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## Persons with Disabilities as a Social and Economic Underclass

**Armantine M. Smith**

Complete strangers  
have patted me on the head, kissed  
my cheek, called me courageous . . . .  
They taunted me retard, cripple,  
defect. The words sank into my body.  
The rocks and fists left bruises.  
. . . . [C]aps in hand, we still  
wander the streets but now the options abound: telethons . . .  
. . . and welfare lines.

— Elizabeth Clare<sup>1</sup>

Persons with disabilities are a marginalized social and economic underclass. Americans with disabilities as a group have been subjected to a purposeful history of discrimination and deprivation that has relegated them to a marginalized status in society. Unequal treatment has been pervasive in both the public and private sectors, especially in areas such as employment, income, and access to the community's infrastructure and services. Thus, persons with disabilities have been excluded from the social and economic life of the community. Public sentiment has viewed persons with disabilities as undesirable, dependent persons in need of charity and pity, which perpetuates their depressed status. The marginalization and oppression impacts both themselves and the whole of society.

Moreover, the current structural organization of work in the market economy marginalizes and discriminates against persons with disabilities. Their continued unemployment and underemployment has caused their potential contributions to be overlooked, which has relegated

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them to the status of outcasts from economic productivity. The resulting decrease in income has forced persons with disabilities into lives of poverty and deprivation that furthers their alienation and isolation. The promise of the Americans with Disabilities Act [hereinafter the ADA] in ending the discrimination against persons with disabilities in the marketplace has yet to be fully realized.

Part I of this paper defines disability and discrimination and argues that persons with disabilities are a social and economic underclass in the country by presenting anecdotal and statistical evidence regarding the social and economic status of persons with disabilities. Part II presents the reasons why the marginalization of persons with disabilities is detrimental to those persons and to society by discussing the personal and marketplace effects of marginalization. Part III argues that the current structure of the capitalist marketplace and the “new economy” result in the marginalization of persons with disabilities, not the ADA. The paper concludes that persons with disabilities continue to be marginalized in our society, and proposes several remedies: (1) changing the existing structure of work itself; (2) altering the valuation of work; (3) providing equality of results through mandatory accommodations and affirmative action in hiring; and (4) providing income support for persons with disabilities who are unable to work.

## **I. PERSONS WITH DISABILITIES AS A MARGINALIZED SOCIAL AND ECONOMIC UNDERCLASS**

In my disabled woman's group  
The facilitator asked me  
“What goals do you have  
For yourself in the next five months?”  
I felt the panic rise in me  
Thinking of the days  
Without a job  
The weeks without the money . . . .  
How many times will I go to the welfare office?  
In the last three weeks  
I've been seven times, and still no check . . . .  
I realize her question is quite reasonable  
It's what other people do.  
I don't live that way, anymore.  
I divide the day into smaller sections -  
A whole day is too much pain.

— Barbara Ruth<sup>2</sup>

Census data and national polls continue to document that persons with disabilities have an inferior status in our country and are socially, vocationally, economically, and educationally disadvantaged.<sup>3</sup> Persons with disabilities are a discrete minority whose restrictions and limitations result from stereotypes not indicative of their ability to participate in and make a meaningful contribution to society.<sup>4</sup> Discrimination against persons with disabilities persists in areas such as employment, education, recreation, and access to public services.<sup>5</sup>

**A. Defining Disability and Disability Discrimination**

Various descriptions are used to define the limits of disability discrimination in our society. The ADA defines disability as a physical or mental impairment that substantially limits a major life activity of a person, having a record of such an impairment, or being regarded as having such an impairment.<sup>6</sup> A physical or mental impairment means a “physiological disorder or condition, cosmetic disfigurement, anatomical loss affecting a body system, or any mental or psychological disorder.”<sup>7</sup> Major life activities refer to functions such as “caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.”<sup>8</sup>

The term “substantially limits” means that the person is not able to “perform a major life activity that the average person in the general population can perform,” or that the person is “significantly restricted as to the condition, manner, or duration” under which the person can perform a major life activity compared to how the average person in the general population can perform the same activity.<sup>9</sup> Several factors are considered to determine if a person is substantially limited: (1) “the nature and severity of the impairment;” (2) “the expected duration of the impairment;” and (3) “the expected permanent or long-term impact” of the impairment.<sup>10</sup> Substantially limited in working means that the person is “significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills, and abilities.”<sup>11</sup> The following additional factors are considered in determining if a person is substantially limited in working: (1) “the geographical area to which the individual has reasonable access;” (2) the job from which he is disqualified because of his impairment, and the number and types of jobs in his geographical area that use “similar training, knowledge, skills, or abilities” from which he is also disqualified; and (3) the number and types of other jobs in the geographical area.<sup>12</sup>

Having a record of an impairment means that the person has a history of an impairment or has been classified as having an impairment.<sup>13</sup> A person is regarded as having an impairment if: (1) he has an impairment that does not substantially limit a major life activity but he is treated by the covered entity as though his limitation is

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substantially limiting; (2) his impairment substantially limits a major life activity only because of the attitudes of others; or (3) he is not impaired but is treated as though he has a substantially limiting impairment.<sup>14</sup>

In addition, the person must be a qualified individual with a disability who has the skill, experience, education, and other job requirements and who can perform the essential functions of the job with or without reasonable accommodations.<sup>15</sup> An essential function is a fundamental job duty that does not include marginal functions.<sup>16</sup> A function is essential if the function is the reason a position exists, because a limited number of employees are available who can perform the function, or because a function is specialized and the employee is hired for his special expertise or ability.<sup>17</sup> Factors to consider are the employer's judgment, the written job description, the time required to perform the function, the consequences of not requiring the applicant to perform the function, the provisions of collective bargaining agreements, the employee's past work experience, and the current experience of employees in similar jobs.<sup>18</sup>

Reasonable accommodations are modifications or adjustments in the job application process, modifications and adjustments to the work environment or to the customary manner in which the job is usually performed, and modifications and adjustments that enable an employee to enjoy equal benefits and privileges.<sup>19</sup> Reasonable accommodations may include job restructuring, part-time or modified work schedules, reassignment, modifications to equipment or devices, modifications to examinations, training materials, and policies, providing readers or interpreters, and making facilities accessible and usable for persons with disabilities.<sup>20</sup>

The ADA allows an employer to be excused from making accommodations if he or she would incur significant difficulty or expense in making the accommodation.<sup>21</sup> Factors to use in assessing whether an accommodation imposes an undue hardship on an employer include: (1) the nature and cost of the accommodation; (2) the overall financial resources of the facility, including the number of persons employed and their effect on expenses and resources; (3) the overall resources of the entity and the size of the entity's business; (4) the type of operation including the composition, structure, and functions of the workforce, and (5) the accommodation's impact on the facility's operation, including the impact on the job performance of other employees.<sup>22</sup>

Under the employment provisions of Title I of the ADA, discrimination is (1) limiting, segregating, or classifying a job applicant in a manner that negatively affects his opportunities because of his disability; (2) using standards of administration that (a) have the effect of discriminating because of a disability; (b) perpetuate the discrimination of others; (c) exclude or deny equal jobs or benefits based on a known disability; (3) not providing reasonable accommodations for the known limitations of an otherwise qualified person with a disability, or denying employment opportunities

because of the need for reasonable accommodations; and (4) using selective criteria that screen out persons with disabilities unless the criteria are job related and consistent with business necessity.<sup>23</sup> Unlawful discrimination based on a disability includes discriminatory practices in: recruitment, advertising, application procedures, hiring, promoting, tenure, demotion, transfer, termination, layoff, pay and compensation, job assignments and classifications, organizational structures, seniority, leaves of absence, sick leave, fringe benefits, selection and financial support for training, social and recreational programs, and other terms, conditions, or privileges of employment.<sup>24</sup>

The ADA does allow certain prescribed defenses to a charge of discrimination that an application of qualification standards, tests, or selection criteria screen out or deny a job or benefit to a person with a disability. The employer must show that the standard is “job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodations.”<sup>25</sup> A qualification standard may require that a person not pose a direct threat to the “health and safety of the individual or others that cannot be eliminated or reduced by reasonable accommodations.”<sup>26</sup> The assessment of whether a person poses a direct threat is based on an “individualized assessment of the individual’s present ability to safely perform the essential functions of the job using a reasonable medical judgment that relies on the most current medical knowledge and/or the best available objective evidence.”<sup>27</sup> Factors to consider are: (1) the “duration of the risk;” (2) the “nature and severity of the potential harm;” (3) the “likelihood that the potential harm would occur;” and (4) the “eminence of the potential harm.”<sup>28</sup>

Thus, the ADA uses functional definitions to assess the presence of disability. Definitions of disability used in measures of the employment rates of persons with disabilities also use functional criteria. Based on the ADA’s definitions, surveys must address the possible limitations in major life activities, but no clear method of making this assessment is provided in the ADA.<sup>29</sup> Therefore, the definitions include various specific criteria in order to assess the exact characteristics of disabling conditions and their degree of severity to provide measures across time and across the spectrum of persons with disabilities.

The United States Census Bureau in the Survey of Income and Program Participation [hereinafter SIPP] measures the employment status of persons with disabilities, and questions their ability to perform specific major life activities such as seeing, hearing, speaking, walking, climbing, and lifting.<sup>30</sup> The SIPP includes the ability to perform activities of daily living (ADLs), such as getting around inside the home, getting in and out of bed, taking a bath or shower, dressing, eating, toileting, and whether assistance is needed to perform these activities.<sup>31</sup> The SIPP also includes instrumental activities of daily living (IADLs), such as going outside the home, keeping track of money, preparing meals, performing light housework, or using the

telephone, and whether assistance is required to perform these activities.<sup>32</sup> According to the Census Bureau, people are considered to have a severe disability if they are unable to perform one or more activities of daily living, if they use an assistive device to get around, or if they need assistance from another person to perform any basic activities.<sup>33</sup> However, Census Bureau analysts caution that the determination of how to best statistically monitor the status of persons with disabilities is still in the early formative stages.<sup>34</sup>

The Census Bureau's Current Population Survey, which measures other employment and income status of persons with disabilities, employs a similar functional analysis. It defines disability as an impairment that negatively affects a person's ability to perform work activities.<sup>35</sup> Likewise, the National Organization on Disability/Harris Survey Program on Participation and Attitudes of Americans with Disabilities [hereinafter NOD/Harris Survey] measures the employment, income, and social status of persons with disabilities and defines disability as an impairment that restricts functional participation in society.<sup>36</sup>

### **B. Persons with Disabilities as a Social Underclass**

Mainstream culture is replete with examples that vividly illustrate the prejudices against persons with disabilities that have been carried into the new millennium. Disability is still viewed by many as a personal tragedy, and that those who have disabilities are sick persons in need of a cure. In 1991, Evan Kemp, then-chairman of the Equal Employment Opportunity Commission, who is a quadriplegic and uses a wheelchair, flew to Jacksonville, Florida for a speaking engagement. However, he flew directly back to Washington when city officials sent an ambulance to the airport to meet him instead of a van.<sup>37</sup>

Attitudes persist that persons with disabilities need medical treatment and do not belong functioning in mainstream society like other persons. In 1989, a person whose legs had been amputated was "left on a baggage cart like a sack of potatoes" in the front of an airplane full of gaping passengers for forty-five minutes. When confronted about the incident, the airline representative remarked, "If he's that sick, he shouldn't be on a plane; he should be in a hospital."<sup>38</sup>

Many persons still assume that all persons with disabilities are to be pitied and are in need of charity. As the executive director of the Disability Rights Education and Defense Fund, Mary Lou Breslin was dressed in business attire and sitting in her electric wheelchair drinking a cup of coffee while awaiting a flight at an airport. Another businesswoman dropped a quarter into her cup and spilled coffee on her blouse.<sup>39</sup>

The abilities of persons with disabilities are often overlooked when it is

assumed that they are incapable because they have a disability. John Hockenberry, a National Public Radio reporter who is a paraplegic, covered stories that ranged from political races to the Mount St. Helen's volcano eruption. His fellow reporters realized years later that he would never have been assigned to cover those challenging events if they had known that he had a disability. They would have paternalistically assumed that he was incapable of reporting them.<sup>40</sup> The stigma experienced by persons with disabilities is so pervasive that even young children are aware that persons with disabilities are considered to be other than normal.<sup>41</sup> In fact, persons with disabilities are sometimes viewed as less than entirely human. Jerry Lewis wrote in a 1990 national magazine that he would have the life of only "half a person" if he had muscular dystrophy, stuck in a wheelchair (the "steel imprisonment"), wishing he could "play basketball like normal, healthy, vital, and energetic people."<sup>42</sup> Lewis is the long-time host of the telethon that raises money to research the condition!

The degree of repugnance, loathing, hatred, and brutal treatment inflicted on persons with disabilities is vividly illustrated by an incident in New Jersey in 1993 when a seventeen year old girl with mental retardation had a baseball bat and broom handle rammed into her vagina. A group of football players perpetrated the act while almost a dozen onlookers did not even try to stop them.<sup>43</sup> The incident was a tragic commentary on the double vulnerability of being a female and disabled in our society and the abuse inflicted upon those least able to defend themselves in our gendered and disablist culture. That others stood by and passively watched only reinforced the degradation, stigmatization, and physical and emotional injury.

