Abstract

The recently-enacted Americans with Disabilities Act (ADA) requires U.S. transit systems to make fixed-route buses and trains fully accessible to the disabled. Under ADA, a large fraction of disabled transit users currently travelling via specialized, door-to-door service may find themselves no longer eligible for it. Instead, they will be expected to use accessible mainline service.

Evidence suggests that a majority of people with disabilities prefer door-to-door services over accessible fixed-route services for their own transportation. Evidence also suggests that virtually all latent demand for door-to-door service could be met for the cost of implementing full mainline accessibility as required by ADA. This thesis offers evidence in support of these two assertions and attempts to explain the political dynamics resulting in a federal mandate that is both high-cost and lacking popular support in the constituency it aims to serve. Two factors appear to have had a crucial influence in shaping ADA: the Washington disability lobby, which over-represents pro-mainline accessibility perspectives at the expense of competing perspectives; and widespread acceptance of the 'minority model' of disability, which equates denial of fixed-route access to denial of civil rights.
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Chapter 1: Introduction

The Americans with Disabilities Act (ADA) is the culmination of twenty years of effort by people with disabilities to strengthen Federal guarantees of their rights. Since the late 1960s, disability advocates have sought laws affording them a level of legal protection equal to that afforded racial minorities. Until the ADA, those efforts have been foiled by skepticism within Congress, the general public, and the disabled community itself about the extent that discrimination plays a role in sustaining the inferior status of disability. As a result, Federal policy before the Americans with Disabilities Act emphasized special programs rather than legal guarantees to help the disabled overcome barriers to their full participation in society.

One such program has consisted of paratransit, the door-to-door accessible vans and mini-buses that public transit agencies provide in most U.S. cities. Before the ADA, most urban residents with disabilities relied exclusively on paratransit when using public transportation, since most fixed-route equipment and infrastructure remained inaccessible to them. For riders, paratransit services clearly had some disadvantages over fixed-route transit, including the requirement of advance reservation in most systems, as well as the possibility of trip unavailability due to capacity constraint. However, the door-to-door services also had significant advantages for many. Paratransit offered most passengers the ability to travel from origin to destination at speeds approaching that of a taxi, but at a fare equivalent to that of public transit. Moreover, the service eliminated the discomforts and risks as-
associated with travelling to transit stops or travelling on crowded transit vehicles.

The enactment of the Americans with Disabilities Act has ended the era of relying largely on paratransit to provide public transportation for people with disabilities. Under the law, transit agencies are required to modify their existing service and infrastructure to make them accessible by people with disabilities. Transit providers must install wheelchair lifts on all new buses. They must construct elevators between the street and platforms of major subway stations. These accessibility modifications and additions will take place at great cost, estimated by Federal authorities at approximately $2 billion.

Moreover, the law guarantees continued paratransit eligibility for only a fraction of the disability population, since it is assumed that mainline accessibility will make the service obsolete for many riders. What remains unclear is whether most people with disabilities will actually prefer to exercise their right of mainstream access. A diverse body of evidence suggests that most people with disabilities prefer door-to-door transit options to ones relying on mainline accessibility. The evidence is not completely irrefutable because little research has ever directly surveyed the disabled population about its mode preferences. Nevertheless, existing consumer preference research, as well as the observed travel behavior of people with disabilities, suggest a preference for door-to-door service.

ADA's mandate for mainline accessibility is also somewhat surprising because of its greater cost in comparison to paratransit. For the cost of a single accessible bus trip likely to be taken as a result of ADA, as many as 10 to 15 door-to-door trips could be provided. In virtually
every transit system, available paratransit supply does not come close
to meeting demand. By mandating full mainline accessibility, Congress
passed up the opportunity to allocate transportation resources in a way
that would have gone far toward meeting that paratransit demand.

This thesis argues that Congress' decision to emphasize fixed-route
accessibility, despite apparent high costs and low benefits, reflects
the influence of several political forces. One such force consists of
the disability lobby, which is dominated by the relatively small segment
of the disability community that has clear-cut reasons to prefer fixed-
route accessibility. A second major influence consists of the legacy of
the black civil rights movement. The rallying cry of an earlier genera-
tion, that "separate is inherently unequal," made it untenable for po-
litical leaders to stand in the way of demands for mainline accessibil-
ity.

Additional factors probably also played a role in convincing
Congress and the President to support the Americans with Disabilities
Act. Though the law's transit requirements impose great costs, virtu-
ally all of them are borne by local and state, rather than Federal, au-
thorities. Moreover, the history of transit in general has shown that
capital cost-intensive alternatives, like fixed-route accessibility, of-
ten triumph over operating cost-intensive ones, such as door-to-door
service, because supporters of transit seek to bind government to a
long-term commitment in providing transportation. Other factors include
the attractiveness of the disabled as a political constituency and their
power as a voting block, as well as the desire of Congress to make a
'bold stroke' which would provide a simple, easily understandable reso-
lution to the disability transportation controversy.
Ultimately, it may not be surprising that this paradox can exist between what ADA requires and what the 'silent majority' of the disability community appears to want. Social scientists have repeatedly demonstrated that the belief structures and political attitudes of almost every individual are rife with inconsistency. Thus, it is entirely conceivable, perhaps even likely, that a majority of individuals with disabilities support fixed-route accessibility requirements while preferring the door-to-door option for their own transportation.

Chapter Two of this thesis describes the history of transportation for people with disabilities in the U.S., with emphasis on the roles that ideology has played in shaping the debate over time. Chapter Three describes the Americans with Disabilities Act itself and describes how the ideology of the civil rights movement ultimately became incorporated into the Act. The chapter also analyzes cost estimates produced as part of the legislative and rulemaking process, in order to show the high cost of fixed-route compliance in comparison to the alternative of guaranteeing wider-scale paratransit eligibility. Chapter Four delineates the evidence suggesting consumer preference for paratransit over fixed-route accessibility. Chapter Five finally examines the central paradox, and attempts to explain why Congress and the President choose to enact a law with high costs and little support in a large segment of the community affected by it. The Epilogue suggests a new direction that the accessibility debate may take in response to ADA implementation.
CHAPTER 2: The Political History of Disability in the United States

The political history of disability in the United States has gone through four distinct phases, beginning with a communitarian approach during the colonial and early national period. During the 19th century the issue was defined primarily as the domain of private charity, while the first half of the 20th century saw it framed as a welfare issue to be addressed by the state. Beginning in the 1960s, a rights-based approach emerged, and it has remained dominant ever since. Transportation programs for the disabled had their genesis during the welfare phase, though it was the advent of the rights-based perspective that made them the subject of public controversy.

Public transport for the disabled has provoked spirited debate ever since Congress first focused its attention on the issue in the late 1960s. Transit agencies have repeatedly asserted that most people with disabilities would be better served by specialized door-to-door services, while disability advocates have asserted that anything less than mainline accessibility constitutes invidious discrimination. Responding in turn to the alternate pressures of disability advocates and the transit industry, Federal policy on the issue flip-flopped repeatedly during the 1970s. Transit agencies were required to provide fixed-route accessibility at some points, and paratransit at others.

The history of disability policy in the United States, and the history of disability transportation policy in particular, suggest several conclusions about the origins of the Americans with Disabilities Act. First, history shows that a 'minority model' of disability has ex-
erted influence in favor of fixed-route accessibility for several decades. Second, the record of efforts to require mainline accessibility reveals a historical under-representation of opinion from 'the silent majority' of people with disabilities. Third, appreciation for the confusing and contradictory history of Federal policies on the subject helps in understanding the attraction of ADA, with its bold stroke mandating both fixed-route accessibility and paratransit.

**Communitarian Phase**

Before the mid-19th century, programs for the disabled stemmed largely from a sense of communal responsibility for those unable to care for themselves. Governments acknowledged the existence of a social contract, rooted in the European feudal obligation of lord toward peasant, which obliged them to assist the helpless and particularly those injured while defending the state. In 17th century Britain, statutes outlawing vagrancy attempted to define the "honest beggar" and distinguish between those "impotent to serve and those able to labor or serve".1 The right to beg, according the Poor Law of 1601, was reserved for "women great with child, men and women in extreme sickness, and "persons being impotent and above the age of sixty." Other English laws of the period instructed local officials to identify their aged and impotent poor, and to "assign them territorial boundaries for their begging, register their names, and provide each of them with a letter indicating authorization to beg within certain territorial limits."2

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2. Stone, p. 36.
In the New World, much early government attention to disability issues reflected a sense of obligation toward wounded veterans. Six years after its establishment, the Pilgrim Colony at Plymouth enacted its first law dealing with the status of wounded soldiers: "If any man shallbe (sic) sent forth as a SOULDIER and shall return maimed, he shallbe maintained competently by the Collonie during his life." 3

A later law of the Massachusetts Bay Colony also stated, "And all such soldiers and seamen as, at any time hereafter, shall be maimed or otherwise disabled by any wound received in their majesties' service within this province, shall be relieved out of the publick treasury, as this great and general court shall order." 4 Similarly, early Virginia asserted that men "hurt or maymed and disabled from providing for their necessary maintenance and subsistence...be relieved and provided for by the several counties, where such men reside or inhabit." 5

The fledgling United States enacted several early laws addressing the republic's responsibility toward disabled soldiers. One law, enacted on August 26, 1776, only 53 days after the republic's founding, acknowledged that wounded veterans "may stand in need of relief" as a result of "los(ing) a limb, or be otherwise so disabled as to prevent their serving in the army or navy, or getting their livelihood." 6

Shortly thereafter, a 1777 statute gave the nation its first program for the rehabilitation of disabled citizens. The law created a Corps of Invalids for injured soldiers to serve in less physically demanding roles at full pay, and obliged them to attend a "Mathematical School,

5. Liachowitz, p. 21.
appointed for the purpose of to learn Geometry, Arithmetick, vulgar and
decimal fractions, and the extraction of Roots."

Private Charity Phase

With the rise of capitalism during the 19th century, and establish-
ment of the first major philanthropies built on capitalist fortunes,
private charities came to occupy the central role of assisting the dis-
abled. In 1812, a private charity founded the first school for the
blind in Baltimore, and in 1817 another charity established the American
School for the Deaf. The Perkins School for the Blind, eventually to
become world renowned via its association with Helen Keller, opened its
doors in 1823. During the 1830s, Dorothea Dix led a movement to estab-
lish Federal hospitals to care for the mentally ill. Though unsuccess-
ful at the national level, she persuaded a number of states to create
them. The last decades of the century saw the establishment of a number
of major charitable organizations that defined their mission at least
partially in terms of serving the disabled. They included The Salvation
Army of the United States, The American Red Cross and its Institute for
Crippled and Disabled Men, Goodwill Industries, the National
Association of Mental Health, and the National Easter Seal Society. 8

Public Welfare Phase

At the close of the 19th century, the Progressive Era political
response to industrialization brought renewed government attention to
disability issues, especially as they related to the workplace. With

7. Liachowitz, p. 25.
8. Richard Scotch, From Good Will to Civil Rights (Philadelphia:
mechanization producing dramatic increases in on-the-job injuries, Progressive reformers successfully lobbied for a series of state workers' compensation laws. The earliest statutes were declared unconstitutional, but by 1921, 45 states and territories had established laws providing medical treatment and financial compensation for workplace injuries, modelled largely on the compensation systems for disabled soldiers in existence since colonial times.

At the end of World War I the Federal Government renewed its role in providing for the welfare of thousands of disabled servicemen. Though the number of disabled veterans was not significantly larger than the nation had been confronted with at the end of the Civil War, the intervening decades had seen early efforts to rehabilitate the disabled. So, rather than simply pensioning off its disabled veterans at the close of the First World War, Congress, under the Smith-Sears Vocational Rehabilitation Act, appropriated funds for educating them and providing them with job training.

World War I also marked an advance in the level of public awareness about the disabled, with the conflict allowing them to enter the work force in unprecedented numbers. As women later did during World War II, disabled people demonstrated their ability to participate in the work force in jobs left vacant by draftees. Recognizing the potential to improve the welfare of the disabled, Congress in 1920 enacted

9. The idea that an injured worker is entitled to compensation goes all the way back to the Middle Ages. Under English common law, an employer was required to compensate workers injured on the job. However, this traditional responsibility withered substantially under early capitalist systems (Scotch p. 18).
10. Scotch p. 18.
the Vocational Rehabilitation Act. The Act offered Federal assistance to disabled civilians in the form of matching grants for state programs for counseling, job training, and job placement. 12

The election of Franklin Roosevelt in 1932 brought further changes in the status of the disabled, both symbolically and substantively. Roosevelt himself, despite dependence on a wheelchair, seemed the antithesis of the frail and helpless stereotype of a disabled person. His administration established the Social Security system, which provided universal old age and survivors benefits, as well as benefits for disabled children and adults. Late in his presidency, Roosevelt signed the Vocational Rehabilitation Act of 1943 (the Barden-LaFollette Act), expanding on the existing Federal/state vocational rehabilitation program and establishing the Office of Vocational Rehabilitation. 13

Civil Rights Phase

In the 1960s, social attitudes about disability, and attitudes of the disabled toward themselves began to shift significantly. In place of the previous perspective on disability, which emphasized the need for government charity toward the disabled unable to earn a living wage, a new group of advocates began to view the disabled primarily as an "oppressed minority group." 14 These advocates argued that oppression of the disabled takes the form of public prejudice and job discrimination, the two chief manifestations of oppression of other minority groups, such as black people.

The essence of the argument made by these advocates was "that the handicapped do not suffer from inherent deficits so much as society imposes those things on them."\textsuperscript{15} They acknowledged that conditions like blindness do impose limitations, but argued that society actively excludes the blind by not designing buildings, transportation and communication systems, and work settings so that they are accessible. In place of mainstream access, they argued, society has offered the disabled segregation in special schools, living facilities, and social programs.

Scholars have often seen a connection with the black civil rights revolution and the new perspective of the 1960s that emphasized discrimination against the disabled. As Richard Scotch has put it, "In the communities and college campuses of this period were models of other groups seeking greater participation in social institutions and more autonomy and control in their lives. Demands for greater participation by disabled people occurred in the wake of the widespread and highly visible social conflicts of the 1960s. These conflicts included the struggle for civil rights by black people, the anti-war and student movements, and a revitalized feminist movement."\textsuperscript{16} In \textit{The Last Civil Rights Movement}, Diane Driedger wrote, "[I]n North America in the 1960s, the political climate of social change spurred disabled people to organize in the same way as blacks, poor people, and women were doing."\textsuperscript{17}

In modelling themselves on blacks and other groups seeking greater self-determination in the 1960s, disabled advocates created what the political scientist Harlan Hahn has termed the 'minority model.'

