

## **Studying Disability, Employment Policy, and the ADA**

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At the tenth anniversary of the Americans with Disabilities Act of 1990<sup>ii</sup> (“ADA”) critical questions remain to be documented about the nature, composition, and qualifications of the American work force of the 21st century. These questions include:

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

This chapter highlights mine and my colleagues empirical investigations of these and related questions as they affect the emerging work force of persons with disabilities.<sup>iii</sup> The need

for a body of research on disability law and policy from varied scientific and social science disciplines is crucial, given the revolutionary shift in just the past 50 years from a model of charity and compensation, to medical oversight, and then to civil rights culminating in the passage of the ADA.<sup>iv</sup>

An overarching theme of the studies highlighted in this chapter is to document the ways in which disability law and policy are enhancing the equal labor force participation of qualified persons with disabilities and in reducing their dependence on governmental entitlement programs.<sup>v</sup> Despite advancements, there is little definitive evidence that disability laws and policies alone have resulted in substantial increases in qualified persons with disabilities participating in the workplace.

### **Substituting Data for Myths About Disability, the ADA, and Work**

Systematic 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>vi</sup>

The research studies highlighted in this chapter have three goals:

1. *Dialogue:* To foster a meaningful dialogue about the hiring, equal

employment, and career development of qualified persons with disabilities;

2. *Awareness:* To raise awareness about persons with disabilities in terms of their work capabilities and qualifications, and value to employers and the American economy; and,
3. *Fairness:* To enhance the effective implementation of the ADA and related anti-discrimination laws by providing information to facilitate employers' understanding of the law and of initiatives in educational, health care, and welfare reform.

Over the past ten years, my colleagues and I have attempted to further these goals through our studies of job applicants, workers with disabilities, employers, assistive technology, and workplace accommodation strategies. The following sections review several of our studies on ADA implementation in these areas.

### **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>vii</sup> Manpower provides temporary employment opportunities to almost two million people worldwide. 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 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.

The study identifies aspects of its corporate culture that foster equal employment opportunities for 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. The study 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 employment.

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

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

Manpower.

2. *Workplace Accommodation Costs Minimal.* The direct costs of accommodating workers with disabilities is low. There were minimal 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.

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

## **Study 2: Labor Market Trends of Persons with Disabilities--- 1990-98 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>viii</sup> The investigation focuses on changes in the participants' employment and economic positions as indicators of progress during ADA implementation. Several measures assess employment and economic trends, including 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 1998, somewhat less than half of the participants (42 percent) remained in the same type of employment; roughly half (47 percent) engaged in more integrated and competitive employment; and somewhat more than 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 23 percent, dropping from 37 percent in 1990 to 14 percent in 1998.
4. *Income Growth.* From 1990 to 1998, the gross and earned income of 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 1998, 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.* Three out of four (75 percent) of those participants not employed or employed in segregated non-integrated settings in 1990 remained in those settings in 1998.

Though encouraging, these findings suggest a good deal of work lies ahead to ensure equal employment opportunity for 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>ix</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>x</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

accommodations are high for large employers, who may be held accountable for extensive modifications because of their greater financial resources.<sup>xi</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. Our studies illustrate that 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 more than 300,000 employees, examining more than 600 workplace accommodations provided by the company during the years 1978 to 1998.<sup>xii</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, managers' 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 accommodations for qualified workers. Sears also provides accommodations that require minor and cost-free workplace adjustments, which are implemented directly by an employee and 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. *Economic Benefits to Employers, Workers Without Disabilities, and 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 associated with the ADA's accommodation provision remain to be discovered and documented. Studies, such as Sears and Manpower, illustrate that companies 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 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>xiii</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 reflect issues that would otherwise be raised under traditional workers' compensation laws.
4. *Settlement.* Of the formal ADA charges studied, the average settlement cost to Sears was \$6,193, exclusive of attorneys' fees.

The findings highlight that analysis of the costs and benefits associated with ADA implementation, compliance, and related litigation is needed on a national scale. 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 equal 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.<sup>xiv</sup> To illustrate the importance of studying the unintended consequences of ADA implementation, we conducted 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>xv</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.