Despite the goal of the Americans With Disabilities Act to promote the full and equal participation of persons with disabilities in all aspects of life, the social status and community participation of persons with disabilities remains depressed compared to persons without disabilities. The NOD/Harris Survey revealed a large gap between people with and without disabilities in employment, educational attainment, income, access to transportation, entertainment, socialization, political and religious participation, and life satisfaction.<sup>44</sup>

The NOD/Harris Survey was one of few to utilize a methodology that investigated disability on a continuum from severe to slight or moderate to nondisabled, which allows comparisons along a spectrum. The survey revealed that gaps are pronounced when comparing persons with severe disabilities with the general population of nondisabled persons. While persons with slight or moderate disabilities scored lower on all quality of life indicators than nondisabled persons, they scored significantly better than persons with severe disabilities.<sup>45</sup>

According to the survey, persons with disabilities are twice as likely as nondisabled persons to delay needed health care because they are not able to afford the costs.<sup>46</sup> Because persons with disabilities have low incomes and low levels of

employment, they have little discretionary money to purchase health care and do not receive health care coverage as an employee benefit.<sup>47</sup> Persons with disabilities are three times more likely to consider transportation to be a barrier.<sup>48</sup> Depressed incomes do not allow persons with disabilities to purchase transportation that would provide opportunities to participate in work, school, entertainment, and social activities.<sup>49</sup> The lack of sufficient income also restricts persons with disabilities from taking advantage of leisure activities such as dining in restaurants, attending sporting events, visiting with friends and relatives, and attending religious services.<sup>50</sup> However, gaps even exist when comparing persons with disabilities who have the same income levels, which suggests that other factors such as inaccessibility, negative attitudes, and discomfort encountered in social settings may still be restricting persons with disabilities from full participation in society.<sup>51</sup> Nevertheless, a promising trend is that persons with disabilities aged eighteen to twenty-nine are almost as likely as their nondisabled peers to socialize with friends and dine at restaurants weekly.<sup>52</sup> Additionally, persons with disabilities are not as engaged in the political process as nondisabled citizens. Only six out of ten were registered to vote in 1996 as compared to approximately eight out of ten nondisabled persons.<sup>53</sup> The result of the low scores on all of the indicators in the NOD/Harris Survey is that only half as many persons with disabilities reported that they are very satisfied with their lives compared to nondisabled persons.<sup>54</sup>

Nevertheless, 63% of all persons with disabilities and 73% of persons with slight disabilities reported that their lives had improved during the last ten years.<sup>55</sup> The majority believed that their quality of life, access to public facilities, media portrayal of persons with disabilities, and public attitudes toward them showed marked improvements.<sup>56</sup> Moreover, another survey of the general population revealed that Americans familiar with the ADA supported the act as well as civil rights protection for persons with disabilities.<sup>57</sup> Three-fourths of all adults surveyed believed that the benefits of the ADA were worth the costs to the government and businesses, and eight of ten believed that increased opportunities for persons with disabilities would decrease welfare and increase employment.<sup>58</sup> Ninety-four percent believed that employers should not discriminate against qualified workers with disabilities, and 85% believed that employers should make reasonable accommodations.<sup>59</sup> Ninety-one percent supported accessible public transportation, and 95% supported accessible, non-discriminatory public places.<sup>60</sup>

However, the data in the NOD/Harris Survey is based on small representative sample populations, and the gaps in quality of life indicators vary with the degree of the severity of the disability.<sup>61</sup> As expected, those with severe disabilities fare significantly worse than those with slight or moderate disabilities.<sup>62</sup> Further studies need to employ a methodology that demonstrates the variance in social and economic

conditions for those with varying degrees of disabilities. A wider range of variables need to be utilized, including a continuum on the perceived quality of life and the perceived changes in the social conditions of persons with disabilities. A broader representative sample would greatly expand the currently available research.

**C. Persons with Disabilities as an Economic Underclass**

The employment rates of persons with disabilities lag significantly behind persons without disabilities. According to the NOD/Harris Survey, only 32% of persons with disabilities aged eighteen to sixty-four are employed full-time or part-time, compared to 81% of persons without disabilities.<sup>63</sup> However, on a continuum only 19% of those with severe disabilities are employed, compared to 51% of persons with slight or moderate disabilities.<sup>64</sup> Of those with disabilities who report that they were able to work, 56% are working, which brings the gap between those who can work and those who are working down to 25% today. Only 46% of those who could work were working in 1986.<sup>65</sup> Even more promising, 57% of eighteen to twenty-nine year olds with disabilities who can work are working, compared to 72% of their nondisabled peers, a gap of only 15%.<sup>66</sup> Of those with disabilities who are unemployed, over two-thirds say they would rather be working.<sup>67</sup>

According to the NOD/Harris Survey, persons with disabilities lag significantly behind persons without disabilities in educational attainment, with one in five failing to finish high school compared to only one in ten nondisabled persons.<sup>68</sup> This gap in education explains the discrepancies in the employment status and income levels of persons with disabilities compared to those without disabilities. Persons who lack a basic education are less likely to be employed or to have high incomes. Nevertheless, the gap is closing because in 2000, nearly eight of ten persons with disabilities had graduated from high school, compared to only six of ten in 1986.<sup>69</sup> This marked progress in educational achievement may be attributed in part to the Individuals with Disabilities Education Act, which opened the doors to education for millions of children with disabilities who were previously excluded from school.<sup>70</sup> The Individuals with Disabilities Education Act Amendments of 1997 provided for including in the individualized education programs the extent of inclusion of persons with disabilities in assessments and in the general curriculum.<sup>71</sup> While the effects of the new provisions are uncertain because the Act gives no clear mandates with penalties for exclusion, the improvements show promise. The Act was amended and strengthened in 1997. However, these educational improvements have not yet resulted in significant increases in the employment status of persons with disabilities.

Other indicators are not as positive as some of the NOD/Harris Survey findings. Of grave alarm is the labor force status of persons with disabilities. While labor force

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participation steadily increased for both men and women from 1995 to 2000,<sup>72</sup> the employment rates remained low for both men and women with disabilities. In 2000, of males twenty-five to sixty-four years old with work disability, only 22.4% were employed full time, and only 15.1% of women were full-time employees.<sup>73</sup> Sixty-eight percent of males were not in the labor force, and 72.7% of females were outside of the labor force.<sup>74</sup> For those with severe work disabilities aged twenty-five to sixty-four in 2000, only 2.7% of males and 3.7% of females were employed full time.<sup>75</sup> For men, 91.2% were not in the labor force, and for women 90.8% were not in the labor force.<sup>76</sup> The unemployment rate for persons aged twenty-five to sixty-four years with severe work disabilities was 12.2% for men and 17.0% for women,<sup>77</sup> while nondisabled workers had an unemployment rate of only 3.2% for men and 2.9% for women.<sup>78</sup>

According to the Census Bureau's Current Population Survey, the mean earnings of workers with disabilities has steadily increased each year from 1994 to 1999.<sup>79</sup> However, the earnings of females are consistently lower than those of males for each year reported, and earnings vary proportionately to the level of educational attainment.<sup>80</sup> In 1999, twenty-five to sixty-four year-old males earned \$26,548, compared to \$15,914 for women.<sup>81</sup> Sixteen to twenty-four year-old men earned \$8,482, compared to \$8,129 for women.<sup>82</sup> Sixty-five to seventy-four year-old men earned \$21,093, but women earned only \$8,785.<sup>83</sup> At the same time, workers with severe work disabilities earned significantly less than workers with slight disabilities.<sup>84</sup> For those with severe disabilities aged twenty-five to sixty-four in 1999, men earned \$13,952 and women earned \$11,057.<sup>85</sup> The 1999 U.S. Census Bureau poverty threshold was \$17,000 for a family of four.<sup>86</sup>

Moreover, according to the Census Bureau's Survey of Income and Program Participation, the income levels of persons with disabilities is low. In 1994 and 1995, 30.4% of persons with disabilities had low incomes, compared to 13.3% of persons without disabilities.<sup>87</sup> Of those with mental disabilities, 40% were in the low-income range, and 34% of those who used a wheelchair had low incomes.<sup>88</sup> Males aged twenty-one to sixty-four years with no disabilities had a median monthly income of \$2,353, and those with non-severe disabilities had a median income of \$2,125. However, those with severe disabilities, who are more likely to require costly doctor's visits, medications, and medical equipment and supplies, received only \$1,880.<sup>89</sup> Only 18.1% of those with severe disabilities worked full-time, compared to 79% of nondisabled persons.<sup>90</sup> Of women aged twenty-one to sixty-four years with no disabilities, 53.2% worked full-time and had a median monthly income of \$1,750, compared to 42% with non-severe disabilities who worked full-time and had a median income of \$1,600. Of those with severe disabilities, 13.2% had a median income of \$1,400.<sup>91</sup>

Gaps in earnings are also reported in the 2000 NOD/Harris Survey, with 29%

of persons with disabilities living in poverty because they earned less than \$15,000 per year compared to 10% of the nondisabled population.<sup>92</sup> However, the number of persons living in poverty earning less than \$15,000 per year has gradually declined from 40% in 1994, 34% in 1998, and 29% in 2000.<sup>93</sup>

To summarize, the results are mixed as to whether the employment status of persons with disabilities has improved since passage of the ADA in 1990, but estimates are that the employment status and income levels of persons with disabilities remains low and lags behind that of nondisabled persons. Gaps are also pronounced between the levels of employment and earnings of males and females with disabilities. Some measures report a downward trend. For these reasons, persons with disabilities are marginalized socially and economically and remain an underclass in society. Unemployment and underemployment perpetuate the prejudices against persons with disabilities who are viewed as socially useless, economically unproductive, and dependent. Thus, a self-perpetuating cycle of discrimination and marginalization reinforces the depressed status of persons with disabilities.

## **II. THE EFFECTS OF THE SOCIAL AND ECONOMIC MARGINALIZATION OF PERSONS WITH DISABILITIES**

Freak, midget, three toed . . . .  
. . . . words I've always heard.  
Disabled, crippled, deformed. Words  
I was given. But tonight I go back  
farther, want more, tear deeper into  
my skin. Peeling it back I reveal  
the bones at birth I wasn't given -  
the place where no one speaks a word.

— Kenny Fries<sup>94</sup>

Marginalization of persons with disabilities perpetuates the ideologies of ableism and normality in our culture. The oppression of persons with disabilities is called ableism, the rating of an individual's values based on his muscular, sensory, or mental powers.<sup>95</sup> When the individual does not meet able-bodied standards of physical and mental competence, nondisabled persons see him as "not normal," "less than," "the other," and "undesirable."<sup>96</sup> One of five persons in the United States has an impairment, yet disability is still considered a deviation from the able-bodied rule.<sup>97</sup>

**A. The Personal Effects of Marginalization**

The disciplinary practices of physical normality are internalized and socially pervasive. They require members to meet physical standards and to objectify their bodies and control them.<sup>98</sup> Proximity to social standards is then ingrained in the sense of personal identity, social acceptance, and self-respect.<sup>99</sup> In our society that idealizes the body, persons with disabilities who cannot even attempt to conform their bodies to cultural ideals become devalued because of their devalued bodies. They serve as a constant reminder to those temporarily normal of what they try to avoid, forget, and ignore: fear, pain, illness, and limitation.<sup>100</sup> When persons with disabilities are excluded, the experience of a negative body does not have to be confronted and understood. It belongs to those with disabilities who are marginalized, those who are not ordinary, not us.<sup>101</sup> Pam Evans described the essence of prejudice that persons with disabilities experience daily:

That our lives are a burden to us, barely worth living . . . .  
That we crave to be normal and whole . . . .  
That we don't have, and never have had, any real or significant  
experiences in the way that non-disabled people do.  
That we feel ugly, inadequate, and ashamed of our disability.  
That we can't ever really accept our condition, and if we appear  
to be leading a full and contented life, or are simply cheerful,  
we are just putting a good face on it.<sup>102</sup>

Whether imposed by self or society, this outsider status, not the disability itself, constitutes the most daunting barrier for most people with physical impairments by preventing them, even more than a flight of steps or elevators without braille, from participating fully in the ordinary world.<sup>103</sup> The problem, therefore, is not the person with a disability but the way normality is constructed to create the problem for the person.<sup>104</sup> The danger inherent in the normal construct is that it allows persons with disabilities to become less than human, and also allows easy justifications to continue inhumane and degrading policies, to exclude persons with disabilities from society, and to allow persons with disabilities to become disposable at political will.<sup>105</sup>

When people view impairment as merely a condition for medicine to cure, the social discrimination experienced by persons with disabilities becomes invalidated. Efforts are then redirected entirely away from removing the barriers to participation in the dominant culture that create the disabilities of persons with impairments.<sup>106</sup> In our society based on hierarchies of power, the social meanings of words depict that power.<sup>107</sup> Those who are "physically challenged" are expected to overcome their disabilities.<sup>108</sup> Instead, responsibility should be placed on society to overcome its

prejudices that create a hostile and discriminatory physical and social environment for persons with disabilities.<sup>109</sup> An anonymous woman with a disability described the impact of the disabling social environment. She said, “There are people who make me feel like I’m looking at myself in the mirror at the funhouse. Like the people on the bus today – the starers . . . . A stare is like a vampire bite - it sucks the life out of you.”<sup>110</sup> Persons with disabilities face a barrage of images of themselves as others perceive them. They must work against destructive forces of an ableist ideology that views them as powerless, passive, and unattractive. The messages persons with disabilities receive from the able-bodied world are clear: persons with disabilities have very little access to positive values of themselves, their bodies, and their lives.<sup>111</sup> As Jo Ann Rome described:

I used to believe that I owed an explanation to whomever demanded one. I felt fearful, intimidated, ashamed . . . . I was a freak, an outsider, an “other” and the world made it clear that I owed them an explanation . . . . The domination and submission in the abled/disabled relationship was/is very powerful.<sup>112</sup>