\textsuperscript{15} Berkowitcz, p. 187.
\textsuperscript{16} Scotch, p. 35.
\textsuperscript{17} Scotch, p. 12.
According to Hahn, the minority model differs from previous attitudes about disability, which he terms the 'functional limitations model.' The older model had emphasized the difficulties that physical handicap causes in negotiating a physical environment seen as fixed and not amenable to government intervention to improve accessibility. The newer 'minority model,' however, reversed the focus, accepting individuals' physical handicap as fixed and emphasizing the need to adapt the physical environment to suit the needs of the handicapped.18 Or, as one writer put it, writing in the Disabled Rag,"[O]ur problems are not 'challenges' we have been assigned by some new age Buddha as our personal-growth Karma, but failings of a society that we personally have done nothing to cause (except to remind those in power of their own mortality, something they heartily do not want to be reminded of?)."19

The minority model's ascendancy in the 1960s created a new emphasis on confrontational advocacy, collective action, and self-help. Earlier private organizations for the disabled, like the Easter Seals, the March of Dimes, and the Salvation Army had employed few disabled people on staff and seldom challenged the social status quo. By contrast, Ed Roberts, an early advocate for disabled rights, openly challenged the University of California's 1962 attempt to deny him admission because he was a quadriplegic.20 Roberts went on to found the Berkeley Center for Independent Living, the first of many such centers around the U.S. that "provided a variety of services to disabled individuals aimed

20. Scotch, p. 36.
at promoting their independence and included among its activities a ma-
jor advocacy focus. 21

With the black civil rights movement as their role model, the
new disabled advocacy groups of the 1960s looked to the courts for re-
lief from perceived discrimination. One early organization to take that
approach was the National Center for Law and the Handicapped (NCLH).
Another organization with a legal emphasis was the Disabled in Action
(DIA), formed in 1972 to assist a wheelchair-bound teacher’s suit
against the City of New York for prohibiting her from teaching in its
public schools. 22 Efforts on the legal front quickly produced visible
results. In 1971, courts recognized for the first time in Wyatt v.
Hardin a basic "right to treatment" for mentally disabled individuals
confined to institutions. Around the same time, courts also recognized
the rights of retarded and other disabled children to receive educa-
tional resources equal to those provided non-disabled children. 23

Early Federal Efforts to Mandate Transit Accessibility

The first Federal mandate for accessible transit emerged with
the Architectural Barriers Act of 1968. The genesis of that act owed
much to the lobbying efforts of a Senate staffer who had difficulty mov-
ing around the Capitol because of its inaccessibility to wheelchairs.
Like most laws that followed it during the next decade, the
Architectural Barriers Act produced enormous confusion within the trans-
it industry about the extent that it required accessible transit sta-
tions.

21. Scotch, p. 36.
22. Scotch, pp. 36-37.
Spurred on by the urgings of the staffer, in 1967 Senator Bartlett introduced a accessibility bill into the subcommittee on Public Buildings and Grounds of the Senate Public Works Committee. The original bill had a highly limited scope that authorized creation of national accessibility design guidelines for new, federally-funded buildings.24 Testifying before the committee, Senator Bartlett offered assurance about the bill's narrow mandate, stating that it "carries with it no appropriation, and will cost the taxpayers of this country only a nominal amount." According to Bartlett, "Its advantages for one segment of our country's citizens are not counterbalanced to any extent by disadvantages to another, nor does it have any accompanying appropriation -- or the prospect of appreciable costs in the future -- over which we, as Members of Congress, must agonize."25

By and large, senators accepted Bartlett's assurances about the bill's limited scope, low cost, and non-controversial nature. During Senate hearings, Members assumed that it would have few far reaching impacts in need of consideration, and possible impacts on public transportation were mentioned only once. No floor debate took place before the Senate ratified the bill and sent it on to the House for consideration.

In the House committee hearings on it, Members questioned the bill's scope somewhat more thoroughly, though they too lacked full recognition of its potential transportation impacts. A congressman from California asked at one point whether BART stations, then in the design phase, would need modification to be in compliance with the contemplated

accessibility law. The committee chairman responded to the question with a remark on the House floor suggesting that "if constructed with Federal public funds, such [transit] facilities would be covered." When the bill came to a vote, not a single Member of the House opposed it.

As enacted, the Architectural Barriers Act of 1968 was ambiguous about requiring full accessibility on new rail transit systems, thereby making further legislation necessary to clarify the issue. BART and the Washington D.C. METRO, the only new U.S. rail systems then in the planning process, responded differently to the Act's initial ambiguity. BART decided to seek Federal funds for elevators, while the Washington METRO asserted that the law did not require wheelchair accessibility at subway stations. METRO's board of directors asserted its exemption from the Act for two reasons: first, because it had been created as a multi-jurisdictional compact, and not as a Federal agency; and second because, "its buildings and structures were not subject to standards for design or construction issued under authority of law authorizing a Federal loan or grant." METRO's board also cited a General Services Agency study that supported its claim of exemption from the Act. Spurred on by METRO's determination not to make its subway system accessible, several organizations, including the Paralyzed Veterans of America and the National Easter Seal Society succeeded in amending the Architectural Barriers Act in 1970 to explicitly require Washington METRO to design all of its buildings and structures to be accessible.

28. Katzmann, p. 27.
That same year, continuing controversy about the scope of the Architectural Barriers Act led to other efforts to strengthen Federal transit accessibility requirements. Congressman Mario Biaggi offered a successful amendment to the Urban Mass Transportation Act of 1964, asserting that elderly and handicapped persons have a right of access to public transportation, and requiring local transit authorities to make "special efforts" to ensure access for the disabled.\(^\text{29}\) Three years later, the same language was inserted into the Federal-Aid Highway Act of 1973 to require such "special efforts" by transit systems receiving Federal highway funds.

The next significant development in transit accessibility legislation came with section 504 of the 1973 Rehabilitation Act. Inserted as part of a bill dealing with mundane issues of vocational rehabilitation, section 504 for the first time cast the status of the disabled in terms of civil rights. The key sentence of the Act stated simply, "No otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity conducted by an Executive agency or by the United States Postal Service."\(^\text{30}\) These words, and other key sections of the Act, were drawn directly from the language of the Civil Rights Act of 1964, which prohibited discrimination on the basis of race, color, or national origin. Their effect was to create a civil rights mandate for accessibility in federally-funded transit systems.

\(^{29}\) Katzmann, p. 93.

\(^{30}\) Berkowitz, p. 199.
Issues of Un-Representativeness among section 504's Advocates

Scholars studying the legislative history of section 504 have documented that the impetus for its civil rights guarantees originated outside of the disability community itself. This finding has significance because it suggests a history of Congress expanding the requirements for accessible transportation without regard for whether people with disabilities are actively seeking them. Moreover, the public advocacy role adopted by officials from the civil rights bureaucracy demonstrates how framing the disability issue in terms of discrimination produced a ready-made lobby willing to support it.

According to Richard Scotch, who has closely researched the issue, during its drafting, an unknown, able-bodied Congressional staffer first suggested the inclusion of a civil rights provision in the bill. This suggestion prompted an aid to Senator Jacob Javits to research the wording of the 1964 Civil Rights Act, and to include key provisions of it in the passage that became section 504. During hearings and floor debate on the Rehabilitation Act, section 504 received virtually no comment, either from witnesses or Members of Congress. Lack of opposition from Members of Congress was especially surprising in light of the failure of virtually identical legislation that had been proposed the previous year.31

In his own analysis, historian Robert Katzmann has argued that members of the Washington civil rights community, with virtually no experience with disability issues, played a major role in defining section 504’s mandate. According to Katzmann, Congress intended only to make a general statement of principle about the status of the disabled in en-

acting section 504, and did not intend to implement a regulatory regime as part of the law. Instead, the mandate for rule-making emerged only after the law's enactment. At that time, according to Katzmann, Congressional and executive branch staffers conspired to redefine Congressional intent to include a heavy emphasis on Federal rule-making and mandated affirmative action for the disabled.

In support of his argument, Katzmann points to the conference committee report accompanying a small amendment to section 504 enacted about a year after the original statute. That report asserted that the 1973 Act had originally intended to require HEW-issued regulations and government-wide guidelines for section 504's implementation. However, Katzmann points out that a rule-making mandate was never discussed or debated during consideration of the 1974 amendment, nor "was [it] discussed in Congress at the time of the passage of the Rehabilitation Act of 1973."32

Katzmann argues that, in writing the conference committee report, Senate subcommittee staffers, rather than Members themselves, "sought to affect its [504's] development and administration in subtle ways. They did so by creating legislative history -- a year after passage of section 504 -- attributing to Congress an intent that had not been expressed at the time of enactment."33 Their ultimate purpose, he suggests, was two-fold. Staffers sought with one hand to legitimate the plans of HEW's Office for Civil Rights, which was eager to extend to disabled people the special legal protection afforded racial minorities. With the other hand, according to Katzmann, staffers were attempting to

32. Katzmann, p. 11.
33. Katzmann, p. 52.
provide a legal basis for courts to uphold HEW's regulatory authority, since judges frequently rely on legislative reports for guidance about Congressional intent in enacting statutes. 34

Confusion and Contradiction in Implementing section 504

Caspar Weinberger, Secretary of HEW, did not share the enthusiasm for rulemaking shown by Congressional staffers or his own Office for Civil Rights. As a result, he moved slowly in responding to the new regulatory pseudo-mandate. However, other Federal agencies and his successor at HEW proved much more willing to comply. By proceeding to issue regulations without any real statutory authority to do so, the Federal government set the stage for successful court challenges to the regulations. Ultimately the process produced continuing confusion about the legal requirements for accessible transportation.

In 1976, the U.S. Department of Transportation (USDOT) promulgated regulations intended to enforce section 504 of the 1973 Rehabilitation Act, as well as Section 16 of the Urban Mass Transit Act, and Section 165(b) of the Federal Aid to Highways Act. 35 The regulations mandated that state and local transit officials make "special efforts in planning public mass transportation facilities and services that can effectively be utilized by elderly and handicapped persons." 36 Moreover, the regulations made it a condition of project grant approval that local transit authorities demonstrate "satisfactory special efforts" on behalf of transportation for the disabled. Guidelines accompanied the regulations to provide transit officials with information

34. Katzmann, p. 53.
35. APTA v. Lewis, 655, F. 2d, 1272.
36. APTA v. Lewis, 655, F. 2d, 1272.
about the kinds of "special efforts" that would satisfy the USDOT. At the same time, however, the guidelines specifically avoided requiring that existing fixed-route transit services be made accessible. Instead, the guidelines offered local transit systems the option to create programs "responsive to local needs" and specifically cited paratransit as an acceptable alternative.37

Two days before USDOT's 1976 regulations were to be published in their final form, President Ford issued an Executive Order directing the Department of Health, Education and Welfare (HEW) to manage the implementation of section 504 for all federal agencies. The order required the Secretary of HEW to promulgate a set of standards and guidelines that would clarify for other Federal departments what practices constitute discrimination. Other Federal agencies, in turn, were directed to craft regulations consistent with these guidelines once they were in place.38

When HEW promulgated its guidelines in 1978, their most significant feature was a requirement that Federal fund recipients "mainstream" handicapped individuals, and by doing so, integrate them into the same programs offered to others. According to the U.S. Court of Appeals that heard a case stemming from these regulations, "HEW's approach [was] premised on the principle that 'separate but equal' treatment is innately discriminatory and must be avoided to enforce the civil rights guaranteed the handicapped by section 504."39 The guidelines did allow separate treatment of the disabled in rare instances, but only when necessary in order to provide equal opportunity for them. Because

37. APTA v. Lewis, 655, F. 2d, 1272.
38. APTA v. Lewis, 655, F. 2d, 1272.
39. APTA v. Lewis, 655, F. 2d, 1272.
USDOT's 1976 regulations had sanctioned paratransit, in effect allowing separate transportation systems for the able-bodied public and the disabled, they clearly violated HEW's 1978 guidelines, and were therefore immediately rescinded. 40

Six months later, USDOT published new transportation accessibility rules intended to be consistent with the HEW requirements for transportation "mainstreaming." These new, 1979 regulations reflected significant differences from the earlier, 1976 ones, though both were intended to implement the same statute. Instead of the vague requirement that transit providers make "special efforts" to provide accessibility, the 1979 regulations mandated goals and timetables, specifically requiring that Federal transit fund recipients make public transport "accessible" by May 31, 1982. Deadline extensions were offered only in the case of "extraordinarily expensive" changes to facilities or equipment, implementation of which the regulations allowed to occur over thirty years. Some structural changes to transit systems could be waived entirely, if they could be shown to be especially burdensome. In practical terms, however, the regulations mandated that all buses purchased after July 2, 1979 have a wheelchair lift, and that by 1989, 50 percent of the buses in transit fleets must be lift-equipped. In rail systems, "key" subway, commuter rail and streetcar stations were to be made accessible. According to the regulations, approximately 40 percent of stations on most rail systems should be considered "key" stations. In addition, transit authorities were required to make one car per train accessible to wheelchairs. 41

40. APTA v. Lewis, 655, F. 2d, 1272.
41. APTA v. Lewis, 655, F. 2d, 1272.
Less than a month after the 1979 regulations were promulgated, the American Public Transit Association (APTA) brought suit in Federal court, claiming that USDOT lacked statutory authority to impose specific accessibility requirements under section 504. In APTA v. Lewis, the District of Columbia Circuit Court upheld APTA's claim on appeal. The court decision relied heavily on a previous Supreme Court ruling, Southeastern Community College v. Davis, which also arose from section 504. In the Davis case, the Supreme Court had acknowledged that "the language and structure of the Rehabilitation Act of 1973 reflect a recognition by Congress of the distinction between the even-handed treatment of qualified handicapped persons and affirmative efforts to overcome the disabilities caused by handicap." Nevertheless, the Supreme Court asserted, "[N]either the language, purpose, nor history of section 504 reveals an intent to impose an affirmative action obligation on all recipients of Federal funds." According to the appeals court hearing APTA v. Lewis, USDOT's regulations did constitute such a proscribed affirmative action obligation because they "require extensive modifications of existing systems and impose extremely heavy financial burdens on local transit authorities."

In the wake of the court ruling in APTA v. Lewis, USDOT suspended its regulations mandating full accessibility. In their place, the agency substituted a version of the earlier 1976 regulations requiring only "special efforts" in transporting the disabled. In restoring the "special effort" standard, the Department of Transportation appeared to fulfill a campaign promise of Ronald Reagan, who had just taken of-

42. 442 U.S. 397, 99.
43. 442 U.S. 397, 99.
44. APTA v. Lewis, 655, F. 2d, 1272.
fice and had campaigned for the Presidency on a platform that stressed regulatory relief for state and local jurisdictions. Moreover, all section 504 regulations became "an early target of Vice President George Bush's regulatory task force charged with scrutinizing regulations and charged with weeding out the unnecessary ones." 

Court challenges to local transit accessibility policies continued throughout the early and mid-1980s. However, in the wake of APTA v. Lewis, judges showed themselves relatively unsympathetic to the arguments of disabled advocates. In Americans Disabled for Accessible Public Transportation (ADAPT) v. Dole the court decided that regulatory agencies may consider costs in determining the adequacy of efforts on the part of transit authorities to make their systems accessible. In ADAPT v. Skinner (1989) court held that section 504 does not mandate 'mainstreaming', the practice of transporting disabled individuals on the same vehicles used to transport the general public.

**Finding the Common Thread in Disability History**

The history of disability policy closely parallels changing social structure in the United States. In colonial days, the blurred distinction between community and state produced family-like reciprocal obligations between individual and society to protect each other in times of need. Society's decision to offer rehabilitation at that time depended largely on the circumstances under which disability originated. During the 19th century, the enormous power of industrial magnates produced a disability system that relied on philanthropic impulses. As a

45. Katzmann, p. 176.
46. Katzmann, p. 45.
47. Katzmann, p. 45.
result, individuals were offered assistance generally only if private monies were available. During the first part of the 20th century, the newfound power of big government produced an emphasis on state action to improve the welfare of the needy. The Federal government's involvement reflected a sense that local community and private services left large gaps unfilled and were subject to the undue influence of powerful individuals like factory owners.

