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Feature

### EMPIRICAL STUDY OF DISABILITY, EMPLOYMENT POLICY, AND THE ADA<sup>1</sup>

Peter David **Blanck**\*

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As our society approaches the next millennium, critical questions are emerging about the nature, composition, and qualifications of the American work force of the 21st century. These questions include:

- ❑ What types of work skills will be needed for American employers to remain competitive in the United States and abroad?
- ❑ Will our increasingly diversified and aging work force include millions of qualified persons with disabilities?
- ❑ What will be the characteristics, capabilities, and qualifications of the work force of persons with disabilities?
- ❑ What types of job training and supports will be available to that work force?
- ❑ How will the dramatic public policy changes that have occurred in the last quarter of the 20th century in disability law and in educational, welfare, and technological reform affect that work force?

To begin to address these and related questions, the 1998 Presidential Task Force on Employment of Adults with Disabilities has undertaken a comprehensive study of the political and ideological bases of attitudes toward persons with disabilities in employment, housing, transportation, and other areas of daily life.<sup>2</sup> This article highlights mine and my colleagues

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<sup>1</sup> This article is derived, in part, from Professor **Blanck's** statements on October 5, 1998, before the U.S. House of Representatives Committee on Education and the Workforce, and on November 12, 1998, before the U.S. Commission on Civil Rights Public Hearings on the Americans with Disabilities Act.

\* Peter David **Blanck**, Professor of Law & of Medicine at The University of Iowa, earned his Ph.D. in psychology from Harvard University and his J.D. from Stanford Law School. He currently serves as a member of the President's Committee on the Employment of People with Disabilities. He served as a senior fellow of the Annenberg Washington Program and a Commissioner on the American Bar Association's Commission on Mental & Physical Disability Law.

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<sup>2</sup> PRESIDENTIAL TASK FORCE, RE: CHARTING THE COURSE: FIRST REPORT OF THE PRESIDENTIAL TASK FORCE ON EMPLOYMENT OF ADULTS WITH DISABILITIES (1998). To receive a free copy of the report, call

related empirical investigations as they affect the emerging work force of persons with disabilities.<sup>3</sup>

### **Substituting Data for Myths About Disability and Work**

In the past 25 years, disability law and policy, as reflected most directly by the passage of the Americans with Disabilities Act of 1990 (ADA), have undergone a dramatic shift from a model of charity and compensation to medical oversight and then to civil rights.<sup>4</sup> The studies highlighted in this article suggest, as former Governor and U.S. Attorney general Dick Thornburgh has articulated, that laws like the ADA are playing a central role in enhancing the labor force participation of qualified persons with disabilities and in reducing their dependence on governmental entitlement programs.<sup>5</sup>

Despite advancements, however, there is little definitive evidence that American disability law and policy alone will result in substantial increases in the numbers of qualified persons with disabilities participating in the workplace. My colleagues and I have attempted to examine these issues through our studies of thousands of job applicants and workers with disabilities, and of many of their employers.

Systematic empirical study on the work lives of persons with disabilities is lacking. The promise of the ADA and related anti-discrimination laws to prevent the exclusion from society of millions of qualified Americans with disabilities makes this lack of information troubling. In assessing our empirical studies, Senator Bob Dole has commented:

Some people think that evaluating the ADA is irrelevant, given that its purpose is to establish certain rights and protections. But I believe that we have an obligation to make sure our laws are working. At the very least, we need to know that all people affected by the ADA are aware of their rights and responsibilities and that its remedies are in fact available and effective.<sup>6</sup>

The research studies highlighted have three goals:

1. *Dialogue*: To foster a meaningful and productive dialogue about the hiring and equal employment of qualified persons with disabilities;
2. *Awareness*: To raise awareness about persons with disabilities in terms of their (a) work capabilities and qualifications and (b) value to employers and the American

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202/219-6081. To view the report on-line, go to [http://www.dol.gov/dol/\\_sec/public/programs/ptfead/rechart/sat5PTFEADfinalwp.htm](http://www.dol.gov/dol/_sec/public/programs/ptfead/rechart/sat5PTFEADfinalwp.htm).

<sup>3</sup> The research sources discussed are drawn, in part, from PETER DAVID **BLANCK**, *THE AMERICANS WITH DISABILITIES ACT AND THE EMERGING WORKFORCE* (American Association on Mental Retardation, Washington, D.C. 1998).