“Doing disability” all day is an exhausting process not because of an impairment, but because of having to expend so much energy dealing with a physical world that has historically been designed to exclude persons with disabilities.<sup>113</sup> Also exhausting is having to filter and make sense of other people’s preconceptions and misperceptions about disability while attending to the daily business of living life independently.<sup>114</sup> However, identifying with other persons with disabilities enables those with disabilities to resist the damaging ableist beliefs and to share their stories, which strengthens their communities, enhances their political awareness, and promotes citizenship.<sup>115</sup> Through this citizenship persons with disabilities can challenge the prevailing ideologies that surround them. They can develop their own identities through shared experiences.<sup>116</sup> Anne Finger, who had polio as a child, described the first time she attended a post-polio conference. “I sat for the first time in my life in a room with other disabled people. I remember how nervous I felt . . . . I moved through the world as a normal person with a limp . . . I was nothing like ‘them.’ I wasn’t whiny or needy or self pitying . . .”<sup>117</sup> What she discovered at the conference was solidarity with other persons who had disabilities. She said:

I felt such commonality with other people there who’d had polio. It was as if I had been living all my life in a foreign land, speaking a language that was not my native tongue. Here I was at last among people who understood, who understood without elaboration, explanation . . . . I wanted to be able to embrace this community, and . . . I wanted to return to the world where I more or less passed for normal.<sup>118</sup>

**B. The Marketplace Effects of Marginalization**

Marginalization of persons with disabilities relegates them to a low social and economic status and deprives them of the dignity available to other members of society. Work is a means of personal achievement and self-realization, and helps to mold individual identities.<sup>119</sup> Traits such as personal initiative, dependability, detail orientation, and cooperation that are developed at work become internalized into the worker's sense of self.<sup>120</sup> Also, a person's job has an impact on the relative degree of respect he commands in the larger society in non-work settings. The highest prestige is accorded to executives and self-regulating professionals and the lowest is accorded to unskilled workers and those in undesirable jobs.<sup>121</sup> One of the social meanings attributed to work is a status-ordering of various kinds of jobs so that the type of work a person performs affects others' evaluations of him.<sup>122</sup> The public perceptions of a person's job and that person's belief of how his or her job is perceived shape the person's sense of the job's worth and his or her worth to society.<sup>123</sup> The harms to the individual brought about by unemployment and underemployment are tangible in terms of reduced income, health care, and benefits, and intangible in terms of the positive social meanings invested in working.<sup>124</sup> The absence of adequately paid work also means dependence on others, failure, a fixed or decreased social status, insecurity, and shame.<sup>125</sup>

Because persons with disabilities who do work are relegated mainly to low skill jobs, they are deprived of the opportunity to gain the power and autonomy exerted by professionals and are excluded from the power relationships exerted in professional groups and organizations.<sup>126</sup> Moreover, persons with disabilities who are completely excluded from working are members of the lowest class of persons in society, which devalues the perception of their worth as contributors to the social and economic mainstream.<sup>127</sup> Marginalization of persons with disabilities also perpetuates the invidious stereotypes that create barriers to participation in society and in the marketplace. Some of the debilitating stereotypes are, as Jenny Morris describes:

That whatever we choose to do or think, any work or pursuit we undertake, is done so as "therapy" with the sole intention of taking our mind off our condition.

That we don't have and never have had, any real or significant experiences in the way that non-disabled people do.

That we are naïve and lead sheltered lives . . . .

That we desire to emulate and achieve normal behaviour and appearance in all things.

That we go about the daily necessities or pursue an interest because it is a “challenge” through which can “prove” ourselves capable . . . .<sup>128</sup>

Stereotyping leads to segregating persons with disabilities from the rest of society. Then, segregation is used to confirm the truth of the stereotypes. Because segregation causes persons with disabilities to rarely have the best jobs, become role models and cultural heroes, or be highly visible members in the community, nondisabled persons conclude that this proves that persons with disabilities are unable to make their own way in society.<sup>129</sup> The tendency is to link impairment with uselessness, to see disability as a personal tragedy, and to leave the disabling condition to medicine to cure.<sup>130</sup> This creates an impossible dilemma because persons with disabilities can never achieve what nondisabled people consider normal.<sup>131</sup> An anonymous woman described how some nondisabled persons judge the lives of persons with disabilities as tragedies and inflict their feelings upon persons with disabilities the following way:

I was riding on the subway one day and this woman came up to me, sat down by me and said, “Oh, my God, it’s such a shame! Such a pretty girl, such ugly hands”! (My hands and feet were deformed at birth . . . .) So I said to her, “So it would be better if I were *all* ugly?” She giggled and mumbled something about a tragedy. I said, “I don’t think it’s such a tragedy. You think my hands are ugly, you should see my feet!”<sup>132</sup>

People link disabilities to physical unattractiveness. They shout at blind persons, assume that persons with physical disabilities are mentally impaired or treat them like children, assume that people with psychiatric conditions are violent, and form negative attitudes about other unrelated personal characteristics based on the existence of one impairment.<sup>133</sup> Thus, people generalize one impairment to incorporate the characteristics of other impairments. Because persons with disabilities have one impairment, they are considered to be impaired persons.

Overcoming the group stereotypes of persons with disabilities is even more problematic when the label of unemployed is attached to them because it contributes to the conventional meanings of dependent and incapable placed on the group and its members. Without the ADA, the vicious cycle of legal discrimination would reinforce the group’s inferior status based on assumptions of their incapacity to work. Even after state antidiscrimination laws were passed, the cycle was perpetuated by the practices of public and private employers.<sup>134</sup> The stereotypes lead to a self-fulfilling prophecy in which persons with disabilities are excluded from society because of the prejudicial attitudes of nondisabled persons.<sup>135</sup> Because they are excluded they are considered to be incapable of participating by their absence from the mainstream.<sup>136</sup> The failure to hire a person with a disability is interpreted by able-bodied persons as the applicant’s

failure, which is supposed to be a natural result of his own incapacity, thereby perpetuating the stereotype.<sup>137</sup> The cycle can only be broken when able-bodied citizens actually see persons with disabilities performing the job. Only then will the social meaning of membership in the group of citizens with disabilities be altered.<sup>138</sup>

Without the ADA, the social status of persons with disabilities would limit their work opportunities, and the restricted types of work offered to individuals with disabilities would lower the group's social status even further.<sup>139</sup> When access to avenues of independent earnings is limited, the promise of freedom and equality is betrayed.<sup>140</sup> The one disability would become the defining characteristic that would negate all other traits. The mere existence of a disability would be considered to convey information about the person's potential and limitations, which would translate into his perceived capabilities in the marketplace.<sup>141</sup>

### **C. The Effect of Marginalization on Citizenship Rights**

Marginalization of persons with disabilities deprives them of the possibility of full membership and citizenship in society by denying them occupational roles. After industrialization, a separateness and distinction of the individual emerged as the division of labor became specialized.<sup>142</sup> The bonds of solidarity in society became forged through occupational associations.<sup>143</sup> In today's diverse post-industrial society, occupational bonds are even more central to full citizenship status in a global world. By excluding persons with disabilities from the realm of work, persons with disabilities are removed from the mainstream, are increasingly alienated and isolated, and are denied their citizenship rights. Work is connected to the liberty-oriented citizenship values of respect, independence, self-expression, personal satisfaction, security, dignity, and participation.<sup>144</sup> Work is a means for the person to prove his worth to himself and others, and to exercise his responsibility to his family, his peers, and the larger community.<sup>145</sup> Working is closely related to the exercise of autonomy and free choice. Working is also the medium by which a free person can demonstrate his citizenship and membership in the community.<sup>146</sup>

The workplace community offers its members fulfillment in their search for meaning in life. "Community is a partnership of free people committed to the care and nurturing of each other's mind, body, heart, and soul through participatory means."<sup>147</sup> Community in the workplace emphasizes the values of cooperation, sharing, commitment, empowerment, and justice.<sup>148</sup> Community is the antithesis of individualism, excess inequality, distrust, alienation, and dependence.<sup>149</sup> The workplace community offers its members many opportunities and advantages not available to those who are excluded. Participation in a community offers a shared vision of the future so that its members are committed to common goals and values.<sup>150</sup>

They work together to achieve success through shared responsibilities.<sup>151</sup> All members become empowered through shared decision-making and governance.<sup>152</sup> They experience spiritual, intellectual, and emotional growth.<sup>153</sup> Members reduce tension as they learn conflict resolution. The workplace community also provides educational advancement and opportunities to create friendships.<sup>154</sup> “Enterprise unites and associates human persons, who are treated as such . . . .”<sup>155</sup> Through work, there is a “giving in the heart and mind.”<sup>156</sup>

Membership in the workplace community also promotes human dignity. “The community is the place where man is fulfilled fully as a person in communion with others . . . . [E]very social relationship, in its ethical substance, consists precisely in the recognition of the dignity of every man.”<sup>157</sup> Therefore, “there is something inseparable from work of the utmost importance: the dignity of the person.”<sup>158</sup> Economic activity is “an expression of the subjective creativity of individuals” and has an “intrinsic social and moral function stemming from the inalienable dignity of the people involved.”<sup>159</sup>

When work is interposed on the constitutional value of equality, the interaction of group status and equal liberty to work translate into a claim for equal access to work.<sup>160</sup> To gain true equality through antidiscrimination law, persons with disabilities must have the full citizenship right of equal access to jobs that provide liberty, independence, and community participation.<sup>161</sup> Ending discrimination becomes imperative to obtaining freedom.<sup>162</sup>

Moreover, free and equal access to work is essential to the preservation of political unity because it is fundamental to independence, personal liberty, and the sense of belonging to the community.<sup>163</sup> The employment market is the field in which the worker exercises his freedom and allegiance. Thus, equal access to work promotes political unity by decreasing alienation and exclusion from the community.<sup>164</sup> Equal access to work also promotes not only the tangible rewards of economic security, but the intangible rewards of personal liberty, equal citizenship, and independence.<sup>165</sup> In contrast, unemployment threatens the union of citizens that forms the foundation of our country’s constitutional order.<sup>166</sup>

#### **D. The Effects of Marginalization on the Capitalist System**

Exclusion from work relegates persons with disabilities to the poverty and the powerlessness that accompanies it in a capitalist system, because the main factor that disables a class of persons is the loss of participation in the creation of social wealth.<sup>167</sup> The assumed levels of unemployability among persons with disabilities divide them into different levels of dependency.<sup>168</sup> The assumed inability to create wealth separates not only persons with disabilities from nondisabled persons, but is divisive within the

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group of persons with disabilities itself, which leads to further polarization and isolation.<sup>169</sup>

When persons with disabilities are discriminated against in the marketplace, they are denied the use of their productive abilities, their incomes are restricted, and they are overrepresented among the poor, which undermines both human capital and society.<sup>170</sup> In the current capitalist system, the dynamics of the market allow a few persons to control nearly all of the productive assets of our society, which translates into a concentration of power in the hands of few persons.<sup>171</sup> This economic and political power is then used to limit the opportunities of persons with disabilities to develop and use the skills that they possess.<sup>172</sup> Asymmetries of power in the labor market allow some employers to structure jobs to enhance their bargaining power, and at the same time substantially damage the opportunities of workers with disabilities to participate in the market.<sup>173</sup> The function of the market deprives workers with disabilities of the ability to utilize their maximum levels of skills and creativity. They are underemployed and forced into any labor merely to obtain some subsistence income, with the majority forced out of the labor market altogether and relegated to public assistance.<sup>174</sup> The poverty that results is regarded by some as the natural consequence of the flawed characters and individual defects of persons with disabilities who are thought to lack aspirations and ability.<sup>175</sup>

Supposedly, anyone who seeks mobility can attain it due to abundant opportunities for advancement in today's marketplace.<sup>176</sup> Some persons even blame the government for destroying incentives to work through social benefits programs.<sup>177</sup> However, the more accurate causes of poverty and unemployment for persons with disabilities are rooted in discrimination in the education system, lack of access to health care in the private sector, and restrictive labor market structures.<sup>178</sup> Society views poverty, loneliness, and stigma as natural consequences of disabilities, but the experience of disability is primarily determined by the way economic development in industrial capitalist societies places persons with disabilities at the margins of social and economic institutions.<sup>179</sup>

Moreover, even if society made profound efforts to integrate persons with disabilities into the working world, some persons, because of the nature and severity of their impairments, would still be incapable of producing the goods and services that society values. They would still be excluded from what is considered by society to be the creation of social wealth.<sup>180</sup> Therefore, just because the main mechanism of oppression is exclusion from social production, overcoming this exclusion would not necessarily entirely eliminate the oppression experienced by some persons with disabilities.<sup>181</sup> Society may be willing to accept a select portion of persons with disabilities into the work force, yet still maintain and even intensify its exclusion of others.<sup>182</sup> Not until society becomes inclusive of all of its members and learns to value

the contributions that those who are the most marginalized are able to make, will the oppression be alleviated. In terms of disability policy, this translates into a need for nondiscrimination legislation to assimilate the greatest number of persons with disabilities as possible into the workforce. Also, social welfare policies are needed to provide for those who are unable to work.