Just as policy toward the disabled has historically reflected changing American social norms, the current controversy about fixed-route accessibility versus paratransit can be seen as a reflection of our own modern social structure. One of the features of that social structure is the ascendancy of the civil rights movement as a banner under which reformers must march in order to be successful. The civil rights orientation that was born in America of the 1960s has increasingly come to dominate issues of every type, from crime to unwanted pregnancy. Where public policy issues were once framed as questions of whether a right did or did not exist, they are now often framed in terms of establishing the precedence of competing rights whose validity is not questioned. Thus debates about criminal justice focus on the rights of the convicted to be free of cruel and unusual punishment versus the right of society to pursue public safety and social retribution. Debates about abortion attempt to sort out the rights of the mother versus the rights of the fetus. Given this context, it is not surprising that the debate over disability transportation has devolved into a struggle over the right of the disabled to receive mainstream access versus the right of the public to provide useful and cost-effective mobility.
Chapter 3: The Americans with Disabilities Act

Introduction

This chapter outlines the history of the Americans with Disabilities Act itself, from its inception through the implementation and rule-making process. In doing so, the chapter focuses on four major points. First, the genesis of ADA owes much to the National Council on the Handicapped (later the National Council on Disabilities), which drafted the legislation and shepherded it through Congress. A later chapter of the thesis argues that the National Council does not represent the full spectrum of the disability population. It also argues that the Council's un-representativeness accounts for why the ADA does not reflect the preferences of the disability population as a whole.

Second, the chapter outlines how the ADA explicitly embraces the minority model of disability by using the strongest possible language to draw parallels between the status of racial minorities and the status of the disabled. These implicit references to the minority model in the language of the Act have significance because widespread acceptance of that model helped make the ADA possible.

Third, the chapter describes how provisions of ADA emphasize fixed-route accessibility at the expense of paratransit. The Act vastly broadens requirements for elevators, wheelchair lifts, and ramps at transit facilities. At the same time, it permits most transit providers to drop large segments of their disability populations from paratransit rosters.
Fourth, the chapter describes cost estimates that have been developed by Federal agencies to assess the financial impact of ADA. These estimates reveal that, on a per trip basis, implementing fixed-route accessibility, combined with continued paratransit service for a large portion of the disabled, costs more than maintaining a long-term commitment to paratransit for all of the transportation disabled population. The decisions of Congress and the President to support ADA, despite lack of widespread support among the disabled, appear even more paradoxical when one considers the evidence available to them about the great expense associated with the Act.

**Genesis of the Americans with Disabilities Act**

In the wake of repeated judicial and legislative reversals of section 504's requirements, U.S. transit systems adopted a wide range of accessibility goals and implementation plans. Most transit agencies retreated from full accessibility commitments that had been made under early interpretations of section 504. Instead, transit agencies frequently substituted paratransit, which according to the transit agencies, could offer more service to disabled individuals at a lower cost. By the mid-1980s, only three of the 22 largest U.S. cities (Los Angeles, Washington, and Oakland) relied exclusively on accessible bus and rail systems to transport disabled persons. Other large U.S. transit systems relied either on paratransit or a mixture of paratransit and accessible mainline services.¹

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One of the major actors in the push for Federal mainline accessibility requirements has been the National Council on Disability. The Council constitutes an independent Federal agency comprised of 15 members appointed by the President and confirmed by the Senate. It was established by Title IV of the Rehabilitation Act of 1973 and was originally an advisory board within the Department of Health, Education, and Welfare. However, in 1984, the Council became an independent agency thanks to an amendment to the Rehabilitation Act offered that year.²

In 1986, the National Council published Toward Independence, a report containing forty-five legislative recommendations, including a call for comprehensive civil rights legislation to protect the disabled. The report assessed the nation's reliance on paratransit for transporting individuals with disabilities and concluded that "we are far short of a truly accessible system."³ In order to implement such a truly accessible system, the report called for legislation guaranteeing "full access"⁴

The National Council's legislative call-to-arms received significant attention because of its official status as an arm of the Federal government with "authority to review all Federal laws and programs that affected individuals with disabilities."⁵ Members of Congress cite the legislative agenda outlined by Toward Independence as the genesis of what ultimately became ADA.⁶

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² Toward Independence, p. iv.
³ Toward Independence, National Council on Disability, p. 32.
⁴ Toward Independence, p. 33.
⁵ Weicker, p. 390.
Though the Council had a Federal mandate to submit suggestions for new legislation regarding the disabled, its decision to pursue comprehensive civil rights protection was not driven by any Presidential directive. Instead, it was motivated "by testimony it received at consumer forums of individuals throughout the country. In those forums, Council members heard repeatedly that the primary problem facing individuals with disabilities was discrimination."\(^7\) Moreover, the Council became even more convinced of the need for civil rights legislation after the release of a 1986 Harris Poll that "documented widespread discrimination [against the disabled] and a sizable consensus [among disabled people] on the need for expanded civil rights protection."\(^8\)

The release of *Toward Independence*, with its call for disability civil rights legislation, caused Congress to request a more detailed follow-up report with specific legislative recommendations. In order to fulfill that mandate, the Council asked Bob Bergdorf, a professor at the Washington, D.C. School of Law, "to draft a proposed bill carrying out the ADA recommendation included in *Toward Independence*."\(^9\) The Council adopted Bergdorf's original version of ADA on November 16, 1987. The draft legislation was featured in the Council's second report, *On the Threshold of Independence*, submitted to Congress in January of 1988.

The original ADA legislation was sponsored by Senator Lowell Weicker (R-CT) and Representative Tony Cuelho (D-CA) and was introduced in April of 1988. The first hearings on the bill took place on September 27, 1988. According to Weicker, "The hearing produced important testimony, but because it was late in the 100th Congressional

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Session, the bills were not acted upon by either the House or the Senate before Congress adjourned."¹⁰

When Congress reconvened, Weicker's role as Senate sponsor was superseded by Tom Harkin. According to Weicker, "He performed a yeoman's service in guiding the bill through the legislative storms. Under his leadership, significant revisions were made to the bill prior to its re-introduction in the Senate. These modifications made the bill more specific and somewhat more moderate."¹¹ Harkin and Cuelho reintroduced the revised bill into both houses on May 9, 1989. Senate passage of the bill took place shortly after the return from summer recess, on September 7, 1989, with House on May 22, 1990. President Bush signed the Americans with Disabilities Act on July 26, 1990.¹²

ADA's Emphasis on the Disabled as a 'Discrete and Insular' Minority

The Americans with Disabilities Act superseded most previous Federal legislation and court decisions on the subject of rights for disabled people. In how they define the purpose of the law, one can see the authors' intent to enact "comprehensive law requiring equal opportunity for individuals with disabilities, with broad coverage and seeing clear, consistent and enforceable standards prohibiting discrimination on the basis of handicap."¹³ For instance, the Act implicitly acknowledges the confusing and piecemeal nature of previous legislation, stating one of its purposes as "provid[ing] a clear and comprehensive national mandate for the elimination of discrimination against individuals

¹⁰. Weicker, p. 391.
with disabilities.\textsuperscript{14} Reacting to previous difficulties with legislation that proved unenforceable in court, the ADA explicitly aims "to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities." In order to clarify previous disagreement about the authority of the executive branch to enforce disability rights, the Act affirms its intent "to ensure that the Federal Government plays a central role in enforcing the standards established in the Act on behalf of individuals with disabilities."\textsuperscript{15}

The ADA justifies its reaffirmation and enhancement of the disabled's special legal status by citing a number of Congressional findings about their need for legal protection. Most of these findings, according to the Act, suggest that the disabled are long-standing victims of legal and social discrimination. For example, "[H]istorically, society has tended to isolate and segregate individuals with disabilities, and despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem."\textsuperscript{16} The Act identifies the attitudes of public transportation and other public facility providers as contributing to this pattern of discrimination, "[I]ndividuals with disabilities continually encounter various forms of discrimination, including outright exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and the relegation to

\begin{itemize}
  \item \textsuperscript{14} 42 USC 12102.
  \item \textsuperscript{15} 42 USC 12102.
  \item \textsuperscript{16} 42 USC 12101.
\end{itemize}
lesser services, programs, activities, benefits, jobs, or other opportunities."\textsuperscript{17}

Another significant finding of ADA is the assertion of a close link between the status of the disabled as victims of discrimination and the status of racial minorities. According to the Act, in some respects the disabled have been worse off than traditional minorities because, "\textsc{[U]nlike individuals who have experienced discrimination on the basis of race, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability often have no legal recourse to address such discrimination.}"\textsuperscript{18}

In its Findings, which comprise the first section of the statute, the Americans with Disabilities Act suggests that it will form the basis for legal protection of the disabled equal to the very strong legal protection afforded to racial minorities. The Act extends that protection by stating in its Findings that "\textsc{individuals with disabilities are a discrete and insular minority.}"\textsuperscript{19} These words are extremely significant, because, with them, the Act attempts to invoke the legal doctrine of 'strict scrutiny.' That doctrine, first promulgated in a Supreme Court case, requires the state to show a 'compelling interest' to justify any statute, regulation, or policy that imposes a greater burden on 'discrete and insular minorities' than on non-minorities. In practical terms, the state can almost never meet the 'strict scrutiny' standard, and as a result, can seldom implement policies that have a differential effect on such 'discrete and insular minorities.'\textsuperscript{20}

\textsuperscript{17. 42 USC 12101.} \textsuperscript{18. 42 USC 12101.} \textsuperscript{19. 42 USC 12101.} \textsuperscript{20. \textit{Yick Wo v. Hopkins}.}
Provisions of the Americans with Disabilities Act

The Americans with Disabilities Act has five major sections which provide the bulk of legal protection to persons with disabilities. Title I prohibits discrimination against otherwise qualified disabled individuals in employment. Title II prohibits discrimination against the disabled in all public services and specifically addresses transportation accessibility requirements. Title III requires disabled access to privately owned public accommodations. Title IV addresses telecommunications access for the deaf. Title V addresses enforcement and miscellaneous issues.

It is worth noting the requirements of ADA's non-transportation provisions because in many cases they are quite onerous. For instance, employers of more than 15 people are prohibited under ADA from considering blindness as disqualifying an applicant from performing a job that requires reading. Instead, the employer must restructure the job by hiring readers. Imposition of such burdens on employers by Congress clearly reflects the acceptance by lawmakers of the minority model. Only by accepting that model could one assert that an employer's reluctance to hire two people to do one job constitutes invidious discrimination against the disabled.

Title I - Employment

Title I prohibits discrimination against qualified disabled people in a variety of employment practices, including hiring, promotion, termination, compensation, and training. The Act mandates 'reasonable accommodation' of qualified applicants or employees unless
it imposes an 'undue burden' on an employer. Reasonable accommodation, according to ADA, includes practices such as making offices or other the job sites accessible; providing blind or deaf employees with interpreters, readers or communications equipment such as a telecommunications display device (TDD); re-assignment of 'non-essential' tasks unable to be accomplished by disabled individuals; and allowing flexible work schedules. Companies with 25 or more employees must comply with Title I by July 26, 1992. Companies with 15 to 24 employees have until July 26, 1994 to meet the requirements. Employers with fewer than 15 employees are exempt from the Act. 

**Title II - Public Services**

Title II has special significance because it contains most of the major provisions relating to transit accessibility. Those transit accessibility provisions are included as part of a more general prescription of discrimination against persons with disabilities in "services, programs, or activities" provided by government agencies. In its provisions specifically addressing public transit, the Title prohibits public entities from denying access to disabled individuals. The Title requires specific steps to be taken by public transit agencies, commuter rail authorities, and AMTRAK in order to comply. For example, the law requires that

- all newly purchased or leased fixed-route transit vehicles must be accessible

- public entities providing fixed-route public transportation must also offer comparable paratransit service to disabled individuals unable to use the fixed-route system.

- newly purchased or leased vehicles used in public demand-responsive service must be accessible unless it can be shown that equivalent service is provided to the disabled.

- new transit facilities must be accessible

- major stations on rail systems must be made accessible by July 26, 1993

- alterations to transit facilities must include features to make them accessible. Alterations covered by law include changes that affect or could affect the usability of the facility. Not covered are normal maintenance, painting, or changes to the electrical, mechanical, or plumbing systems.

- one car per train in rapid and light rail systems must be made accessible by July 26, 1995."

**Title III - Public Accommodation and Services Provided by Private Entities**

Title III of ADA contains sweeping prohibitions on private sector discrimination against the disabled in public accommodations. The Title guarantees disabled individuals "full and equal enjoyment of the goods, services, facilities, privileges, and advantages of any privately-owned place of public accommodation." These guarantees effectively mandate equal treatment and full accessibility for the disabled in hotels, restaurants, theaters, stores, professional offices, schools, museums, "terminals, depots, and other stations used for public transportation." Accessibility in public accommodations must have been provided by January 26, 1992, except in cases where provision for accessibility would impose undue financial burden on landlords. Title III also mandates that existing facilities must be made accessible when they undergo major alterations or renovations, and that all new facilities must include accessibility features.

Title III's mandate for accessibility specifically includes private transportation providers, such as hotel shuttles or private bus

lines. However, the Title does make a distinction between companies providing transportation as their primary business and companies providing transportation only as a secondary service. The latter category, which includes businesses like hotels and convention centers, is subject to a relatively less stringent mandate requiring accessibility only on vehicles seating more than 16 passengers. Smaller vehicles must be accessible only if it can be shown that no equivalent transportation service exists for persons with disabilities.

Companies engaged in transportation as their primary business must meet a higher accessibility standard. Title III of ADA requires them to provide accessibility on all fixed-route vehicles that seat seven or more passengers. Where smaller vehicles are used, companies are not required to provide accessibility as long as they provide comparable service for the disabled. Private transportation companies using over the road coaches are specifically exempted from ADA, as are private airlines.23

**Title IV - Telecommunications**

Title IV requires telephone companies to offer telecommunications relay services for the hearing or speech impaired by July 26, 1993. Such relay services would enable a person with a speech or hearing impairment to communicate with others using a relay operator and a telecommunications display device (TDD). With this service a disabled person using the TDD can communicate with the operator, who then relays by voice the words appearing on the TDD screen to a third party.24

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Title V - Miscellaneous

Title V has several significant provisions. Among them are provisions binding the United States Congress to the non-discrimination provisions of ADA, as well as provisions exempting various categories of people from claiming disability status under the Act. Among those excluded are drug and alcohol abusers, transvestites, homosexuals, pedophiliacs, exhibitionists, voyeurists, compulsive gamblers, kleptomaniacs, and pyromaniacs.25

Enforcement and Rule Making

ADA gives the executive branch the authority to make rules implementing the statute, unlike section 504, which was silent on the subject of rulemaking authority. Title I of the ADA requires the Equal Employment Opportunity Commission to issue regulations implementing its provisions within one year of the statute's enactment.26 Title II requires both the Attorney General and the Secretary of Transportation to issue implementation regulations within a year. The Attorney General's regulations are intended to cover issues relating to discrimination against the disabled by all government agencies except transit agencies, while the Secretary of Transportation's regulations are intended to cover transit agencies specifically.27 Title III also divides rule-making authority between the Secretary of Transportation and the Attorney General.28 The Federal Communications Commission is granted responsi-

26. 42 USC 12116
27. 42 USC 12164
28. 42 USC 12186
bility for implementing Title IV via rulemaking to be carried out within 12 months.29

The United States Department of Transportation issued interim rules implementing Title II and Title III on October 4, 1990. These rules included the requirement that all newly purchased or leased transit vehicles should be accessible. The rules also required that transit systems and other public entities had to maintain the level of paratransit service then provided until final rules could be implemented. Presumably, DOT included this provision to keep transit authorities from abandoning their paratransit services before final rules could be announced.

