and who did not have a credit card, was denied service altogether. Now customers may complete a written application that includes disability-related income as an alternative to employment information.

- A Texas movie theater that had prevented a woman from bringing a box of cookies into the theater for her diabetic child agreed to modify its policy against outside food and beverages by making an exception in the case of medical necessity.
- A bar in Illinois agreed to modify its policy of refusing to serve alcohol to customers who appear to be drunk based on the way they walk. A customer who has Parkinson's disease had been refused service because staff assumed he was drunk due to his unsteady gait associated with his disability.
- A drugstore chain agreed to modify its policy against permitting animals in its stores by making an exception in the case of service animals such as guide dogs.
- A famous restaurant in New York City that had turned away a customer who was wearing sneakers due to a mobility impairment agreed to modify its dress code by making an exception when necessary to provide service to a person with a disability.
- A Nevada hotel agreed to offer its barrier-free rooms at the same rate as its other rooms, including at those times when promotional or special rates are offered.

*Other
Settlements*

D. Investigations

The Department is currently investigating over 900 complaints against public accommodations and commercial facilities under title III.

In addition, the Department is currently investigating nearly 800 complaints against units of State and local government under title II. Seven other Federal agencies are also investigating title II complaints and may refer cases to the Department of Justice for litigation.

The Department also has a number of investigations underway under title I against public employers. (Enforcement of title I against private employers is handled by the EEOC.)

II. Certification of State and Local Building Codes

The ADA authorizes the Department to certify State or local laws or building codes that meet or exceed the ADA's accessibility requirements. This is a voluntary program in which States and localities can choose to participate. In a jurisdiction whose law or code has been certified, when a new public accommodation or other commercial facility is built, or an existing facility is altered or expanded, compliance with the local regulations will give the building owner and other responsible parties rebuttable evidence of compliance with the ADA if the building's accessibility is later challenged under the ADA.

On May 20, 1993, the Department of Justice issued its first response to a request for certification of a state accessibility code. The letter to the State of Washington provided a side-by-side analysis of the State's standards and the ADA standards as a means of providing technical

assistance to the State in identifying minor areas of discrepancy. It was not a formal preliminary determination of equivalency or nonequivalency with the Federal accessibility standards.

Other requests for certification have been received from the City of New York, the State of New Mexico, the State of Utah, and the State of Florida.

The Department has also responded to a request for technical assistance from the State of New Hampshire and is reviewing requests for technical assistance from the Council of American Building Officials (CABO) on behalf of the American National Standards Institute (ANSI) A117.1 committee, the Building Officials and Code Administrators International (BOCA), and the National Parking Association.

III. Technical Assistance

The ADA requires the Department of Justice to provide technical assistance to entities and individuals with rights and responsibilities under the ADA. The Department encourages voluntary compliance by providing education and technical assistance to business, industry, government, and members of the general public through a variety of means.

ADA telephone information line

The Department of Justice now provides toll-free "800" service for both voice and TDD callers who have questions about title II and title III of the ADA, including the Standards for Accessible Design. Under its expanded hours of operations, operators may be reached from 11:00

a.m. to 5:00 p.m. (EDT), Monday through Friday (except Thursdays, 1:00 p.m. to 5:00 p.m.). The system has been upgraded to accommodate a larger number of callers simultaneously and to provide Spanish language service. Callers may hear recorded information and order materials at any time, day or night. The information line numbers are:

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

Washington, D.C., area
202-514-0301 (voice)
202-514-0383 (TDD)

Grants

ADA technical assistance grants are awarded primarily to target specialized information to specific audiences. To date, \$6.5 million in grant funds have been awarded for ADA technical assistance projects to 30 organizations.

Publications

Copies of the Department of Justice's regulations for titles II and III of the ADA, the ADA Questions and Answers booklet, the ADA Handbook (limited quantities available), and information about the Department's technical assistance grant program can be obtained by calling the telephone number listed above or writing to the address listed below. These materials are available in standard print, large print, Braille, audio-tape, and computer disk.

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

These materials are also available through the Department of Justice's ADA electronic bulletin board at 202-514-6193.

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

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

Freedom of Information/Privacy Act
Branch
Room 7337
Civil Rights Division
U.S. Department of Justice
Washington, D.C. 20530

IV. Other Sources of ADA Information

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

For ordering documents
1-800-669-3362 (voice)
1-800-800-3302 (TDD)

For questions
1-800-669-4000 (voice)
TDD: use relay service

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

ADA documents and general questions
202-366-1656 (voice)
202-366-2979 (TDD)

ADA legal questions
202-366-9306 (voice)
202-755-7687 (TDD)

Nat'l Easter Seal Society
"Project Action" grant
202-347-3066 (voice)
202-347-7385 (TDD)

Air Carrier Act questions
202-376-6406 (voice)

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

ADA documents and general questions
202-632-7260 (voice)
TDD: use relay service

ADA legal questions
202-634-1808 (voice)
202-632-6999 (TDD)

Hearing Aid Compatibility
Act (HACA) questions
202-634-7150 (voice)
TDD: use relay service

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

ADA documents and questions
800-872-2253 (voice & TDD)
202-272-5434 (voice)
202-272-5449 (TDD)

The National Institute on Disability and Rehabilitation Research (NIDRR) of the U.S. Department of Education has funded Disability and Business Technical Assistance Centers (DBTAC's) in ten regions of the country to provide technical assistance to the public concerning title I, title II, and title III of the ADA.

ADA technical assistance
(800) 949-4232 (voice & TDD)

V. How to File Complaints

Title I

Complaints about violations of title I (employment) by units of State and local government or by private employers should be filed with --

Equal Employment Opportunity Commission
Program Development and Technical Assistance Division
Office of Program Operations
1801 "L" Street, N.W.
Washington, D.C. 20507

Title II

Complaints about violations of title II by units of State and local government should be filed with --

U.S. Department of Justice
Civil Rights Division
Coordination and Review Section
Post Office Box 66118
Washington, D.C. 20035-6118

Title III

Complaints about violations of title III by public accommodations and commercial facilities should be filed with --

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

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U.S. Department of
Transportation

Office of the Secretary
of Transportation

Memorandum

Subject: Department of Transportation
Activities in Improving Transportation
Accessibility (Update)

Date: JUN 3 1993

From: Joseph Canny *Joseph Canny*
Deputy Assistant Secretary for
Transportation Policy

Reply to
Airtel of

To: Stanley Herr
Domestic Policy Council

In response to your request to Deputy Secretary Mortimer Downey, enclosed is an updated version of the Department of Transportation's (DOT) memorandum to you of December 28, 1993, on what has been accomplished in removing barriers to persons with disabilities who wish to use the Nation's transportation system and the Department's future directions in this area. The new material added to the December 28 memo is highlighted by its placement under "Update" headings. Also enclosed is an addendum describing DOT's effort to inform and involve persons with disabilities and industry representatives about Departmental programs and requirements for improving transportation services for persons with disabilities. The addendum includes some discussion as well as problems encountered in complying with accessibility rules.

I trust you will find this information helpful.

Enclosures

Department of Transportation Activities
In Improving Transportation Accessibility (Update)

The following is an update of the Department of Transportation's (DOT) December 28, 1993, memorandum--together with an addendum--on what has been accomplished in removing barriers to persons with disabilities who wish to use the Nation's transportation system.

ACCESSIBILITY GOALS

The following goals are drawn from our governing statutes and implementing regulations:

- . to work towards a barrier-free environment for all who desire to travel, that will foster increased employment and educational and social opportunities for some 40 million Americans with disabilities;
- . to ensure that travelers with disabilities will be treated without discrimination;
- . to ensure or encourage the training of all transportation employees who have contact with the public so that they can provide needed services to passengers in an appropriate way;
- . to work with public and private providers of transportation services, professional organizations and consumers in improving accessibility to transportation for the disability community; and
- . to ensure that DOT enforces national transportation accessibility regulations and standards and makes its own facilities and services accessible.

INTRODUCTION

The Department's activities in this area are governed by the Americans With Disabilities Act (ADA) of 1990, the Air Carrier Access Act (ACAA) of 1986 and section 504 of the Rehabilitation Act of 1973 (section 504). These statutes also provide a basis for technical standards that define accessible facilities and vehicles.

The following provides a brief overview of what has been accomplished to date.

- . In aviation, disabled travelers can use the air transportation system with much less difficulty than was true 10 years ago. Airports are far more accessible and new aircraft must have features such as movable armrests on aisle seats, special wheelchairs to permit easy boarding and movement in the cabin, and, in some cases, accessible lavatories.

- . In mass transit, every Federally subsidized system provides some type of service usable by disabled and elderly passengers. Accessibility improvements are appearing rapidly, in the form of bus lifts, vehicle ramps, and door-to-door paratransit vans for persons unable to use fixed-route service. Rail transit systems are upgrading their key stations and buying railcars with accessible devices. The Federal Transit Act requires any fixed-route transit system receiving Federal operating assistance to charge elderly and disabled passengers one-half the standard fare in non-peak periods.
- . Intercity rail service is becoming generally accessible; one car per train must be accessible by 1995, and Amtrak's existing stations must be modified by 2010. Elderly and disabled passengers travel at a 25 percent discount, subject to certain restrictions.
- . For streets and highways, new Interstate and other rest areas funded with Federal aid must be accessible. Streets and highway pedestrian facilities being constructed, renovated and altered with Federal aid are being brought into conformance through installation of curb cuts that will accommodate wheelchairs.
- . Intercity buses currently have few accessibility features, and the Department is developing a proposed regulation to establish accessibility requirements for intercity, charter and other non-mass transportation bus services. The DOT rule will take effect by the ADA deadlines of 1996 and 1997.
- . In the maritime area, the Department is planning preparatory research, to gather data that will assist in the development of a rule establishing accessibility standards. The Department expects to begin rulemaking in 1995 that would implement ADA requirements for accessible marine vessels (ranging from ferry boats to cruise ships) and facilities.