<sup>4</sup> See John Parry, *Civil Rights for Persons with Mental and Physical Disabilities*, in forthcoming *ABA BLUE-PRINT FOR DISABILITY LAW AND POLICY* (American Bar Association Commission on Mental & Physical Disability Law 1999).

<sup>5</sup> See Dick Thornburgh, *Ensuring Equal Opportunity for Individuals with Disabilities Through the ADA*, in forthcoming *ABA BLUE-PRINT FOR DISABILITY LAW AND POLICY* (American Bar Association Commission on Mental & Physical Disability Law 1999).

<sup>6</sup> Bob Dole, *Are We Keeping America's Promises to People with Disabilities?*--Commentary on **Blanck**, 79 *IOWA L. REV.* 927, 928 (1994).

economy; and

3. *Fairness*: To enhance the effective and fair implementation of the ADA and related anti-discrimination laws by providing information to (a) facilitate employers' understanding of the law and of related initiatives in educational, health care, and welfare reform and (b) help informally resolve employment-related disputes when they arise.

### **Study 1: The Hiring of Persons with Disabilities--The 1998 Manpower Study**

In 1998, my colleagues and I released a case study of Manpower Inc., the nation's largest staffing employer.<sup>7</sup> Manpower annually provides temporary employment opportunities to almost two million people worldwide, maintaining 2,800 offices in 83 countries. Manpower's revenues have nearly doubled since 1991, with sales of \$8.9 billion for 1997. The U.S. Bureau of Labor Statistics estimates that between the years 1994 and 2005, temporary employment opportunities will grow by 55 percent.

The Manpower study examines the employment opportunities available to persons with physical and mental disabilities. The initial study explored the importance of hiring and job training opportunities as strategies that provide a bridge to full-time employment for qualified persons with disabilities. Interviews of Manpower employees with a range of serious impairments, who worked for various employers across the United States, suggest the company's investment in individualized training programs, job skills assessment techniques, and career development strategies has been a critical element of its success in hiring and retaining workers with disabilities.

Moreover, the study identifies aspects of its corporate culture that foster equal employment opportunities for qualified persons with disabilities, including a belief that (1) there are no unskilled workers; (2) every individual has job skills and aptitudes that can be measured; and (3) every job may be broken down into essential tasks. Job training is focused on matching worker skills and host business needs. The study also identifies the ways in which the staffing industry supports the employment of workers with disabilities, showing that (1) individualized training and job placement are available; (2) above minimum wages and health insurance benefits are provided; and (3) there is opportunity for career advancement, self-advancement, self-learning, and transition to full-time competitive employment.

The Manpower study highlights one important bridge from unemployment to employment for qualified workers with disabilities. The implications of the study may be summarized as follows:

1. *Prompt Transition from Unemployment to Employment*. Manpower effectively and promptly transitions people with disabilities from unemployment to employment. Ninety percent of the individuals studied were at work within 10 days of applying to Manpower.

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<sup>7</sup> See PETER DAVID BLANCK, THE EMERGING ROLE OF THE STAFFING INDUSTRY IN THE EMPLOYMENT OF PERSONS WITH DISABILITIES: A CASE REPORT ON MANPOWER INC. (The University of Iowa Law, Health Policy, and Disability Center, Iowa City, Iowa 1998).

2. *Workplace Accommodation Costs Minimal.* The direct costs of accommodating workers with disabilities is low. There were no direct costs to Manpower or its customer companies in accommodating the workers studied.
3. *Staying at Work.* Sixty percent of the individuals studied moved from no employment to permanent employment. Annually more than 40 percent of Manpower's entire work force transitions to permanent work that is the direct result of the temporary job placements.
4. *Safety at Work.* For the employees with disabilities studied, there were no incidences of work site injury, and, thus, no additional costs to the employer due to workplace safety issues.
5. *Choice in Work.* Ninety percent of the individuals studied were placed in a job or industry in which they expressed an interest, and job placements were consistent with individualized work skills.
6. *Retaining Work That Pays.* Ninety percent of the employees studied remained in the work force from the time of their first job assignment, earning above the minimum wage, either through a series of temporary job assignments or permanent employment.

These implications suggest ways for policy makers, employers, health professionals, and others to expand employment opportunities for qualified individuals with disabilities consistent with the ADA's goals.

