Testimony of John D. Kemp
Senate Health, Education, Labor and Pensions Committee
Full Committee Oversight Hearing
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I. Introduction and Recognition

Good morning [Greeting].

As I prepared for today's testimony and reviewed the substantial history and documentation surrounding the momentous passage of the Americans with Disabilities Act, there was a certain reference that I stumbled upon again and again. It was a reference to the promise of the founders, articulated with simple grace more than 230 years ago: "We hold these truths to be self-evident - that all [people] are created equal. That they are endowed by their creator with certain inalienable rights."

How appropriate these words were for that occasion, and for this one. For those words have served as a beacon for all of us – and for the world - toward which we continue to strive.

But the history of our nation has shown that "equality" under the law is not a gift that is easily given, but instead is a treasure of the most sacred kind, which must be fought for and protected in order to be gained and held. This country has seen many such battles, including those against the dark legacies of racial and gender discrimination. It is through these struggles that we as a nation, and as individuals, move closer to the ideal and the truth upon which this country was founded.

In 1990, 216 years after Thomas Jefferson scripted his most famous words, and its promise was made, and 26 years after the passage of the Civil Rights Act, this body came together and, in an extraordinary, bi-partisan manner, said no to discrimination on the basis of disability. With the passage of the Americans with Disabilities Act, this nation took a monumental, long-awaited step in its long journey toward full and equal rights for all of its citizens.

The heroes of the ADA are here with us today: Senator Tom Harkin, sponsor of the ADA whose tireless commitment and deep dedication made the achievement possible. Senator Bob Dole, who guided and shepherded this legislation from the outset and whose unwavering leadership has served as an inspiration to all. Attorney General Dick Thornburgh, who played such a critical role in supporting and enforcing the legislation. And Congressmen Tony Coelho, Steny Hoyer and Steve Bartlett who championed the cause of equality and inclusion for people with disabilities.

The heroes of the ADA also included members of the disability and business communities who were willing to work together with members of Congress to draft the ADA and the committee reports reflecting clear and unambiguous congressional intent. To these individuals, and to the many, many others who worked to make the ADA a reality, we say "thank you."

Thank you, because in 1990, largely as a result of your work and commitment, we recognized, acknowledged, and sought to alter forever the dark history of discrimination on the basis of disability; a history fraught with ignorance, indignity, suffering, exclusion, and waste of human life and potential. A history of segregation and discrimination that, in the words of civil rights champion and Supreme Court Justice Thurgood Marshall, "in its virulence and bigotry rivaled, and indeed paralleled, the worst excesses of Jim Crow."

II. History of Discrimination in the U.S.

I am by nature an optimist, and today is about looking forward with hope, determination, and with the aim of ensuring the greater success of the Americans with Disabilities Act. It is important to pause and remember this difficult history, a history that included, until very recently, laws that prohibited certain American citizens from appearing in public. A Chicago ordinance in effect until 1974 imposed a fine upon any individual who "exposes himself to public view" who was "diseased, maimed, or in any way deformed so as to be an unsightly or disgusting object."

Discrimination on the basis of disability also permeated our public schools. Until 1975, the State of Maine had a statute which gave the school board the authority to "exclude from the public schools any child whose physical or mental condition makes it inexpedient for him to attend." This same policy was reflected in legislation in virtually every State in the nation.

In 1919, the Wisconsin Supreme Court upheld the exclusion from school of a child with cerebral palsy, writing that the child's appearance produced a "depressing and nauseating effect" upon his teachers and the other children that his condition required "undue" time and attention of the teacher, and that he "interferes generally with the discipline and progress of the school." The court concluded that the child's presence was "harmful to the best interests of the school."

Forced sterilization on the basis of disability was also permitted in this country. In 1927, the United States Supreme Court addressed the constitutionality of a state law which allowed the sterilization of institutionalized people with mental disabilities. The court upheld the law, and acclaimed Justice Oliver Wendell Holmes wrote: "In order to prevent our being swamped with incompetence, it is better for all the world, if instead of waiting to execute the degenerate offspring for crimes, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind."