The Department provides information and interpretation of DOT's accessibility regulations to travelers with disabilities and responds to complaints about non-compliance on a continuing basis. As a statutory member of the Architectural and Transportation Barriers Compliance Board (Access Board), the Department participates in formulating policy and standards for accessibility requirements. It also provides information and technical assistance on the special transportation needs of persons with disabilities to planners, architects, designers, and providers of transportation services.

Although much work has been accomplished, the task is far from complete.

AVIATION

Status - In the Nation's air transportation system, many barriers to persons with disabilities have now been eliminated:

- Airport Facilities - Federally assisted airports and all air carrier-operated terminal facilities being built or altered must be made accessible. Required accessibility features pertain to such items as accessible parking, baggage services, signage, water fountains, bathrooms, ticket counters, and information/telecommunications devices. There must be an accessible path from the front door of the terminal to each boarding gate, including loading ramps, boarding bridges, lifts or mobile lounges to all aircraft with 30 or more seats. All Federally assisted airports are generally in compliance with DOT's requirements. Places of public accommodation within the airports are covered under Department of Justice (DOJ) ADA Title III regulations.
- Aircraft - DOT's ACAA rule requires new aircraft delivered after April 5, 1992, to have the following accessibility features:
 - Movable aisle armrests: required on 50 percent of aisle seats in new and refurbished aircraft with 30 or more seats. We estimate that, by the end of 1993, 400 to 800 new and refurbished aircraft had roughly 6,500 to 13,000 such armrests installed, about 10 to 20 percent of the fleet. All such aircraft should be so equipped by the year 2000. Very few aircraft with less than 30 seats have armrests.
 - Aisle wheelchairs: required on aircraft with 60 or more seats and an accessible lavatory, or upon passenger request. Just about all such aircraft are now equipped with on-board wheelchairs.
 - Cabin stowage: space for at least one passenger's folding wheelchair required on all new aircraft with over 99 seats. We estimate about 200 such new aircraft have cabin stowage space large enough for one folding wheelchair. Many existing aircraft also have adequate space for a wheelchair in a coat closet or other areas.
 - Accessible lavatories: required on twin-aisle aircraft (typically 200+ seats). We estimate only a few new twin-aisle aircraft were delivered with fully accessible lavatories by the end of 1993. A DOT Federal Advisory Committee, which completed most of its work last year, has circulated for internal committee comment a draft report on the feasibility and costs (\$20,000 to \$150,000) of installing accessible lavatories on single-aisle aircraft with over 100 seats.

- **Passenger Services** - All carriers, upon request, must now provide disabled passengers with special assistance in boarding, deplaning, and connecting with flights (including hand-carrying onto aircraft larger than 30 seats, if no other means of boarding exists). In the cabin, passengers' wheelchairs and other assistive devices are given priority stowage over carry-on baggage. Passengers with battery-powered wheelchairs are routinely accommodated (with few exceptions due to baggage compartment limitations or safety), and spillable batteries are placed in hazardous materials packages at no charge. Carriers are required to designate Complaints Resolution Officials to resolve complaints and respond to inquiries by persons with disabilities. Some carriers, but not all, have chosen on a voluntary basis to provide requesting passengers with medical oxygen, stretchers, incubators, or respirators on their aircraft, at an additional charge in some cases.
- **Training** - DOT's ACAA rule requires all carriers operating aircraft with more than 19 seats to provide carrier and contract employees having contact with the public with sensitivity training, as well as education to proficiency about DOT's accessibility regulations and proper and safe operation of equipment for travelers with disabilities.
- **Consumer Guidance on ACAA Regulations** - Since January 1992, about 35,000 copies of a booklet, "New Horizons for the Air Traveler with a Disability," developed by DOT to help disabled travelers understand their rights to accessible air travel, have been mailed to advocacy groups, the air travel industry and the public. The Department also distributes a two-page fact sheet summarizing these regulations.

Update: Between January 1 and May 31, 1994, the Department has distributed an additional 2500 copies of New Horizons and 287 more copies of the fact sheet.

Compliance - The Department monitors air carrier compliance through complaints. (DOT staff takes complaints from the public on airline service issues and conducts follow-up investigations with carriers.) Between April 5, 1990 (the effective date of DOT's ACAA rule) and the end of August 1993, 678 complaints have been filed with DOT. These include such issues as improper handling or packaging of wheelchairs and their batteries, denial of boarding assistance, refusal of some airlines to provide oxygen aboard their planes (not required by our regulations), and carrier personnel who are not trained adequately to comply with the various provisions of the ACAA regulations.

Update: Between August 1993 and May 31, 1994, DOT has received an additional 233 complaints.

In each instance, DOT verifies that the carrier has responded and taken appropriate corrective action, where necessary. Such complaints are also routinely reviewed to determine the extent to which carriers are in compliance with the regulations. The Department also uses these complaints to track trends or spot areas of concern which may warrant further action with carriers in the future. Cases in which serious or recurrent violations of the regulations are found are referred to the Department's enforcement office. Since the enactment of the regulations, the Department has taken enforcement action against four major airlines for violations of the rules. DOT also receives about 10 complaints per year alleging that some part of an airport facility does not comply with accessibility regulations, and DOT conducts follow-up investigations with airports and carriers to resolve such complaints.

Coming Initiatives - When DOT issued its 1990 ACAA regulations, there was no safe, efficient way for wheelchair passengers to board and leave small commuter aircraft (primarily those with 19 to 30 seats). As a result, the ACAA regulation does not require boarding assistance for those aircraft, if hand-carrying is the only form of assistance available. This has resulted in instances of disabled travelers being denied boarding assistance on commuter flights.

Private sector firms have now developed a series of external lifts that have tested satisfactorily on most (but not all) commuter aircraft in the 19 to 30 seat range. These devices range in cost from \$13,000 to \$37,000. In September 1993, DOT published a proposed rule to jointly require commuter air carriers and operators of roughly 545 airports to acquire lift devices or other equipment to board passengers with mobility impairments onto such aircraft by 1997. DOT expects to publish a final rule by summer 1994. Currently, we estimate about 50 airports have voluntarily purchased lift devices for these aircraft. The lifts are not designed for aircraft with below 19 seats, but the proposed rule would require their use on such aircraft where feasible.

Update: DOT extended the comment period on its NPRM for commuter aircraft boarding equipment, in response to a request from the Paralyzed Veterans of America. This delayed the spring 1994 target date for final rule publication. Approximately 500 comments were received on this NPRM, and reviewed, analyzed and categorized by issue category. FAA's Airport Improvement Program (AIP) grants office is surveying regional offices for updated estimates on the number of lifts purchased or requested by airports using AIP funding. Next Steps: Evaluation of major issues and drafting of final rule. Problem: Special cost analysis of impacts of rule on small entities requested by OMB may delay this rulemaking further.

The Department must also determine how it will resolve problems for passengers requiring medical oxygen. FAA regulations prohibit airline passengers from carrying their own supply of medical oxygen on board aircraft. It is provided by some airlines, at costs ranging from \$50 to \$75 per flight. The apparatus must be surrendered, however, at the gate upon arrival. If passengers must lay over at an airport, medical oxygen is generally not available for use in the terminal. While airlines and terminals are not required to provide oxygen, many such travelers needing it feel they are unfairly being denied access to the Nation's air transportation system. The Department has asked for comments in a recent NPRM about how better to serve the needs of those who require medical oxygen, as well as about the handling of wheelchair batteries.

Update: Roughly 200 docket comments were received on the citizen's petition for rulemaking concerning exorbitant costs and other issues related to medical oxygen provision by airlines and airports. DOT staff met with a member of the National Association of Medical Directors of Respiratory Care to discuss alternatives to carriers' provision of oxygen and related safety and hazardous materials regulations. DOT is considering conduct of a regulatory negotiation during FY 1995 to discuss issues and draft regulations.

Cost - The Department estimated industry compliance cost to meet its ACAA rule's aircraft accessibility and training requirements at roughly \$19.7 million per year (1990\$). Estimates of total additional costs to the aviation industry to provide boarding equipment for commuter aircraft (19-30 passenger seats) would range from \$1.0 million to \$8.3 million (1993\$) per year (based on alternative assumptions about the number of lifts and boarding chairs needed per airport).

MASS TRANSIT

Status - In accordance with DOT's ADA regulations issued September 6, 1991, every Federally subsidized transit system currently provides some type of accessible service usable by passengers with disabilities. The phased-in implementation of the ADA is on schedule, and no major problems have been encountered. The transit industry has held thousands of meetings with persons with disabilities, involving them in their system planning and fostering a new community of trust.

- Accessible Vehicles - Under the ADA, all new, used and refurbished transit buses, vans with over 16 seats, and railcars for which a solicitation for purchase was made after August 25, 1990, must be accessible. In demand responsive

service (e.g., dial-a-ride), an operator can provide equivalent service in lieu of acquiring all new accessible vehicles.