### **Study 2: Labor Market Trends of Persons with Disabilities--1990-97 Longitudinal Research**

Since 1990, my colleagues and I have been studying the labor market trends of more than 5,000 persons with mental retardation and related impairments living in Oklahoma.<sup>8</sup> The investigation focuses on changes in the participants' employment and economic positions as indicators of progress during initial ADA implementation. Several measures are used to assess employment and economic trends, including the participants' personal and educational backgrounds; job capabilities, qualifications, and training; involvement in community, citizenship, and advocacy activities; and perceptions of ADA effectiveness.

The investigation's core findings may be summarized as follows:

1. *Attaining Employment, Integration into Competitive Employment, and Retention of Employment.* From 1990 to 1997, roughly half of the participants (43 percent) remained in the same type of employment; roughly half (44 percent) engaged in more integrated and competitive employment settings; and somewhat more than

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<sup>8</sup> For a review, see Peter David **Blanck**, *supra* note 3.

one tenth (11 percent) regressed into less integrated employment settings.

2. *Employment of a New Generation of Workers with Disabilities.* Younger relative to older participants, and those individuals with better job skills showed substantial gains in employment.
3. *Drop in Unemployment Levels.* Relative unemployment levels for all participants declined by 24 percent, dropping from 38 percent in 1990 to 14 percent in 1997.
4. *Income Growth.* From 1990 to 1997, the gross and earned income of all participants rose substantially, with younger participants showing substantial increases in income. Better job skills, greater independence in living, and more involvement in self-advocacy activities related to higher earned income levels.
5. *Substantial Individual Growth.* From 1990 to 1997, participants improved substantially in their job capabilities and qualifications, lived in more integrated settings, became more involved in self-advocacy and citizenship activities, and reported enhanced accessibility to society as defined by the ADA.
6. *Black Hole Effect.* More than three out of four (78 percent) of those participants not employed or employed in segregated non-integrated settings in 1990 remained in those settings in 1997.<sup>9</sup>

Though encouraging, these findings suggest a good deal of work lies ahead to ensure equal employment opportunity for qualified workers with serious mental and physical impairments. The gains in employment, income, individual growth, independent living, and ADA awareness, however, reflect "a core, common cause-- the drive for independence and integration of people with disabilities."<sup>10</sup>

### **Study 3: Economics of Accommodating Persons with Disabilities--The 1994 and 1996 Sears Studies**

One aspect of the ADA that has received extensive attention involves the law's affect on employers' ability to provide workplace accommodations for qualified job applicants and employees with disabilities.<sup>11</sup> Critics suggest the ADA's accommodation provision creates for persons with disabilities an employment privilege or subsidy and imposes upon employers an affirmative obligation to retain less economically efficient workers. Others argue the costs of

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<sup>9</sup> Thus, 25 percent of those participants not employed in 1990 remained unemployed in 1997, and 33 percent of those participants in sheltered workshops in 1990 remained in those settings by 1997. In comparison, only one percent of those participants in supported employment in 1990 remained in those settings in 1997, and one percent of those participants in competitive employment in 1990 remained in those settings in 1997. See **Blanck**, supra note 3 (discussing longitudinal study findings). Future analysis is needed of the role of ADA Titles I and II, particularly in the context of the macroeconomic trends in the U.S. economy, in fostering the equal employment of qualified workers with disabilities in integrated settings. *Id.*

<sup>10</sup> See Bob Dole, supra note 6. See also Tom Harkin, *The Americans with Disabilities Act: Four Years Later--Commentary on Blanck*, 79 IOWA L. REV. 936 (1994) (commenting that "Our challenge, as I see it, is to reach the participants in **Blanck's** 'black hole' and to continue the positive momentum that he charts.").

<sup>11</sup> See Peter David **Blanck**, *Transcending Title I of the Americans with Disabilities Act: A Case Report on Sears, Roebuck and Co.*, 20 MENTAL & PHYSICAL DISABILITY L. REP. 278 (1996).

accommodations are especially high for large employers, who may be held accountable for extensive modifications because of their greater financial resources.<sup>12</sup>

The research to date does not show that the ADA's accommodation provision is a preferential treatment initiative that forces employers to ignore employee qualifications and economic efficiency. My colleagues and I have conducted a series of studies, finding companies that are effectively implementing the law demonstrate the ability or "corporate culture" to look beyond minimal legal compliance in ways that enhance their economic bottom lines. The low direct costs of accommodations for employees with disabilities produces substantial economic benefits in terms of increased work productivity, workplace injury prevention, reduced workers' compensation costs, and workplace effectiveness and efficiency.