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

### **Study 6: Social Construction of Disability and the ADA— An Historical Investigation of Conceptions of Disability**

In a large-scale historical investigation, we continue to explore the underpinnings of law and policy affecting persons with disabilities, as exemplified today by the ADA. The historical

investigation explores the ways in which public acceptance and reaction to the inclusion into society of persons with disabilities in late nineteenth century America was, like today, at least as much driven by political, economic, social, and attitudinal factors regarding conceptions of disability, as by law and policy themselves.<sup>xvi</sup>

We explored the profound aftereffects on American society of the emergence of the large class of disabled Civil War veterans and the ways in which they changed conceptions of disabled persons in American society. Three preliminary hypotheses were tested:

- (1) The severe criticism in the press directed against disabled veterans in particular, and against the pension system in general, will have *at least as much to do* with party politics of the day as with the workings of the pension system.
- (2) The perceived legitimacy of and stigma toward veterans' disabilities will have *at least as much to do* with the provision of pensions, as with the severity of disabilities.
- (3) Social characteristics of the veterans, such as occupational status, will have *at least as much to do* with the provision pensions, as with the severity of disabilities.

Examination of these hypotheses supported the view that attitudes about disability, as illustrated in the context of the empirical studies described above, often have less to do with the operation of law and policy than with underlying attitudinal and political views toward disabled persons. These conclusions are based on findings from the first wave of the data collected from U.S. military archives involving approximately 6,600 Union Army veterans from four Northern

states – Illinois, New York, Ohio, and Pennsylvania.

The preliminary findings confirm and refine prior suggestions about the profound influence of political, economic, and social forces on the evolution of conceptions of disability. Deep-seated attitudes about disability and nineteenth century patronage politics contributed to the negative attitudes toward a then new social category of individuals with disabilities. Targeted criticisms in the press scapegoating disabled veterans as “illegitimate” and “unworthy” occurred despite evidence that the pension system was performing gatekeeping functions. Negative public attitudes occurred at a time when social norms about disability had not developed and advocacy for the disabled was non-existent or in its infancy.

The investigation confirms the contemporary view that partisan and attitudinal factors unrelated to disability contributed to the legacy disability policy. Professor Harlan Hahn’s seminal articulation of the minority group model is instructive in this regard. Hahn suggests that negative social attitudes are the primary source of barriers to equal participation in society confronted by disabled people.<sup>xvii</sup> Hahn believes that “disability *is defined* by public policy.”<sup>xviii</sup>

The findings also highlight that conceptions of disability held by examining surgeon’s applying late twentieth century diagnostic methods may have been a factor in development of the long-lasting “medical model” approach to disability. The dominance of the medical approach to disability was to last well into the next century.

### **Is the Past a Prologue to the Future of People with Disabilities?**

One hundred years after the height of the Civil War pension system in 1890, critical reactions to passage of the ADA included widespread allegations that the law is aiding “gold diggers” with illegitimate disabilities and that it is have a chilling effect on the hiring and employment of “truly” disabled persons.<sup>xix</sup> Others argue that the costs of ADA workplace accommodations far exceed the benefits, that there are high numbers of frivolous ADA lawsuits brought by “undeserving” plaintiffs, and that, because of all of this, there have been negative economic consequences from the ADA from “fraudulent or overly bureaucratic programs.”<sup>xx</sup>

Proponents argue that negative trends in the labor force participation of people with disabilities to date have less to do with ADA implementation than with macro-economic trends when the law was passed and with structural inefficiencies and disincentives in existing disability and health insurance policies.<sup>xxi</sup> Critics respond that a decline or lack of growth in the labor force by persons with disabilities, combined with an increase in applications for entitlement benefits, suggests that the ADA may not be helping those it was intended to serve.<sup>xxii</sup>

The themes articulated by critics come down to the view that the ADA is not serving, and indeed are hurting, the interests of all Americans. A 1999 *San Francisco Chronicle* article concludes that “history is littered with laws that not only did not work, but did exactly the opposite of what was intended. The Americans with Disabilities Act appears, sadly, to be one.”<sup>xxiii</sup> A 1998 Reader’s Digest article describes the ADA as “A good law gone bad.”<sup>xxiv</sup> Professor Andrew Batavia comments that some critics believe that people with disabilities “have done something morally wrong to deserve their predicament and that they should be assisted only through charity.”<sup>xxv</sup>

The debate pits supporters who stress the civil rights guaranteed by its anti-discrimination provisions against critics who cast the law as broad, inefficient, and as a preferential treatment initiative.<sup>xxvi</sup> The debate is cast in ideological terms, as liberal efforts to enlist the federal government in the inclusion of the disabled into society versus conservative attempts to allow the power of economic markets to assist disabled persons.<sup>xxvii</sup> The debate inevitably, like that over social welfare programs generally, comes down to a view about the proper role of the federal government in the lives of disabled citizens.