And particularly in the 20th century, children as well as adults were often subject to lives of forced institutionalization on the basis of disability. They were hidden from public view, isolated from family and friends and excluded from the mainstream of life. Leading medical authorities began to portray people with mental disabilities as "a menace to society and civilization…responsible in large degree for many, if not all, of our social problems."

It was said that people with intellectual disabilities caused "unutterable sorrow at home and are a menace and danger to the community." They were considered a danger to the "social, economic, and moral welfare of the state."

And there were, of course, the more insidious forms of "every day" discrimination: social ostracization, the inaccessibility of retail establishments, eating establishments, public transportation, places of public gathering, and job sites.

Justice Marshall summed up this unfortunate history well when he observed that "Massive custodial institutions were built to warehouse the retarded for life; the aim was to halt reproduction and nearly extinguish their race. Many disabled children were categorically excluded from public schools, based on the false stereotypes that all were uneducable and on the purported need to protect non-disabled children from them. State laws deemed the retarded "unfit for citizenship." Justice Marshall concluded that persons with disabilities have been subject to a history of discrimination that is both tragic and grotesque. In the words of former Senator Lowell Weicker, people with disabilities spend a lifetime "overcoming not what God wrought but what man imposed by custom and law."

This brief review of our nation's history of discrimination on the basis of disability provided the backdrop for the comprehensive reports and clarion call for action by 15 members of the National Council on Disability appointed by President George H.W. Bush. Based on reports by NCD and others, Congress concluded that there was a compelling need to establish a clear and comprehensive federal prohibition of discrimination on the basis of disability.

The statement of findings in the ADA and the Senate and House committee reports explain the purposes of the ADA. The Committee reports, in the words of Senator Dole sought to put an end to "prejudice, isolation, discrimination, and segregation," and to address and dispel the myths and false perceptions of people with disabilities, which have formed the basis for past misguided policies.

The Committee reports make several clear, unequivocal statements of intent. First, discrimination on the basis of disability includes denying equal opportunity to persons who have actual impairments that substantially limit major life activities (i.e., more than minor or trivial impairments). Examples included discrimination on the basis of deafness, blindness, paraplegia, HIV, developmental disability, mental illness. The House and Senate Reports also make it clear that persons with medical conditions that are under control such as persons taking medication for diabetes and epilepsy and high blood pressure may make claims of discrimination on the basis of disability. In other words, whether a person has an actual impairment should be assessed without regard to the availability of mitigating measures.

Second, discrimination on the basis of disability includes denying equal opportunity to an individual who does not have an impairment but simple has a record of an impairment. Congress concluded that it is critical to protect individuals who have recovered from an impairment as well as persons who had been misclassified as having an impairment. Examples include persons with histories of mental or emotional illness, heart disease, or cancer; examples of those misclassified as having an impairment include persons misclassified as mentally retarded.

Third, discrimination on the basis of disability includes denying equal opportunity by taking adverse action against an individual whether or not the person has an actual impairment i.e., a person who is regarded as having a disability. Congress explained that it wanted to protect individuals from discrimination because of the negative reactions of others. The House and Senate Committee reports quote the U.S. Supreme Court case of School Board of Nassau County v. Arline (interpreting Section 504 of the Rehabilitation Act), "Congress acknowledged that society's accumulated myths and fears about disability and diseases are as handicapping as are the physical limitations that flow from actual impairment."

For example, if a an employer refused to hire someone because of a fear of the negative reactions of others to the individual or because of the employer's perception that the applicant had a disability which prevented that persons from working, that person would be able to make a claim of discrimination under the ADA.

In sum, Congress correctly intended the ADA to protect all individuals who are subjected to adverse treatment based on actual or perceived impairment, or record of impairments or are adversely affected by prejudiced attitudes, such as myths, fears, ignorance, or stereotypes concerning disability or particular disabilities, or by the failure to remove societal and institutional barriers.