- Buses: Out of a total active fleet of about 52,500 fixed-route buses in excess of 24 seats, operated by 458 Federally assisted transit agencies in urbanized areas (over 50,000 population), roughly 50 percent, or 26,000 buses, are now lift-or ramp-equipped, versus 35 percent prior to the ADA. DOT estimates the fleet will be 100 percent accessible in 405 urbanized areas by 2001.
- Railcars: Under ADA, rapid, light and commuter rail operators must provide one accessible car per train by 1995. As of year-end 1991, the total transit rail fleet consisted of 8,106 rapid railcars, 811 light railcars, and 3,989 commuter railcars. Currently, all rapid railcars are accessible to wheelchair users, though many do not satisfy ADA requirements for accessible features to facilitate use by persons with vision and hearing impairments (e.g., exterior speakers). There are greater accessibility problems with many current light and commuter rail systems.
- Paratransit - DOT has completed review of plans required from transit agencies covering a 5-year phase-in of paratransit services, for persons with disabilities unable to use fixed-route systems. Despite the effect of the recession being experienced at that time on local tax revenues, only two of the 540 systems submitting paratransit plans to the DOT in the first year requested a waiver due to undue financial burden (Richmond, VA and Suffolk County, NY), and are being denied. However, waiver requests are expected to increase significantly as we approach the end of the phase-in period in 1996.

By year-end 1993, the second year of the phase-in period, over 100 of the 540 ADA paratransit areas have indicated that they are planning to be in full compliance. The remaining 440 areas are expected to complete paratransit system implementation by year-end 1996. It is still too early in the implementation timetable to determine whether lack of funding for paratransit will prove a major problem in transit agencies, all of which are dependent on existing Federal, state and local funds. Many paratransit systems are encountering problems because they now find they may have to deny service to able-bodied elderly patrons previously served on the basis of age, but who are no longer required to be eligible under ADA guidelines.

- **Key Rail Stations** - A key station is one that has particular importance to users (e.g., because it is a transfer point between lines, generates a high volume of demand, or interfaces with other transportation modes). We estimate about 500 of the 708 key stations are now wheelchair accessible.

Time extensions beyond ADA's required July 1993 compliance date have been granted by DOT for 284 key rail stations. Some key station extensions run until 1999; others extend up to 2020; and some dates are still being determined. As key station implementation proceeds, lack of funding to accommodate major modifications may be a problem, because rail operators must stretch existing Federal, state and local funds for regular transit service to cover ADA station improvements. Aside from granting time extensions authorized by ADA for extraordinary key station expenses, DOT also proposed to nearly fully fund authorized levels for the FY 95 mass transit program, in part to help remedy some of the ADA funding concerns.

The Department has decided to extend the deadline for installation of detectable warning strips on rail platforms from July 1993 to July 1994. DOT explicitly recognized the safety importance of detectable warnings to visually impaired passengers, but believed that rail systems needed additional time to solve practical problems concerning the installation and maintenance of such strips.

Cost - Over the FY 1995-FY 1999 period, ADA costs to the Nation's public fixed-route operators should total about \$900 million annually, or about four percent of all public transit costs. Annual costs are then expected to drop to \$800 million following the year 2000 after most key rail stations are made accessible (the one-time capital cost estimates are \$907 million for 12 rapid rail operators, 10 commuter rail systems, and 14 light rail systems for 708 key stations). Recurring capital and operating costs of complementary paratransit service are estimated to be \$700 million per year. Lifts on buses and vans cost about \$50 million per year, and railcar modification costs are estimated at about \$15 million per year. In the 1991-2000 decade total costs for ADA mass transit compliance are estimated at \$7.3 billion.

Compliance - The Department denied 115 key station time extension requests, on the basis that the rail operators' requests did not meet the \$225,000 cost threshold established by FTA guidance to satisfy the ADA criterion of "extraordinary expensive structural change". These 115 key stations were in probable non-compliance with the ADA July 1993. They have been referred to FTA's Office of Civil Rights.

Update: FTA, in consultation with groups representing persons with disabilities, are working out voluntary agreements, with reasonable timetables for rail transit operators to reach compliance. For example, in Boston, the FTA asked local groups to review and comment on the voluntary compliance agreement between the FTA and the Massachusetts Bay Transit Authority (MBTA), the local transit provider. This agreement sets forth a reasonable timetable for key station compliance for rail stations that were denied time extensions under the cost threshold levels in the regulation. This agreement was crafted to meet the needs of the FTA, the MBTA, and persons with disabilities in the Boston area.

INTERCITY RAIL SERVICE

Status - Amtrak's service is becoming accessible, providing where necessary station-based lifts to accommodate wheelchairs from the platform onto the car and accessible features within railcars. Amtrak is purchasing new railcars and expects to meet the requirement of one accessible car per train by ADA's July 1995 deadline.

Update: As of May 31, 1994, Amtrak has received 47 accessible Superliner cars.

Amtrak stations must undergo major alterations to bring them into conformance with DOT's ADA standards, which call for full accessibility at all Amtrak stations as soon as possible, but no later than July 2010. In October 1992, the Amtrak Board of Directors approved a plan to modify eight Amtrak-owned joint use stations that have been designated as key stations and requested that DOT extend its July 1993 deadline for installation of warning edge stripping on train platforms and other substantial improvements. Extensions were granted into 1994 and 1995 for five of the stations, but Amtrak has since requested extensions on these stations to July 1997.

Cost - The total cost of modifying the eight key Amtrak stations is estimated at \$9.3 million.

STREETS AND HIGHWAYS

Status - All Interstate highway rest areas were made accessible a number of years ago because of previous legislation affecting persons with disabilities. Other street and highway-related facilities are covered by the DOJ's ADA Title II regulations affecting state and local facilities. Under Title II, whenever pedestrian facilities or bus stops and shelters are provided in conjunction with new street or highway construction, curb cuts must be included. For existing crosswalks on highways with curbs in downtown areas, state and local governments with 50 or more employees were required by July 1993, to include in their

transition plans a schedule for providing curb cuts, ramps, or other sloped areas, giving priority to walkways serving state and local government offices, facilities, transportation, public accommodations, and employers.

In order to eliminate state to state inconsistencies concerning parking for persons with disabilities, the Department issued a set of nonbinding regulatory guidelines for establishment of a uniform system for such parking in 1989.

Coming Initiatives - DOJ will soon amend its Title II regulation expanding coverage to everything within public rights-of-way (e.g., signage, street furniture, emergency road-side call boxes).

Compliance - Complaints affecting streets and highways received by DOJ under Title II are being forwarded to DOT for investigation. A significant number of these complaints are premature as the alleged violations cannot yet be viewed as such under the state's transition plan requirements.

MARITIME

Status - The Department is in the process of planning preparatory research and anticipates issuing a proposed rule and cost/benefit analysis by year-end 1995. An ANPRM would begin the process of establishing ADA accessibility regulations and standards for marine passenger vessels (ranging from ferry boats to cruise ships) and facilities. This project must be coordinated with the Access Board's issuance of related accessibility guidelines.

Update: Work is expected to begin in two weeks on a study to provide background data for determining the technical and financial feasibility of designing and constructing marine passenger vessels to accommodate persons with disabilities.

PRIVATE TRANSPORTATION

Status - Unlike previous statutes, the ADA requires private as well as public transportation vehicles, services, and facilities to be accessible, whether or not they receive Federal funds. The ADA requirements for private transportation vary, depending on whether the operator is or is not primarily involved in the transportation business, operates demand-responsive or fixed-route service, and uses large or small vehicles. Generally, most private transportation operators must either acquire accessible vehicles or provide equivalent service to disabled passengers. Over-the-road buses are a special case under the ADA and are discussed next.

INTERCITY, CHARTER, AND TOUR BUSES

Status - The ADA requires the Department to promulgate a final rule by mid-May 1994, implementing accessibility requirements for over-the-road buses (OTRB) and related facilities in the intercity, charter and tour bus industries. These requirements are to be effective in July 1996 for large carriers and July 1997 for small carriers, although the President may delay implementation for up to one year to reduce excessive cost burdens.

Currently, there are 3,500 private companies operating a total fleet of 25,000 OTRBs, ranging in size from Greyhound with 1950 fixed-route regular service buses to small companies with fewer than one-half dozen buses. Most of the OTRB fleet is inaccessible, as are most terminals and flag stops (gas stations, grocery stores, etc.). The OTRB industry provides a variety of services, including fixed-route buses linking some 6,000 communities; charter and tour services; and commuter, airport and other services. For a number of reasons, since 1982, the OTRB ridership base has shrunk from 130 million annual passengers to 37 million passengers in 1990.

Currently, 26 OTRB operators provide about 350 lift-equipped buses under contract to public agencies, and almost all such buses have been purchased with the aid of public monies. Few passengers have used the lifts. In October 1993, DOT issued an ANPRM to explore legal, technical and operational issues involved in developing OTRB accessibility requirements. The Department and the Access Board held a joint workshop on October 21-22, 1993, where key issues with all parties affected by this rulemaking were discussed. Major issues to be addressed in this rulemaking concern (1) the potential compliance costs on a struggling industry; (2) how to provide accessible restroom services; and (3) how to frame ADA-mandated accessibility requirements to minimize economic disruption of the industry, and reduce the risk that OTRB services will be cancelled in rural areas where they are especially needed.