The ADA and social security system are not mutually exclusive policies, and the focus cannot be solely on the ADA as a civil rights policy or on Social Security as in income maintenance policy.<sup>183</sup> As long as discrimination exists, civil rights protection will be necessary.<sup>184</sup> As long as some persons are not able to provide for themselves, a social welfare strategy must include assistance for those who cannot work.<sup>185</sup> Moreover, gaps between these two systems must be bridged with other policies that further encourage the participation and dignity of those who are alienated from the current systems. The American Dream is a belief in the rewards of work, and the hopelessness that results from unemployment is its opposite.<sup>186</sup> The demoralization of the unemployed is a testament to how completely they have absorbed the values of work. With this demoralization comes the alienation from the community that is experienced by marginalized groups who realize that they have been denied equal access to work.<sup>187</sup>

### **III. MARKETPLACE DISCRIMINATION AND THE ASSAULT ON THE ECONOMIC RIGHTS OF PERSONS WITH DISABILITIES**

Quick-change artist extraordinaire,  
I whip out my folded cane  
And change from black man to 'blind man'  
with a flick of my wrist.  
It is a profound metamorphosis . . .  
From welfare rich pimp  
to disability rich gimp;  
And from White Man's burden  
to every man's burden . . . .  
Whether from cursed by man to cursed by God;  
Or from scripture-condemned to God-ordained;  
My final form is never of my own choosing;  
I only wield the wand;  
You are the magician.

— Lynn Manning<sup>188</sup>

The manner in which the workplace and the economic market is currently organized wrongly marginalizes and discriminates against persons with disabilities.

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While the ADA was designed to remedy the effects of marketplace discrimination, many are waging an attack against the ADA so that a backlash has occurred. The American Spectator and Reader's Digest have called the ADA "A Law that is Disabling Our Courts;" Pat Buchanan has requested a rollback; Newt Gingrich proposed to dismantle the ADA on Meet the Press in 1995; Congressmen Mickey Edwards and Tom DeLay want to repeal the ADA.<sup>189</sup> Moreover, in each recent term the Supreme Court has narrowed the reach of the ADA. Additionally, many researchers and commentators have leveled economic criticisms of the effects of the ADA. Their arguments raise two issues that are central to remedying discrimination in the workplace for persons with disabilities: equality, and the cost of ending discrimination through accommodations and their effects in the marketplace. To understand what equality means for persons with disabilities and the price of accommodations, it is necessary to understand how the current marketplace and the "new economy" marginalize persons with disabilities. This section will examine (A) the marginalization of persons with disabilities in the capitalist market, (B) the effects of the "new economy" and changing market conditions on persons with disabilities, (C) the costs of accommodations, and (D) the nature of equality for persons with disabilities.

**A. Marginalization of Persons with Disabilities in the Capitalist Market**

Persons with disabilities were not always excluded from working in agrarian societies. However, with the advent of the industrial era, the speed of assembly lines, enforced discipline, standardization, time-keeping, and production norms excluded persons with disabilities from the labor market.<sup>190</sup> Thus, persons with disabilities were unable to participate in the work process, were denied previous social roles, and were excluded from society by institutionalization.<sup>191</sup> Even in post-industrial capitalist society, the standardization of machinery and methods in the workplace design geared to the average able-bodied norm continued. This perpetuated the exclusion and oppression of persons with disabilities.<sup>192</sup>

However, capital is more than machinery and gross investment, the man-made factors of production. Capital is the relationship people have with each other in the process of production, exchange, and distribution within which the world economic system values every element and transforms it into a commodity.<sup>193</sup> While people with disabilities are marginal to the work market, they do become commodities when their disabling conditions attain an exchange value that is profitable to a few in industry.<sup>194</sup> In fact, in the United States whole industries have grown around rehabilitating, housing, transporting, educating, and employing persons with disabilities in segregated

settings.<sup>195</sup> While marginalized in the mainstream work environment, persons with disabilities have not escaped the forces of the capitalist system.<sup>196</sup> Paratransit companies, private schools, builders and developers, and service agencies are earning millions of dollars by segregating and further marginalizing persons with disabilities.<sup>197</sup>

Commodification of rehabilitation products and services occurred in the capitalist economy when disability was defined as a social problem and recast in economic terms.<sup>198</sup> The assumption was that money for programs, goods, and services could solve or eliminate the problem.<sup>199</sup> Commodification of persons with disabilities occurred in the capitalist system when physicians certified persons to be disabled in terms of their potential economic contributions and value to society.<sup>200</sup> Then, the persons with disabilities became the “raw material” for various businesses within the service industry, and became commodities to be bought and sold in the marketplace.<sup>201</sup> Within these sets of social relationships, persons with disabilities are judged undesirable, dysfunctional, and deviant.<sup>202</sup> They are targeted for various interventions from which the service industry makes millions of dollars each year. Thus, the service industry benefits, but the poor and disenfranchised do not necessarily profit.<sup>203</sup>

#### **B. The Effects of the “New Economy” and Changing Market Conditions on Persons with Disabilities**

The empirical studies of the employment status of persons with disabilities have produced mixed results. Some studies suggest that most persons with disabilities have not realized any benefits covered by the law.<sup>204</sup> The Current Population Survey demonstrates that for persons with disabilities in 1995, 24.3% of men and 13.4% of women who were twenty-five to sixty-four years old were employed full time, whereas in 2000 only 22.4% of men and 15.1% of women were employed full time.<sup>205</sup> For those with only a high school diploma, 24.4% of men were employed full time in 1995, but only 21.5% were employed full time in 2000.<sup>206</sup> For those with at least sixteen years of education, 45.7% of men and 29.1% of women were employed full time in 1995, but the numbers declined to 39.7% for men and 26.2% for women in 2000.<sup>207</sup> The studies that show positive trends like the NOD/Harris Survey do not use national data to test multivariate models of employment status, salaries, job satisfaction, and other relevant outcomes. Therefore, they are not generalized and do not account for alternative explanations of factors that contribute to the results other than the ADA.<sup>208</sup> Examination of the recent studies on the effects of the ADA based on economic models of supply and demand have not eliminated other plausible alternative explanations<sup>209</sup> for the downward trend in employment. This suggests that other labor market forces may be producing the undesirable effects rather than the ADA.

The employment to population ratio in the entire population for college graduates increased by 1% between 1979 to 1994, but fell 3% for high school graduates, and fell to 10% for high school dropouts.<sup>210</sup> This suggests that a shift has occurred in labor demand toward more highly skilled workers.<sup>211</sup> Because a greater percentage of persons with disabilities than nondisabled persons have only a high school education or less, a greater percentage of persons with disabilities are likely to be unemployed based solely on their level of educational attainment. Moreover, the trend away from jobs that employ many workers with disabilities will probably continue because of the decreased demand for unskilled labor.<sup>212</sup> The incidence of disability coupled with skill deficits is high, which places many workers in double jeopardy. As less-skilled workers become less valuable in the marketplace, the incentive to accommodate persons with disabilities decreases.<sup>213</sup>

While the computer revolution could open many jobs for persons with disabilities, unless persons with disabilities have more access to computer skills, they may not be able to take advantage of these opportunities.<sup>214</sup> In one New Jersey study in 1994, only 30% of persons with spinal cord injuries [hereinafter SCIs] worked in the week in which they were surveyed, and only 20% worked full time.<sup>215</sup> Only 41% used computers at home or work compared to 54% of equally educated nondisabled persons.<sup>216</sup> However, those who worked after they were injured were more likely to use computers at work.<sup>217</sup> The primary reason those with injuries did not use computers was because they did not work; therefore, they did not learn to use a computer.<sup>218</sup> Significantly, persons with SCIs who used a computer at work earned as much as nondisabled workers, but those with SCIs whose jobs did not involve computer use earned 35% less than comparable nondisabled workers.<sup>219</sup> Moreover, persons with SCIs who worked were more likely to have white-collar jobs.<sup>220</sup> Those who used computers at work before they were injured returned to work more quickly and with a higher rate of pay.<sup>221</sup> The study demonstrates the value of computer technology to enhance the employment status and earning potential of some persons with disabilities who are capable of using computers. The study also discloses that many persons with disabilities lack the education and skills necessary to bring them into the skilled labor market. Because of the decreased demand for unskilled labor, persons with disabilities are unlikely to find employment opportunities in the future unless their levels of education and training are enhanced to keep pace with the trends in the labor market.

Additionally, persons with disabilities face the same employment problems as others who live in poverty. They are also subject to the decreased availability of low-skill jobs in the urban labor market. Too many people in the inner city are chasing too few job opportunities in the service sector, and the inner city is where those in poverty are located, including those with disabilities.<sup>222</sup> A study of the Harlem labor market

revealed that older workers, outsiders, those with contacts, and non-African Americans were given preferences in hiring practices.<sup>223</sup> Therefore, workers with disabilities who do not fit these characteristics will have a difficult time in gaining employment in the inner city. Also, transportation to suburban jobs is even more problematic for poorer persons with disabilities than for nondisabled job seekers because of lack of access.

Moreover, because of the downsizing and job insecurity in all sectors of the economy, workers must be more flexible and become “jacks of all trades” when only one worker is hired who is expected to have all of the skills, time, and ability to perform many different roles.<sup>224</sup> Persons with disabilities may have been able to perform what were formerly the essential functions of a job.<sup>225</sup> However, more roles are now classified as essential functions that exclude persons with disabilities who are not able to meet the increasing demands in a wider variety of job tasks.<sup>226</sup> Also, classifying more roles as essential functions eliminates the option under the ADA to restructure and redistribute them as nonessential functions to other personnel as an accommodation. Moreover, today’s labor market does not allow an organization to simply hire other employees to perform functions that are redistributed when a person with a disability is unable to perform non-essential job functions.<sup>227</sup> Therefore, relieving one employee of responsibilities and redistributing the tasks to other staff members may be untenable in today’s market.<sup>228</sup> Even nonprofit organizations must show a profit to have enough working capital to survive.<sup>229</sup>

These market forces produce jobs for which persons with disabilities may not be otherwise qualified under the ADA because a variety of tasks may be essential functions, and because redistributing nonessential roles may present an undue hardship for the employer. Rather than blaming the ADA for a worker not being hired, the market needs to be restructured through government policy and incentives if necessary to include the kinds of jobs with accommodations that are conducive to employers hiring persons with disabilities. Government policies and laws like the ADA that provide aids to employment and modifications of the workplace target the supply side of the economy by making the individual with a disability more economically productive and therefore more acceptable to employers.<sup>230</sup> To be effective government policy must attempt to alter the social organization of work on the demand side of the labor market.<sup>231</sup> The government must take an active role in making persons with disabilities more employable by altering the existing social organization of work and daily life.<sup>232</sup> Otherwise, the policies will fail to end the dependency and poverty that the current market system generates.<sup>233</sup>

The question then arises as to who should bear the cost. The issue of cost should not be evaluated in terms of the expense of accommodations but rather in terms of the expense incurred by society because of the lack of accommodations. The costs of maintaining persons with disabilities in dependent roles is estimated to be trillions of

dollars for the lifetimes of those currently receiving disability benefits such as Social Security Supplemental Income, Medicaid, Medicare, and food stamps.<sup>234</sup> In contrast, the many employers who have provided accommodations for workers with disabilities report either minor costs or efficiency gains that offset the costs of those efforts.<sup>235</sup>

### **C. The Costs and Effects of Accommodations**

Critics claim that reasonable accommodations under the ADA impose on employers the affirmative duty to grant better terms and conditions of employment at a greater cost to the employer than what he spends to employ nondisabled workers.<sup>236</sup> Moreover, they argue that the law precludes reductions in compensation to workers with disabilities to offset the cost of accommodations and also mandates accommodations without considering whether they will yield expected benefits to the employer.<sup>237</sup> Many of the criticisms of the ADA involve the costs on the employer that include training human resources personnel, revising job applications, changing medical examination procedures, modifying manuals and interview guidelines, and reviewing collective bargaining agreements.<sup>238</sup> Additional cost factors are the litigation expenses imposed on businesses because the ADA requires an individualized analysis, contains a definition of disability that is susceptible to abuse, and requires expensive accommodations.<sup>239</sup>

No doubt continuing the discriminatory status quo may appear cost-effective when faced with complying with anti-discrimination laws, but the costs to persons with disabilities and society far outweigh the inconveniences employers face when having to discontinue discriminatory practices. Employers cannot illegally discriminate and then complain that it costs them too much money to stop, or that they are burdened when faced with litigation for their discriminatory actions. Moreover, according to the Senate Report accompanying the ADA, the anticipated costs of accommodations for 30% of workers with disabilities are less than \$100 per worker, and 51% of workers require accommodations at no cost.<sup>240</sup> A Louis Harris survey found that only 35% of employed workers with disabilities had accommodations.<sup>241</sup> Furthermore, the costs of accessibility for new constructions and renovations were usually between zero and 1% of the construction budget.<sup>242</sup> Moreover, claims are grossly exaggerated that employers will be unable to compete in the global economy because persons with disabilities are demanding to work and demanding that work environments be modified when they were created with barriers to their participation.<sup>243</sup> If employers had not erected the exclusionary barriers and instituted discriminatory business practices, they would not have the expenses of remedying them.

Also, criticism has been leveled against disability activists who suggest that the costs incurred by employers are merely the expenses of doing business.<sup>244</sup> However,

the costs are actually incurred because they are the expenses of remedying past discriminatory business practices. They are also the cost of providing workers with an environment designed to enhance productivity.