III. The Topic of Testimony: Employment – Recent Cases

One of the primary areas that the ADA sought to address was that of employment. As was recognized by those who worked so hard for the passage of the ADA, denial of equal employment opportunity on the basis of disability debases and undermines the quest for equality and dignity. Discrimination on the basis of disability perpetuates exclusion and separation; it contributes to the false perception that some people are less than capable, or not equally capable, and cannot contribute or compete in the mainstream; and it creates and compels dependence on government subsidies and programs without fair access to competitive employment; In short, discrimination on the basis of disability perpetuates the cycle of segregation, isolation, and poverty.

Discrimination on the basis of disability in employment not only limits dreams and encourages alienation and economic dependence, it weakens our nation as a whole. As

President George H.W. Bush stated in 1991, "No nation, no matter how wealthy, has ever been able to afford the waste of human talent and potential. That is particularly true today," he wrote, "as the world economy continues to grow in size and sophistication."[1] The President's words have the same force today as they did sixteen years ago, perhaps more. In the growing global economy, and increasingly competitive global workplace, this country cannot afford to overlook one of its greatest human resources – a population of willing, capable, talented, and competent Americans - who stand ready to contribute.

In a nutshell, in the words of Senator Dole, the ADA offered "accessible environments and reasonable accommodations to empower persons with disabilities to utilize their full potential." So, in 1990 we were off to a wonderful start – a start that was in sync with the clear intent of this body.

Unfortunately, however, *the promise of that start has not come to fruition*. Not because of any lack of diligence by Congress and all those who labored to bring about this historic legislation – but because of mistaken, limiting constructions of its intent and meaning. Beginning in the late 1990's, a series of judicial opinions began to emerge, which have undermined the purpose and effect of the ADA. Among other things, the Supreme Court has ruled, in direct contravention of Congressional intent, that the ADA must be strictly interpreted to create a "demanding standard for qualifying as disabled." The court has also ruled that mitigating measures – including medications, prosthetics, hearing aids, and other auxiliary devices, must be considered in determining whether an individual has a disability under the ADA.[2] The Court in reaching this decision had the nerve to state that it "had no reason to consider the ADA's legislative history." In so doing, the court has significantly narrowed the scope of conditions that were specifically intended to be covered by the Act, including epilepsy, diabetes, HIV infection, depression, cancer, and intellectual and developmental disabilities, bipolar disorder, multiple sclerosis, hard of hearing, visual impairments, post-traumatic stress disorder, heart disease, depression, and asthma.[3]

The Supreme Court's rulings have created an untenable situation for individuals who are taking self-help steps to control their illnesses or mitigate the effects of their impairments. If they avail themselves of treatment that improves their condition and prolongs their health and life, they are no longer "covered" by the protections of the ADA, and cannot challenge discriminatory treatment under the Act. These opinions, and their progeny, create a bizarre legal scenario in which an employer can refuse to hire or terminate an

[1] 56 Fed. Reg. 51,145 (Oct. 10, 1991).
[2] Consortium for Citizens with Disabilities, Failing to Fulfill the ADA's Promise and Intent: The Work of The Courts in Narrowing Protection Against Discrimination on the Basis of Disability (Sept. 2006) (unpublished manuscript, on file with author), citing *Sutton v. United Airlines, Inc*., 527 U.S. 471 (1999), *Murphy v. United Parcel Service, Inc*., 527 U.S. 516 (1999); *Albertson's, Inc. v. Kirkingburg*, 527 U.S. 555 (1999).
[3] Consortium for Citizens with Disabilities, Failing to Fulfill the ADA's Promise and Intent: The Work of The Courts in Narrowing Protection Against Discrimination on the Basis of Disability (Sept. 2006) (unpublished manuscript, on file with author).

individual *expressly because of their disability*, and then – when challenged – argue that the individual is not "*disabled enough*" to fall within the protections of the ADA. Thus, while the employer's practices may be overtly discriminatory on the front end, those practices cannot be challenged "on the back end" under the ADA. If this sounds confusing to you – or nonsensical - that's because it is. My friends, we are truly "through the looking glass" here.