The program of study highlighted in this chapter illustrates that attitudinal, economic, and political forces affected public views about disability law and policy one hundred years ago, as they do today. Because study on persons with disabilities is lacking, much of the criticism has focused on whether certain groups of disabled persons are a “deserving” class.<sup>xxviii</sup> News coverage reflects skepticism and cynicism about the definition and “legitimacy” of disabilities claimed and covered by the ADA. Some commentators have interpreted the negative press as an ideological effort to intentionally deflect meaningful discussion of disability law and policy.<sup>xxix</sup>

Widespread criticism of the ADA illustrates a growing ideology that, knowingly or unknowingly, perpetuates attitudinal barriers and unjustified prejudice toward disabled Americans in employment, education, housing, and daily life activities.<sup>xxx</sup> Evaluation of attitudes about disability and the operation of disability law and policy is needed for several reasons.

First, study of the equal participation in society of persons with disabilities will aid in



long-term evaluation of emerging policies in areas of welfare, educational, health care, and dispute resolution reform.<sup>xxxix</sup> Second, study is needed of the extent to which the ADA has enabled persons with severe disabilities to enter the mainstream of society, particularly in education and employment.<sup>xxxix</sup> Third, research from a variety of disciplines is needed to inform policy makers, employers, and members of the disability community about the emerging issues related to prejudice and long-term ADA implementation.<sup>xxxix</sup>

In his classic article “The Right to Live in the World,” Professor tenBroek argued that the disabled have a right to live under a national policy of “integrationalism,” which is full and equal participation in society.<sup>xxxix</sup> Integrationalism as a national policy may have commenced formally as early as 1920, when Congress adopted the national Vocational Rehabilitation Act.<sup>xxxix</sup> The gradual shift toward integrationalism may be one legacy of the Civil War pension system, from its early beginnings as policy of charity, to compensation, to the medicalization of disability.<sup>xxxix</sup> In 1990, the modern view of disability civil rights was articulated in passage of the ADA. This new paradigm emphasizes an individualized and socially contextual approach to civil rights enforcement.<sup>xxxix</sup>

### **Conclusion: Study of the ADA and the Emerging Workforce of Persons with Disabilities**

A new generation of empirical evaluation of the legal, policy, and economic implications associated with the emerging workforce of persons with disabilities and ADA implementation is needed. As discussed in this chapter, study of the labor force participation of persons with disabilities will aid in long-term ADA implementation and of other policy initiatives.

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.

This chapter has highlighted that, 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)/Harris Organization found significant participation gaps between people with and without disabilities in employment and other aspects of life.<sup>xxxviii</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.

To continue to address the issues, meaningful discussion among scholarly disciplines is needed to inform policy makers, employers, members of the disability community, and others about the issues related to ADA implementation in ways that articulate the values and goals of the nation's policies affecting persons with disabilities.

Of course, 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 research and case studies are required to provide a springboard for further discussion about evolving disability law and policy.

In this last regard, my colleagues and I, with support from the National Institute on Disability Research and Rehabilitation (NIDRR), have established a Rehabilitation and Research and Training Center on work force investment, employment policy for persons with disabilities, and ADA implementation.<sup>xxxix</sup> The Center's goals include conducting study of the effects of federal and state policies on the employment of persons with disabilities, such as the ADA and the Workforce Investment Act.

One example of a new research project at the Center is a study of self-employment and entrepreneurial activities of people with disabilities.<sup>xl</sup> Self-employment is examined as a growing option for joining the workforce. The research explores how the Iowa's Entrepreneurs with Disabilities program enables individuals with disabilities to pursue self-employment. The report uses in-depth interviews, observations, and archival data sources to examine the Entrepreneurs Program. The over-arching goal of this research is to stimulate discussion of self-employment techniques and policy initiatives that address the unemployment problem faced by millions of Americans with disabilities who want to be work, and who are capable of and interested in self-employment.

The preliminary findings illustrate that self-employment provides an alternative for people with disabilities to move from unemployment, or underemployment, to productive employment. Self-employment initiatives provide assessment, technical assistance, training and funding for prospective entrepreneurs, allowing them to pursue self-employment. The self-employment programs studied provide entrepreneurs with opportunities to establish businesses, acquire startup and expansion funding, build credit histories, enhance their

self-esteem, become involved in their communities, interact with suppliers and customers, and earn income. Through empirical and policy analysis of the kind highlighted in this chapter, the Center's goal is to expand and improve disability and generic policy to impact positively equal employment opportunities for Americans with disabilities.<sup>22</sup>

At bottom, 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.

One hundred years ago, and today, at the tenth Anniversary of the ADA, disabled people are portrayed as shirkers, malingerers, free loaders, and undeserving. One hundred years ago and today, some claim that disabled people seeking protection under the law pose a moral challenge to the notions of fairness in American law and policy.<sup>23</sup> Over the course of the twenty-first century, our challenge is to strive toward national policies that promote inclusion into society for all persons, with and without disabilities.