Costs - Based on OTA's report to Congress, the estimated cost of equipping an OTRB with lift and related equipment ranges from \$7,000 to \$35,000. There are also costs from foregone revenue resulting from the loss of seating and baggage capacity to accommodate lifts and wheelchair securement spaces.

Update: The cost impacts of the various options under consideration for making OTRB service accessible to persons with disabilities has resulted in the development of an options paper seeking Secretarial guidance on which option to propose and on whether the Department should also pursue legislation to authorize a Federal subsidy to assist the OTRB industry in meeting ADA accessibility requirements.

CONCLUSION

Much has been accomplished in removing barriers to persons with disabilities in the Nation's transportation system. The Department has kept up reasonably well in developing, promulgating, and implementing its regulations within the timetables mandated by the ADA, the ACAA, and section 504. In many cases, enforcement procedures are still evolving, as new rules go into effect and we gain experience with their implementation. In addition, the Department is working to ensure that its own programs and facilities are fully consistent with requirements for non-discrimination on the basis of disability.

APPENDIX A

STATUTES AND REGULATIONS AFFECTING PERSONS WITH DISABILITIES

Many programs and activities of the Department are affected by the following laws pertaining to persons with disabilities.

- ° The Architectural Barriers Act of 1968, as amended, requires that certain buildings financed with Federal funds be designed and constructed to be accessible to the physically handicapped.
- ° Section 16 of the Federal Transit Act, as amended, sets forth a policy that elderly and persons with disabilities have the same right to utilize Federally-subsidized mass transportation facilities and services as other persons.
- ° Section 165(b) of the Federal Aid Highway Act of 1973, as amended, requires that certain transportation projects receiving Federal funds under the Act be planned, designed, constructed, and operated to allow effective utilization by elderly and handicapped persons.
- ° Section 504 of the Rehabilitation Act of 1973, as amended, prohibits discrimination on the basis of handicap in all Federally assisted and conducted programs.
- ° The Air Carrier Access Act of 1986 prohibits discrimination on the basis of handicap in air travel.
- ° Section 161 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 directed the Secretary of Transportation to conduct a study on parking for handicapped persons.
- ° The Americans With Disabilities Act OF 1990 (ADA) gives civil rights protection to individuals with disabilities similar to those given to individuals on the basis of race, sex, national origin and religion. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services and telecommunications. The Department issued a final rule in 1990 implementing many provisions of the ADA.

APPENDIX B

ADA TECHNICAL ASSISTANCE

The Federal Transit Administration (FTA) has produced the following ADA guidelines and reference reports:

Handbook on Preparation of ADA Paratransit Plan.

Guidelines for Improvement of Transit Accessibility for Persons with Disabilities.

Update of 1986 FTA-Sponsored "Guidelines for Active and Passive Wheelchair Lifts, Ramps and Securement Devices."

Guidelines on Rail Car Gaps and High Platform Safety.

Guidelines on Wheelchair and Three Wheel Scooters use in Public Transit.

Guidelines on Transportation Needs of Persons with Visual, Hearing, and Cognitive Impairments.

Strategies for Implementing a Standee-on-Lift Program for Fixed-Route Bus Service.

Accessibility Handbook for Transit Facilities.

Handbook and Course on Public Participation in Transportation Planning.

Americans With Disabilities Act Paratransit Eligibility Manual and Course of Study.

Independent Locking Securement System for Mobility Aids in Public Transportation Vehicles.

FTA is also supporting accessibility demonstration projects in 25 cities, which are being conducted under the auspices of the National Easter Seal Society.

During fiscal year 1994, FTA's technical assistance activities will continue to focus on the technology requirements to overcome mobility barriers and will address additional accessibility needs with regard to buses, bus stops, rail cars, and transit facilities. Special emphasis will be placed on problems of safety (adequacy of securements for wheelchairs and other mobility aids in vehicles and protective devices for standees on lifts), and on the communications needs of persons with visual, hearing, and other physical or mental impairments.

**DOT's OUTREACH TO INDUSTRY OPERATORS OF ACCESSIBLE
TRANSPORTATION SERVICES AND PERSONS WITH DISABILITIES**

DOT's National ADA Mass Transit Outreach Efforts

. **Project ACTION.** DOT's most significant direct effort to involve persons with disabilities in ADA implementation is our \$2 million annual funding of the National Easter Seals' Project ACTION, which serves as a forum to bring together all key decisionmakers in implementing the ADA including: the DOT, Access Board members, transit providers and equipment manufacturers, and, most importantly, major groups representing persons with disabilities. Project ACTION developed many technical publications and films for use in training transit agency personnel and disabled riders in using fixed-route accessible services. On June 6-7, Project ACTION will host a national conference in Washington, DC, where every major national disability group will offer DOT their inputs and recommendations on facilitating ADA implementation, solving problems, and improving transit access:

. **Technical Assistance.** The next most significant DOT effort to assist in ADA implementation is our funding of technical assistance to the transit industry on making vehicles and stations accessible. DOT's technical assistance program includes ongoing research projects and technical bulletins on accessible vehicle standards, lift maintenance, driver sensitivity training in reaching out to passengers with different types of disabilities, vehicle and station audio and visual communication systems for persons with visual and hearing impairments, accessible facility requirements, tactile warning strips at the edge of platforms for blind persons, wheelchair securement safety, etc.

. **National Transit Institute.** DOT's most significant direct effort to educate transit operators on all aspects of the ADA is concentrated in the newly created National Transit Institute at Rutgers University, in New Jersey. Our recent course on determining ADA Paratransit Eligibility was an overwhelming success; about 300 transit professionals were trained at 10 courses held across the Nation. The FTA and NTI are currently preparing a new course on implementing ADA.

. **Enforcement.** Nationally, persons with disabilities were involved in drafting and commenting on DOT's transit accessibility regulations, and we continue to seek their inputs in issuing new and amended ADA rules. But, beyond the rulemaking stage, we also involve local disability groups in ADA enforcement/compliance actions across the Nation.

National Clearing House. Since ADA enactment, DOT and the American Public Transit Association have conducted four training-seminars for transit operators nationwide concerning their obligations under the Act. We continue in this education role, and also serve as a national clearing house and authority on all aspects of ADA transportation implementation for the general public, including private taxi services and other private transportation providers (e.g., hotel and airport shuttles, church and company owned buses and vans).

Amtrak's National ADA Consumer Outreach Efforts

The National Railroad Passenger Corporation (Amtrak) has a system-wide policy of offering passengers with disabilities and elderly patrons a 25 percent discount on one-way ticket purchases.

Amtrak, with appropriate prior notification to its reservation offices, provides special food service to accommodate passengers with diet restrictions, telecommunications devices for handling reservations for hearing impaired persons, special equipment handling, provision of wheelchairs, and assistance in boarding and deboarding passengers. Amtrak operates a Special Services Desk seven days a week that assists passengers with special needs in obtaining tickets and transportation. Persons may request these services through Amtrak's toll free special service desk number at 1-800-USA-RAIL. They also may inform their travel agents or station ticket agents of their need for assistance at the time they book their reservations, or call the railroad station in advance of their travel.

More than 150,000 senior citizens, mobility-impaired and other persons with disabilities sought assistance from the Special Services Desk during 1993, and thousands of other disabled and elderly persons traveled on Amtrak unassisted. Amtrak works each year with a number of organizations representing persons with disabilities and elderly persons in planning large special moves of passengers needing assistance.

Local ADA Outreach Efforts through DOT's Mass Transit Grantees

Through public participation requirements set forth in the Department's ADA rules, DOT requires significant outreach efforts by its grantees to their customers who are disabled.

. **Key Rail Stations.** In developing local ADA plans to identify and make key rail stations accessible, transit agencies also are required by DOT to hold public hearings and incorporate the comments of persons with disabilities into their plans. More than elevators, bricks and mortar are required to make stations accessible to riders with disabilities; both public transit and train schedules are published in accessible formats, and special audio/visual systems are being installed in stations to communicate public announcements to persons with visual and hearing impairments.

. **Accessible Bus Systems.** An ADA accessible bus requires more than a lift or a ramp. ADA accessibility requires communication systems to provide riders with sensory impairments with sufficient information to board and navigate the fixed-route bus system. Bus schedules must be in accessible formats. Transit providers are providing travel mobility training to persons with disabilities and are reaching out to high schools to train disabled students in how to use fixed-route systems. A spillover benefit of many accessible communication systems required by DOT is that buses are now easier to use by all riders, not just persons with disabilities.

. **Paratransit & Outreach.** In developing their initial plans for DOT on provision of ADA supplementary paratransit services, transit providers had to survey all local disability groups, independent living centers, local social service agencies, etc. in an attempt to identify all persons whose disabilities might qualify them for ADA paratransit service and to inventory all paratransit service provided in the region. Transit providers were required to establish ongoing advisory groups composed of persons eligible for paratransit to consult with them on planning and implementing acceptable services. These groups often meet monthly with over 500 fixed-route transit operators across the nation to review service progress. Service and route changes are routinely directed through these groups and networked to riders with disabilities. DOT attributes much of the success in ADA paratransit implementation to these local groups.

. **Updates of ADA Paratransit Plans.** During the allowable 5-year phase-in period for ADA paratransit service, local providers' plans to provide ADA paratransit services must be annually updated and must pass muster at annual public hearings. Comments of persons with disabilities must be addressed. DOT must review over 500 transit provider plan

updates each year. Failure to meet the public participation requirements has resulted in plan disapproval by DOT, and could jeopardize future Federal funding assistance if not corrected.