I'd like to take a moment and give you a few examples of how this confounding reasoning has worked against people with disabilities. I'll start by telling you a bit about the case of a young man named Charles Irvin Littleton, Jr. Mr. Littleton is a 29 year old man with intellectual disabilities. He lives at home with his mother and receives social security benefits because of his disability. In 2003, Charles' job counselor helped him to arrange an interview for a position as a cart-pusher at a large, well-known retail establishment. Charles job counselor, Carolyn Agee, asked in advance if she could sit in on the interview with Charles, and the personnel manager agreed. When Ms. Agee and Mr. Littleton arrived at the store, however, Ms. Agee was not permitted to attend the interview. After the interview, the company refused to hire Charles.

Charles brought a discrimination claim against the company under the ADA. The court never reached the question, however, as to whether Charles was qualified for the job or whether the company had discriminated against him on the basis of his disability. Rather, the court extinguished the matter before ever reaching these substantive questions by finding, in accordance with the company's arguments, that Charles was not "disabled" under the ADA. The court made this finding despite Charles' explanations that 1) his cognitive ability was equal to that of an eight-year old child, 2) he needed a job counselor to accompany him during the interview process and at the workplace itself, until he became comfortable with his job responsibilities, 3) that he had "difficulty thinking and communicating," which the court itself had observed in the delivery of his testimony, 4) that he was substantially limited in the ability to communicate with others as a result of his disability, and 5) that he was substantially limited in the major life activity of working, as demonstrated by his receipt of social security disability benefits, which are granted only to those who are unable to work by virtue of significant impairments in ability.

Despite these arguments, the court found that, because Charles could drive a car, had graduated from high school with a special education certificate, and had attended a technical college and was able to read and comprehend, he was not substantially limited in the major life activities of thinking and learning. The court also found that although Charles was not hired for this particular position, there were other jobs that he *could* do, and therefore that his disability did not substantially limit him in the major life activity of working. In other words, while Charles' disability may have been the catalyst for the

denial of employment by this company, he was not disabled enough to be protected from discriminatory hiring practices under the ADA.[4]

Let me share with you the story of Mary Ann Pimental. Mary Ann was a registered nurse who lived in New Hampshire with her husband and two children. She worked in a hospital. After five years of employment at the hospital, Mary Ann was promoted to the nurse management team. About one year later, she was diagnosed with Stage III breast cancer.

Mary Ann took some time away from work to undergo a mastectomy, chemotherapy, and radiation treatments. While she was receiving her treatment, the hospital eliminated Mary Ann's position. When she was well enough to return to work, Mary Ann re-applied for several different positions at the hospital, but was not hired. Eventually, the hospital hired her back as a staff nurse for only 20 hours per week, without the higher level of benefits accorded to those working more than 30 hours per week.

Given her strong performance history, and the fact that she had been asked by her employer about her ability to perform her nursing duties while being treated for cancer, Mary Ann believed that the hospital's decision to hire her back in a part time, diminished capacity was related to her breast cancer. When Mary Ann challenged the hospital's decision under the ADA, the hospital argued that Mary Ann did not have a disability, and hence was not protected by the ADA. In response, Mary Ann offered highly personal evidence and information to her employer that demonstrated how her breast cancer had substantially impacted her life. She noted her hospitalization for mastectomy, chemotherapy, and radiation therapy; she shared that she had problems concentrating, memory loss, extreme fatigue, and shortness of breath; that she experienced premature menopause brought on by chemotherapy, burns from radiation therapy, pain in her shoulder resulting in an inability to lift her arm above her head, sleep deprivation caused by nightmares, difficulty in intimate relations with her husband as a result of her premature menopause and self-consciousness about her mastectomy, and that she needed assistance from her husband and mother in caring for herself and her two children, because of extreme fatigue and difficulties performing basic household tasks.

When Mary Ann returned to work, she was still receiving radiation treatment and experiencing great fatigue. She could not lift her arm above her head, experienced concentration and memory problems, and still received help with household and childcare tasks. Despite this painful litany, the hospital maintained that Mary Ann did not have a disability under the ADA because she hadn't shown a substantial limitation of a major life activity, and the court agreed. It wrote – "[while] [t]here is no question that plaintiff's cancer has dramatically affected her life, and that the associated impairment has been real

[4] Consortium for Citizens with Disabilities, The Effect of the Supreme Court's Decisions on Americans with Disabilities (unpublished manuscript, on file with author), citing *Littleton v. Wal-Mart Stores, Inc*., No. 05-12770, 2007 WL 1379986 (11th Cir. May 11, 2007).

and extraordinarily difficult for her and her family, Mary Ann failed to show that she had been limited by breast cancer on a permanent or long-term basis." [5]

Mary Ann Pimental died of breast cancer four months after the court issued its decision.