## Endnotes

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i. 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 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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ii. 42 U.S.C. §12101 et. seq.

iii. 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).

iv. See John Parry, "Civil Rights for Persons with Mental and Physical Disabilities," in ABA Blue-print for Disability Law and Policy (American Bar Association Commission on Mental & Physical Disability Law 1999).

v. See Dick Thornburgh, "Ensuring Equal Opportunity for Individuals with Disabilities Through the ADA," in ABA Blue-print for Disability Law and Policy (American Bar Association Commission on Mental & Physical Disability Law 1999).

vi. Bob Dole, "Are We Keeping America's Promises to People with Disabilities?--Commentary on Blanck," 79 Iowa L. Rev. 927, 928 (1994).

vii. 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).

viii. For a review, see Peter David Blanck, *supra* note 3.

ix. 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

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challenge, as I see it, is to reach the participants in Blanck's 'black hole' and to continue the positive momentum that he charts.”).

x. 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).

xi. 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).

xii. 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).

xiii. See Peter David Blanck, *supra* note 12, 1996 Follow-Up Report on Sears, Roebuck & Co. (studying 141 formal EEOC charges and 20 informal disputes).

xiv. Susan Schwochau & Peter David Blanck, “The ‘Real’ Economics of the Americans with Disabilities Act—Part 3: Does the ADA Disabled the Disabled?,” xx Berkeley J. Employ. & Lab. L. xxx-xxx (2000 forthcoming).

xv. 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).

xvi. Peter David Blanck, Civil War Pensions, Civil Rights, and the ADA, xx **XXXXXX** xxx-xxx (forthcoming, 2000).

xvii. Harlan Hahn, “The Potential Impact of Disability Studies on Political Science (as Well as Vice-Versa),” Policy Stud. J. (Winter 1993), at 741.

xviii. Harlan Hahn, “Disability Policy and the Problem of Discrimination,” 28(3) Amer. Behav. Sci. 294(1985) (emphasis added).

xix. See, e.g., Russell Redenbaugh, Out of Control: Ten Case Studies in Regulatory Abuse (Lexington Institute, Arlington, Va. 1998) (arguing that the implementation of the ADA has

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harmred the interests of persons with disabilities and calling the ADA “The Americans with Minor Disabilities Act.”); Editorial, Americans with Minor Disabilities Act, Wash. Times Feb. 20, 1999, at C2 (*quoting* Redenbaugh’s remarks on the ADA). *Cf.* Albert R. Hunt, The Disabilities Act is Creating a Better Society, Wall St. J. (Mar. 23, 1999), at A23 (commenting that ADA “doomsayers were almost totally wrong” and that the ADA “has won widespread acceptance from the public and most businesses, and has significantly elevated the awareness of and respect for millions of Americans with disabilities.”).

xx. *Cf.* Andrew Batavia, “Ideology and Independent Living: Will Conservatism Harm People with Disabilities,” 549 Annals, AAPSS 14-15 (Jan. 1997).

xxi. *Cf.* Michael Ashley Stein, “Questioning the Assumptions Underlying Law & Economics Evaluations of Title I of the Americans with Disabilities Act,” xx Berkeley J. Employ. & Lab. L. xxx-xxx (1999).

xxii. *See, e.g.*, Daron Acemoglu & Joshua Angrist, “Consequences of Employment Protection? The Case of the Americans with Disabilities Act,” National Bureau of Economic Research, Inc., Working Paper 6670 (July 1998) (finding that ADA has a negative effect on the employment of the disabled); Thomas DeLeire, “The Wage and Employment Effects of the Americans with Disabilities Act,” University of Chicago Working Paper (Dec. 1997) (same).

xxiii. Carolyn Lochhead, “How Law to Help Disabled Now Works Against Them,” S.F. Chronicle (Sun., Jan. 3, 1999), at 7; 1999 WL 2677104 (citing data from economic studies of the ADA).

xxiv. Trevor Armbrister, “A Good Law Gone Bad,” Reader’s Digest, May 1998, at 145 (also claiming that a flood of frivolous ADA lawsuits have clogged the courts). As another example, *see also* Editorial, “Laws Protecting Disabled Too Susceptible to Abuse,” Atlanta J. & Constitution (Feb. 9, 1999), at A10, 1999 WL 3749474 (commenting that “[h]istory may record the Americans with Disabilities Act as one of the most costly and abused pieces of legislation ever brought forth.”).

xxv. Batavia, Ideology and Independent Living, 549 Annals, *supra* note 20, at 17.