An additional criticism is that the ADA contributes to the unemployment of persons with disabilities because it costs more to hire and accommodate them, so employers maximize their profits by hiring the equally qualified nondisabled workers.<sup>245</sup> Thus, the argument is that the ADA's reasonable accommodations and equal pay provisions will actually discourage the employment of persons with disabilities.<sup>246</sup> Employers are forced to pay more than persons with disabilities are worth, and the increase in pay will result in a decline in employment because fewer persons will be hired at the higher wage.<sup>247</sup> The criticisms rely on the false stereotype that workers with disabilities are less beneficial to employers and contribute less than nondisabled workers. An additional assumption is that employers will continue to illegally discriminate despite the force of law. Moreover, working conditions must be revised to provide equal access before the productivity of workers with disabilities can be fully assessed.<sup>248</sup> What is known is that exclusion results in lowered productivity because the productivity of persons with disabilities enhances the productivity of others, whereas dependence resulting from exclusion drains communal resources and squanders public assets.<sup>249</sup>

A related criticism is that workers with disabilities are less able to compete because they cannot waive their rights to equal pay and benefits that would improve their chances of securing a job.<sup>250</sup> They also cannot accept reduced wages to compensate for the employer's increased cost in hiring and firing workers with disabilities who sue the employer for discrimination.<sup>251</sup> A worker with a disability should not have to accept less advantageous terms and privileges of employment merely because he has a disability in order to get hired. This result would lead directly to discrimination based on disability. To require workers to accept unequal pay because of a disability just to obtain a job is to require that they become complicit in the discriminatory marketplace tactics perpetrated by an employer against them. Also, to require workers with disabilities to accept lower salaries to offset the employer's costs of defending discriminatory actions would lump all persons with a disability into a category targeted for less favorable treatment based on the presence of a physical or mental characteristic, and would place the burden and costs of illegal discrimination on the victim, an untenable result under any anti-discrimination law.

#### **D. The Nature of Equality for Persons with Disabilities**

Another criticism of the ADA is that the statute goes beyond the equal pay for equal work requirements of traditional anti-discrimination laws by mandating unequal

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treatment of equals. The argument is that the ADA includes in the protected class people who are not as productive and who do not contribute the same profitability as other people with the same qualifications, because they can only perform the essential functions of the job and only with accommodations.<sup>252</sup>

Formal equality requires that all of those who are similarly situated be treated alike.<sup>253</sup> Formal equality is adequate when the law treats similarly persons who are similarly situated. However, reliance on formal equality is counter-productive for persons with disabilities who are not similarly situated with able-bodied counterparts because the physical, social, and marketplace environments were designed to exclude them.<sup>254</sup>

The nation's capital assets and infrastructure were developed using procedures that excluded persons with disabilities from enjoying a commercial and civic life.<sup>255</sup> The ADA is designed to remedy the environmental outcomes of this disablism oppression by requiring anyone who operates a facility to reform arrangements that exclude persons with disabilities unless that would pose an undue hardship.<sup>256</sup> Expenses for retrofitting are actually compensatory rather than privileging because they are responses to outcomes of exclusionary past practices, not to individual personal neediness.<sup>257</sup> Thus, accommodations are actually a means of providing equal, not special, treatment when comparing actual results. An inaccessible environment in the workplace that requires accommodations is the product of conscious design adapted to able-bodied workers, with the discriminatory assumption that those who are not able-bodied workers could not or would not perform the job.

Reliance on formal equality for persons with disabilities would promote actual inequity because if a person's needs are different, then treating him or her the same as others is differential treatment in terms of actual results, opportunities, and outcomes.<sup>258</sup> These outcomes include dignity, true equality and respect.<sup>259</sup> The distinction must be made between equal treatment and treatment as an equal.<sup>260</sup> Treating persons with disabilities equally means giving them the same opportunities as nondisabled persons. If no distinction is drawn between equal treatment and equal results, then every accommodation for a person with a disability would violate equality.<sup>261</sup>

While discrimination involves treating some people differently and less favorably than others, treating people with disabilities differently may be justified or even required.<sup>262</sup> Nevertheless, differentiating and denying reasonable accommodations is discriminatory if distinctions have the effect of restricting the equal enjoyment of civil rights.<sup>263</sup> Differentiation is not a synonym for discrimination, and the same treatment does not necessarily result in equality.<sup>264</sup>

Neglecting to offer people with disabilities access to the same opportunities as others has been justified by categorizing them as limited, deficient, and having special

needs.<sup>265</sup> The resulting exclusion may be diminished and equality may be advanced by remedying externally-imposed barriers to workplace access.<sup>266</sup> If disability were viewed as a normal condition, the workplace environment would accommodate the needs of persons with disabilities as well as the majority. The current problem is not the difference but the privileged norm.<sup>267</sup> Because the disadvantages experienced by people with disabilities derive from the interaction between the individual and the workplace environment, justice requires modifying the environment and accommodating a broad range of needs and capacities.<sup>268</sup> Therefore, equality of opportunity embodies not just an equal chance to compete but an equal chance to succeed.<sup>269</sup>

#### IV. CONCLUSION

Persons with disabilities continue to be marginalized in our society, but several remedies may alleviate their current social and economic condition. First, the value of work can be altered. The work-based model of social membership and identity inevitably implies a value judgment of the undesirability of impaired existence. This allows the integration of substantial numbers of persons with disabilities into the work process only as far as impairment, technology, and socially valued activity merge to produce a currently desired outcome.<sup>270</sup> “In a work-driven society, where what you ‘do’ determines who you ‘are,’ being unemployed deteriorates a person’s self-worth as well as her bank account.”<sup>271</sup> Stephanie McCarthy, who for ten years had managed a bookstore before her multiple sclerosis forced her to stop working and accept Social Security Disability benefits, described her experience as follows:

I often feel flustered when I am asked what I “do” for a living (they wouldn’t believe what I do just to live) and don’t quite know what to say. I take classes in pottery, spend a great deal of time in the library (and doctor’s office), keep myself busy on my home computer, and concentrate on staying healthy. But these things all seem pretty benign when I am talking to someone with a “career.”

— Nancy Mairs<sup>272</sup>

A solution is for the government to design methods to compensate work that is not traditionally viewed as paid employment, such as maintaining a home, caring for children, and community service jobs, work that has gone unrecognized because it is not validated by a wage.<sup>273</sup> What is then valued is not just that a job is done, but that workers are provided the dignity of work and are included in the community.<sup>274</sup> However, the ultimate goal must be to distance cultural values from merely identifying persons according to their productive capacities.<sup>275</sup>

Second, the Social Security and benefits system needs to be strengthened to

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**Smith**

provide a living wage to those who are unable to work. Then the possibility of eradicating the oppression of all persons with disabilities might be tenable.

Third, the structure of work must be altered by the government to provide monetary incentives for accommodations and grants to companies to design and market workplace equipment and environments utilizing universal designs that are usable by all.

Fourth, the ADA can be strengthened to ensure equality of results by including a greater number of persons with disabilities in the current economic market. The Americans with Disabilities Act promises to eradicate at least some of the discrimination against persons with disabilities and remains a viable social and economic solution. The ADA can work because it “embodies the spirit of inclusiveness, the devotion to individual rights, and an entitlement to equal opportunity.”<sup>276</sup> The ADA needs to include greater accommodations for persons with a broader range of disabilities, and include affirmative action in hiring to remedy past discriminatory practices. We must not abandon the ADA and return our society to disabled apartheid before its promises are fully realized.

Charge me to see  
In all bodies the beat of the spirit,  
Not merely in the tout en l'air  
Or double pike with layout  
But in the strong,  
Shouldering gait of the legless man,  
The calm walk of the blind young woman  
Whose cane touches the curbstone . . .  
That this eye not be folly's loophole  
But giver of due regard.

— Richard Wilbur<sup>277</sup>

<b>TABLE 1</b>												
<b>Mean Earnings of Workers with a Work Disability</b>												
Age & Years of Schooling	1994		1995		1996		1997		1998		1999	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
<u>25 - 64 years old</u>	21,563	11,743	23,657	13,249	23,408	12,198	23,809	13,433	25,556	14,809	26,548	15,914
Less than 12 years	10,928	5,579	11,433	6,901	12,130	5,924	13,487	7,940	12,470	7,837	13,052	8,445
12 years	18,116	10,245	19,756	10,294	20,350	10,245	20,993	10,555	18,100	13,066	21,549	12,491
13-15 years	22,513	12,152	12,788	16,247	25,985	12,715	23,169	14,580	30,048	13,371	28,391	16,578
16 or more years	36,249	23,226	43,363	22,458	38,787	22,356	39,367	21,838	40,508	26,110	44,995	27,861
<u>16-24 years old</u>	6,573	6,735	6,063	6,131	6,732	5,599	6,526	6,619	8,339	6,958	8,482	8,129
Less than 12 years	3,179	6,399	3,010	3,489	4,608	3,190	4,049	3,500	3,554	2,703	5,712	6,822
12 years	8,035	5,546	8,808	6,421	6,703	5,268	7,378	6,082	10,056	7,206	6,970	6,916
13 - 15 years	7,183	6,377	8,974	7,835	8,635	7,523	7,081	8,922	6,824	10,991	11,636	9,483
16 or more years	28,818	14,755	7,191	20,605	19,270	19,446	46,000	4,895	32,368	23,492	27,769	21,348
<u>65 - 74 years old</u>	N/A	N/A	19,539	8,933	11,489	10,697	17,737	10,397	17,233	19,876	21,093	8,785
Less than 12 years	N/A	N/A	13,001	4,384	7,721	7,839	8,915	7,025	9,070	4,467	6,619	4,331
12 years	N/A	N/A	10,253	8,360	10,847	12,748	15,251	10,782	14,224	49,148	15,840	7,491
13 - 15 years	N/A	N/A	22,088	10,526	14,487	12,419	12,800	4,853	9,229	11,423	13,708	13,532
16 or more years	N/A	N/A	37,225	15,777	15,672	8,538	33,420	21,411	35,414	14,645	57,890	10,926

Adapted from U.S. Census Bureau, Current Population Survey (1994-1999).

**TABLE 2**
**Mean Earnings of Workers with a Severe Work Disability**

Age & Years of Schooling	1994		1995		1996		1997		1998		1999	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
<u>25 - 64 years old</u>	12,494	7,916	13,478	9,234	12,775	7,364	12,357	10,905	18,178	N/A	13,952	11,057
Less than 12 years	7,191	5,046	7,087	6,002	9,704	4,745	8,843	7,100	10,153	6,597	10,684	6,735
12 years	13,818	7,910	12,772	9,194	9,755	7,035	10,523	9,570	10,905	12,866	11,159	10,131
13-15 years	14,241	7,511	13,225	9,772	16,201	8,352	13,764	10,863	38,946	11,570	15,858	12,681
16 or more years	19,199	18,425	39,179	16,433	24,406	14,192	23,518	20,966	24,630	22,813	28,702	17,003
<u>16-24 years old</u>	2,022	4,134	4,212	5,504	5,156	3,723	18,891	5,059	4,960	N/A	4,981	6,694
Less than 12 years	1,142	2,651	2,176	3,495	2,839	3,427	4,818	3,838	3,423	2,221	5,176	5,114
12 years	2,885	2,543	6,922	4,729	6,482	4,114	7,687	3,892	5,107	4,298	3,713	6,034
13 - 15 years	2,631	7,323	7,229	7,960	6,092	3,556	3,287	8,310	5,922	3,235	4,105	10,111
16 or more years	N/A	4,312	N/A	26,000	15,700	1,300	N/A	1,836	29,000	29,374	26,000	3,024
<u>65 - 74 years old</u>	N/A	N/A	19,630	9,658	13,775	9,437	6,384	10,070	104,101	4,450	19,996	3,402
Less than 12 years	N/A	N/A	20,117	10,458	30,000	428	664	13,676	6,262	1,572	223	4,022
12 years	N/A	N/A	22,096	8,241	13,660	19,136	25,000	N/A	N/A	3,000	N/A	N/A
13 - 15 years	N/A	N/A	7,786	N/A	2,000	N/A	13,000	3,250	8,861	9,298	N/A	N/A
16 or more years	N/A	N/A	45,000	N/A	N/A	N/A	N/A	N/A	475,000	N/A	N/A	N/A

Adapted from U.S. Census Bureau, Current Population Survey (1994-1999).

<b>TABLE 3</b>						
<b>Labor Force Status of Persons with a Work Disability Percent Employed in 1995</b>						
	<b>Total</b>		<b>Full Time</b>		<b>Not in Labor Force</b>	
<b>Age &amp; Years of Schooling</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>
<u>16 - 24 years old</u>	27.7	23.8	13.2	12.2	60.7	70.8
Less than 12 years	15.7	14.9	6.2	7.7	76.6	79.9
12 years	36.4	26.3	18.3	12.1	43.8	66.2
13 - 15 years	48.1	33.6	21.6	16.0	46.1	62.7
16 or more years	100.0	39.5	100.0	33.0	0.0	57.7
<u>25 - 64 years old</u>	31.6	24.2	24.3	13.4	63.9	72.4
Less than 12 years	13.8	12.8	7.8	5.1	81.8	85.2
12 years	31.7	23.4	24.4	13.1	63.7	73.6
13 - 15 years	45.7	34.0	37.7	19.8	49.8	59.9
16 or more years	55.2	44.4	45.7	29.1	40.5	51.9

Adapted from U.S. Census Bureau, Current Population Survey (1995).

<b>TABLE 4</b>						
<b>Labor Force Status of Persons with a Work Disability Percent Employed in 1996</b>						
	<b>Total</b>		<b>Full Time</b>		<b>Not in Labor Force</b>	
<b>Age &amp; Years of Schooling</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>
<u>16-24 years old</u>	34.9	29.6	14.6	13.0	55.7	61.4
Less than 12 years	24.1	18.7	5.5	2.9	66.4	73.5
12 years	46.2	34.5	21.2	17.1	45.4	54.3
13-15 years	58.1	45.3	37.2	27.3	32.0	47.9
16 or more years	19.1	30.2	19.1	19.6	58.5	51.0
<u>25-64 years</u>	30.1	25.0	22.4	14.0	65.5	72.2
Less than 12 years	15.4	11.6	8.0	5.2	81.7	86.0
12 years	28.4	25.2	20.9	14.0	66.9	72.3
13 - 15 years	43.5	36.9	34.7	21.3	50.8	58.5
16 or more years	48.5	42.6	40.5	27.1	47.1	53.3
<u>65 - 74 years old</u>	9.6	4.8	3.2	1.5	90.2	94.4
Less than 12 years	6.0	2.2	2.6	0.3	93.9	96.9
12 years	9.4	4.8	1.2	1.1	90.5	94.9
13 - 15 years	13.7	10.5	6.0	5.6	85.7	87.6
16 or more years	16.6	8.6	6.2	2.5	83.4	91.4

Adapted from U.S. Census Bureau, Current Population Survey (1996).