We have conducted a series of studies at Sears, Roebuck and Co., a company with approximately 300,000 employees, examining more than 600 workplace accommodations provided by the company during the years 1978 to 1998.<sup>13</sup> Our findings show that most accommodations sampled required little or no cost-- more than 75 percent required no cost; somewhat less than one quarter cost less than \$1,000; and less than 2 percent cost more than \$1,000. The average direct cost for accommodations was less than \$30.

The following implications may be drawn from the Sears studies:

1. *Compliance Linked to Culture, Attitudes, and ADA Transcendence.* The degree to which Sears and other companies examined comply with the ADA's accommodation provision appears to have more to do with their corporate cultures, attitudes, and business strategies than with meeting the law's minimal obligations.
2. *Benefits of Workplace Accommodations Outweigh Costs.* The indirect cost of not retaining qualified workers is relatively high, with the average administrative cost at Sears per employee replacement of \$1,800 to \$2,400-- roughly 40 times the average of the direct costs of workplace accommodations for qualified workers. Sears also provides accommodations that require minor and cost-free workplace adjustments, which are implemented directly by an employee and his or her supervisor. Sears is realizing positive economic returns on the accommodation investment by enabling qualified workers with disabilities to return to or stay in the work force, reducing the risk of workplace injury and lowering worker absenteeism.
3. *Unintended Economic Benefits to Employers, Workers Without Disabilities, and*

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<sup>12</sup> See Peter David **Blanck**, *The Economics of the Employment Provisions of the Americans with Disabilities Act: Part I--Workplace Accommodations*, 46 DEPAUL L. REV. 877 (1997).

<sup>13</sup> See Peter David **Blanck**, *Communicating the Americans with Disabilities Act, Transcending Compliance: A Case Report on Sears, Roebuck & Co.*, THE ANNENBERG WASHINGTON PROGRAM REPORTS (Washington, D.C.: The Annenberg Washington Program in Communications Policy Studies of Northwestern University 1994); Peter David **Blanck**, *Communicating the Americans with Disabilities Act, Transcending Compliance: 1996 Follow-Up Report on Sears, Roebuck & Co.*, THE ANNENBERG WASHINGTON PROGRAM REPORTS (Washington, D.C.: The Annenberg Washington Program in Communications Policy Studies of Northwestern University 1996).

*Workers Who May Become Disabled in the Future.* Accommodations involving universally designed technology enable employees with and without disabilities to perform jobs productively, cost-effectively, and safely (for example, reducing the potential for workplace injury). The costs associated with the technologically-based accommodations studied (for example, computer voice synthesizers) enabled qualified employees with disabilities to perform essential job functions. These strategies create a corporate "ripple effect," as applications increase the productivity of employees without disabilities. The direct costs attributed to universally designed accommodations are lower than predicted when their fixed costs are amortized over time.

The findings from the Sears studies suggest that many economic and social benefits and costs, intended and unintended, associated with the ADA's accommodation provision remain to be discovered and documented. Studies, such as Sears and Manpower, illustrate that companies already expend large sums of money accommodating the needs of workers without disabilities (for example, through flexible scheduling of work hours, child care support, and Employee Assistance Programs), and that these costs are substantially greater than those associated with accommodations for workers with disabilities. Analysis of these strategies shows that they complement cost-effective accommodation strategies for workers with disabilities.

#### **Study 4: Resolving ADA Disputes--The 1996 Sears Study**

Another major critique of the ADA is that it fosters unintended and costly employment litigation. It has been suggested that a large source of indirect costs associated with ADA implementation is related to expenses for administrative, compliance, or legal actions.

The Sears study examined both the formal ADA Title I charges filed with the Equal Employment Opportunity Commission (EEOC) against Sears from 1990 to mid- 1995 and informal disability-related disputes raised by employees.<sup>14</sup> The findings include the following:

1. *Formal ADA Charges.* Almost all of the formal charges filed with the EEOC (98 percent) were resolved without resort to extensive trial litigation.
2. *Informal ADA Disputes.* More than three quarters (80 percent) of the informal disability-related disputes were resolved through informal dispute processes that enabled qualified employees with disabilities to return to productive work.
3. *Nature of Impairment.* Almost half (41 percent) of the employees who filed charges with the EEOC evidenced an impairment before their employment at Sears; more than one quarter (29 percent) who filed charges were injured on the job; and 18 percent who filed charges were injured off the job. The findings do not support the view that the charges filed reflect issues that would otherwise be raised under traditional workers' compensation laws.