xxvi. *See, e.g.*, Peter David Blanck, “The Economics of the ADA,” in Peter David Blanck (ed.), Employment, Disability, and the Americans with Disabilities Act: Issues in Law, Public Policy, and Research (1999) (discussing need for interdisciplinary study of the ADA).

xxvii. *See* Mark Kelman & Gillian Lester, Jumping the Queue: An Inquiry into the Legal Treatment of Students with Learning Disabilities 203 (1997) (discussing this dichotomy).

xxviii. *Cf.* David Matza & Henry Miller, “Poverty and Disrepute,” in Contemporary Social Problems 601 (R. Merton & R. Nisbet eds., 4<sup>th</sup> ed. 1976) (discussing stigma associated with

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“undeserving” poor).

xxix. *Cf.* Dole, *supra* note 6, at 927-28.

xxx. *See generally* Blanck, Emerging Workforce, *supra* note 3, at 3-10 (discussing attitudinal biases and myths toward persons with disabilities); Peter David Blanck, “Civil Rights, Learning Disability, and Academic Standards,” 2(1) J. Gender, Race, & Jus. 33-58 (1998), at 3 (same). *See also* Douglas Martin, “Disability Culture: Eager to Bite the Hand that Would Feed Them,” N.Y. Times, June 1, 1997, sec. 4, at 1, 6 (discussing the view that it is offensive to disabled persons to argue that “cure” would integrate them into society).

xxxi. Peter David Blanck & John Parry, The ABA’s Blueprint for Disability Law and Policy (1999) (reviewing ABA’s disability law and policy agenda).

xxxii. *See* Peter David Blanck, “Empirical Study of Disability, Employment Policy, and the ADA,” 23(2) Men. & Phys. Dis. L. Rep. xxx-xxx (1999) (discussing future research agenda); Peter David Blanck & Patrick L. Steele, Self-Employment and Entrepreneurial Activity of People with Disabilities: A Case Study of Iowa’s Entrepreneur’s with Disabilities Program (Law, Health Policy & Disability Center Reports, 1999).

xxxiii. *See, e.g.*, Simi Linton, Claiming Disability: Knowledge and Identity 2 & 147 (1998) (discussing emerging field of disability studies as “an interdisciplinary field based on sociopolitical analysis of disability and informed both by the knowledge base and methodologies used in traditional liberal arts, and by conceptualizations and approaches developed in areas of the new scholarship.”).

xxxiv. Jacobus tenBroek, “The Right to Live in the World: The Disabled in the Law of Torts,” 54 Calif. L. Rev. 841-919, at 843 (1966).

xxxv. tenBroek, The Right to Live, 54 Calif. L. Rev., *supra* note 34, at 843.

xxxvi. *See* C. Esco Obermann, A History of Vocational Rehabilitation in America (1965) (describing development of rehabilitation system and relation of system to provision of services for veterans, and noting that prior to 1920 “rehabilitation” meant payment of pensions).

xxxvii. Paul Steven Miller, “Disability Civil Rights and a New Paradigm for the Twenty-First century: The Expansion of Civil Rights Beyond Race, Gender, and Age,” 1(2) U. Pa. J. Lab. & Empl. L. 511-26, at 26 (1998) (discussing traditional and new disability civil rights paradigms).

xxxviii. *See* National Organization on Disability, the 1998 N.O.D./Harris Survey of Americans with Disabilities (Washington, D.C. 1998).

xxxix. *See* Michael Morris, Peter David Blanck, Robert Silverstein, Carl Van Horn, & Duke



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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).

x1. See Peter David Blanck & Patrick Steele, Self-Employment and Entrepreneurial Activity of People with Disabilities: A Case Study of Iowa's Entrepreneurs with Disabilities Program, *supra* note 32 (using case studies and empirical analyses to track program's efforts).

22. See Albert R. Hunt, "The Disabilities Act Is Creating a Better Society," Wall St. J., Mar. 23, 1999, at A23.

23. Cf. Ruth Shalit, "Defining Disability Down," The New Republic, Aug. 25, 1997, at 16 (discussing remarks concerning students with disabilities by President of Boston University). Compare Hunt, "The Disabilities Act is Creating a Better Society," *supra* note 40, at A23 (commenting that "the most significant contribution of the ADA is that it has clearly changed the perception of the disabled."), with Mona Charen, "Frenetic Guidelines Straight from the EEOC," Wash. Times (July 31, 1997) (commenting that the ADA "has gone far beyond the benevolent intentions of its designers ... [it] has accomplished nothing less than to undermine our traditional understanding of character, behavior, and personal responsibility.").