<b>TABLE 5</b>						
<b>Labor Force Status of Persons with a Work Disability Percent Employed in 1997</b>						
	<b>Total</b>		<b>Full Time</b>		<b>Not in Labor Force</b>	
<b>Age &amp; Years of Schooling</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>
<u>16 - 24 years old</u>	36.0	34.3	13.5	12.8	57.2	56.0
Less than 12 years	21.7	18.3	9.6	2.8	72.4	72.5
12 years	48.3	44.6	13.5	18.3	43.9	45.1
13 - 15 years	54.9	54.6	25.2	28.4	36.8	37.3
16 or more years	70.8	40.6	28.9	0.0	29.2	26.1
<u>25 - 64 years old</u>	30.9	25.3	22.7	14.8	64.5	70.9
Less than 12 years	17.4	10.4	11.5	4.6	78.5	85.5
12 years	28.1	27.0	20.8	14.9	67.5	70.4
13 - 15 years	43.5	34.0	32.4	21.5	51.1	60.5
16 or more years	50.8	47.8	38.8	32.2	44.4	49.0
<u>65 - 74 years old</u>	10.7	5.5	3.6	1.7	88.9	94.1
Less than 12 years	7.3	3.5	0.0	1.3	92.6	96.5
12 years	13.9	5.5	4.2	1.6	85.6	94.2
13 - 15 years	10.9	8.7	4.5	2.1	88.6	90.1
16 or more years	13.5	12.7	5.7	4.9	86.0	87.3

Adapted from U.S. Census Bureau, Current Population Survey (1997).

<b>TABLE 6</b>						
<b>Labor Force Status of Persons with a Work Disability Percent Employed in 1998</b>						
	<b>Total</b>		<b>Full Time</b>		<b>Not in Labor Force</b>	
<b>Age &amp; Years of Schooling</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>
<u>16 - 24 years old</u>	27.4	33.2	9.2	12.3	69.1	56.2
Less than 12 years	15.5	13.6	4.0	5.8	78.9	75.4
12 years	28.5	38.5	14.4	17.8	55.2	52.5
13 - 15 years	35.1	52.1	16.3	26.8	60.4	35.1
16 or more years	25.2	87.9	25.2	0.0	79.8	12.1
<u>25 - 64 years old</u>	29.0	24.2	20.4	14.6	67.6	72.8
Less than 12 years	16.0	11.5	9.2	6.3	82.1	85.8
12 years	26.8	22.2	17.8	13.4	69.9	75.3
13 - 15 years	38.8	34.7	30.5	20.9	56.9	61.0
16 or more years	49.5	43.0	37.0	27.3	44.8	54.1
<u>65 - 74 years old</u>	9.5	4.9	3.6	1.3	90.0	94.7
Less than 12 years	5.2	2.7	0.7	0.2	94.1	97.1
12 years	7.4	4.3	2.5	1.0	92.6	95.3
13 - 15 years	12.5	7.4	4.5	1.9	86.9	92.6
16 or more years	22.1	17.6	12.9	8.9	77.0	80.1

Adapted from U.S. Census Bureau, Current Population Survey (1998).

<b>TABLE 7</b>						
<b>Labor Force Status of Persons with a Work Disability Percent Employed in 1999</b>						
	<b>Total</b>		<b>Full Time</b>		<b>Not in Labor Force</b>	
<b>Age &amp; Years of Schooling</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>
<u>16 - 24 years old</u>	27.8	29.4	11.3	10.9	63.1	63.1
Less than 12 years	14.7	22.5	2.3	2.9	80.1	71.3
12 years	29.2	27.0	12.5	12.4	55.7	60.9
13 - 15 years	58.9	45.1	28.8	24.5	38.7	52.1
16 or more years	50.1	89.6	50.1	95.1	0.0	6.5
<u>25 - 64 years old</u>	29.2	23.5	21.6	13.3	68.3	73.4
Less than 12 years	12.3	11.2	6.9	5.9	85.7	86.4
12 years	26.7	22.5	18.4	12.3	70.9	74.5
13 - 15 years	41.0	30.6	33.7	16.8	55.4	64.6
16 or more years	51.4	42.2	41.0	27.4	46.7	55.8
<u>65 - 74 years old</u>	9.8	7.3	3.8	1.5	89.7	92.4
Less than 12 years	4.2	4.4	1.7	0.5	95.7	95.6
12 years	11.9	6.3	4.7	0.4	88.1	92.8
13 - 15 years	12.3	11.5	6.8	3.3	85.1	87.8
16 or more years	19.1	15.1	4.6	7.0	80.8	84.6

Adapted from U.S. Census Bureau, Current Population Survey (1999).

<b>TABLE 8</b>						
<b>Labor Force Status of Persons with a Work Disability Percent Employed in 2000</b>						
	<b>Total</b>		<b>Full Time</b>		<b>Not in Labor Force</b>	
<b>Age &amp; Years of Schooling</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>
<u>16 - 24 years old</u>	37.5	29.7	17.9	18.1	56.6	62.4
Less than 12 years	22.9	18.4	7.3	11.0	70.2	75.0
12 years	43.4	36.7	17.7	17.1	49.9	54.9
13 - 15 years	65.9	37.6	42.8	28.3	31.4	53.6
16 or more years	100.00	66.1	93.6	66.1	0.0	19.8
<u>25 - 64 years old</u>	29.6	24.6	22.4	15.1	68.0	72.7
Less than 12 years	14.0	10.7	9.0	6.6	84.5	86.1
12 years	29.6	24.5	21.5	14.8	67.7	73.2
13 - 15 years	37.4	33.4	30.7	20.2	59.9	64.0
16 or more years	50.2	40.0	39.7	26.2	46.9	57.0
<u>65 - 74 years old</u>	10.8	6.4	2.9	1.1	88.6	93.1
Less than 12 years	5.0	4.8	1.2	0.6	94.2	95.2
12 years	11.9	4.6	2.0	0.6	87.6	95.2
13 - 15 years	16.2	12.8	8.0	2.8	83.0	85.9
16 or more years	20.6	10.5	4.0	2.7	79.3	87.2

Adapted from U.S. Census Bureau, Current Population Survey (2000).

<b>TABLE 9</b>						
<b>Labor Force Status of Persons with a Severe Work Disability Percent Employed in 1995</b>						
	<b>Total</b>		<b>Full Time</b>		<b>Not in Labor Force</b>	
<b>Age &amp; Years of Schooling</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>
<u>16 - 24 years old</u>	12.9	10.2	1.6	3.3	80.5	86.7
Less than 12 years	8.1	5.2	1.6	1.8	87.6	90.2
12 years	20.0	13.9	2.3	4.6	66.3	83.6
13 - 15 years	20.1	15.3	0.0	5.6	79.9	83.7
16 or more years	0.0	13.2	0.0	0.0	0.0	86.8
<u>25 - 64 years old</u>	6.3	7.7	2.2	3.2	91.7	90.4
Less than 12 years	3.7	5.9	1.0	1.7	94.5	92.6
12 years	8.0	7.0	2.4	3.3	89.5	91.1
13 - 15 years	7.3	11.5	2.5	5.2	91.1	85.1
16 or more years	11.9	12.6	8.7	7.1	85.7	85.7

Adapted from U.S. Census Bureau, Current Population Survey (1995).

<b>TABLE 10</b>						
<b>Labor Force Status of Persons with a Severe Work Disability Percent Employed in 1996</b>						
	<b>Total</b>		<b>Full Time</b>		<b>Not in Labor Force</b>	
<b>Age &amp; Years of Schooling</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>
<u>16 - 24 years old</u>	18.8	19.8	4.7	6.9	76.6	74.4
Less than 12 years	12.0	10.3	2.1	1.2	83.1	82.0
12 years	31.4	29.9	10.6	7.5	65.0	66.1
13 - 15 years	35.2	29.7	8.5	24.3	59.6	70.3
16 or more years	0.0	29.3	0.0	29.3	100.0	44.7
<u>25 - 64 years old</u>	8.0	8.8	3.0	4.0	89.5	89.6
Less than 12 years	5.6	5.4	1.3	2.0	92.9	93.7
12 years	8.5	8.9	2.7	4.2	89.2	89.2
13 - 15 years	9.9	12.8	4.7	6.1	84.6	84.3
16 or more years	13.8	18.3	9.7	8.6	84.1	80.3
<u>65 - 74 years old</u>	0.7	0.0	0.0	0.0	99.3	99.6
Less than 12 years	0.7	0.0	0.0	0.0	99.3	100.0
12 years	0.0	0.0	0.0	0.0	100.0	100.0
13 - 15 years	0.0	0.0	0.0	0.0	100.0	95.4
16 or more years	3.8	0.0	0.0	0.0	96.2	100.0

Adapted from U.S. Census Bureau, Current Population Survey (1996).

<b>TABLE 11</b>						
<b>Labor Force Status of Persons with a Severe Work Disability Percent Employed in 1997</b>						
	<b>Total</b>		<b>Full Time</b>		<b>Not in Labor Force</b>	
<b>Age &amp; Years of Schooling</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>
<u>16 - 24 years old</u>	18.8	19.8	4.7	6.9	76.6	74.4
Less than 12 years	12.0	10.3	2.1	1.2	83.1	82.0
12 years	31.4	29.9	10.6	7.5	65.0	66.1
13 - 15 years	35.2	29.7	8.5	24.3	59.6	70.3
16 or more years	0.0	29.3	0.0	29.3	100.0	44.7
<u>25 - 64 years old</u>	8.08	8.8	3.0	4.0	89.5	89.6
Less than 12 years	5.6	5.4	1.3	2.0	92.9	93.7
12 years	8.5	8.9	2.7	4.2	89.2	89.2
13 - 15 years	9.9	12.8	4.7	6.1	84.6	84.3
16 or more years	13.8	18.3	9.7	8.6	84.1	80.3
<u>65 - 74 years old</u>	0.7	0.0	0.0	0.0	99.3	99.6
Less than 12 years	0.7	0.0	0.0	0.0	99.3	100.0
12 years	0.0	0.0	0.0	0.0	100.0	100.0
13 - 15 years	0.0	0.0	0.0	0.0	100.0	95.4
16 or more years	3.8	0.0	0.0	0.0	96.2	100.0

Adapted from U.S. Census Bureau, Current Population Survey (1997).

<b>TABLE 12</b>						
<b>Labor Force Status of Persons with a Severe Work Disability Percent Employed in 1998</b>						
	<b>Total</b>		<b>Full Time</b>		<b>Not in Labor Force</b>	
<b>Age &amp; Years of Schooling</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>
<u>16 - 24 years old</u>	12.8	23.1	4.4	9.9	82.6	69.7
Less than 12 years	10.1	10.2	4.6	5.3	85.0	82.9
12 years	19.5	30.7	6.1	12.2	74.5	65.6
13 - 15 years	13.2	36.8	0.0	17.0	86.	46.3
16 or more years	0.0	61.2	0.0	0.0	100.0	38.8
<u>25 - 64 years old</u>	9.6	8.1	3.5	3.6	88.7	90.0
Less than 12 years	7.5	4.8	2.1	2.0	91.5	93.0
12 years	10.0	6.9	3.6	3.0	88.6	91.3
13 - 15 years	10.0	12.8	4.5	5.3	87.8	85.4
16 or more years	17.1	17.3	7.8	9.9	77.6	81.3
<u>65 - 74 years old</u>	0.0	0.1	0.0	0.0	100.0	99.9
Less than 12 years	0.0	0.0	0.0	0.0	100.0	100.0
12 years	0.0	0.4	0.0	0.0	100.0	99.6
13 - 15 years	0.0	0.0	0.0	0.0	100.0	100.0
16 or more years	0.0	0.0	0.0	0.0	100.0	100.0

Adapted from U.S. Census Bureau, Current Population Survey (1998).

<b>TABLE 13</b>						
<b>Labor Force Status of Persons with a Severe Work Disability Percent Employed in 1999</b>						
	<b>Total</b>		<b>Full Time</b>		<b>Not in Labor Force</b>	
<b>Age &amp; Years of Schooling</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>
<u>16 - 24 years old</u>	16.0	16.1	4.1	5.6	76.0	80.0
Less than 12 years	8.3	15.7	1.4	3.0	85.6	78.9
12 years	18.1	12.4	4.1	6.2	68.6	84.1
13 - 15 years	41.3	19.9	12.7	5.9	58.7	80.1
16 or more years	100.0	87.5	100.0	87.5	100.0	12.5
<u>25 - 64 years old</u>	7.3	8.9	2.8	3.1	91.4	89.3
Less than 12 years	4.4	5.8	1.2	1.6	94.9	92.6
12 years	8.4	8.7	2.8	2.5	90.7	89.4
13 - 15 years	9.5	11.4	5.0	5.2	88.1	85.9
16 or more years	10.4	16.1	4.9	6.4	87.0	83.3
<u>65 - 74 years old</u>	1.1	1.4	0.0	0.0	98.9	97.9
Less than 12 years	0.0	1.2	0.0	0.0	98.9	97.9
12 years	0.0	2.4	0.0	0.0	100.0	92.1
13 - 15 years	4.6	0.0	0.0	0.0	95.4	96.8
16 or more years	6.9	0.0	0.0	0.0	93.1	100.00

Adapted from U.S. Census Bureau, Current Population Survey (1999).