Consumer Feedback. DOT sponsored a recent consumer survey in Pittsburgh to query transit riders on the quality of service. Other surveys are being planned.

Assessment of ADA Transit Implementation Problems, to Date

Implementation of the ADA in Public Transit. The ADA was enacted almost four years ago, and implementation of accessible public transit services appear to be on schedule, with fewer complaints than expected to date. Other than the complaints by those with visual impairments on DOT's one year time extension on the controversial tactile warning platform edge strip requirements of ADA, transit systems have not been the focus of much attention from groups representing persons with disabilities. Unlike the history of implementation problems incurred under DOT's predecessor section 504 transit accessibility regulations implementing the Rehabilitation Act of 1973, the transit industry and APTA have strongly supported this civil rights mandate. However, this may be the quiet before the storm. Disability groups may refocus their attention on transit if the operators of several key rail stations in major cities miss their ADA compliance deadlines, or if the progress in completing ADA paratransit services is not as good as expected, we may have to confront the following problems in the future:

Problems in Implementing ADA Mass Transit Regulations

Unfunded Federal Mandate. ADA Paratransit Operating Cost--Local Funding Shortfall. As DOT's budget approaches full funding of the ISTEA authorized levels, we have been able to accommodate about 80 percent of the incremental capital costs of implementing the ADA. However, it is the annual \$600-\$700 million burden of ADA paratransit operating costs on state and local budgets that governors and local officials have labeled the true "unfunded Federal mandate" of the ADA. In defense conversion states like California, these operating costs have been added to huge current operating deficits at local transit authorities. Unless state and local budgets increase dramatically with the current economic expansion, it is expected that as many as 100 transit systems may file requests for a waiver (time extension) from meeting the six ADA paratransit service requirements on the basis of undue financial burdens.

Beginning in FY 1995, transit agencies' will have to absorb a 25 percent across-the-board reduction in Federal operating assistance funding.

Displacement of Elderly Patrons off Paratransit. Both DOT and a March 1994 GAO report on ADA transit implementation have identified transit agencies' greatest challenge to be financing paratransit service requirements of ADA. It is clear from the agencies' ADA paratransit plans that provision of paratransit service is very expensive--between \$15 - \$30 per one-way van trip. In fact, it is so expensive that transit authorities across the nation are planning to reduce costs by eliminating current paratransit passengers and other specialized transportation services that are not specifically covered by ADA service mandates. Currently, existing paratransit service to able-bodied elderly patrons is planned to be virtually eliminated, setting up a potential rift between the elderly and those certified as eligible for ADA paratransit service. It is estimated that about 60 percent of all ADA paratransit eligible riders are elderly. The American Association of Retired Persons is studying this problem.

Client Shedding (Dumping) by Social Service Agencies. In many localities, human resource agencies have stopped providing paratransit services to their clients because the ADA mandates public transit providers to provide such services. To date, we do not have a handle on the extent of dumping problem. Nationally, social service agencies funded by HHS provide at least 5 times the number of trips provided by all public transit. With current resources, there is no way all of these trips can be accommodated by the public transit system. DOT and HHS have met to try to identify their shared responsibilities and coordinate transportation services at the local level.

Problems in Implementing other Accessibility Requirements

Aviation. The fact that DOT has received an additional 233 consumer complaints subsequent to the Department December 28, 1993, report may be an indication that air carriers are not complying fully with the air Carrier Access Act (ACAA) requirements.

The Department continues to receive complaints about the availability of oxygen in air travel. The complaints concern (1) failure of some carriers to offer oxygen on their planes; (2) the high cost of oxygen provided by carriers; (3) lack of access to oxygen while waiting in

airports; and (4) failure of air carriers to permit travelers to bring their own oxygen onboard airplanes because of hazardous materials regulatory requirements.

Some persons with disabilities are being denied boarding on commuter-type airplanes because there is not yet a requirement that there be available suitable devices to assist them. Many air carriers and airport operators are awaiting issuance by the Department of a final regulation requiring them to purchase lifts, ramps, or other suitable devices not used for freight to assist persons with disabilities in boarding commuter-type airplanes.

Marine Passenger Vessels. A major problem in developing a regulation that would set forth accessibility standards for marine passenger vessels stems from the particular physical characteristics of vessels, and the care with which accessibility requirements must be coordinated with the Coast Guard's and international safety requirements, which include personnel capability and structural standards. A study, soon to be initiated, will provide background data for determining the technical and financial feasibility of designing and constructing marine passenger vessels to accommodate persons with disabilities.

Over-the-Road Bus (OTRB) Accessibility. Under the Americans With Disabilities Act (ADA), the Department must issue accessibility regulations concerning OTRBs, the vast majority of which are operated by private sector enterprises. In the course of developing the NPRM, we have developed three options: one requiring OTRBs to be equipped with integral lifts so passengers can use their own wheelchairs; one allowing the operator to provide accessibility by a variety of means, including station-based lifts and boarding chairs; and one that is a mix of the other two.

We expect that the OTRB ADA rule will be controversial because the cost impacts of all options on the industry are significant. The Greyhound company anticipating the ADA costs will impact significantly on company profits and has requested that DOT pursue legislation that would make available a Federal subsidy to assist in meeting accessibility requirements.

Concern about the cost of implementing ADA in OTRB service persuaded DOT staff to develop two papers requesting Secretarial assistance. Staff has developed an options paper requesting Secretarial decision on the notice of proposed rulemaking approach (NPRM) to be used to make OTRBs accessible to persons with disabilities.

Staff has also developed a subsidy paper requesting Secretarial decision on whether DOT should pursue legislation to establish a subsidy program for OTRB operators. Meanwhile, section 120 of a bill to amend title 23, United States Code (USC), to establish the National Highway System, provides authority for the Secretary to make section 3 capital subsidies to intercity bus operators.



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PROGRAM BRIEFING PAPER

September 1993

This document presents the programs of the Architectural and Transportation Barriers Compliance Board (Access Board) which are carried out to meet its responsibilities under the Americans with Disabilities Act and the Architectural Barriers Act.

Since July 1990, when the ADA was signed into law, the Board's program priorities have been, and will continue to be:

- Developing the ADA Accessibility Guidelines (ADAAG)
- Providing Technical Assistance and Training on ADAAG
- Conducting research to support ADAAG
- Enforcing the Architectural Barriers Act

Beginning in fiscal year 1994, the Board will initiate two additional programs in support of its priorities. The Public Communications Program will coordinate and focus all of the Board's communications to its various customers. Additionally, the Board will embark on a Quality Improvement Program. By focusing on our customers and improving the quality of our services, we believe we can ultimately reduce our program and administrative costs.

Developing the ADA Accessibility Guidelines

The following is a history of the Board's ADAAG rulemaking and a discussion of our plans for future ADA rulemaking.

ADAAG for Buildings and Facilities (Sections 1-9)

Notice of Proposed Rulemaking Published	01/22/91
Public Comment Period Ended	03/25/91
Final Guidelines Published	07/26/91
Department of Justice Adopted Guidelines	07/26/91

ADAAG for buildings and facilities initially consisted of nine sections. Sections 1 through 4 contain general sections, scoping provisions, and technical specifications applicable to all types of buildings and facilities. The scoping provisions specify which and how many elements and spaces of a building or facility must be accessible (e.g., parking spaces, entrances, toilet

rooms). The technical specifications describe how to design the elements and spaces covered by the scoping provisions so that they are accessible to and usable by individuals with disabilities. Sections 5 through 9 contain additional scoping provisions and technical specifications for the following buildings and facilities: restaurants and cafeterias (section 5); medical care facilities (section 6); mercantile establishments (section 7); libraries (section 8); and hotels, motels, and transient lodging (section 9). The Department of Justice adopted sections 1 through 9 of ADAAG on July 26, 1991 as the standard for accessible design in its regulations for title III of the ADA.

ADAAG for Transportation Facilities (Section 10) and ADAAG for Transportation Vehicles

Notice of Proposed Rulemaking Published	03/20/91
Public Comment Period Ended	05/20/91
Final Guidelines Published	09/06/91
Department of Transportation Adopted Guidelines	09/06/91

This rulemaking added section 10 to ADAAG for buildings and facilities and contains additional scoping provisions and technical specifications for transportation facilities. A separate ADAAG was issued for transportation vehicles which covers the following vehicles and systems: buses and vans, rapid rail vehicles, light rail vehicles, commuter rail cars, intercity rail cars, over-the-road buses, automated guideway transit vehicles, high-speed rail cars, monorails, and trams and similar vehicles. The Department of Transportation adopted sections 1 through 10 of ADAAG for buildings and facilities and ADAAG for transportation vehicles on September 6, 1991 as the standard for accessible design in its ADA regulations.

ADAAG for State and Local Government Facilities (Sections 11-14)

Notice of Proposed Rulemaking Published	12/21/92
Public Comment Period Ended	03/22/93

This rulemaking will add four new sections to ADAAG for buildings and facilities and will contain additional scoping provisions and technical specifications for the following State and local government facilities: judicial, legislative and regulatory facilities (section 11); detention and correctional facilities (section 12); residential housing (section 13); and public rights-of-way (section 14). The final guidelines will be published in fiscal year 1994. The Department of Justice is preparing a notice of proposed rulemaking to adopt sections 1 through 14 of ADAAG as the standard for accessible design in its regulations for title II of the ADA.