The stories of Charles Littleton and Mary Ann Pimental are but two examples – two tragic, confounding examples – of the misconstruction of the intentions of this body and the contravention of the broad sweep of the ADA. In these cases, and others like them, the courts and the employers *never reach* the substantive question under the ADA – the question of whether the employer's action was improperly related to the individual's disability. That inquiry is circumvented – it ends before it begins – with the narrow construction of "disability," and a finding that individuals who are clearly disabled, who are entitled to the protections of the ADA, and whom the ADA was intended to protect – are not sufficiently disabled to warrant its protections. *And there are many more stories*: Stephen Orr was fired from his job as a pharmacist after his employer refused to allow him to take a lunch break so that he could regulate his blood sugar and control his diabetes by eating. But because Stephen managed his diabetes through regimented food intake and medication, the court ruled that he was not substantially limited in any major life activity, and therefore was not protected from discrimination under the ADA.[6] Vanessa Turpin was an auto packaging machine operator with epilepsy, who resigned after her employer required that she work a shift that would have worsened her seizures. The court held that although Vanessa experienced nighttime seizures characterized by "shaking, kicking, salivating, and, on at least one occasion, bedwetting" and that caused her to wake with bruises on her arms and legs, Vanessa was not disabled because "[m]any individuals fail to receive a full night of sleep." The court also found that Vanessa's daytime seizures, which caused her to become unaware and unresponsive to her surroundings and to suffer memory loss, did not render her disabled because "many other adults in the general population suffer from a few incidents of forgetfulness a week." [7]

These cases are painful to recount. And unfortunately, there are many more. The Supreme Court has set the standard – a standard that is in direct opposition to the intent of this body – and the lower courts have followed, creating a barrage of incorrectly reasoned opinions that un-do and negate the good that this body expressly endeavored to achieve.

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[5] Consortium for Citizens with Disabilities, The Effect of the Supreme Court's Decisions on Americans with Disabilities (unpublished manuscript, on file with author), citing *Pimental v. Dartmouth-Hitchcock Clinic*, 236 F.Supp.2d 177, 184, 188 (D.NH. 2002).

[6] Consortium for Citizens with Disabilities, Failing to Fulfill the ADA's Promise and Intent: The Work of The Courts in Narrowing Protection Against Discrimination on the Basis of Disability (Sept. 2006) (unpublished manuscript, on file with author), citing *Orr v. Wal-Mart Stores, Inc*., 297 F.3d 720 (8th Cir. 2002).

[7] Consortium for Citizens with Disabilities, Failing to Fulfill the ADA's Promise and Intent: The Work of The Courts in Narrowing Protection Against Discrimination on the Basis of Disability (Sept. 2006) (unpublished manuscript, on file with author), citing *Equal Employment Opportunity Comm'n v. Sara Lee Corp*., 237 F.3d 349 (4th Cir. 2001).

Recent studies show that plaintiffs lose more than 90% of cases brought under the ADA, primarily on the grounds that they are not disabled enough.[8] Thus, the courts never reach the question of discrimination under the ADA, and these matters are dismissed on the basis that the complainant does not qualify as "disabled" under the Supreme Court's narrow and strict definition. These cases affirm the dire necessity of this gathering, and the necessity of further action to clarify – so that there can be no further mistakes by employers or the courts - that these individuals are covered and protected by the ADA.

If our voices were not heard clearly in 1990, let them be heard again – forcefully and unequivocally – so that there will be no mistake as to our intentions; and no mistake that individuals like Charles Littleton and Mary Ann Pimental and Stephen Orr and Vanessa Turpin are entitled to the full and complete protection of this legislation.