On September 6, 1991, USDOT superseded its previous rules with the issuance of final rules implementing ADA's transportation provisions. The regulations dealt with two broad categories of accessibility requirements: service requirements for transporting the disabled and design standards for accessible vehicles and stations. The design standards specified details like acceptable lift design loads, platform gaps, ramp slopes, vehicle and station door widths, handrails, restroom layout, and signage.30 The service requirement regulations provided greater detail than was contained in the ADA statute regarding when and how transit vehicles and facilities would need to be made accessible, as well as what kind of paratransit service would be required by the Act and who would be required to be transported.

The additional detail provided by the USDOT regulations varied according to the topic discussed. For instance, the ADA legislation it-

29. 47 USC 225
self had required existing transit stations undergoing renovations to be retrofitted with "accessible paths of travel" in all cases where such accessibility would not be "disproportionate to the overall alterations in terms of cost and scope." USDOT's implementation rules, however, offered an explicit explanation of "disproportionate cost," defining it as "when the cost exceeds 20 percent of the cost of the alteration to the primary function area (without regard to the cost of accessibility modifications)." Likewise, ADA required the complete accessibility of key stations, but allowed the definition of 'key' to be "determined under the criteria established by the Secretary [of Transportation] under regulation." The September 1991 USDOT regulations fulfilled that statutory requirement, designating as key stations those with ridership at least 15 percent above system average, those that allow transfer between lines or modes, or those that serve major activity centers.

Paratransit Requirements

Among the most significant provisions of the September 6, 1991 regulations were those dealing with paratransit requirements. The ADA statute had mandated the general requirement for provision of paratransit service, stating that, "It shall be considered discrimination for purposes of section 202 of this Act... for a public entity which operates a fixed-route system... to fail to provide... paratransit and other special transportation services to individuals with disabilities." The Act goes on to specify that eligible recipients of paratransit include

32. 42 USC 12148.
34. 42 USC 12143.
individuals living in the "service area" of existing fixed route transit, but unable to "board, ride, or disembark" from vehicles in the fixed-route system. Eligible paratransit recipients, according to the ADA, also include individuals unable to travel to stops on accessible fixed route systems. 35

ADA requires continuing paratransit eligibility only for the fraction of previously-eligible individuals unable to use accessible mainline service. 36 This point is a crucial one; large numbers of existing paratransit users may find themselves ineligible for that service in the future, despite the Act's requirements that significantly more paratransit service be offered to the individuals who remain eligible. Newly non-eligible individuals would find themselves relegated to using the accessible fixed-route service, while paratransit remained reserved for individuals unable to use accessible fixed-routes.

Following enactment of ADA, the U.S. Department of Transportation attempted to define when it would be permissible for transit agencies to dump individuals from their paratransit systems. According to a handbook created by the agency to guide administrators, ADA essentially requires that paratransit be provided to three distinct categories of people: individuals who cannot ride on accessible vehicles, individuals who cannot travel to accessible stops, and individuals physically able to ride fixed route service but who cannot because full accessibility has not yet been implemented on it. Unlike individu-

35. 42 USC 12143.
36. As of 1990, almost 80 percent of existing paratransit services in the U.S. were open to either all elderly persons or all persons with disabilities, and made no effort to actually assess whether individuals were capable of using fixed-route service. (Preliminary Regulatory Impact Analysis of Transportation Accessibility Requirements for the Americans with Disabilities Act, p. II-7)
als in the first two categories, who are permanently eligible for paratransit, those who fall into the third category are eligible only as long as their local transit authority cannot transport them on their fixed system. Transit systems may refuse to continue providing paratransit to such individuals once the trips they wish to make can be served on the mainline system. Moreover, at any point, transit systems can refuse to provide service to otherwise eligible disabled persons whose trip would take them either to or from locations more than three quarters of a mile from existing fixed-route service.37

In its regulatory impact analysis of ADA, the USDOT estimated the number of individuals with disabilities who fall into the category that can be denied paratransit once an accessible fixed-route alternative exists. Citing a Canadian study on the incidence of disability, the largest such study ever conducted in North America, the Department estimated that approximately 1.9 percent of the U.S. total population would remain eligible for paratransit after full mainline accessibility is implemented in U.S. transit systems.38 Subtracting this figure from estimates of national disability incidence yields estimates of 0.6 to 1.8 percent of the population vulnerable to being removed from paratransit rolls.39 These figures suggest that ADA puts at least 25 to 50 per-

39. The National Survey of Transportation Handicapped People put the incidence of transportation handicap at 2.5 percent of the total population. The 1980 census put the total incidence of transportation handicap at 3.7 percent of the non-institutionalized population. The incidence of transportation handicap is presumably higher in institutional settings; nevertheless, the non-institutionalized total represents a good conservative proxy for the entire population.
percent of the transportation disabled population at risk of losing para-
transit eligibility on the basis of their ability to use accessible
fixed-route service. An additional, unknown fraction of the disability
population stands to lose paratransit eligibility because it lives out-
side of the three-quarters of a mile corridor around fixed service that
paratransit is required to serve.

Cost Impacts

As part its rulemaking requirement, the U.S. Department of
Transportation developed implementation cost estimates for ADA's main-
line accessibility and paratransit requirements. Those estimates sug-
gested that, on a present value basis, universally available paratransit
for the disabled would remain slightly less expensive than the combina-
tion of full fixed-route accessibility and paratransit mandated by the
Americans with Disabilities Act. According to USDOT's estimate, para-
transit could retain its cost advantage even if service were expanded
nationally "to meet all demand" and even if paratransit eligibility
standards continued to define disability so broadly that in many cases
individuals would be eligible simply as senior citizens.40

This conclusion, that no cost advantage accrues from diverting
the disabled onto accessible fixed service, might have surprised the
Members of Congress who voted for ADA. In the absence of hard data,
many probably made the facile assumption that one-time expenses like el-
evator installation and high-platform construction would eventually pay
for themselves by making possible a reduction in the continuous operat-

40. Hickling Associates, Preliminary Regulatory Impact Analysis of
Transportation Accessibility Requirements for the Americans with
ing expense of paratransit. Representatives of the transit industry had offered Congress general cautions about ADA's cost: "We [the transit industry] ask that you [Congress] recognize the cost to transit of this bill." 41

Nevertheless, ADA was enacted without any comprehensive estimates of its cost to the transit industry or analysis of its cost-effectiveness compared to other alternatives.

The Final House Report appended to the Americans with Disabilities Act reflects Congressional uncertainty about the cost of its transit accessibility mandate. According to the report, "CBO [Congressional Budget Office] cannot provide a comprehensive analysis of the impact of H.R. 2273 on mass transit costs of state and local governments. The scope of the bill's requirements in this area is very broad, many provisions are subject to interpretation, and the potential effects on transit systems are significant and complex." 42

The House report went on to assert that its inability to develop a comprehensive cost impact estimate was attributable largely to the difficulty of estimating ADA's paratransit costs. "The (ADA) bill also requires paratransit operators to offer paratransit or other special transportation services providing a level of service comparable to their fixed-route public transportation to the extent that such services would not impose an 'undue financial burden.' Because we cannot predict how this provision will be implemented, and because the demand for para-

41. Testimony of Mortimer Downey, Chairman, APTA Legislative Subcommittee, before the House Public Works and Transportation Committee, September 20, 1989.
transit is very uncertain, we cannot estimate the potential cost of the paratransit requirement, but it could be significant.\textsuperscript{43}

Nevertheless, Federal law required the Department of Transportation to conduct an analysis of costs associated with implementing ADA's fixed-route accessibility and paratransit provisions. For fixed route service, national estimates were derived using capital and operating cost survey data from local transit authorities, as well as information provided by vehicle manufacturers about purchase price and operating costs of accessible equipment. Separate estimates were developed for accessible buses, commuter rail stations and cars, as well as rapid transit and light rail stations and vehicles.\textsuperscript{44} When all of these individual estimates were summed, they indicated that transit agencies would need to spend an additional $1.9 billion to $2.1 billion (expressed as a 30 year present value) in order to comply with ADA's fixed-route accessibility requirements.\textsuperscript{45}

To meet all paratransit demand, according to the Department, would cost between $8.9 and $12.4 billion on a thirty year present value basis. Both of these figures assume that transit agencies continue the pre-ADA practice of transporting many individuals who have no disability and virtually all disabled people regardless of whether they can use accessible fixed-route transit. The higher estimate reflects

\textsuperscript{43} H. Rpt. 101-596, p. 50
\textsuperscript{44} Preliminary Regulatory Impact Analysis of Transportation Accessibility Requirements for the Americans with Disabilities Act, p. III-2.
\textsuperscript{45} present value accessibility cost by component:
  bus: $552 - $592 million
  commuter rail vehicle: $291 - $376 million
  commuter rail station: $201 - $247 million
  LR vehicle & station: $85 - $146 million
  rap. tr. veh. & stat.: $775 million
implementation of less than four hour response times nationally, while the lower estimate reflects four to 24 hour response time assumptions. USDOT also estimated that provision of paratransit for only those individuals who cannot ride accessible fixed transit, as defined by ADA standards, would cost between $7.5 and $10.8 billion. Once again the difference between these two figures results from the two different response time assumptions. 46

The difference in cost associated with widely and narrowly available paratransit can be derived by subtracting the two estimates. Doing so, yields totals of between $1.4 billion and $1.8 billion. 47 These totals represent the marginal cost of paratransit transportation for the segment of the disability population that, under ADA, would be expected to travel via accessible fixed-route service. The figures suggest that a paratransit solution to disability transport, even for those able to use fixed route transit, would cost less than mainline accessibility, by a margin of between $100 and $700 million. The cost advantage of paratransit is especially noteworthy in these estimates, since the advantage persists even when assuming a much shorter response time than exists most places in the U.S., as well as a much higher level of overall service.

47. Preliminary Regulatory Impact Analysis of Transportation Accessibility Requirements for the Americans with Disabilities Act, p. II-5.
Conclusion

Cost estimates often have an inherently high level of uncertainty associated with them. Nevertheless, the history of the Americans with Disabilities Act shows that lawmakers paid little attention to the issue of cost when considering the bill, and sought no hard data about whether ADA would represent a financial burden to transit agencies. That inattention to cost impacts on transit parallels the lawmakers' apparent unconcern for the cost to private businesses required to employ readers under ADA. Congressional inattention to costs suggests widespread acceptance of the minority model among Members. Costs are irrelevant to policy only when they must be paid to guarantee a "right." In cases where only "welfare" is at stake, costs represent an important consideration in determining how public benefit can be maximized.
Chapter 4: Evidence Suggesting Consumer Preference for Paratransit

Introduction

Powerful evidence suggests that most people with disabilities prefer paratransit to fixed-route accessibility. National and local surveys, observed ridership patterns, theoretical forecasting techniques, and anecdotal information all suggest widespread preference for door-to-door service within the disability community at large. In cases where individuals with disabilities have been presented with a choice, the majority have invariably chosen paratransit. However, despite the strength of the circumstantial data, a preference for paratransit has not been proved conclusively, since no survey has ever addressed itself to a population of disabled people actually experienced in using accessible transportation.

In light the wide body of circumstantial evidence showing preference for paratransit, the emphasis of ADA on fixed-route accessibility seems paradoxical. The paradox is even more remarkable when it is noted that Congressional committees reviewing the ADA bill did hear evidence suggesting preference for paratransit. Statements by committee Members indicated that some of them did have deep reservations about the proposed Act because of its inconsistency with evidence of preference for paratransit among the disabled. However, those reservations were overwhelmed by other factors. This chapter presents evidence that the majority of the disabled prefer paratransit. The chapter also shows that Congress was aware of that preference when it enacted ADA.
Difficulties in Learning about Preferences of the Disabled

Surveys provide one of the most powerful means of assessing consumer preferences of all types. Because of their ability to gauge opinions, surveys are used extensively to learn about public preferences for Presidential candidates, laundry detergents, and a myriad other issues and products. However, several factors make it difficult to survey the disabled population and might partially account for the relative scarcity of survey data about their transportation preferences. People with disabilities constitute a small proportion of the population as a whole. According to the 1980 Census, only about three percent of the U.S. population reported having a 'transportation disability.' The dispersion of this relatively small group throughout the population at large makes members extremely difficult to identify as survey candidates. Because surveys cannot be easily targeted toward the disabled, they must be huge, yet with little assurance that they will actually reach the target population. Moreover, the nature of many disabilities themselves pose challenges in designing survey inquiries. Deaf people cannot hear telephone survey questions; blind people cannot read written survey forms.

Despite these difficulties, some transit agencies have conducted surveys of disabled populations to learn about their trip-making patterns. However, these surveys have generally not included questions about the issue of fixed-route accessibility versus paratransit. An extensive literature search,\(^1\) as well as interviews with experts on trans-

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portation disability issues, uncovered only a few surveys that include questions about mode preference among the disabled. That finding is especially noteworthy in light of the fact that the transit industry conducts mode preference surveys of the general public quite frequently.

Transit agencies may undertake relatively few surveys of the disabled for several reasons. Transit agencies typically conduct market research to learn about how consumers decide between trip-making alternatives. Since the disabled currently do not have many trip-making alternatives, agencies may perceive no immediate reason to survey them. Transit officials may also fear potential conflict with advocates of mainline accessibility if they attempt to show consumer preference for paratransit. Evidence for this hypothesis can be found in a decision by BART officials to abandon a study that appeared to show miniscule patronage of its rail system by persons in wheelchairs. According to a BART planning staffer, release of the study would have likely have provoked strong protest from disability leaders that BART was implicitly questioning the need for full-accessibility requirements on the system.

The paucity of opinion surveys might also reflect political reluctance among transit officials to survey the disability community. As

2. Among the experts consulted were Mr. Daniel Fleishman and Keith Forstall of Multisystems, Inc.; Mr. Stephen Wilkes of Hickling Associates; and Mr. Norm Ketola of Ketron, Inc. These three firms are well-known for their work on transportation for the disabled and have authored many studies on the subject. Multisystems, for instance, wrote AC Transit's ADA Compliance Plan. Hickling Associates authored the USDOT's preliminary and final Impact Assessment of ADA compliance. Ketron has performed one of the largest surveys of the transportation disabled ever conducted, which was commissioned by the City of New York.

Other sources consulted included planning department staff members at several major transit agencies, including the Washington Metro, BART, the Houston transit system, the New York TA, and the Toronto Transit Commission.

3. Interview with Aaron Goldstein, BART Planning Department, Feb. 11, 1992
part of this thesis, the author proposed to conduct a survey of registered users of the RIDE, the MBTA's paratransit service. It was hoped that the survey would provide detailed information about the mode preferences of individuals who were directly familiar with the nature of paratransit service, its advantages and its drawbacks. However, the MBTA refused to release the necessary lists of current clients, citing 'privacy concerns' of riders as the reason for its refusal.