ADAAG for Over-the-Road Buses

This rulemaking will establish additional accessibility guidelines to ensure over-the-road buses are accessible to individuals who use wheelchairs and other mobility aids. A notice of proposed rulemaking and final guidelines is planned to be published during fiscal year 1994.

ADAAG for Recreation Facilities and Outdoor Developed Areas

This rulemaking will establish accessibility guidelines for amusement parks; indoor and outdoor sports facilities; zoos and botanical gardens; playgrounds and related equipment; pools and other aquatic facilities; and parks, trails, and other outdoor developed areas. An advisory committee composed of representatives of disability organizations; the recreation industry; and Federal, State and local governments was established in July 1993 to advise the Board on issues related to making these facilities and areas readily accessible to and useable by individuals with disabilities. The advisory committee is expected to present a report to the Board in fiscal year 1994. The Board plans to publish a notice of proposed rulemaking in fiscal year 1995 with recommended guidelines based on the report.

ADAAG for Children's Environments

This rulemaking will establish accessibility guidelines for day care centers; nursery, pre-school, kindergarten, elementary and other school programs; children's museums; and other children's environments. The Board published an Advance Notice of Proposed Rulemaking on February 3, 1993, and the public comment period ended on June 1, 1993. A notice of proposed rulemaking is planned to be published during fiscal year 1994. In fiscal year 1995, the Board will analyze the public comments and plans to publish final guidelines.

ADAAG for Water Transportation

This rulemaking will establish accessibility guidelines for various forms of water transportation, including passenger ships, ferries, and docks. During fiscal year 1994, the Board plans to convene, in cooperation with the Department of Transportation, an Advisory Committee to provide the Board with a set of recommendations for accessibility guidelines. The Committee will be composed of representatives of the industry, organizations representing people with disabilities, and Federal agencies. We anticipate the Water Transportation Advisory Committee will meet during fiscal year 1995 and present a report to the Board.

ADAAG For Federal Use

During fiscal year 1994, the Board will begin revising its accessibility guidelines for Federally financed buildings and facilities covered by the Architectural Barriers Act to be consistent with ADAAG. The ADAAG is more complete and in many instances mandates a higher degree of accessibility than do the current Uniform Federal Accessibility Standards (UFAS). The Federal Government should be held to the same high accessibility requirements that are now imposed on public accommodations and State and local governments. On January 13, 1993, the Board passed a resolution urging other Federal agencies to adopt the ADAAG as their design standard. The General Services Administration has announced that it would use ADAAG for alterations and new construction. The Department of Justice has asked Federal agencies with regulations under Section 504 of the Rehabilitation Act to adopt ADAAG for compliance under that statute. To further the goal of uniform standards, the Board intends to use ADAAG as the accessibility guidelines for Federally financed facilities covered by the Architectural Barriers Act

of 1968 (42 U.S.C. 4151 et seq.) since the Federal government owns or operates many of the same type of facilities as State and local governments. Under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792), the Board is responsible for establishing guidelines for accessibility standards issued by other Federal agencies pursuant to the Architectural Barriers Act of 1968.¹ The Board anticipates initiating action to adopt ADAAG with special provisions as appropriate for Federal buildings (e.g., post offices, military facilities) in place of its current guidelines for Federally financed facilities. Standards issued by other Federal agencies pursuant to the Architectural Barriers Act must be consistent with the Board's guidelines. Those Federal agencies responsible for issuing accessibility standards under the Architectural Barriers Act must initiate separate rulemaking to adopt standards consistent with ADAAG as supplemented in place of UFAS. The Board anticipates that it will publish a Notice of Proposed Rulemaking on the Federal ADAAG in fiscal year 1995.

ADAAG Review

In fiscal year 1994, the Board will begin a rulemaking effort to coordinate ADAAG and the accessibility standards published by the American National Standards Institute, the ANSI A117.1-1992 standards. The ANSI standards for accessibility are incorporated into the model building codes and hence are the building code standards used by most state and local governments for new construction and alterations which would be covered under title III of the ADA. By coordinating ADAAG and ANSI standards, implementation of the accessibility requirements in titles II and III of the ADA for alterations and new construction will be much more effective. During fiscal year 1994, the Board will convene an advisory committee of representatives from the model code organizations, building code officials, product manufacturers, and organizations representing people with disabilities to coordinate ADAAG and ANSI. We anticipate that the committee will submit an analysis and report to the Board during fiscal year 1995, and that the Board will publish a NPRM early in fiscal year 1996.

Technical Assistance and Training

Several studies have documented that the lack of information about the ADA's requirements has inhibited implementation of the Act.² The Board's Technical Assistance and

¹ UFAS was developed by the General Services Administration, Department of Defense, Department of Housing and Urban Development, and the United States Postal Service to implement the Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.) which requires certain Federally financed buildings to be accessible. Most Federal agencies reference UFAS in the accessibility standards for buildings and facilities constructed or altered by recipients of Federal financial assistance for purposes of section 504 of the Rehabilitation Act of 1973, as amended. (29 U.S.C. 794).

² United States General Accounting Office, "Americans With Disabilities Act, Initial Accessibility, Good But Important Barriers Remain," GAO/PEMP-93-16, (May 19, 1993). National Council on Disability, "A Report to the President and Congress On Progress Implementing the Americans With Disabilities Act," (April 5, 1993).

Training Program has become a very important part of the Government's overall effort to inform the public about the ADA. The Board has concentrated its efforts on architects, the design and construction industry, designers of public transit systems and facilities, and State and local government officials.

In previous years the Board has prepared a series of technical manuals, technical bulletins, videos, and an ADAAG Checklist. Additionally, as the following table shows, as of mid-fiscal year 1993 the Board has responded to over 50,000 technical assistance telephone calls, mailed out over 30,000 packets of information, and has provided 188 training sessions.

TECHNICAL ASSISTANCE AND TRAINING						
	FY 91	FY 92	FY 93 To Date	FY 93 Estimated	FY 94 Estimated	FY 95 Estimated
Telephone Calls	16,000	19,000	15,600	18,700	20,000	22,000
Information Packets	9,600	10,500	10,500	12,600	14,000	15,000
Training Sessions	55	62	68	75	80	90

The Board expects the demand for technical assistance and training to increase in fiscal years 1994 and 1995. In fiscal year 1994, the Board plans to publish four new sections for ADAAG containing additional scoping provisions and technical specifications for State and local governments covering judicial, legislative and regulatory facilities; detention and correction facilities; residential housing; and public rights-of-way. Many of the provisions in these sections, particularly public rights-of-way, present completely new accessibility concepts. We anticipate a very high demand for technical assistance and training on these new guidelines. From our experience, we expect to respond to approximately 22,000 telephone calls, send out approximately 15,000 information packets, and provide about 90 training sessions in fiscal year 1995. We will also develop additional technical bulletins, training materials, and are planning a technical assistance manual covering public rights-of-ways.

Research

The Board now selects research projects for each fiscal year based on several considerations, including public comment in response to rulemaking; the need for technical information for future rulemaking; and our technical assistance program needs.

During the initial ADAAG rulemaking in 1991, the public identified 31 areas that are in need of further study before new or additional accessibility guidelines could be developed. In May 1992, the Board published a notice in the Federal Register requesting further public input to assist the Board in prioritizing these areas. The Board's research priorities for fiscal years 1993 and 1994 are largely based on public response to the Federal Register notice.

The Board also considers the need for technical information for future rulemaking when selecting research projects. For example, in fiscal year 1991 the Board contracted for a study on accessibility standards for children in anticipation of developing future guidelines in this area. The study was completed in fiscal year 1992 and the Board published a notice in the Federal Register in February 1993 notifying the public about the availability of the study and requesting comments on several critical issues related to the rulemaking.

In addition, the Board also considers its technical assistance program needs when selecting research projects. For example, the Board receives many requests about where to purchase various accessibility products such as devices to convert doorknobs to lever controls which do not require twisting or turning. The Board has previously contracted to have an accessibility products file developed to meet this technical assistance need. The file is constantly updated. We do not endorse specific products but make the information available to the public.

The Board has successfully used these criteria to choose its fiscal year 1993 and 1994 research projects, which are:

Fiscal Year 1993

- Detectable Warnings. This project will research several issues related to detectable warning surfaces. The project will begin with an extensive international literature review to identify research that has already been conducted regarding detectable warning surfaces. Secondly, it will examine whether there is a need for detectable warning surfaces. If detectable warnings are needed, the research will examine where they are needed and the technical specifications for the warnings.

- Ramp Slope and Landings. This twelve-month project will research and make recommendations regarding ramp slope and landing requirements for new construction and alterations. The project will study the adequacy of the 1:12 maximum slope and 30 foot maximum length for today's population of individuals with mobility impairments. The research project will evaluate existing research and conduct human subject testing focused on individuals with mobility impairments that have not been the subject of previous study.

Fiscal Year 1994

- Space and Reach Range Requirements for Persons Using Power Wheelchairs and Three-Wheeled Scooters and Interior Circulation in Transportation Vehicles. This project will make recommendations for technical specifications for reach ranges, clear floor space, and turning and maneuvering spaces for persons using power wheelchairs and three-wheeled scooters. The project will also study whether additional specifications for interior circulation in transportation vehicles are needed. Specifically, it will address space limitations at fare boxes in buses and light rail vehicles, and whether fare boxes in such vehicles could be made smaller or placed differently.