Let me be clear - we do not seek to govern the *outcome* of these cases – we do not argue today that each of the complainants in the [number] cases would have prevailed in their discrimination claims. We simply state that where an individual alleges discrimination on the basis of disability his or her claim should at least be heard and decided – should rise or fall - *on its merits as intended by Congress* The ADA promises no less.

IV. Employment Statistics

While some employers clearly seek loopholes in the ADA and try to avoid compliance with its terms, it is important to note that there are others that have embraced the ADA, and have taken a proactive approach to developing inclusive, accessible workplaces. These employers include, among others, IBM, Merrill Lynch, CVS, Hewlett-Packard, JP Morgan Chase, SunTrust and Lockheed. Let these companies be the proud vanguard for other businesses to follow. *And follow they must*; for despite this great legislation, and the courageous work of so many, there is still much that is unchanged. Despite the passage of the ADA over seventeen years ago, and despite its effort to prevent discrimination on the basis of their disability in gaining employment, statistics indicate that little has changed in terms of the numbers of people with disabilities entering the job market. According to some statistics, the employment rate for people with disabilities has remained in the vicinity of 35 percent since World War II.[9] Nearly 2/3 of people with disabilities are unemployed. Since 1995, the employment rate for women who are not disabled has been 80.06 percent, for women with disabilities the employment rate is 33.06 percent. Since 1995, the employment rate for men who are not disabled has been 94.96 percent, and for men with disabilities the employment rate is 36.21 percent. For college graduates (male and female) without disabilities, the employment rate is 89.9 percent. For college

[8] Congressman Steny Hoyer, *Not Exactly What We Intended, Justice O'Connor*, www.washingtonpost.com, Jan. 20, 2002.
[9] Center for an Accessible Society, Labor Day and People with Disabilities, *available at* http://www.accessiblesociety.org/topics/economics-employment/labor2001.htm.

graduates with disabilities, the employment rate is 50.6 percent. The median household income for women with disabilities has been $13,974; for disabled men, the median household income has been $15,275. [10]

These numbers – which infer an unemployment rate for people with disabilities of roughly 65%, are alarming. The large employment *gap* between people with disabilities and those without disabilities - a gap of roughly 50 percent - is alarming. These numbers tell us that, although this legislation is "on the books," so to speak, and has been "on the books" for 17 years – there is a disconnect that is inhibiting the fulfillment of the promise of the ADA, and that is preventing the removal of barriers to full participation in the mainstream job market.

What is the source of this disconnect, we must ask. Apart from the recent case law history, which sends a message to employers that they can "get around" the ADA with the right manipulation or maneuvering, research has shown that changing hearts and minds is a difficult task when it comes to creating and catalyzing change. Employers in at least one study stated that the most difficult adjustment to make in order to meet the needs of an employee with a disability was "changing co-worker/supervisor attitudes." According to this study, changing attitudes was rated as "difficult" more than twice as often as other adjustments, such as "changes to management system," and sixteen times as often as "ensuring equal pay and benefits" for employees with disabilities.[11]

No change or growth or evolution is *ever* without difficulty, however. Legislation is the first, critical step forward on this journey. But words alone, without employer action and enforcement, can only take us so far in achieving true integration, in changing attitudes and hearts and minds. Employers must not only "talk the talk" with appropriately worded anti-discrimination policies, but must also "walk the walk," so to speak, by working in partnership with the principles of the ADA, educating their employees - from the top down - and making their workplaces accessible to disabled employees. They must create and maintain a corporate culture of inclusion, fairness, respect for diversity in thoughts and ideas. And they must realize that this is *not* an act of charity.

According to surveys conducted by the DuPont Corporation and other companies, employees with disabilities have lower turnover rates, lower absenteeism, and high productivity. Successive studies by DuPont showed, consistently, that 90 percent of employees with disabilities were considered average or better than average in job performance.[12] And there is talent out there to perform jobs at *all levels* of enterprise – from senior executives with disabilities to mid-level employees to entry-level candidates. The National Business Services Alliance has a new Disability Employment Institute, which, among other things, offers CEO and manager training courses to people with

[10] *Id.*
[11] *Id.*
[12] *Id.*

disabilities. [Insert reference to other programs.] Programs like these are critically important in helping to integrate the employment sector at every level and maintaining a strong American workforce. By 2010, it is estimated that America will have 168 million jobs and only 158 million workers to perform these jobs. "Tapping" the pool of willing, capable, and talented workers with disabilities could be our national solution to that impending shortage.