Surveys Suggesting Preference for Paratransit

Nevertheless, several surveys suggesting that the majority of the disability population may prefer paratransit to accessible fixed routes do exist. It would be imprudent to base conclusions on the results of any one of these surveys, since all have problems that make them less than completely conclusive indicators of disabled transit preference. However, as a group, these studies support the premise that most people with disabilities prefer paratransit, since they do not evidence any shared bias, yet offer similar results.

National Survey of Transportation Handicapped People

The most extensive consumer preference survey of the disabled ever conducted was the National Survey of Transportation Handicapped People. The only detailed national data collection effort ever undertaken, the National Survey attempted to learn about the incidence, distribution, demographics, trip-making patterns, and mode preferences of people with disabilities. The survey took place in 1978, during the debate over whether to implement section 504 by requiring fixed-route transit or paratransit. The survey was thus intended to assist policy-
makers in learning about consumer preferences for different kinds of mobility options then under consideration at the national and local level. 4

Despite its large sample size (more than 1,500 respondents) and methodological care, the National Survey suffered from the unfamiliarity of respondents with the hypothetical transit options it offered. As late as 1978, very little paratransit and even less accessible fixed-route transit existed in the United States. As a result, very few of the survey respondents would have had direct experience using either option. Nevertheless, the survey asked respondents to evaluate the attractiveness of both options. One can speculate that some respondents might have rated options differently if they had actual experience with them, though it is difficult to know exactly how lack of experience may have biased the results.

In order to assess mode preference, the survey asked respondents to assess whether they would use any of four hypothetical transit services designed to transport people with disabilities and, if so, how often. Respondents were asked to choose among four service alternatives:

- **Alternative I was an accessible fixed route system** for all mass transit modes (including bus, subway, or any other type of mass transit system in the respondent’s area) which is based on modifying mass transit vehicles and improving quality of service.

- **Alternative II was an accessible feeder** to accessible fixed route systems. An accessible feeder would presumably consist of paratransit service.

Alternative III was a new door-to-door system which is fully accessible. The cost of a ride in the vehicle would be about the same as current public transportation fare.

Alternative IV consisted of giving individual subsidies to transportation handicapped people in order for them to pay for better transportation. This solution alternative concept also offered some examples of how the coupons or financial assistance could be used, e.g.:
- taking additional trips on public transportation
- making adjustments or modifications to their car so they would be able to drive themselves
- making adjustments or modifications to their car so they would be able to ride in it as a passenger
- paying for another person to drive their car for them
- providing for taxi rides.5

The first two alternatives were offered only to respondents who live in areas that were served by existing mass transit. Alternatives III and IV, were offered to individuals in both mass transit and non-mass transit areas.

The survey was designed so that the level of appeal of each alternative could be measured in several ways. One measure was the fraction of respondents who said that they would use the service if it were available to them. A second measure was the fraction of 'barrier-sensitive' respondents stating intent to use the hypothetical service. The definition of 'barrier-sensitive' was deliberately kept broad, with respondents asked to classify themselves as such if they were unable to access conventional transit due to inability to climb stairs. The category was included as part of the survey so that alternatives could be evaluated in terms of their ability to attract riders most dependent on

5. Summary Report of Data from National Survey of Transportation Handicapped People, p. 66.
the provision of accessibility features. A third measure was the number of additional monthly trips that respondents stated they would make if each type of transportation service were available.  

**National Survey Results**

According to two of the three measures used, the door-to-door transportation alternative received the most support from respondents. According to the survey, the door-to-door alternative offered the greatest potential ridership, with a potential for 22.5 million monthly passengers nation-wide. This figure suggested that the door to door alternative could generate almost 50 percent more ridership potential than the second best alternative, accessible fixed service with accessible feeder (paratransit) service. The other two alternatives lagged even further behind in terms of ridership potential.

The door-to-door service also received the most support of any alternative among 'barrier sensitive' respondents. Thirty percent of such respondents stated a preference for it, while only three percent expressed preference for an accessible fixed system with accessible feeder service. The extraordinarily small number of potential users that this three percent figure suggests is somewhat surprising and may reflect lack of understanding on the respondents' part. The rarity of accessible vehicles in the 1970s could have caused respondents to fail

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to realize how lifts could provide relatively reliable and easy access to vehicles.8

Door-to-door service and accessible fixed service (with paratransit feeder service) had approximately equal support among respondents when measured in terms of willingness to use hypothetical transit services at all, as opposed to estimated frequency of use. Sixty-three percent of those surveyed stated a willingness to use a potential door-to-door service, while 66 percent expressed willingness to use accessible fixed service if it were accompanied by accessible feeder service.9

These measures of support for door-to-door and accessible fixed service, taken as a whole, suggest an interesting conclusion. Apparently, accessible fixed service appealed to large numbers of potential riders who would use it relatively infrequently, while door to door service appealed to an almost equally large number of frequent potential riders. This distribution of potential riders is suggested by the fact that both pools of potential riders are of roughly equal size, yet the door-to-door option generated many more potential trips than did the accessible fixed-route option.

1978 MBTA Disability Master Plan

Further evidence of consumer preference for paratransit is provided by the MBTA Master Plan: Transport Services for Persons with Special Needs. As part of that 1978 plan, the Massachusetts Bay Transportation Authority (MBTA) conducted a survey to learn about atti-

tudes toward transit access issues in the disability community. Like the National Survey, the MBTA survey results revealed an "overwhelming" preference among respondents for a demand responsive special system in comparison to either a subsidized taxi program or accessible bus and rapid transit service. That evidence of consumer preference apparently influenced the MBTA's subsequent decision to create an expansive para-transit system, rather than a completely accessible fixed system.

According to the Master Plan, the survey methodology consisted of mailing a questionnaire to 1,000 Boston-area residents presumed to have transportation handicaps. Half the potential respondents were identified through handicapped person (HP) automobile registrations, while the other half were chosen from client lists of human service agencies serving people with disabilities. The Master Plan does not provide information about the survey response rate. However the written analysis acknowledges that "it was known a priori that the respondents would not be representative of the TH [transportation handicapped] population as a whole."10

Results of the survey revealed especially strong support for a specialized door-to-door service, but also suggested that substantial support existed for accessible buses and trains, and subsidized taxis as well. When asked to select the alternative that they thought most people with disabilities would use, "by a wide margin" respondents ranked the door-to-door system first, the subsidized taxi option second, and accessible bus and rapid transit third. Moreover, when asked whether they personally would use each of the three options, the largest frac-

tion said yes to the specialized door-to-door system, though a large majority said yes to each of the three options.\textsuperscript{11}

The survey also offered information about why fixed-route accessibility failed to appeal to between 20 and 40 percent of respondents. Among the reasons cited were fear of mugging, distance to transit stops, and lack of curb cuts.\textsuperscript{12} This finding about curb cuts is significant, since they have become nearly universal in some neighborhoods since 1978. Curb cut availability thus probably does not pose the obstacle to fixed-route access that it once did. One might therefore conclude that support for fixed-route accessibility may be somewhat higher now than it was at the time that the 1978 Master Plan was published.

\textbf{Experiments in Fixed-Route Accessibility: The Example of Los Angeles, Washington, and Oakland}

In several large U.S. cities, including Oakland, Los Angeles, and Washington D.C., fully accessible bus systems carry miniscule numbers of wheelchair riders. Similarly sized systems where the disabled rely primarily on paratransit, by contrast, have achieved ridership levels vastly greater. In systems that offer substantial amounts of both paratransit and accessible fixed service, the door-to-door system carries a disproportionately large fraction of riders. All of this "revealed preference" data suggests that most people with disabilities prefer paratransit to fixed-route accessibility.

AC Transit provides bus service to Oakland and the East Bay portion of the San Francisco region and has one of the largest fleets of

\textsuperscript{11} Applied Resource Integration, p. III-38.
\textsuperscript{12} Applied Resource Integration, p. III-38.
fully accessible buses in the United States. Its service area held a population of 1.3 million individuals in 1990, of whom between 34,000 and 67,000 were estimated to meet the ADA's definition of transportation disability. AC-Transit operates 600 vehicles during the peak period on weekdays and carried 63 million passengers in 1989, a figure roughly equal to the bus passenger totals at Pittsburgh's and Atlanta's transit systems.

In May 1991, the most recent period for which data is available, AC-Transit carried only 899 passengers who required use of bus lifts, on average less than 30 wheelchair trips per day. Other fully-accessible systems show a similarly low rate of lift-use. The Southern California Rapid Transit District serves Los Angeles and Long Beach a service area that includes approximately 10 million people. There, 1,800 peak vehicles carry approximately 80 wheelchair riders per day. In Washington D.C., 1330 peak vehicles carry approximately 60 disabled people per day over a service area approaching two million people.

Other U.S. cities have experienced a similar pattern of relatively poor usage of accessible fixed route transit. This extremely low use of existing fixed-route accessible transit contrasts strongly with the high use of paratransit in cities where the disabled rely on it as a primary transport means. Boston's paratransit system, for instance, which served a central area of only about a million people, carried approximately 400 wheelchair passengers per day in 1989. This figure is

16. Transportation Services for Disabled and Elderly Persons, p. 11.
nearly five times that of Los Angeles, though the service area population in Los Angeles is vastly larger.

Several U.S. transit systems, such as those in Baltimore, Portland and Orange County (California) provide both paratransit as well as fixed route accessibility on the majority of their routes. In all three of those cases, lift-equipped, fixed route vehicles carry less than five percent of system wheelchair ridership, with the remaining 95 percent carried on paratransit.\(^\text{17}\)

This pattern had not gone unnoticed prior to the passage of ADA. In fact, based on experiences like these, many transit systems had receded from earlier commitments to total fixed route accessibility made in the late 1970s and early 1980s. In abandoning earlier goals of total mainline accessibility, transit agencies often cited "poor usage of accessible bus and rail services and continued demand for improvements in door-to-door services despite a high degree of accessibility on the conventional transit system."\(^\text{18}\)

Evidence from Transportation Demand Analysis Techniques

The preference for paratransit in many U.S. cities can also be well explained in light of standard consumer cost- and time-minimization behavior observed in almost every kind of transportation mode choice. According to experts in ridership forecasting, "People, disabled or otherwise, attempt to minimize the time, inconvenience, and monetary costs of travel in choosing their mode of transportation."\(^\text{19}\) This tendency causes people to prefer modes such as private automobiles, taxis, or

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17. Transportation Services for Disabled and Elderly Persons, p. 11.
18. Transportation Services for Disabled and Elderly Persons, p. 11.
19. Transportation Services for Disabled and Elderly Persons, p. 22.
paratransit, that typically provide shorter trip times between points than transit offers due to more direct routing and lack of necessity to transfer from vehicle to vehicle. Preference for these modes is even more understandable when one considers the well-documented consumer attraction to services that minimize time spent travelling to transit stops or transferring between vehicles.

Recent Toronto Transit Commission (TTC) disability ridership forecasts demonstrate the application of proven demand estimation techniques to the question of consumer preference for paratransit versus mainline accessibility. The results of the projections, which pitted paratransit against full mainline accessibility, reinforce the conclusion that paratransit has an inherently superior ability to attract riders. Moreover, these numbers were obtained despite using several assumptions extremely favorable to fixed-route accessibility, including a rate of bus ridership by persons in wheelchairs 25 percent higher than ever observed in North America and an assumption that some mainline buses would be 'divertible' in order to pick up and drop off disabled passengers close to their origins and destinations.

In spite of the methodological bias in favor of fixed-route accessibility, the TTC projections showed that future ridership on a hypothetical paratransit system would outstrip potential disability ridership on a fully-accessible mainline system. These results, the TTC concluded, show "the dominance and consumer preference for door-to-door services." Even after a long adjustment period intended to allow previous paratransit users to become adjusted to using the accessible fixed

20. Transportation Services for Disabled and Elderly Persons, pp. 20-22.
21. Transit Services For Disabled and Elderly Persons, p. 130.
system, TTC's 'most likely' scenario projected that paratransit would continue to carry almost six times as many disabled riders as the main-line service. Moreover, the forecast projected a less than one percent likelihood that ridership on the mainline could ever amount to more than a tenth of paratransit ridership. 22

Anecdotal information at other transit systems supports the validity of TTC's conclusion about preference for paratransit, even when there exists easy access to lift-equipped buses. John Fraser, community relations manager for Boston's paratransit system, explains that it is common behavior for paratransit users who live along accessible bus routes to respond to denied paratransit trips by stating "...'well if you can't get me, that's ok, I can take..' and then rattle off what they could do [to take an accessible bus]." Moreover, Fraser states that he commonly encounters passenger who, despite living along a lift-equipped bus route and having the ability to travel by lift equipped bus, will choose to make the trip using the RIDE (the paratransit system). Many such passengers, according to Fraser, "feel disgusted" with service whenever they are forced to take the bus. 23

Other Service Factors that Favor Paratransit

Some people argue that individuals with disabilities prefer paratransit, even when an accessible fixed route alternative exists, because service attributes in addition to shorter travel time make it easier to use than accessible fixed service. For instance, even those who are relatively strong and who live within a few blocks from a transit

23. Interview with John Fraser, RIDE Community Relations Manager, March 6, 1992.
stop face challenges not encountered by the able bodied in using transit. Snow can obstruct paths; illegally parked cars can block curb cuts; muggers can mark them as easy and vulnerable targets. And as one disabled advocate puts it, people with disabilities must constantly confront the possibility that, by venturing out onto the sidewalk or subway platform, they will be "looked at like they are a freak." 24

Evidence Offered During ADA Hearings

During hearings on the ADA legislation, Congress heard large amounts of testimony reinforcing the conclusion of consumer preference for paratransit. The existence of that testimony has significance for two reasons. First, it provides additional support for the ridership, survey, anecdotal, and other data already cited. Second, it demonstrates that Congress was aware of evidence suggesting preference for paratransit, and that ADA's incompatibility with that preference cannot therefore be attributed to ignorance on the part of Members.

During hearings on the ADA bill, questions arose several times about the extent of wheelchair ridership on existing accessible transit systems. Members of Congress expressed concern about the implications of apparent lack of interest in travel by bus or subway among the wheelchair bound. One hearing included the following exchange between two Congressman and an official of USDOT:

Congressman Mineta: What are the ridership levels, disability ridership levels? For instance, I have heard a story that in Seattle, where they have lift-equipped buses, they average only one person using the lift every other day per bus. Is that accurate?

Mr. Mross (USDOT): Again, that figure, nationally, we are estimating to be 1,500 to 3,000 users daily....

24. Interview with John Fraser, March 6, 1992.
Congressman Shuster: I see people behind you nodding their heads yes when I quoted the Seattle statistic. Can somebody tell me is that an accurate statistic from Seattle?

Mr. Cline (USDOT): The Seattle statistic from 1981 or 1983, is about 0.5 usage per lift.

Congressman Shuster: So that is one every other day?

Mr. Cline (USDOT): Right.

Congressman Shuster: Does that suggest that there is great variability, that there may be, in some cities, much greater use of lifts and in other cities much less?

Mr. Cline (USDOT): Currently, Seattle, based on our information, has the highest usage per lift.

Congressman Shuster: Seattle has the highest usage per lift, and it is only 0.5 per day?

Mr. Cline (USDOT): That is correct.

Congressman Shuster: That is an incredible statistic, is it not? You are saying that Seattle, which has the highest lift use per bus in the nation, has only one person using the lift every other day?