- o Public Information for Persons with Cognitive Disabilities. This project will produce technical assistance materials about providing public information and wayfinding information for persons with cognitive disabilities in buildings, transportation facilities and outside areas. The study will examine the symbols and signage that can be used to meet the needs of that population.

- o Regulatory Impact Analysis. The regulatory impact analysis will be a limited project to provide data for a cost benefit analysis of the proposed guidelines for recreation facilities and outdoor developed areas.

As soon as the Board completes its current rulemaking on ADAAG sections for certain State and local government facilities, it will begin the process of selecting research projects for fiscal years 1995 and 1996. During December 1993 and January 1994 we will review the issues from our rulemaking that need research, and we will identify additional "tools" needed for the technical assistance program. We plan to publish a Federal Register Notice in February or March 1994 to solicit public comment on our research agenda. We plan a Board vote on the fiscal year 1995 and 1996 research projects in July 1994.

ABA Enforcement

As the table below illustrates, the number of complaints the Board has received under the Architectural Barriers Act (ABA) has been declining. We expect the number of complaints to level out in fiscal years 1994 and 1995 to some where between 90 and 100. The ABA has been effect for 23 years, and the Board has had the enforcement responsibilities for 20 years. Perhaps, the message of accessibility is being heard, and those entities constructing building and facilities with Federal funds are making them accessible. We have found that entities seem much more willing to take corrective action to remove barriers to accessibility. Even with a reduced case load, the Board plans to keep the same resources allocated to the Compliance and Enforcement program as it has in the past. We do not intend to allow a back log of cases to develop as happened in the 1985 to 1989 time period.

ARCHITECTURAL BARRIERS ACT ENFORCEMENT					
Number of New Cases Received					
FY 91	FY 92	FY 93 To Date	FY 93 Estimated	FY 94 Estimated	FY 95 Estimated
153	145	90	100	100	100

Quality Improvement

The Board is planning to implement a total quality program. We believe such a program is necessary for the Agency. We keep statistics, for example, on the number of phone calls we receive, the number of training courses we provide, and the number of cases

we resolve. However, we do not have any measure of the quality of our services. The Board seems to be a prime agency to implement a quality program. Our size allows us to be less bureaucratic, we are organizationally flat, and we have easily identifiable services and customers. The Board has made a strong commitment to quality. Beginning in October 1992, we have sent all unit directors and the administrative officer to total quality management training. During the summer of 1993, we have visited other Federal agencies that have implemented a quality program to learn about their success and mistakes. We have met with consultants, and staff from the Federal Quality Institute. We have reviewed a number of survey instruments other agencies have used to survey their internal and external customers.

We have begun instituting quality oriented changes. We have had numerous complaints from technical assistance customers that our toll-free lines were always busy. A volunteer team of Board staff took the lead in developing the hardware and software specifications and the menu options for a new telephone system. The telephone system is now in place with real time reports available to monitor line usage. Additionally, for the first time, we are using an advisory committee made up of people who will be the customers using our accessibility guidelines for recreation to recommend guidelines for the Board to consider. The response and work of the members of the advisory committee have exceeded our expectations.

During fiscal year 1994, we plan to provide all the Board staff with training in the quality approach, measurement techniques, and team problem solving. The staff and Board members will together develop a vision statement for the Board and specific goals. We plan to conduct a survey of both external and internal customers of the Board. By fiscal year 1995, we will have a quality approach to our programs and services at the Board. We do not anticipate any additional fiscal year 1995 funds will be necessary for this effort.

Public Communications

The Public Communications program will coordinate efforts to provide information to the Board's publics and customers, to assess customer needs for specific data or products, and to develop ways to address those needs through technical assistance, training, publications, and video and audio presentations. The program will also increase access to information through a variety of channels including a recorded news and information telephone line, a computer bulletin board, expanded and refined mailing lists for reaching specific publics or customers with information pertinent to their needs or to notify them of issues of interest. In addition, the Public Communications program will foster working together collaboratively with outside groups in order to develop closer ties with other Federal agencies, State and local governments, and such customer groups as architects, designers, public works officials, and building and construction managers.

**NATIONAL INSTITUTE ON DISABILITY
AND REHABILITATION RESEARCH**

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WASHINGTON, DC 20202-2572
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**DBTAC TOLL FREE NO. - 1-800-949-4232
(VOICE/TDD)**

The National Institute on Disability and Rehabilitation Research's (NIDRR's) Americans with Disabilities Act (ADA) Technical Assistance Initiative

History: In the fall of 1991, the Senate Report accompanying NIDRR's Appropriation bill directed NIDRR to fund "technical assistance related to the implementation of the ADA" and the House report directed NIDRR to fund "...up to ten new regional centers on disability." In response to these directives, NIDRR established an ADA technical assistance initiative with the following five components.

Five Components:-

- (1) Regional Disability and Business Technical Assistance Centers (DBTACs)
- (2) National Training Projects (NTPs)
- (3) Materials Development Projects (MDPs)
- (4) ADA Grant Coordination Contractor
- (5) Interagency Collaboration

Project Model:

NIDRR's technical assistance program is designed to develop and support a network of technical assistance providers that operates at a regional, State, and local level. Each of the regional DBTACs has established a network of State affiliates. In the next five year cycle, a network of local affiliates will be established by the State affiliates.

ADA Grants and Contracts History:

<u>October 1991</u>	<u>October 1994</u>
10 <u>DBTACs</u> - 5 Year Grants	10 <u>DBTACs</u> (continued)
2 <u>NTPs</u> - 3 Year Grants	6 <u>NTPs</u> - 3 Year Grants
(1) Independent Living Centers	(1) Independent Living Centers
(2) Peer and Family Networks	(2) Family Organizations
3 <u>MDPs</u> - 2 Year Grants	(3) School Districts
(1) Public Accommodations and Accessibility	(4) State and Local ADA Coordinators and Policymakers
(2) Employment	(5) Hispanics with Limited Proficiency in English
(3) Employment	(6) Standards for Accessible Design
1 <u>ADA Grant Coordination Contractor</u> - 3 Years	1 <u>ADA Grant Coordination Contractor</u> - 3 Years

Average Annual Budgets: (1) DBTACs: \$450,000; (2) NTPs: \$250,000; (3) MDPs: \$250,000; (4) ADA Contractor: \$300,000.

The DBTACS and State affiliates are administered by a wide range of agencies:

	DBTACS	State Affiliates
Independent Living Centers	1	16
Disability Organizations	2	9
Disability Coalitions		8
Governors' Committees on Disability	1	8
State Disability Agencies		13
Disability-related Business-based programs	2	7
Disability-related University-based programs	4	7

Note: The number of State affiliates exceeds 50 because some of the larger States have more than one affiliate.

Accomplishments:

(1) Regional Disability and Business Technical Assistance Centers

a. Receive 6,000 per month on 800# that automatically routes caller to the DBTAC serving the area code of the caller.

b. Train over 60,000 persons per year on all parts of the ADA using a variety of methods and formats:

- 1. Business ----- 29%
- 2. Government ----- 27%
- 3. Individuals with Disabilities- 24%
- 4. Service Providers ----- 12%
- 5. Other ----- 8%

c. Distribute 540,000 documents per year at no cost or cost of shipping and duplication. All materials distributed by the DBTACs are either produced by the Department of Justice (DOJ) or the Equal Employment Opportunity Commission (EEOC) or reviewed by them for legal sufficiency.

d. Provided 80,000 instances of technical assistance per year. Technical assistance defined to include: making referrals, answering technical questions, and providing on-site consultation, making TV/radio appearances, and writing newspaper and magazine articles.

e. All of the grantees share information with each on a daily basis using a electronic bulletin board housed at the University of West Virginia. The EEOC and Access Board are participants on the bulletin board.

f. Special Initiatives: The DBTACs have undertaken a wide range of special initiatives in addition to their core functions. Some of these special initiatives are:

1. A Minority Outreach Project in Los Angeles that began with \$25,000 from the Region IX DBTAC and grew to \$120,000 with matching grants from the local and State agencies. The outreach is targeted to minority community organizations, consumers, and disadvantaged business enterprises.

2. A Hispanic Outreach Project in Texas that developed new ADA materials in Spanish and piloted the use of mass media as a means of reaching persons who are Hispanic and have limited proficiency in English.

3. The development of materials about the implications of the ADA for persons who with mental retardation. Note: A similar project was undertaken by one of NIDRR's field-initiated research projects regarding persons with psychiatric disabilities.

4. The development of TV and radio PSAs about the ADA in English and Spanish.

5. The development of a pilot curriculum about the ADA and disability awareness for elementary and secondary school students.

6. Each of the DBTACs makes \$50,000 available to the Independent Living Centers in the region to promote the implementation of the ADA through technical assistance activities.

(2) National Training Projects (NTPs)

The Peer and Family Training Project trained approximately 2,400 person per year on all aspect of the ADA.

The Independent Living Center Training Project trained approximately 75 persons per year on all aspects of the ADA. This training was intensive and intended to enable the trainee to train other persons associated with Independent Living Centers.

(3) Materials Development Projects (MDPs)

The MDPs developed over 60 products including videos, self-evaluation instruments, fact sheets, facility surveys, PSAs, and slide shows. These materials were distributed by the DBTACs and publishing houses and were reviewed by the DOJ and the EEOC for legal sufficiency.

(4) ADA Grant Coordination Contractor

The Coordination Contractor convened semi-annual 3 day meetings of all of the Project Directors, facilitated the distribution of materials from other Federal agencies to the DBTACs, and collected and compiled monthly evaluation data on all of the grantees.