<b>TABLE 14</b>						
<b>Labor Force Status of Persons with a Severe Work Disability Percent Employed in 2000</b>						
	<b>Total</b>		<b>Full Time</b>		<b>Not in Labor Force</b>	
<b>Age &amp; Years of Schooling</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>
<u>16 - 24 years old</u>	15.5	17.1	2.4	8.5	77.5	75.0
Less than 12 years	12.4	12.5	1.3	5.6	81.0	83.0
12 years	20.5	21.3	0.0	8.6	71.7	69.2
13 - 15 years	16.3	22.8	9.2	16.4	76.1	64.9
16 or more years	100.0	0.0	100.0	0.0	0.0	52.7
<u>25 - 64 years old</u>	7.7	7.6	2.7	3.7	91.2	90.8
Less than 12 years	5.7	9.7	2.2	2.2	93.5	93.8
12 years	8.8	7.4	2.9	3.7	90.4	91.7
13 - 15 years	8.7	11.3	2.6	5.6	89.4	86.8
16 or more years	9.4	10.9	4.6	4.5	89.1	86.0
<u>65 - 74 years old</u>	0.1	0.0	0.0	0.0	98.2	99.1
Less than 12 years	0.0	0.0	0.0	0.0	100.0	100.0
12 years	0.0	0.0	0.0	0.0	100.0	100.0
13 - 15 years	1.8	0.0	0.0	0.0	98.2	100.0
16 or more years	0.0	0.0	0.0	0.0	100.0	88.1

Adapted from U.S. Census Bureau, Current Population Survey (2000).

<b>TABLE 15</b>												
<b>Unemployment Rates for Persons with Severe Work Disabilities</b>												
<b>Percent Unemployed</b>												
<b>Age &amp; Years of Schooling</b>	<b>1995</b>		<b>1996</b>		<b>1997</b>		<b>1998</b>		<b>1999</b>		<b>2000</b>	
	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>
<u>16 – 24 years old</u>	33.9	23.3	19.5	22.6	21.9	21.3	26.1	24.0	33.3	19.5	31.1	31.8
Less than 12 years	34.9	46.8	28.8	42.4	29.1	29.8	32.6	40.2	42.2	25.6	34.9	26.6
12 years	40.6	15.6	10.3	12.0	10.2	16.7	23.4	10.8	42.5	21.7	27.7	30.7
13 - 15 years	0.0	6.6	12.8	0.0	43.2	18.3	0.0	31.4	0.0	0.0	31.7	35.2
16 or more years	N/A	0.0	N/A	47.1	0.0	0.0	N/A	0.0	0.0	0.0	0.0	100.0
<u>25-64 years old</u>	24.8	20.4	23.4	15.8	21.5	16.4	15.1	19.0	14.5	17.1	12.2	17.0
Less than 12 years	33.5	20.0	21.2	14.2	23.1	25.6	11.9	30.6	13.8	21.2	13.3	24.3
12 years	23.9	20.9	21.0	18.1	22.2	12.6	12.4	21.0	9.7	17.7	7.9	11.8
13 - 15 years	17.2	22.8	35.4	18.0	17.8	16.3	17.9	12.4	19.9	19.2	18.0	14.8
16 or more years	17.0	12.0	13.0	7.4	22.6	12.0	23.8	7.4	20.4	3.6	13.8	21.9
<u>65 - 74 years old</u>	N/A	N/A	0.0	100.0	21.3	51.4	N/A	0.0	0.0	35.3	88.1	100.0
Less than 12 years	N/A	N/A	0.0	N/A	0.0	28.1	N/A	N/A	N/A	0.0	100.0	N/A
12 years	N/A	N/A	N/A	N/A	0.0	0.0	N/A	0.0	N/A	37.2	N/A	N/A
13 - 15 years	N/A	N/A	N/A	100.0	100.0	65.7	N/A	N/A	0.0	100.0	0.0	100.0
16 or more years	N/A	N/A	0.0	N/A	N/A	N/A	N/A	N/A	0.0	N/A	N/A	100.0

Adapted from U.S. Census Bureau, Current Population Survey (1995 - 2000).

<b>TABLE 16</b>												
<b>Unemployment Rates for Persons with No Work Disabilities</b>												
<b>Percent Unemployed</b>												
Age & Years of Schooling	1995		1996		1997		1998		1999		2000	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
<u>16 - 24 years old</u>	12.3	11.0	14.0	10.3	13.2	10.5	12.1	8.9	10.9	9.4	10.1	9.6
Less than 12 years	19.8	19.8	21.2	18.5	21.2	18.5	19.7	15.4	18.0	17.2	14.8	15.5
12 years	11.0	12.0	11.9	12.3	11.0	10.9	10.2	10.2	8.6	9.7	10.4	10.7
13 - 15 years	7.1	6.1	10.3	4.5	8.6	6.3	7.1	5.0	6.2	5.1	5.5	5.6
16 or more years	5.3	2.9	6.6	4.1	3.2	2.1	4.0	1.2	3.9	1.4	4.8	4.3
<u>25-64 years old</u>	4.7	4.0	5.0	3.8	4.3	3.7	3.8	3.5	3.4	3.1	3.2	2.9
Less than 12 years	9.9	8.2	10.7	10.5	9.3	9.6	7.9	8.5	6.7	8.2	6.9	8.0
12 years	5.3	4.3	6.1	4.2	5.2	4.3	4.8	4.1	3.9	3.5	3.7	3.4
13 - 15 years	4.2	4.0	4.1	3.4	3.6	3.1	3.4	3.2	2.9	2.6	3.0	2.7
16 or more years	2.4	2.3	2.1	1.9	1.9	1.8	1.5	1.7	1.9	1.8	1.5	1.3
<u>65 - 74 years old</u>	N/A	N/A	2.6	2.3	3.4	3.1	4.2	2.9	2.6	3.7	3.4	4.0
Less than 12 years	N/A	N/A	1.5	3.6	5.1	3.3	7.7	2.4	3.2	7.7	7.1	3.2
12 years	N/A	N/A	3.7	2.1	2.5	1.8	1.3	2.8	4.2	2.4	2.8	3.1
13 - 15 years	N/A	N/A	2.1	1.4	3.1	4.3	3.0	2.7	2.2	4.9	2.2	4.7
16 or more years	N/A	N/A	2.6	2.7	3.2	4.2	4.9	3.9	1.3	1.6	2.9	5.6

Adapted from U.S. Census Bureau, Current Population Survey (1995 - 2000).

<b>TABLE 17</b>				
<b>Disability and Employment from the Survey of Income and Program Participation</b>				
<b>Selected Conditions</b>	<b>1991/1992</b>	<b>1993/1994</b>	<b>1994/1995</b>	<b>1997</b>
Age 21 - 65	75.1	75.1	76.2	78.2
Used Wheelchair	18.4	20.9	22.0	21.0
Used Cane or Crutches	25.2	29.2	27.5	24.8
Used Walker; Difficulty Standing	45.5	45.5	43.7	42.2
Severe	25.6	24.7	30.8	30.6
Not Severe	48.3	48.4	45.9	44.1
Difficulty Hearing	63.7	65.4	64.4	62.4
Severe	58.7	53.3	59.7	48.5
Not Severe	54.0	66.4	64.9	63.4
Difficulty Speaking	35.0	34.1	22.4	36.9
Severe	24.4	24.6	27.3	24.1
Not Severe	36.1	35.4	27.4	40.1
Difficulty Walking	31.5	31.9	33.5	33.9
Severe	20.8	22.0	22.5	22.5
Not Severe	39.0	39.6	41.1	42.4
Difficulty Climbing Stairs	30.1	31.6	33.9	34.9
Severe	20.5	23.1	25.5	19.2
Not Severe	37.9	38.8	40.5	40.1
Difficulty Lifting	32.1	34.5	34.8	30.0
Severe	22.4	23.3	27.0	20.1
Not Severe	38.4	42.7	39.4	38.2

Adapted from U.S. Census Bureau, Current Population Survey (1991 - 1997).

**TABLE 18**

**NOD/Harris Survey Program on Participation and Attitudes 2000  
Percentage of Respondents with and without a Disability**

	2000			1998			1994			1986		
	% With Disability	% Without Disability	Gap	% With Disability	% Without Disability	Gap	% With Disability	% Without Disability	Gap	% With Disability	% Without Disability	Gap
Employed	32	81	49	29	79	50	N/A	N/A	N/A	N/A	N/A	N/A
Not High School Graduate	22	9	13	20	9	11	24	12	12	39	15	24
Socialize Once a Week	70	85	15	69	84	15	68	86	18	75	85	10
Attend Church Once a Month	47	65	18	54	57	3	48	58	10	55	66	11
Eat Out Once a Week	40	59	19	33	60	27	34	55	21	34	58	24
Registered to Vote in 1996	62	78	16	62	78	16	N/A	N/A	N/A	N/A	N/A	N/A
Annual Income \$15,000 or less	29	10	19	34	12	22	40	18	22	51	29	22
Transportation a Problem	30	10	20	30	17	13	N/A	N/A	N/A	N/A	N/A	N/A
Health Needs Unmet Once a Year	19	6	13	21	11	10	18	13	5	N/A	N/A	N/A
Very Satisfied with Life	33	67	34	33	61	28	35	55	20	39	50	11

Adapted from National Organization on Disability, National Organization on Disability/Louis Harris Survey Program on Participation and Attitudes (2000).

<b>TABLE 19</b>				
<b>NOD/Harris Survey Program on Participation and Attitudes 2000 Percentage Indicators by Severity of Disability</b>				
	<b>% Severe</b>	<b>% Slight or Moderate</b>	<b>% With Any Disabilities</b>	<b>% Without Disabilities</b>
Employed	19	51	32	81
Not High School Graduate	26	17	22	9
Socialize Once a Week	68	74	70	85
Attend Church Once a Month	44	53	47	65
Eat Out Once a Week	33	51	40	59
Registered to Vote in 1996	N/A	N/A	62	78
Annual Income \$15,000 or less	34	20	29	10
Transportation a Problem	35	21	30	10
Health Needs Unmet Once a Year	21	13	19	6
Very Satisfied with Life	26	45	33	67

Adapted from National Organization on Disability, National Organization on Disability/Louis Harris Survey Program on Participation and Attitudes (2000).

**Notes**

1. Elizabeth Clare, *How to Talk to a New Lover About Cerebral Palsy*, in *STARING BACK: THE DISABILITY EXPERIENCE FROM THE INSIDE OUT* 125 (Kenny Fries ed., 1997).
2. Barbara Ruth, *In My Disabled Women's Group*, in *WITH WINGS: AN ANTHOLOGY OF LITERATURE BY AND ABOUT WOMEN WITH DISABILITIES* 33 (Marsha Saxton & Florence Howe eds., 1987).
3. The Americans with Disabilities Act, 42 U.S.C. § 12101(a)(6) (1990).
4. *Id.* at § 12101(a)(7).
5. *Id.* at § 12101(a)(3).
6. *Id.* at § 12102(2) (1990).
7. 29 C.F.R. § 1630.2(h)(1)-(2) (1999).
8. *Id.* at § 1630.2(i) (1999).
9. *Id.* at § 1630.2(j)(1)(i)-(ii) (1999).
10. *Id.* at § 1630.2(j)(2)(i)-(iii) (1999).
11. *Id.* at § 1630.2(j)(3)(i) (1999).
12. *Id.* at § 1630.2(j)(3)(ii)(A)-(C) (1999).
13. *Id.* at § 1630.2(k) (1999).
14. *Id.* at § 1630.2(l) (1999).
15. *Id.* at § 1630.2(m) (1999).
16. *Id.* at § 1630.2(n)(1) (1999).
17. *Id.* at § 1630.2(n)(2)(i)-(iii) (1999).
18. *Id.* at § 1630.2(n)(3)(i)-(iv) (1999).
19. *Id.* at § 1630.2(o)(1)(i)-(iii) (1999).
20. *Id.* at § 1630.2(o)(2)(ii) (1999).
21. *Id.* at § 1630.2(p)(1) (1999).
22. *Id.* at § 1630.2(p)(2)(i)-(v) (1999).
23. Americans With Disabilities Act, 42 U.S.C. § 12112(b) (1990).
24. 29 C.F.R. § 1630.4 (1999).
25. Americans With Disabilities Act, 42 U.S.C. § 12113(a) (1990).
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27. *Id.*
28. *Id.*
29. JOHN M. MCNEIL, *EMPLOYMENT, EARNINGS, AND DISABILITY* 3-4 (2000).
30. Table 17.
31. MCNEIL, *supra* note 29.
32. *Id.*
33. U.S. CENSUS BUREAU, *DISABILITIES AFFECT ONE-FIFTH OF ALL AMERICANS* 1, CENSUS BRIEF (Dec. 1997).
34. *Id.*
35. Table 1.
36. Table 18.
37. JOSEPH P. SHAPIRO, *NO PITY: PEOPLE WITH DISABILITIES FORGING A NEW CIVIL RIGHTS*