Mr. Cline (USDOT): That's correct.²⁵

In the final House report that accompanied the ADA bill, Shuster, along with several other Members of Congress, reiterated their concern that the bill's heavy emphasis on fixed-route accessibility would poorly serve the needs of a large fraction of the disabled community. According to their Minority Views accompanying the report, accessibility features on mainline transit "will be used rarely or not at all." Moreover, the "onerous financial burdens" imposed by ADA will likely "result in the loss of service to residents of small towns and

²⁵ Testimony of Roland Mross, Deputy Administrator, UMTA; John Cline, Associate Administrator, Budget and Policy; and Don Trilling, DOT Office of Transportation Regulatory Affairs. Sept. 20, 1989 before the Subcommittee on Surface Transportation.
rural areas," as money is drained away from other programs to comply with mainline accessibility requirements. The Members particularly highlighted the negative impact that ADA would have on "the elderly population that will grow steadily larger as the median age increases." Negative impacts will accrue to this group, according to the Minority Views, because the bill's intent to limit paratransit eligibility will cause the elderly to be "denied needed transportation services."26

Testimony from several witnesses added support to the concern of Congressman Shuster and a few others that ADA's emphasis on mainline accessibility was wrong-headed. According to that testimony, fixed-route accessibility poorly serves the needs of "the silent majority who want curb-to-curb service."27 For instance, the general manager of Reading Pennsylvania's transit system pointed out that, in rural areas, implementation of ADA could easily result in fewer citizens with disabilities being able to use public transportation. This could be true because ADA does not require any transportation provisions for individuals who live more than three-quarters of a mile from existing fixed-route transportation, individuals like "Mrs. Jones" who, according to the Reading general manager, "I have to take 40 miles one way--that is 80 miles a day--to go to the hospital." Under ADA, he pointed out, these individuals could be denied paratransit service because they do not live within three-quarters of a mile of fixed-route service, yet at the same time, they would be effectively unable to use that fixed route

26. "Minority views of Mr. Bud Shuster, Mr. Bob McEwen, Mr. Ron Packard, Mr. Mel Hancock, and Mr. Christopher Cox"; accompanying House Report on Americans With Disabilities Act of 1990.
27. Dennis Louwerse, Executive Director, Berks Area Reading Transportation Authority, before the House Subcommittee on Surface Transportation, Sept 20, 1989.
service because of its remoteness and because of the long distance involved in their daily travels.\textsuperscript{28}

Managers and riders of the St. Cloud, Minnesota transit system also testified that the Act would override the preferences of local citizens with disabilities, the majority of whom prefer paratransit. According to one advocate for persons with disabilities in St. Cloud, "Locally, persons who are disabled have often discussed door-to-door transportation versus on-line accessible transit." After weighing the benefits of each option, the disabled community of St. Cloud has collectively supported the expenditure of resources on paratransit rather than accessible fixed-route vehicles. The major reason for that conclusion, according to the advocate, is that paratransit "provides an excellent and necessary service to local disabled persons who are mobility-impaired."\textsuperscript{29} Several other reasons offered in the testimony included:

- "In this part of the United States, during six months of each year, just the act of getting to and from regular pickup points in the winter is an insurmountable barrier. Too many individuals with disabilities experience just as many difficulties in warm climates as in cold."

- "If a disabled person were able to make it to a regular bus stop or pick-up point, he or she would not necessarily be assured of a place to sit on the next available bus...If I were able to get to a regular route, pick-up point, the next available bus might already be filled with people who are mobility impaired and would not have room to pick me up because of lack of tie downs."

- "If the Americans with Disabilities Act passes into law, as it presently is written, St. Cloud's Specialized Service Program for persons with disabilities could, eventually, be greatly diminished."\textsuperscript{30}

\textsuperscript{28.} Louwerse, September 20, 1989.
\textsuperscript{29.} Kathleen Wingen, Executive Director, Advocacy Plus Action, before House subcommittee on Surface Transportation, September 20, 1989.
\textsuperscript{30.} Wingen, September 20, 1989.
The general manager of St. Cloud's transit system testified in support of the position advocated by his city's disabled community. He reaffirmed that the decision to emphasize paratransit had been democratically arrived at, and asserted that "since 1980, with the meetings and public hearings on 504," St. Cloud's disabled citizenry "has argued that, with the limited governmental subsidies and local efforts, monies and efforts should be expended on the mobility service needed and requested by St. Cloud's great majority of disabled citizens." The general manager also explained that many paratransit users in St. Cloud were concerned about the implications of ADA since, with its mandate "there is a very legitimate fear that, with this [mandated] additional fixed-route expenditure, decisions in the future to either decrease or to not increase the specialized service may be made." The general manager ended his testimony by pleading that the large fraction of people with disabilities who prefer paratransit, "not be forgotten about and allowed to slip through the cracks," and questioning "whether their mobility needs are really being adequately represented."

**Conclusion**

Available evidence suggests that the disabled population strongly prefers paratransit to fixed-route accessibility. That evidence was presented to the United States Congress, and from remarks like those of Congressman Shuster, it is clear that at least some Members not only heard the evidence, but understood it. Yet, despite that understanding, the Congress passed a law that directly contradicted the pref-

erences of the larger disability community. As discussed in Chapter Two, the rise of the minority model and the change in social norms away from 'welfare' and towards 'rights' may have had a decisive impact on the Congressional decision in favor of ADA, as may have several other factors, which are discussed in Chapter Five.
Chapter 5: Explaining the Paradox of ADA

Introduction

The legislative success of ADA is especially paradoxical in light of numerous factors that should have militated against it. In addition to the legislation's practical disadvantages, such as relatively high cost and low levels of popular support, ADA faced a political climate that had featured a reluctance by lawmakers to impose new burdens on the Federal budget. Advocates of ADA also had to win the support of a Republican President who, earlier in the decade, had made section 504's accessibility requirements an "early target" for elimination.

ADA's supporters also triumphed despite the American social trend toward more individual- and door-to-door-oriented transportation that has been evident since World War II. That trend has manifested itself most visibly in the proliferation of the private automobile. It has had the effect of dramatically reducing demand for fixed route transit in the United States. Yet ADA's advocates succeeded in arguing that the disabled stand apart from the mass of Americans who have abandoned public transportation and its attendant tardy vehicles and exposure to inclement weather.  

1. Katzmann, p. 45.
2. It should be noted that paratransit actually offers only two of the three major advantages that private autos have over transit. As with cars, paratransit generally provides both door-to-door service and a one-seat ride. However, because of the need for advance reservations, paratransit does not provide the spontaneity of trip-making that has been such a boon to owners of private autos. Nevertheless, studies have shown that people with disabilities tend to make many fewer trips than non-disabled people, so spontaneity may not be too important to many people with disabilities. Moreover, paratransit does have a pricing advantage over private automobile transportation in that it charges fares generally no higher than twice the regular transit fare and requires no capital investment.
Several theories might account for why the Americans with Disabilities Act succeeded in becoming law, despite forces working against it. This chapter examines a number of factors influencing the eventual decision. Hypotheses include the political dominance of disability issues by younger wheelchair-users who tend to favor mainstream accessibility. Another hypothesis focuses on the new perception of services for the disabled as predicated on inherent 'rights' rather than on 'welfare.' By forging a link between mobility and civil rights, disability leaders made unacceptable any options perpetuating 'separate but equal' transportation systems. A third possible explanation lies in the willingness of Federal political leaders to support an issue that imposes most costs on state and local, rather than Federal, jurisdictions. A fourth reason stems from the general preference of transit activists, both disabled and non-disabled, for alternatives that have intensive requirements for capital, rather than operating, funds. A fifth explanation lies in the general tendency of political constituencies to demand ever greater government benefits once initial claims have been satisfied. ADA may have also received critical support from George Bush because of the significance of the disability population as a voting block. A final hypothesis examined is the possibility that ADA's fixed-route accessibility provisions actually enjoy wide support in the disability population, despite evidence that most individuals with disabilities prefer paratransit for their own transportation.

**Interest Group Hypothesis**

ADA's advocates present an interesting case study in the power of interest groups. Since the founding of the American republic, polit-
ical scientists and philosophers have debated whether interest group activism tends to produce public policy consistent with the 'public good.' The ADA was conceived by advocacy groups for the disabled and was enacted by Congress, despite the fact that it emphasizes transportation requirements that are relatively unpopular, under-utilized, and high-cost. The history of the Americans with Disabilities Act suggests that organized interest groups can subvert the process of majoritarian politics, particularly when level of organization and fervor of belief count for more than the number of people represented.

Political scientists have offered several reasons for the potential conflict of interest groups with democratic values. Writing in the *Federalist Papers*, James Madison argued that, throughout history, interest groups have "divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good." Moreover, according to Madison, such tendencies are "sown into the nature of man," thus making it the responsibility of government to structure itself so as to repress, as much as possible, those evil impulses. 3

In the 1930s and 1940s, political scientist E.E. Schattschneider wrote about how well-organized interest groups receive preferential treatment by legislators. In *The Semisovereign People*, Schattschneider documented that industries that maintain a strong presence on the Washington lobbying scene historically have much more success in promoting their own tariff agendas than industries without such a presence. In *The Power Elite*, C. Wright Mills argued that elite groups of individuals, possessing a common social, educational, and eco-

nomic background, dominate the U.S. political process. In *The Process of Government*, Bentley argued that "government by the people" is often only "a slogan and a rallying cry for some particular groups at special stages of their development." 4

Mancur Olson offered a compelling theory for why interest groups are able to successfully organize around some issues, but not others. According to Olson, individuals form interest groups only when joining is required; when it can provide benefits available only to members; or when the interest group is small enough that an individual can feel that he has a major impact on the group's potential for success. Robert Salisbury offered a variation on Olson's incentives to form interest groups. According to Salisbury, ideological satisfaction also plays a major role in influencing interest group formation, as does the desire for intercourse with similarly situated people. 5 These theories of Olson and Salisbury suggest powerful explanations for why disability lobbies have formed primarily around more ideological issues, such as civil rights, and why the lobbies represent only a somewhat homogenous subset of the disability population.

One can question the representativeness of the Washington disability lobby in light of the fact that individuals who played key roles in conceiving and lobbying for the Americans with Disabilities Act included very few senior citizens. This finding has significance because substantial evidence suggests that younger people with disabilities tend to favor accessible mainline transportation, while the older population favors paratransit. For instance, Seattle Metro has conducted several

surveys that show that "lift-bus riders are considerably younger, more mobile, and employed compared to the average profile of elderly, retired passengers using user-side subsidy (paratransit) services."  

Among the major advocates of ADA, virtually none are identifiable as senior citizens or as allied with senior citizen interests. Instead, key actors consisted overwhelmingly of two types: individuals and groups working on behalf of disabilities that afflict the young; and non-disabled individuals with a history of activism, often on behalf of children with disabilities.

Among the board members of the National Council on Disability, only a single official biography identifies a member as a senior citizen or as afflicted with any infirmity of old age. Eighteen persons served on the Council's board during 1990, the year that ADA became law. Of these, two members had spinal cord injuries and were under the age of 40; three had congenital disabilities. The remainder of board members appeared to have had no disabilities. Five of them had become involved in the disability movement through work with disabled children. One had a husband with a disability, while several others became involved through athletics or physical education. One board member was a fire fighters' union official with an interest in occupational safety, and several other board members appeared to be able-bodied business people under the age of 55.

After successfully shepherding the Americans with Disabilities Act through Congress, the National Council on Disability:

GRASS ROOTS COORDINATORS

Marilyn Golden
Disability Rights Education and Defense Fund, Inc.

Justin Dart
President's Committee on the Employment of People With Disabilities

REGIONAL GRASS ROOTS COORDINATORS

Sue Ammeter
Washington State Human Rights Commission
AK, WA, ID, OR, WA

Gerald Baptiste
Berkeley Center for Independent Living and
Anita Baldwin
Ray Arm Outreach Recreation Program
CA, NV

Nancy Hildebrand
Center for People With Disabilities
AZ, CO, MT, NE, NM, UT, WY

Bob Kafra and
Stephanie Thomas
Coalition of Texans With Disabilities and
American Disabled for Accessible Public Transit of Texas
TX

Ray Petty
Independence, Inc.
AR, KS, OK

Margo Imdieke
State Council on Disability
MN, ND, SD

Joyce Pomo
Governor's Committee for People With Disabilities
WI

Rene Luna
Access Living of Metropolitan Chicago and
Jim De Jong
Coalition for Citizens With Disabilities in Illinois
IA, IL, IN

Pat Cannon
Michigan Commission on Handicapper Concerns
MI

Paul Schroeder
Governor's Office of Advocacy for People With Disabilities
OH, WV

Jim Tusher
Paraplegic, Inc.
KY, MO, TN

Larry Johnson
Alabama Rehabilitation Association
AL, LA, MS

Jim Parrish
Florida Disability Caucus
FL

Zeb Y.C. Schmitt
Governor's Council on Developmental Disability
GA, NC, SC

Sharon Mistler
Independence Center of Northern Virginia
VA

Amy Mansue
Association of Retarded Citizens-New Jersey and
Colleen Fraizer
United Cerebral Palsy, New Jersey and New Jersey Consortium on Disability
DE, MD, NJ

Judy Barricella
Allegheny County Office of Independent Living
PA

Darrell Jones
Assoc. of Independent Living Centers of New York
NY

Eileen Horndt
Independence Northwest and
Shelley Teed-Wargo
Connecticut Union of Disability Action Groups
CT, MA, ME, NH, RI, VT

and a cast of 43 million!

NOTE: Organization affiliations are current at the time of passage of ADA.
Disability published an official legislative history of the Act. One interesting feature of the history is its inclusion of organization charts with pictures of key people who worked on drafting and lobbying for the bill (see attached illustration). Of the 31 individuals pictured, 29 are almost certainly not senior citizens. Of the two older individuals pictured, one, Jay Rochlin, appears to be approximately 60 years old, and one other man, Justin Dart, appears to fall into the senior citizen category.

Moreover, the National Council's list of organizations on its lobbying team shows a striking absence of groups representing senior citizens with disabilities. Throughout the U.S., most organizations working on behalf of the disabled can be classified into two types. One generally concentrates on the needs of elders, and includes institutions like senior citizen centers, adult day care providers, and councils on aging. The second consists of non-senior-oriented organizations, such as independent living centers, rehabilitation centers, human rights commissions, and support organizations for specific groups, such as disabled veterans. Interestingly, ADA's lobbying team included no organizations that focus on elder affairs, despite the fact that elders comprise 60 percent of the transportation disabled population.8

The under-representation of seniors did not go unnoticed by Congress. Several congressmen, including Bud Shuster, expressed concern about the over-representation of younger, stronger people with disabilities among the witnesses offering testimony in favor of ADA. According to Shuster, most of the individuals with disabilities testifying on behalf of the bill were "from the category of what I would say is the

8. 1980 U.S. Census, Table P-10.
'healthy person' with a disability." This category, he suggested, includes "Viet Nam vets who are paralyzed, for example." Such individuals tend to favor mainline accessibility because "they have the ability to get around, to move those wheelchairs around." By contrast, Shuster argued, the majority of the disabled population, which is over the age of 65, "simply doesn't have the strength, the capacity to get from the house to the bus stop." 9

Shuster's complaint about the un-representativeness of witnesses seems quite valid in light of the organizational affiliations of witnesses who testified on behalf of ADA. Of the more than 100 witnesses who testified, not a single one represented an organization whose name identifies it as primarily oriented toward the senior citizen population. As the Appendix shows, the vast majority of advocacy organizations testifying consisted of ones like centers for independent living and human rights commissions, which represent the interest of younger people with disabilities.