(5) Interagency Collaboration

a. NIDRR has provided funding to the DOJ and EEOC to defray costs of publishing their ADA materials and sponsored a joint meeting of the NIDRR-DOJ technical assistance grantees.

b. At each of the Project Directors' meetings, representatives of all relevant Federal agencies update the grantees on the status of their technical assistance and enforcement activities and answer technical questions.

c. NIDRR has cooperated with the Office for Civil Rights with the Department of Education to develop and publish self-evaluation guides for schools, universities and public libraries.

d. There are staff liaisons at the EEOC, DOJ, and Access Board with each of the DBTACs to assist them to answer technical questions accurately and in a timely manner.

July 25, 1994

To: Carol H. Rasco

From: Stan Herr

Re: Some of the Administration's ADA Accomplishments

THE AGENCIES' STATUTORY RESPONSIBILITIES AND ACCOMPLISHMENTS

The ADA divides implementation responsibilities among five agencies: the Department of Justice, the Equal Employment Opportunity Commission, the Federal Communications Commission, the Department of Transportation, and the U.S. Architectural and Transportation Barriers Compliance Board [hereinafter the Access Board]. This memorandum highlights the respective duties and accomplishments of these five agencies in respect of the President's directive to "fully implement and aggressively enforce" the ADA.

1. Department of Justice.

Duties. DOJ has responsibility for enforcement of Title III (public accommodations) of the ADA, and shared jurisdiction over complaints concerning State and local government actions under Title II. The Attorney General has also promulgated regulations on Title II (other than transportation matters reserved for the Secretary of Transportation). Such regulations are to be consistent and coordinated with Section 504 regulations under the Rehabilitation Act.¹

Accomplishments. DOJ currently allocates Title III work to its Public Access Section in the Civil Rights Division and Title II to its Coordination and Review Section. DOJ now assigns 50 professional staff to ADA matters, but acknowledges that this is too small a complement for the load of complaints they receive. They recently added 10 people to a telephone hotline for advice and technical assistance (circa February 1994), and added 5 attorneys to the Public Access section (circa October 1993). They have entered over 150 Title III and 100 title II formal and informal settlement agreements. Some of their notable successes include:

- the availability of sign-language interpreters and other auxiliary aids to permit deaf students in review courses for professional licensure to learn and communicate effectively.²

- settlement without litigation of a complaint that emergency medical technicians had refused to assist an individual with HIV, with the settlement requiring the training of the technicians and the issuance of a new policy that persons with

HIV/AIDS are entitled to benefit fully from emergency medical services.³

- settlement of physical accessibility complaints related to ensuring access to public areas of the Empire State Building, including the lobby, observation decks, restrooms and telephones.⁴ (A DOJ official quite aptly referred to this as "a high-profile case.").

2. The Equal Employment Opportunity Commission.

Duties. EEOC is charged with the enforcement of the employment sections (Title I) of the ADA, which prohibits discrimination against people with disabilities in private sector employment and in public sector jobs in state and local governments.

Accomplishments.

- Although the underlying law is a bit murky, the EEOC has had some early successes in obtaining consent agreements or preliminary rulings in ADA-based AIDS bias claims against health insurers.⁵

- The EEOC's new Alternate Dispute Resolution (ADR) program seeks to settle ADA and other civil rights disputes in a timely and cost-effective manner, without resort to litigation.

- This pilot mediation program in the private sector involving 398 charging parties resulted in 82% of them accepting the offer, but only 62% of the respondents resulting in 201 sets of parties willing to undertake mediation.

- EEOC scored a notable success in its first ADA court battle.⁶ That case involved a jury award of back pay, compensatory damages, and punitive damages to an executive in a security investigations firm who was fired because he had cancer notwithstanding his ability to perform the essential functions of his job.⁷ The court's judgement also barred retaliation for bringing an ADA claim or assisting another as a witness in a claim, gave notice to other employees of their ADA rights and the employer's violation of this particular executive's rights, and required such notice in the company's employee handbook or training manual.⁸

- EEOC also filed suit in September 1993 on behalf of a foreman who returned from an approved 13 week disability leave for his back condition, but was not reinstated because of the employer's that would experience difficulty with its insurance coverage. The EEOC alleges that the employee was fired despite his willingness to demonstrate that he could perform the essential functions of his job, and that is considering filing a similar suit against another Michigan employer.⁹

3. Department of Transportation.

Federal activities to improve transportation accessibility are one of the least heralded, but most important aspects of ADA implementation. The ADA is only one source of statutory authority for such accessibility. The Air Carrier Access Act of 1986 and the Rehabilitation Act of 1973 (Section 504) also undergird efforts to create a barrier-free environment and ensure that travelers with disabilities will be treated without discrimination in mass transit, intercity rail service, inter-city buses, federally aided streets and highways, maritime transport, and aviation. Without access to the nation's transportation system, Americans with disabilities are unable to reach their jobs and places of educational, cultural, and social opportunities.

Accomplishments.

DOT can point to many solid gains, such as:

- every Federally-subsidized mass transit system provides some type of accessible services usable by passengers with disabilities.

- about half of the nation's 52,500 fixed route buses in urbanized areas, i.e., 26,000 buses are now lift- or ramp-equipped (versus 35% pre-ADA).

- all 8,106 rapid railcars are accessible to wheelchair users.

- over 104 of the 540 ADA paratransit areas planned to be in compliance by the end of 1993, with some 440 expecting to be in full compliance by the end of 1996 (only two areas have so far requested a waiver due to financial burden).

- Amtrak service is becoming accessible, with 47 accessible Superliner cars received as of May 1994 and anticipated statutory compliance of the one accessible car per train per the ADA's July 1995 deadline.

- Steps are being taken to improve street and highway accessibility features such as curb cuts, ramps, or other sloped areas, and regulations on signage, emergency road-side call boxes, and other items in public rights-of-way.

4. The Federal Communications Commission.

The FCC is responsible for assuring that telephone companies provide relay services for communicating by and with people who use TDDs. It is also charged with oversight of television stations that are required to transmit certain public service announcements with closed captioning.

Accomplishments.

- Telephone relay systems now operate in all 50 states and the District of Columbia.
- TTD machines are increasingly found in transit facilities and other places to aid deaf and hard-of-hearing individuals.

5. The Access Board.

This Board describes the ADA as its number one priority. Under the ADA, the Access Board has multiple responsibilities: implementing a technical assistance plan on Board guidelines for the transportation and public accommodations ADA titles; developing accessibility guidelines for transit facilities and vehicles, commercial facilities and public accommodations, children's environments, and recreation facilities; and producing technical assistance manuals and guidelines for accessibility of State and local government facilities, and public accommodations.

Accomplishments.

- developing accessibility guidelines (ADAAG) for buildings and facilities, for transportation vehicles, and for automated teller machines at banks.
- technical assistance and training program targeted for architects, designers, the construction industry, and State and local government officials through approximately 75 training sessions, the distribution of 12,600 information packets, and responses to some 18,000 telephone calls.

There are other ADA activities in the Federal government of note. For instance, the Department of Education (NIDRR) has an extensive network of ADA Technical Assistance Initiative programs. The President's Committee on Employment of People with Disabilities and the National Council on Disability have also been active in publicizing and monitoring the Act's provisions, and conducting roundtables with business and disability community leaders to improve the ADA's implementation. Finally, it should be noted that the Federal government has a full range of antidiscrimination requirements for federal contractors, federally assisted programs, and the federal government itself under the Rehabilitation Act of 1973.

This information was gathered over several months, and the agencies mentioned may have more updated and complete outlines of their ADA-related accomplishments (esp. the FCC and Access Board).

1. 42 U.S.C. § 12134(a)-(b) (cross-referencing 29 U.S.C. § 794).

2. U.S. v. Becker C.P.A. Review, 1993 WL 632257 (D.D.C. Dec. 22, 1993) (cross motions for summary judgment denied), CA No. 92-2879 settlement decree (May 13, 1994).

3. Formal settlement with Philadelphia, Pennsylvania, in US Department of Justice, Enforcing the ADA: A Status Report from the Department of Justice 5 (April 4, 1994).

4. Empire State Building, New York City. Id. at 7.

5. Milt Freudenheim, "In Minnesota, Settlement is First for AIDS Bias by Health Insurer," N.Y. Times, Dec. 22, 1993, A19. (noting settlement with damages awarded where employer reduced AIDS health insurance coverage from \$300,000 to \$5,000).

6. There are many potential reasons for a reticence to prosecute. EEOC has many competing claims on its prosecution resources and may be waiting to see how committed to the ADA is its incoming leadership. It may wish to keep out of court because of the backlog of complaints it faces and the need to demonstrate ADR restraint and flexibility. A third possibility is that, while eager to prosecute, the EEOC strategically believes it must wait for clear "winners" so as to appear the effective enforcer and deter others into compliance.

7. U.S. Equal Employment Opportunity Commission v. AIC Security Investigations, 820 F. Supp. 1060 (N.D. Ill. 1993) (summary judgment for plaintiff denied), 823 F. Supp. 571 (N.D. Ill. 1993) (jury award of \$500,000 reduced to \$150,000; \$50,000 in compensatory damages and \$22,000 in back pay also awarded).

8. Id. 823 F. Supp. at 581.

9. US EEOC, News Release, "EEOC Files Disability Lawsuit Against H. Hirschfield Sons Co.," Sept. 3, 1993.