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<sup>14</sup> See Peter David **Blanck**, *supra* note 13, 1996 Follow-Up Report on Sears, Roebuck & Co. (studying 141 formal EEOC charges and 20 informal disputes).

4. *Settlement.* Of the formal ADA charges studied, the average settlement cost to Sears was \$6, 193, exclusive of attorneys' fees.

These findings highlight that analysis of the costs and benefits associated with ADA implementation, enforcement, compliance, and related litigation is needed on a national scale.<sup>15</sup> Nevertheless, discussion limited to EEOC charges associated with ADA implementation tends to focus analysis on the failures of the system, as opposed to efficient and fair workplace strategies that enhance the productive work force participation of persons with disabilities.

### **Study 5: Unintended Economic Consequences of the ADA--A Case Study of Technological Innovation and Inventive Activity**

Independent of the civil rights guaranteed by the law, estimating the costs and benefits of ADA implementation is a complex undertaking. To illustrate the importance of studying the unintended consequences of ADA implementation, my colleagues and I recently completed the first study of economic activity in the assistive technology (AT) market, using data derived from the United States Patent and Trademark Office (PTO).<sup>16</sup>

The findings suggest that ADA implementation is fostering technological innovation and economic activity in the AT consumer market. As the regulatory shifts imposed by the ADA expand the market for goods that improve accessibility to society, inventors and manufacturers are responding to meet the needs of consumers with disabilities.

The core findings include the following:

1. *Economic Activity.* Assistive technology patent numbers have shown substantial annual increases since 1976.
2. *ADA Awareness.* Although reference to civil rights legislation is atypical of patent records, from 1990 through mid-1998, the number of patents citing the ADA has increased substantially, totaling 139.
3. *Unintended Economic Benefits.* Inventors who cite the ADA are a geographically diverse group, many unaffiliated with large corporations. From 1990 to mid-1998, patents were granted for a wide range of assistive devices with uses for a wide array of consumers with disabilities.

These findings are consistent with those suggesting that the ADA is affecting the AT consumer market, including persons with and without disabilities, in economically positive ways and is

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<sup>15</sup> See Bill Lann Lee, *Enforcing the ADA: The Department of Justice's Role*, in forthcoming ABA BLUE-PRINT FOR DISABILITY LAW AND POLICY (American Bar Association Commission on Mental & Physical Disability Law 1999).

<sup>16</sup> Assistive technology is any item, piece of equipment, or product system--whether acquired commercially, modified, or customized--that is used to increase and improve the functional capabilities of individuals with disabilities. See Heidi M. Berven & Peter David **Blanck**, *The Economics of the Americans with Disabilities Act, Part II--Patents and Innovations in Assistive Technology*, 12 NOTRE DAME J. L. ETHICS & PUB. POL'Y 101 (1998).



creating profit-making opportunities for inventors, manufacturers, and employers that were unanticipated when the law was passed.

### **Conclusion: Studying the Emerging Work Force of Persons with Disabilities**

Empirical evaluation of the legal, policy, and economic implications associated with the emerging work force of persons with disabilities is needed for several reasons, including:

1. *Effective and Fair ADA Implementation.* Study of the labor force participation of persons with disabilities will aid in long-term ADA implementation and interpretation of related initiatives such as welfare, educational, health care, and dispute resolution reform.
2. *The Emerging Work Force.* Study is needed of the extent to which ADA implementation has coincided with larger numbers of persons with severe disabilities entering the labor force. In 1996, the U.S. Census Bureau released data showing that the employment to population ratio for persons with severe disabilities increased from roughly 23 percent in 1991 to 26 percent in 1994, reflecting an increase of approximately 800,000 additional people with severe disabilities in the work force.
3. *Existing Challenges.* Despite encouraging trends, study is required of the underlying causes of high unemployment levels facing persons with disabilities. A 1998 survey by the National Organization on Disability (NOD) and the Louis Harris and Associates Organization found significant participation gaps between people with and without disabilities in employment and other aspects of life.<sup>17</sup> Of the persons with severe disabilities surveyed, more than two thirds (approximately 67 percent) were unemployed and out of the work force compared to less than 10 percent of all Americans. Forty percent of the individuals with disabilities surveyed lived below the poverty line versus 18 percent of all Americans. Additional analysis of the 1998 NOD/Harris survey, excluding those individuals in the sample who were retired or unable to work, reveals that more than half of the remaining individuals (approximately 62 percent) were working either full or part time.<sup>18</sup>
4. *Call for Collaboration.* Meaningful discussion among scholarly disciplines is needed to fully inform policy makers, employers, members of the disability community, and others about the complex issues related to the intended and unintended consequences of ADA implementation in ways that articulate the values and goals of the nation's policies affecting persons with disabilities.<sup>19</sup>

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<sup>17</sup> See NATIONAL ORGANIZATION ON DISABILITY, THE 1998 N.O.D./HARRIS SURVEY OF AMERICANS WITH DISABILITIES (Washington, D.C. 1998). To order a copy, contact N.O.D., 910 16th St., N.W., Washington, D.C. 20006.

<sup>18</sup> When excluding those 351 individuals surveyed between the ages of 18 and 64 years who were retired or unable to work due primarily to their disability or health condition from the total sample size of 621 persons, roughly 62 percent of the remaining individuals report that they are employed either full or part time. More than half (approximately 68 percent) of persons reporting that they are unable to work would like to have a regular job. Subsequent analysis is required to assess the nature of the participants' impairments and conditions and whether many of these individuals are (1) persons with disabilities for purposes of the ADA and (2) capable of employment with the provision of workplace accommodations or personal assistant services.

<sup>19</sup> See EMPLOYMENT, DISABILITY, AND THE AMERICANS WITH DISABILITY ACT: ISSUES IN LAW, PUBLIC POLICY, AND RESEARCH (forthcoming, Peter David **Blanck** ed., Northwestern University Press, Evanston, Ill. 1999).

5. *Call for Research.* The conclusions from any single research study, or even from series of studies, are insufficient for drawing sweeping conclusions about persons with disabilities and employment law and policy. Future large scale and case study research is required to provide a springboard for further discussion about evolving disability law and policy.<sup>20</sup>

In this last regard, in 1998 my colleagues and I were awarded a grant from the National Institute on Disability Research and Rehabilitation (NIDRR) to establish a Rehabilitation and Research and Training Center on work force investment and employment policy for persons with disabilities.<sup>21</sup> The Center's goals include conducting large-scale and case study of the effects of federal and state policies on the employment of persons with disabilities, such as the ADA, the Temporary Assistance to Needy Families (TANF) program, and the Workforce Investment Act. Through empirical and policy analysis, the Center's overriding goal is to expand and improve disability and generic policy to impact positively equal employment opportunities for Americans with disabilities.<sup>22</sup>

Useful and credible information about the issues that I have highlighted, and many others, must be derived from study of core values related to our sense of individual worth and identity, self-respect, fairness, and economic common sense. The articulation of these values by persons with and without disabilities will shape the lives of the next generation of children with disabilities who have experienced integrated education and who will become part of the competitive work force of the next century.

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<sup>20</sup> Examples of empirical projects in preparation include study of (1) self-employment and entrepreneurial activities by persons with disabilities, (2) myths about workplace violence and persons with mental illness, (3) the unintended consequences of ADA backlash, and (4) ADA implementation and corporate culture. See Peter David **Blanck**, Civil War Pensions, Civil Rights, and the ADA, BERKELEY J. EMP. & LAB. L. (forthcoming, ADA Backlash Symposium Presentation, 1999). To contact the journal, call 510/642-5003.

<sup>21</sup> See Michael Morris, Peter David **Blanck**, Robert Silverstein, Carl Van Horn & Duke Storen, PROJECT OVERVIEW OF THE REHABILITATION RESEARCH AND TRAINING CENTER ON WORKFORCE INVESTMENT AND EMPLOYMENT POLICY FOR PERSONS WITH DISABILITIES (Community Options Working Papers, Washington, D.C. 1999).

<sup>22</sup> See Albert R. Hunt, The Disabilities Act Is Creating a Better Society, WALL ST. J., Mar. 23, 1999, at A23.