John Fraser, one of the managers of the Massachusetts Bay Transportation Authority's paratransit system, and himself disabled, offers several explanations for the greater activism of younger individuals with disabilities in comparison to older ones. According to Fraser, "the person who is above the age of sixty, first of all, doesn't define themselves [sic] as disabled the way a person under age sixty would." 10 Instead, he suggests, "they see themselves as being sick or frail..."
By contrast, younger members of the disabled population tend to focus their self-identity in terms of their disability and, as a result, share a common ideology that allows them to act collectively to "demand what society may owe to them." Because of that commonly held belief, Fraser argues, younger people with disabilities have been successful in forming groups to assert their claims. The elderly, however, "tend to be somewhat passive" because they lack a common ideology of entitlement to government services.

The tendency for senior citizens to avoid identifying themselves as disabled has been noted by other commentators as well. According to Berkowitz, creators of the minority model recognized the inherently greater difficulties of fostering political consciousness among the disabled compared to other minorities. Unlike racial minorities or women, members of the disabled population may not be born into it. Instead, they move from membership in what he terms "the dominant, oppressive society," where attitudes of prejudice toward the disabled were formed, to membership in the disabled minority, as a result of injury or disease. As a result, a large fraction of the disabled population lacks the common ideological perspective of a 'discrete and insular minority' which would help them to form interest groups.

Likewise, Scotch has written, "Disabled people are spread across the various social classes and status groups in society and, if their disability is not severe, may spend nearly all of their time in the company of able-bodied persons." This may be especially true for

the disabled elderly, who often receive on-going care from their children, grandchildren, visiting nurses, and other younger, non-disabled friends and family. By contrast, young adults with disabilities often rely on centers for independent living and other communal resources where they spend most of their time with other people with disabilities. As a result, for the elderly, disability tends to be "an individual experience," that makes the formation of community, and hence interest groups, difficult in most cases.

A very different law might have resulted if the elderly disabled had participated in the debate over ADA. One can imagine that their participation might have led to less emphasis on mainline accessibility, which evidence suggests they particularly disfavor in comparison to paratransit. As a result, one can say that the unrepresentativeness of the disability lobby was a primary cause of ADA's mandate for unpopular and high cost fixed-route accessibility.

The Attraction of Low Operating-Cost Transit Alternatives

The pursuit of mainline accessibility by many disability activists might be partially accounted for by a desire to avoid alternatives, like paratransit, which require continuous government financial commitment. According to experts in disability transportation, advocates for the disabled often express skepticism about transit agency commitment to maintaining adequate levels of paratransit over the long term. A powerful temptation exists, the advocates argue, for transit authorities to re-direct resources away from paratransit in the future.

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12 This generalization does not apply to the disabled elderly living in nursing homes who are greatly hindered by their own infirmity from political activism.
13 Scotch, p. 31.
14 Interview with Mr. Keith Forstall, Vice President, Multisystems, Inc., March 25, 1992.
if a more politically powerful constituency makes demands on those re-
resources. Likewise, in times of budget crisis paratransit service pre-
sents a tempting target for cost savings.

Capital intensive alternatives, like fixed-route accessibility, provide a much less tempting target. Once wheelchair ramps and high
platforms are installed, no further financial commitment on the part of
transit agencies is necessary in order to guarantee on-going transit ac-
cess for the disabled. Able-bodied citizens throughout the United
States have demonstrated a similar preference for spatially fixed tran-
sit alternatives, suggesting that the preference is rooted in dynamics
not unique to disability politics. Residents of Boston’s South End en-
gaged in a long struggle about what type of service should replace an
elevated rail line after it was removed. Though the local transit au-
thority initially proposed replacement diesel bus service, residents
held out for trackless trolleys, largely on the grounds that diesel
buses could be easily reassigned to other service areas, while trackless
trolleys could not. Likewise, transit advocates in St. Louis fought for
years to construct a light rail line, despite evidence that upgraded bus
service could produce more ridership for the same investment. Ne-
vertheless, light rail advocates succeeded to a significant extent be-
cause of their argument that rail represents a greater long-term com-
mitment to providing transit.

The attraction of low operating-cost alternatives has clearly
played a role in the decision of disability advocates and lawmakers to
support fixed-route accessibility. However, two reasons suggest that
the operating-cost issue is a factor of only secondary importance in ex-
plaining the political triumph of ADA. First, the lack of emphasis on
operating costs in the official record of ADA suggests that neither advocates for the bill nor Members of Congress paid much attention to the issue at the time the law was enacted. Second, the fact that capital-intensive transit alternatives are only sometimes implemented, despite the public's general preference for them, suggests that other factors must also play a role in determining their political success.

The Mainstream Imperative of the Minority Model

The new tendency to consider government assistance for the disabled as stemming from "rights" rather than from "welfare" can be seen in text of the Americans with Disabilities Act itself. It explicitly links the social status of the disabled and racial minorities. Moreover, Chapter Two documented the prevalence of that model in some circles of the Federal government as far back as twenty years ago.

Acceptance of the minority model espoused by the activist disability population ultimately forced Congress to mandate accessible fixed-route transit, despite evidence of its low popularity. Because the argument for mainline access was based on "rights" rather than "welfare," it removed the issue from susceptibility to cost benefit analysis, which might have cast doubt on its utility. Definition of the issue in terms of civil and human rights cast it in terms of principles that are inherently indivisible and unable to be abrogated on the basis of budgetary burden. Moreover, by evoking the emotionally powerful symbols of earlier efforts to end racial segregation, disability lobbyists were able to take advantage of the human tendency to base decision on emotional, rather than intellectual grounds.
Scotch points out the "distinct political advantages"\(^\text{15}\) that have resulted from framing accessibility as a civil rights issue. So long as accessibility was viewed as a welfare issue, it would have been seen as desirable but not socially imperative, an act of charity rather than a recognition of entitlement. As a welfare issue, he argues, it would have been forced to compete with food stamps, social security, health care, and a myriad of other compelling claims to the Federal treasury. Moreover, Scotch suggests, "In periods of limited resources, which is to say, virtually always, it is politically acceptable to limit benevolent acts of charity because of budgetary constraints, traditional practice, or administrative difficulty. Reducing benefits may be legitimate, while violating rights is not."\(^\text{16}\)

By adopting the philosophy that transportation is an indivisible civil right, disability lobbyists were able to demand full mainline access and reject proposals for partially accessible transit systems. If a right to accessible transportation exists, it must exist irrespective of its implementation cost. In rejecting proposals for "cost effective" partial transit accessibility, advocates have pointed to Supreme Court rulings on the irrelevance of cost in deciding other types of rights-based issues. For instance, one accessibility advocate has asserted, "[E]conomics cannot be the issue around which decisions turn. The Supreme Court said long ago that civil rights cannot be abrogated simply because of cost factors."\(^\text{17}\)

As transportation began to be seen as a civil right the battle for fixed-route access assumed special importance as a symbol of the

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15. Scotch, p. 42.
17. Bowe, pp. 97-98.
struggle against perceived legal and social oppression of the disabled in general. Political scientist Murray Edelman has used the term 'condensation symbol' to describe such issues that "condense into one symbolic event, sign, or act of patriotic pride, anxieties remembrances of past glories or humiliations, promises of future greatness; some one of these or all of them."\textsuperscript{18} With its ability to evoke memories of civil rights martyrs, Jim Crow, and the heroic actions to protect legal rights of black citizens, the controversy over accessible transportation became rich with such symbols.

An important feature of condensation symbols, according to Edelman, is that "the constant check of the immediate environment is lacking."\textsuperscript{19} Because such symbols are based primarily on emotion, mythology, self and group identity, "there is no necessity, and often no possibility, of continuously checking convictions against real conditions."\textsuperscript{20} One sees the truth of this generalization in the disability lobby's pursuit of mainline accessibility despite evidence that a large segment of its constituency prefers paratransit.

Advocates of mainline accessibility have shown a keen understanding of how to use symbols to generate emotional support for their civil rights perspective. As Chapter Two showed, the intellectual history of the minority model is replete with evocation of the earlier struggle against racial segregation. With words, disability advocates have attempted to connect their battle for accessible transit with earlier battles to secure free access to public transit for racial minori-

\begin{flushleft}
\textsuperscript{19} Edelman p. 5.
\textsuperscript{20} Edelman, p. 7.
\end{flushleft}
ties. "We're not asking for any special place to sit;" one accessible transportation advocate proclaimed "we just want to be able to get on the bus in the first place."\textsuperscript{21}

Advocates for the disabled have often explicitly linked the legal system that created and perpetuated Jim Crow with the historical legal status of people with handicaps. For instance, writing in a recent issue of the \textit{Temple Law Review}, one advocate asserted that:

The Jim Crow system established after \textit{Plessy} and the government-supported segregation of persons with handicaps during precisely the same time period were no mere coincidence of historical events. The historical record abounds with evidence that disability discrimination emanated from the same attitudes and prejudices fomenting at the turn of the century regarding race.\textsuperscript{22}

Berkowitz has pointed out that the evocation of Jim Crow by advocates for the disabled had special significance because of the central role that transportation facilities played in the establishment and eventual repudiation of legal racial segregation in the United States. \textit{Plessy versus Ferguson}, the 1896 Supreme Court case that created the legal basis for racial segregation, grew out of a dispute between a black man and a railroad that had excluded him from a Pullman car. Rosa Parks' refusal to sit in the back of a Montgomery, Alabama public bus triggered the rise to national prominence of Martin Luther King, who was previously an obscure local minister. Two of the first martyrs of the modern civil rights movement were young 'Freedom Riders' travelling through the South by bus in an effort to desegregate Greyhound waiting rooms.\textsuperscript{23}

\textsuperscript{21} Bowe, p. 82. 
\textsuperscript{22} Cook, p. 404. 
\textsuperscript{23} Interview with Edward Berkowitz, March 3, 1992.
Once political leaders embraced the civil rights model and its assumption that the disabled are oppressed by a legal and social system similar to Jim Crow, paratransit inevitably became an unacceptable mobility alternative. After all, in *Brown versus the Board of Education*, the Supreme Court articulated the central tenet of the modern civil rights movement, the idea that "separate is inherently unequal." No matter how it was packaged, paratransit could never overcome its status as a separate transportation system, and hence presumably inferior.

The evidence suggests that the minority model played a primary role in bringing about the mainstream accessibility requirements of the ADA. This thesis has presented evidence that since the 1960s advocates of the minority model have equated fixed-route accessibility with civil rights. The thesis has also shown that, in drafting the Americans with Disabilities Act, Congress did not closely scrutinize those civil rights claims, and instead yielded to symbols and rhetoric suggesting that the disabled constitute a 'discrete and insular minority.'

**Creating New Demands for Civil Rights by Satisfying Previous Ones**

Political scientists have noted a general tendency for political movements to advance more ambitious claims to rights and benefits once their original aims have been realized. According to Murray Edelman:

> Success in achieving a political objective leads to demands for larger amounts of the same benefits or new goals different in manifest content but like the old ones in respect to a latent dimension.\(^{24}\)

This observation explains why the Washington civil rights community broadened its focus to include disability issues only after achieving its original objective to create legal protections for racial minorities. Similarly, the disability community began to seek a comprehensive civil rights law only after years of success in enacting legislation that addressed other disability welfare issues. As Edelman puts it, "success [in advancing claims for benefits] consistently breeds more confident and intensified interest in a larger claim, not satisfaction." 25

Edelman offers two major reasons for the phenomenon of ever-expanding political demands. New claims are often the product of agencies established to administer the original programs, he argues. Thus the Social Security system was expanded almost annually for thirty years after the enactment of the original act, in large measure due to the support for expansion by the Social Security administration itself. Likewise, the impetus for ADA came from the National Council on Disability, an organization originally created to assist Congress in implementing the Rehabilitation Act of 1973.

A second reason for the tendency of successful political claims to engender further claims is that "a group whose political objective is achieved advances claims for other types of benefits, where the satisfied claims and the new ones lie upon a common latent value continuum." 26 Edelman argues that evidence for this assertion can be seen in the tendency of the same people and groups to support related causes. Thus, the same activists who supported the original civil rights claims

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26 Edelman, p. 155.
of black people and women tended to support the civil rights claims of the disability community. However, by itself, these observations about the insatiable nature of demands for government benefits cannot explain the political triumph for ADA and its fixed-route accessibility requirements. Other factors must play a key role in determining which demands for expanded government programs are successful; otherwise government would quickly expand *ad infinitum*, consuming all of society's resources in the process.

**Accessibility as Political Temptation**

Once leaders for the disabled had succeeded in defining access to mainstream transportation facilities as a civil rights issue, it became tempting for Federal lawmakers to support that claim. By championing the cause of the most vocal disability groups, elected officials could win political points by appearing concerned for the welfare of a needy group and compassionate toward the weak and helpless. The disabled are an especially tempting target for such outpourings of compassion on the part of politicians because almost no one opposes assisting them. By contrast, in recent years, conservatives have successfully made many leaders defensive about supporting government programs for the poor, racial minorities, AIDS victims, and many other traditional targets of government aid.

Another reason support for mainstream transit accessibility must have seemed attractive to many Federal officials is that it poses no financial burden on the Federal government. Virtually all public transit is provided by state and local authorities; as a result, it is state and local officials, not Federal ones, who must pay the cost for
accessible vehicles and stations. Moreover, the lack of hard information about the high cost of ADA compliance at the time the bill was considered must have made supporting it even more tempting for many Members. Congressman Valentine, a Member of the House Committee on Surface Transportation, expressed concern about such temptation during hearings on the ADA, at one point asking his fellow committee members the rhetorical question, "Are we going to mainly say to the states and local governments and municipalities, 'You do these things [required by ADA],,' and we [the Congress] just wash our hands of the problems that are inherent with respect to cost?"27

Ultimately, Congress was able to wash its hands of the costs associated with ADA, to a significant extent because the transit industry lobby lacked the strength to force attention to the issue. The American Public Transit Association (APTA) has repeatedly demonstrated a very limited ability to protect its constituency from new Federally-imposed costs. For instance, APTA recently failed to prevent Congress from imposing expensive new emissions requirements on diesel buses as part of the Clean Air Act, despite the fact that the trucking industry, which produces the vast proportion of diesel emissions, was exempted from those requirements.

However, the weakness of the transit industry lobby and the attractiveness of the disabled as a constituency cannot, by themselves, explain why Congress decided to implement ADA. Many groups suggest themselves as 'deserving' recipients of government aid, and many industries lack the lobbying strength to prevent Congress from imposing costs on them if it wanted. The decision of Congress to take action in the case of ADA, but not in other cases, can be explained only if one takes into account other primary causation factors such as the mainstream imperative of the minority model.

ADA as Political Payback

Some evidence suggests that President Bush supported the Americans with Disabilities Act because the disabled represent a key constituency that supported him in the 1988 election. According to the pollster Lou Harris, "Disabled people swung the [1988] election for George Bush" because Bush had made support for civil rights for the disabled a centerpiece of his nomination acceptance speech at the Republican National Convention. According to Harris, "The data demonstrate that one to three points of President-elect Bush's seven point margin of victory are directly attributable to the swing vote in disabled voters from their traditional Democratic bearings toward the President-elect after he pledged to include disabled voters in the mainstream." That pledge, according to Harris, refers to Bush's nomination speech, which included the words "I'm going to do whatever it takes to make sure the disabled are included in the mainstream. For too long, they've been left out, and they're not going to be left out anymore."28 The realization that the disabled wield considerable strength as a voting block helps to account for why in 1988 George Bush reversed his earlier public opposition to fixed-route accessibility.