- MOVEMENT 21 (1993).
38. *Airline Workers Manhandle, Abuse Handicapped Passenger*, L.A., Jan. 15, 1989, at 3, *quoted in* Brief of Amicus Curiae, Paralyzed Veterans of America, National Organization on Disability, National Mental Health Association, and National Alliance for the Mentally Ill in Support of Respondents, University of Alabama at Birmingham Board of Trustees v. Garrett, 193 F.3d 1214 (11th Cir. 1995) (No. 99-1240) [hereinafter Brief of Amicus Curiae, Paralyzed Veterans of America].
  39. SHAPIRO, *supra* note 37, at 19.
  40. *Id.*
  41. Brief of Amicus Curiae, Paralyzed Veterans of America, *supra* note 38 (quoting Pam Maras, The Integration of Children with Disabilities into the Mainstream 140 (1993) (unpublished Ph.D. thesis, University of Kent).
  42. SHAPIRO, *supra* note 37, at 23.
  43. Barbara Kantrowitz, *Verdict After a Day of Horror*, NEWSWEEK, Mar. 29, 1993, at 27, *cited in* Brief of Amicus Curiae, Paralyzed Veterans of America, *supra* note 38.
  44. Table 18.
  45. Table 19.
  46. Table 18.
  47. NATIONAL ORGANIZATION ON DISABILITY, ACCESS TO HEALTH INSURANCE (excerpted from the NOD/Harris 2000 Survey of Americans with Disabilities July 25, 2001), *available at* <http://www.nod.org>.
  48. *See* Table 18.
  49. NATIONAL ORGANIZATION ON DISABILITY, LIFE OUTSIDE THE HOME – SOCIALIZING AND GOING OUT (excerpted from the NOD/Harris 2000 Survey of Americans with Disabilities July 24, 2001), *available at* <http://www.nod.org>.
  50. *See* Table 18.
  51. NATIONAL ORGANIZATION ON DISABILITY, LIFE OUTSIDE THE HOME – SOCIALIZING AND GOING OUT, *supra* note 49.
  52. *Id.*
  53. *See* Table 18.
  54. *Id.*
  55. JOHN M. WILLIAMS, NATIONAL ORGANIZATION ON DISABILITY, REMEMBERING ADA (Aug. 3, 2000), *available at* <http://www.nod.org>.
  56. *Id.*
  57. NATIONAL ORGANIZATION ON DISABILITY, PUBLIC SUPPORT FOR THE ADA IS STRONG (excerpted from the NOD/Harris 2000 Survey of Americans with Disabilities July 22, 2001), *available at* <http://www.nod.org>.
  58. *Id.*
  59. *Id.*
  60. *Id.*
  61. GARY HENDERSHOT, NATIONAL ORGANIZATION ON DISABILITY, PEOPLE WITH DISABILITIES LAG FAR BEHIND PEOPLE WITHOUT DISABILITIES IN FEELING GOOD ABOUT THEIR LIVES, THEIR COMMUNITIES AND THE NATION (excerpted from the NOD/Harris 2000 Survey of Americans with

- Disabilities July 25, 2001), *available at* <http://www.nod.org>; *see also* Table 19.
62. HENDERSHOT, *supra* note 61; *see also* Table 19.
63. NATIONAL ORGANIZATION ON DISABILITY, EMPLOYMENT FACTS ABOUT PEOPLE WITH DISABILITIES IN THE UNITED STATES (excerpted from the NOD/Harris 2000 Survey of Americans with Disabilities June 28, 2001), *available at* <http://www.nod.org>.
64. Table 19.
65. NATIONAL ORGANIZATION ON DISABILITY, EMPLOYMENT FACTS ABOUT PEOPLE WITH DISABILITIES IN THE UNITED STATES, *supra* note 63.
66. NATIONAL ORGANIZATION ON DISABILITY, EMPLOYMENT RATES OF PEOPLE WITH DISABILITIES (excerpted from the NOD/Harris 2000 Survey of Americans with Disabilities July 24, 2001), *available at* <http://www.nod.org>.
67. *Id.*
68. NATIONAL ORGANIZATION ON DISABILITY, EDUCATION LEVELS OF PEOPLE WITH DISABILITIES (excerpted from the NOD/Harris 2000 Survey of Americans with Disabilities July 25, 2001), *available at* <http://www.nod.org>.
69. Table 18.
70. Individuals With Disabilities Education Act Amendments of 1997, Pub. L. No. 105-17, 111 Stat. 37 (1997).
71. *Id.* at § 601.
72. *See generally* Tables 3-8.
73. Table 8.
74. *Id.*; *see* Tables 3-8 (summarizing 1995-1999 statistical trends).
75. Table 14.
76. *Id.* Those not in the labor force are persons who are unemployed and not seeking employment.
77. Table 15.
78. Table 16.
79. Table 1.
80. *See id.* for a detailed summary of earning trends by age and years of school completed.
81. *Id.*
82. *Id.*
83. *Id.*
84. *See* Table 1 for a breakdown by age and level of educational attainment from 1994 to 1999.
85. Table 2.
86. NATIONAL ORGANIZATION ON DISABILITY, ACCESS TO HEALTH INSURANCE, *supra* note 47.
87. U.S. Census Bureau, Survey of Income and Program Participation (SIPP) Table 8A (1994-1995).
88. *Id.*
89. *Id.* at Table 10B.
90. *Id.*
91. *Id.* at Table 10C.
92. NATIONAL ORGANIZATION ON DISABILITY, NOD/HARRIS SURVEY PROGRAM ON PARTICIPATION AND ATTITUDES: EXECUTIVE SUMMARY (2000), *available at* <http://www.nod.org>.
93. Table 18.
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101. *Id.*
102. JENNY MORRIS, PRIDE AGAINST PREJUDICE: TRANSFORMING ATTITUDES TO DISABILITY 19 (1991).
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105. RUSSELL, *supra* note 95, at 17.
106. *Id.* at 16.
107. *Id.* at 14.
108. MORRIS, *supra* note 102, at 30.
109. RUSSELL, *supra* note 95, at 14
110. MORRIS, *supra* note 102, at 30.
111. *Id.* at 28.
112. *Id.*
113. Lois Keith, *Encounters with Strangers: The Public's Response to Disabled Women and How this Affects Our Sense of Self*, in ENCOUNTERS WITH STRANGERS: FEMINISM AND DISABILITY (Jenny Morris ed., 1996).
114. *Id.*
115. Nicholas Watson, *Enabling Identity: Disability, Self, and Citizenship*, in THE DISABILITY READER: SOCIAL SCIENCE PERSPECTIVES 145, 161-62 (Tom Shakespeare ed., 1998).
116. *Id.*
117. MORRIS, *supra* note 102, at 36 (1991), quoting ANNE FINGER, PAST DUE: A STORY OF DISABILITY, PREGNANCY AND BIRTH 16-17 (1991).
118. *Id.*
119. Kenneth L. Karst, *The Coming Crisis of Work in Constitutional Perspective*, 82 CORNELL L. REV. 523, 533 (March 1997).
120. *Id.*
121. Edna Mora Szymanski, *Psychosocial and Economic Aspects of Work: Implications for People with Disabilities*, in WORK AND DISABILITY: ISSUES AND STRATEGIES IN CAREER DEVELOPMENT AND JOB PLACEMENT 9, 15 (Edna Mora Szymanski & Randall M. Parker eds., 1996).
122. Karst, *supra* note 119, at 533 (noting that factors influencing status evaluations include pay, the power connected to the job, the social importance of the job, the difficulty of entry, independence in completion of the task, the complexity and creativity demanded, and the level of education and training required).
123. *Id.*
124. *Id.*
125. *Id.*

126. Szymanski, *supra* note 121, at 15.
127. *See id.*
128. MORRIS, *supra* note 102, at 19-22.
129. Brief of Amicus Curiae, Paralyzed Veterans of America, *supra* note 38.
130. *See id.*
131. RUSSELL, *supra* note 95, at 14.
132. ANN CUPOLO CARRILLO, ET AL., NO MORE STARES 14 (1982).
133. *See id.* at 14-15.
134. For examples of how these discriminatory patterns were applied to women and blacks, *see* Karst, *supra* note 119, at 540.
135. *See id.*
136. *See id.*
137. *See id.*
138. *See id.*
139. *See id.*
140. *See id.*
141. *See* Brief of Amicus Curiae, Paralyzed Veterans of America, *supra* note 38.
142. Paul Abberley, *The Spectre at the Feast: Disabled People and Social Theory*, in THE DISABILITY READER: SOCIAL SCIENCE PERSPECTIVES 79, 81 (Tom Shakespeare ed., 1998).
143. *Id.*
144. Karst, *supra* note 119, at 538.
145. *Id.* at 532.
146. *Id.* at 531. Karst explains that in colonial times, a free citizen was independent, mobile, and had the liberty to work for his own benefit, in contrast to the slave who was dependent and legally bound to work for his master's profit under his master's control. The notion of liberty and autonomy in work is evident today in the very nature of citizenship, which involves respected and responsible participation in the community's public life. The slave's legal deprivation of liberty and autonomy in his life and in his work was linked to the denial of his citizenship rights.
147. THOMAS H. NAYLOR ET AL., THE SEARCH FOR MEANING IN THE WORKPLACE 75 (1996).
148. *Id.*
149. *Id.* at 76.
150. *Id.*
151. *Id.*
152. *Id.*
153. *Id.*
154. *Id.* at 76-77.
155. John Paul II, *Economics Must Always Be Directed to the Good of the Person*, in DIGNITY OF WORK: JOHN PAUL II SPEAKS TO MANAGERS AND WORKERS 12, 13 (Robert G. Kennedy ed., 1994).
156. Robert G. Kennedy, *Introduction to the Thought of John Paul on Work and Management*, in DIGNITY OF WORK: JOHN PAUL II SPEAKS TO MANAGERS AND WORKERS (Robert G. Kennedy ed., 1994) (quoting John Paul II).
157. John Paul II, *A Just Society Must Be Founded upon the Truth*, in DIGNITY OF WORK: JOHN PAUL II

- SPEAKS TO MANAGERS AND WORKERS 57, 58 (Robert G. Kennedy ed., 1994).
158. John Paul II, *Business People Should Collaborate in Transforming Society According to God's Plan*, in DIGNITY OF WORK: JOHN PAUL II SPEAKS TO MANAGERS AND WORKERS 64, 68 (Robert G. Kennedy ed., 1994).
159. John Paul II, *European Business Leaders Should Employ the Spiritual and Cultural Resources of Europe for the Well-Being of All*, in DIGNITY OF WORK: JOHN PAUL II SPEAKS TO MANAGERS AND WORKERS 75, 75 (Robert G. Kennedy ed., 1994).
160. Karst, *supra* note 119, at 539.
161. *See id.*
162. *See id.*
163. *Id.* at 549.
164. *See id.* at 557.
165. *See id.*
166. *See id.* at 552.
167. Vic Finkelstein, *The Commonality of Disability*, in DISABLING BARRIERS - ENABLING ENVIRONMENTS 12, 12-14 (John Swain et al. eds., 1993).
168. *Id.*
169. *See id.*
170. Szymanski, *supra* note 121, at 25.
171. *See* JOHN BUELL, DEMOCRACY BY OTHER MEANS: THE POLITICS OF WORK, LEISURE, AND ENVIRONMENT 43 (1995).
172. *Id.*
173. *See id.*
174. *See id.*
175. *See id.*
176. *Id.*
177. *Id.*
178. *Id.*
179. Jenny Morris, *Gender and Disability*, in DISABLING BARRIERS - ENABLING ENVIRONMENTS 85, 85-86 (John Swain et al., eds., 1993).
180. Abberley, *supra* note 142, at 89.
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183. Wendy Wilkinson & Lex Frieden, *Glass Ceiling Issues in Employment of People with Disabilities*, in EMPLOYMENT, DISABILITY, AND THE AMERICANS WITH DISABILITIES ACT: ISSUES IN LAW, PUBLIC POLICY, AND RESEARCH 68 (Peter David Blanck ed., 2000).
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185. *Id.*
186. Karst, *supra* note 119, at 547.
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188. Lynn Manning, *The Magic Wand*, in STARING BACK: THE DISABILITY EXPERIENCE FROM THE INSIDE OUT 105 (Kenny Fries ed., 1997).
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190. Michael Oliver, *Disability and Dependency: A Creation of Industrial Societies?*, in *DISABLING BARRIERS - ENABLING ENVIRONMENTS* 47, 51 (John Swain et al. eds., 1993).
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192. *Id.*
193. JAMES I. CHARLTON, *NOTHING ABOUT US WITHOUT US: DISABILITY OPPRESSION AND EMPOWERMENT* 46 (2000).
194. *Id.*
195. *Id.*
196. *Id.*
197. *Id.*
198. GARY L. ALBRECHT, *THE DISABILITY BUSINESS: REHABILITATION IN AMERICA* 35 (1992).
199. *Id.*
200. *Id.* at 27.
201. *Id.*
202. *Id.* at 244.
203. *Id.*
204. Peter David Blanck, *Assessing Five Years of Employment Integration and Economic Opportunity under the Americans With Disabilities Act*, 19 *MENTAL & PHYSICAL DISABILITY L. REP.* 384, 388 (1995) (noting that most persons with mental retardation who were employed worked in nonintegrated settings between 1990-1994, and some moved from integrated to non-integrated settings); PETER DAVID BLANCK, *THE AMERICANS WITH DISABILITIES ACT AND THE EMERGING WORKFORCE: EMPLOYMENT OF PEOPLE WITH MENTAL RETARDATION* 98 (1998) (noting that forty seven percent of persons with disabilities had no change in employment status between 1990 and 1996).
205. Tables 3 and 8. *See* Part I for a discussion of labor force and employment rates.
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207. *Id.*
208. Susan Schwochau & Peter David Blanck, *The Economics of the Americans With Disabilities Act, Part III: Does the ADA Disable the Disabled?*, 21 *BERKELEY J. EMP. & LAB. L.* 271, 273 (2000).
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218. *Id.*
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