The Attraction of a Bold Stroke

ADA's mainstream accessibility requirements allowed Congress to make a bold stroke, sweeping aside the confusing and contradictory accessibility requirements mandated since enactment of the Rehabilitation Act of 1973 and producing concise policy suitable for newspaper headlines. After more than 15 years of confusion based on

section 504, Congress sought to finally make a bold stroke that would create a "clear and comprehensive national mandate,"29 guiding Federal policy. The language of the Act reflects an effort to avoid the paralyzing court challenges that plagued earlier efforts to implement national accessibility requirements. For that reason, "In passing the ADA, Congress took the unusual step of setting forth its constitutional authority in the preamble."30

Likewise, in addressing the question of mainstream transit accessibility versus paratransit, ADA clearly stated that both would be required. By being so explicit, lawmakers hoped to avoid the rancorous debate that had previously taken place when the Federal government had required only one or the other. One Member summed up the desire of Congress to finally settle the issue by requiring both types of access with the words:

"Those members of the disability community who can use fixed-route lift-equipped buses will be able to do so. Those who cannot otherwise use the fixed-route system will use alternative paratransit systems. This simple logic has been lacking in our earlier attempts to address this issue. That is why we have had such a long and tangled history of court decisions dealing with accessibility regulations in this country today."31

The power of a single imaginable idea, the 'simple logic' which fixed-route accessibility represents, clearly played a role in its ultimate acceptance in Congress. In combination with the pressures of the

29. 42 USC 12102.
disability lobby and the symbolism of the minority model, it helped to make possible the enactment of the Americans with Disabilities Act.

The Potential for Dichotomy between Personal and Public Preference

Personal preference and political beliefs are not always consistent. Although the majority of people with disabilities may prefer paratransit for their own transportation, it is possible that many believe that transit agencies should also be required to provide fully accessible mainline service for those who wish to use it. People with disabilities might support fixed-route accessibility although they themselves would never use it. This thesis has only examined evidence suggesting that the disabled prefer paratransit for their own trip-making. One might therefore argue that with the current lack of data no conclusion is possible regarding disabled attitudes toward transit accessibility for the principle.

Some anecdotal evidence supports the notion that preference for personal transportation and political opinion about accessibility often diverge. At a very individual level, some disability activists working on transit accessibility have their own lift-equipped van. As a result, they have little reason to ever use the transit system that they seek to make accessible.32 Likewise, John Fraser from the MBTA's paratransit system has heard disdain for actually riding the system expressed by activists who have chained themselves to trolleys in Boston to protest lack of wheelchair accessibility.33 Such a contrast between personal

32. The most recent chairperson of AC Transit's Accessibility Advisory Committee represents one example of a disability advocate who owns a lift-equipped vehicle and seldom rides on transit. This case is particularly striking, since AC Transit is already 100 percent accessible, so the chairperson's avoidance of transit cannot be explained by lack of fixed-route accessibility.
33. Interview with John Fraser, March 6, 1992.
avoidance of transit and political support for it seems less surprising when one considers that many able-bodied advocates of transit also rarely ride it.\(^{34}\) When asked about the inconsistency between their advocacy positions and their personal behavior, some of these individuals will state that they are seeking to provide others with a good transportation system.

History offers abundant evidence that human beings are capable of holding two entirely divergent political opinions simultaneously. For instance, public opinion research conducted at Stanford in 1966 showed that, at that time, a majority of Americans supported both "the President's handling of the Vietnam situation (an escalation policy) and approved of de-escalation."\(^{35}\) Likewise, a 1964 poll of Minnesota residents indicated that 74 percent of respondents "said they favored prayer in the public schools. However, the same poll also showed that "well over half of this same 74 percent of the respondents said they approved of a Supreme Court ruling declaring it illegal to prescribe prayers for children to recite in public school."\(^{36}\) On the issue of welfare policy, polls have consistently shown that "Those who favor welfare programs more frequently oppose taxes to finance them than do opponents of the programs."\(^{37}\)

Internal inconsistency of opinion about government policy has also been noted within the disability community on issues other than transportation. For example, advocates working on Federal welfare pol-

\(^{34}\) For example, at Multisystems, Inc., a Cambridge, MA transit consulting firm of 20 professionals, virtually none of the professional staff commutes via transit, despite the firm's location a only few blocks from a subway stop.

\(^{35}\) Edelman, p. 5.

\(^{36}\) Edelman, p. 5.

\(^{37}\) Edelman, p. 5.
icy toward the disabled have for decades attempted to provide their constituencies with "tickets out of the labor force," in the sense of providing disability benefits even when individuals capable of participating in the labor force refused work. In the 1980s, the Reagan Administration sought to prune from the disability roles individuals rendered able to work through training and accommodation. These efforts produced a furor in the disability community, as "advocates for the disabled argued that the handicapped had a legal entitlement to a disability pension and should not be forced to seek work."

Yet, at the same time, disability advocates have long sought the creation of a vast network of training programs and legally-mandated public accessibility and non-discrimination in order to facilitate the entry of the disabled into the labor force.

Unfortunately, lack of direct evidence makes it impossible to know the relationship between attitudes about fixed-route accessibility and personal preference for paratransit among the disabled. An opinion survey would have shed light on the issue but was not possible due to lack of cooperation from the MBTA. Future researchers may wish to explore this issue in surveys when cooperation exists from transit authorities.

Conclusion

The un-representativeness of the disability lobby and the mainstream imperative of the minority model provide the two most powerful explanations for why ADA triumphed despite lack of popular support and high cost. Other factors examined by this thesis played a supporting role in creating a political environment favorable to the Act, but by themselves, probably would not have produced ADA. By contrast, the lack

38. Berkowitz, p. 4.
of representation of the majority of the disabled population in lobbying for ADA clearly had a major impact in shaping the law's outcome. Of the more than 100 groups that offered Congressional testimony, most in support of fixed-route accessibility, not a single one specialized in elderly affairs. Yet the elderly make up approximately 60 percent of the transportation disabled and have less reason to support such accessibility than younger people with disabilities.

The National Council on Disability and other advocacy groups have been able to gain great influence because of the social trend toward considering the disabled a 'discrete and insular minority' entitled to strong civil rights protection. As transportation began to be seen as a civil right for the disabled, paratransit systems providing "separate but equal," or even "separate but better" service came under suspicion. Images of separate transportation were evocative of the system of Jim Crow, and disability advocates were able to draw on these sentiments to pursue fixed-route accessibility while the disability population at large remained quiescent.

The banner of civil rights, when waved by a small segment of society on behalf of their interests, can easily produce the ideological rigidity that ADA exemplifies. In seeking mobility for their constituents, disability leaders have failed to critically question how their needs differ from the needs of black Americans 30 years ago. As a result, the disabled have remained wedded to an ideology and political response which was created in response to a unique history of Constitutionally-enshrined slavery, legally-mandated segregation, and socially-enforced oppression. The symbolism which emerged from the struggle for black civil rights has continued to hold the activist
disability community in rapture because it embodies many of the ideals of the American spirit: desire for fairness, belief in the fundamental equality of all persons, conviction that government can provide a level playing field on which all members of society can compete. Unfortunately, disability leaders have continued to pursue those ideals through strategies which fulfilled the needs of another minority group in an earlier era, rather than the needs of the disabled today.
Chapter 6: Epilogue

The End of Quiescence among the Silent Majority?

The political quiescence of the disability population at large may soon come to an end. As paratransit eligibility is tightened in coming months and years, the silent majority, most of whom are senior citizens, might finally make its voice heard. In New York City, many existing paratransit users can be expected to object to being "required to reapply for ADA paratransit." Their objections are likely to magnify once they learn that the Transit Authority and City consider their paratransit system's current, pre-ADA eligibility standards "insufficiently discriminating between those persons with disabilities who can use accessible mass transit and those who cannot." Objection is likely to turn to ire once a significant number of existing paratransit users learn that they have failed to meet "trip eligibility as defined by ADA," and hence no longer qualify for paratransit service.

Likewise, in urban areas less densely served by transit than New York, paratransit users might soon be confronted by new eligibility restrictions on the basis of proximity to fixed-route service. Many are sure to bristle upon learning that ADA requires paratransit service only for trips beginning and ending within three quarters of a mile of fixed route service. Uproar will surely occur when longtime paratransit users

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suddenly find themselves denied paratransit service because of where they live or work.

Though transit agencies have generally not yet placed new geographic restrictions on paratransit eligibility, the temptation to do so clearly exists. In times of tight budgets, transit officials can point to ADA's heavy requirements for fixed-route accessibility in justifying the budgetary imperative of restrictions on paratransit. At least one software firm\(^4\) is banking on that happening. It has recently run advertisements for a computer program allowing transit authorities to trim their paratransit roles by assessing ADA eligibility based on the origin and destination locations of trip requests.

One major transit system reports evidence of nascent opposition to ADA's transportation provisions among the elderly. According to Richard Deroc, who manages paratransit services for the Los Angeles County Transportation Commission (LACTC), some local councils on aging have protested ADA requirements that they purchase only wheelchair-accessible community transportation vehicles in the future. The Antelope Valley Council on Aging, in particular, has gained media attention by asserting that it should not be burdened with responsibility for transporting the severely disabled.\(^5\)

The Americans with Disabilities Act, like most pieces of Federal legislation, was the object of intense lobbying by interest groups. Some, like the National Council on Disability, favored fixed-route accessibility, arguing that transportation is a civil right, and that separate transportation systems are inherently unequal. Others,

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4. Comsis, Inc.
like local transit officials, argued that paratransit is actually more convenient for users and cheaper for municipalities. As is often the case, the public policy decision about which perspective to accept owed much to political factors. However, it remains puzzling why the 60 percent of the transportation disabled population which is elderly did not attempt to exert any political influence.

The American Association of Retired Persons (AARP), for instance, has a reputation in Washington as a potent lobby. However, according to an AARP official, the organization made no effort to be called as a witness when Congress was considering ADA. AARP generally supported the legislation but played no active role, according to the official, because it perceived the legislation as focused primarily on the needs of younger people with disabilities rather than senior citizens.6 One can speculate that when significant numbers of elderly people with disabilities are threatened by loss of paratransit eligibility, the legendary lobbying prowess of AARP and other senior citizen groups will finally be mobilized on their behalf.

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6 Interview with Laurel Beebon, ADA liason for AARP, April 23, 1992.
Appendix
Organizations Testifying before Congress about ADA

National Coalition for Cancer Survivorship
Gallaudet University
Candlelighters Childhood Cancer Foundation
Mass. Commission against Discrimination
Training and Research Institute for Adults with Disabilities
National Council on the Handicapped
World Institute on Disability
Task Force on the Rights and Empowerment of Americans with Disabilities
Mass. Executive Office of Human Services
Mass. Rehab. Commission
Mass. Commission for the Deaf and Hard of Hearing
Mass. Commission on the Blind
Mass. Department of Mental Retardation
National Council on Independent Living
Ad Lib, Inc.
Northeast Independent Living Program
Independent Living Association of Providence, RI
Independent Living Center, Norfolk, VA
Connecticut Traumatic Brain Injury Association
Americans Disabled for Accessible Public Transportation
Easter Seal Society of Connecticut
Volunteers Disabilities Network of Eastern Connecticut
Greater Waterbury Consumer Action Forum
Connecticut Developmental Disabilities Council
Center for Independent Living of Southwestern Connecticut
Connecticut Union of Disability Action Groups
Disabilities Network of Eastern Connecticut
Connecticut Coalition of Citizens with Disabilities
Greater Hartford Advocates for Change
CILSC
Western Connecticut Association for the Handicapped and Retarded
Independence Unlimited
Connecticut Office of Protection and Advocacy for Handicapped and Developmentally Disabled Persons
Challenges Unlimited
Deaf-Blind Contact Center
Mass. AIDS Advisory Board
Worcester, Conn. Center for Independent Living and Working
New Hampshire Multiple Sclerosis Society
Mass. Department of Mental Health
Traumatic Brain Injury Services, Hartford
Harvard Dyslexia Awareness Group
Bay State Council for the Blind
Portland Coalition for the Psychiatrically Labelled
Kathleen Mulligan Foundation
Maine Independent Living Center
Mass. Developmental Disabilities Council
Vermont Center for Independent Living
Rhode Island Governor's Commission on the Handicapped
Association for Retarded Citizens of Massachusetts
Mass. Coalition of Citizens with Disabilities
Renaissance Club of Lowell, MA
Men's Project AIDS Memorial Quilt
Boston Commission for Persons with Disabilities
Names Project New England and D.C.
Mass. Office of Handicapped Affairs
National Head Injury Foundation
Northeast Independent Living Program
Disability Law Center
President's Committee on Employment of People with Disabilities
U.S. Chamber of Commerce
American Society for Personnel Administration
Disability Rights and Education Defense Fund
Barrier Free Environments, Inc.
Association of Christian Schools, International
National Federation of Independent Businesses
National Association of Theater Owners
National Easter Seal Society
ACSI
Virginia Association of Public Transit Officials
American Public Transit Association
American Bus Association
Eastern Paralyzed Veterans Association
National Disability Action Center
Task Force on the Rights and Empowerment of Persons with Disabilities
Advocating Change Together
Paralyzed Veterans of America
National Center for Law and the Deaf
Direct Connect Minnesota Relay Service
AT&T
Queens Independent Living Center
National Council of Independent Living Centers
Columbia Lighthouse for the Blind
Americans Disabled for Accessible Public Transportation
Leadership Conference on Civil Rights
Task Force on the Rights and Empowerment of Americans with Disabilities
National Council on Disability
National Restaurant Association
National Organization on Disability
American Civil Liberties Union
National Federation of Independent Business
International Mass Retail Association
American Hotel and Motel Association
Disabled Lawyers Committee, American Bar Association
National Commission on AIDS
American Institute of Architects
Council for Disability Rights
Southwestern Bell Corp.
Metropolitan Transit Authority of Harris County (Houston)
Institute for Rehabilitation and Research
Equal Employment Opportunity Commission
Marriott Corp.
Associated Builders and Contractors
Accessible Community Transportation in Our Nation Project
Cambria County Transit Authority
St. Cloud, Minn. Metropolitan Transit Authority
Advocacy Plus Action
New York MTA
Memphis Area Transit Authority
Berk's Area Reading, Pa. Transit Authority
American Public Transit Association
Chicago RTA
Chicago Transit Authority
SEPTA
National Tour Association
Greyhound Corp.
Peter Pan Bus Lines
Community Transportation Association
Airport Ground Transportation Association
International Taxicab Association
Yellow Cab Service Corp.
National Rehabilitation Hospital
American Council of the Blind
National Federation of the Blind
Denver RTA
U.S. Telephone Association
Indiana Governor's Planning Council for People with Disabilities
Indiana Dept. of Mental Health
American Council of the Blind of Indiana
Common Concerns
Indianapolis Resource Center for Individual Living
Indiana Dept. of Veterans' Affairs
National Small Business United

[Note: list does not include Federal agencies]
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