Moreover, creating inclusive, accessible workplaces goes a long way in creating good will with the community of people with disabilities – a community that is now approximately 54 million strong in the United States alone. This is a powerful consumer base, and a base that is continually growing. There are 76 million people over the age of 50 in this country, and by 2020 this number will have grown to 116 million, or 36 percent of the population. As the baby boomers grow older, and as they seek both to remain in the workforce longer and to patronize businesses that meet their growing physical, information and communication accessibility needs, this progressive and powerful generation will continue to influence the way companies do business, both internally and externally.

To put it simply – accessible and inclusive workplaces are not only the law, not only an ethical imperative, but they are also sound business practice. In creating and pursuing integrated hiring practices and accessible environments for employees with disabilities, employer-businesses can tap an under-utilized segment of the work force as well as a significant, but often overlooked, consumer base. And perhaps most important, we must remember that integrating the workforce, expanding our worlds, and encouraging policies and practices that foster the potential of *all* employees - those with disabilities and those without - is good for everyone.

V. Veterans Issues/The Future/ Convention/Closing

I will begin my closing remarks by recalling that, in 1990, Senator Harkin dedicated the ADA to the "next generation." Esteemed colleagues, Senators, Congressmen and Congresswomen, that generation is here. They are our children and our grandchildren; our brothers and sisters. They are born with disabilities, they acquire disabilities through illness or accident, they age into disabilities. And it goes without saying that they are also the wounded sons and daughters of the conflicts in Iraq and Afghanistan. Recent estimates state that more than 20,000 men and women have been wounded in these military operations.[13] Iraq veterans have seen twice the number of amputations as veterans of previous wars, and some of these soldiers have lost more than one limb.[14] Young men and women are returning home with significant injuries in unprecedented numbers, as the quality of care in the field enables them to survive what might in earlier wars have been

[13] Intrepid Fallen Heroes Fund, Facts and Statistics (2007), *available at* www.fallenheroesfund.org/common/page.php?ref=fund_statistics.
[14] *Amputation Rate for U.S. Troops Twice That of Past Wars,* The Boston Globe (Dec. 9, 2004), *available at* www.boston.com/news/mnation/articles/2004/12/09/amputation_rate_for_us_troops.

fatal injuries. Many servicemen and women – a recent report suggested approximately 6% - are returning with mental health problems, and more than half from Iraq/Afghanistan conflict are returning with what many are calling the "signature wound" of the Iraq war – traumatic brain injury.[15]

These men and women – and all those who live with a disability of any kind or source – need our attention and our continued vigilance and commitment in seeing to it that this legislation serves its intended purpose, and that all of our children have the opportunity to live strong, productive lives and pursue their dreams to the greatest extent of their will and desire. 17 years later, it is not yet time to rest. It is time, instead, to strengthen, renew and *restore* our energy and our commitment to restore the rights and promises of the Americans with Disabilities Act of 1990.

We here have made a promise to all the members of this new generation. It is a promise that must be kept, not just in word, but in deed. We have promised them the opportunity for good, rich, productive lives; we have promised them education, inclusion in the work force, *the financial ability to raise families*. For wounded veterans and others – many of them parents - this means being able to resume their place as an economic contributor within their families. We must see to it that discrimination on the basis of disability does not mean an end of life or productivity, that our sons and daughters in military service do not return to a country in which they have no place. We had better learned these painful lessons from the Vietnam War. We must see to it that individuals are not shut out of the mainstream workforce because of discrimination on the basis of disability. For unless this trend changes, they – we - will be kept in a cycle of poverty, personal dependence, and economic dependence on government subsidies, which serves to undermine dreams and to waste human potential. Let us affirm today that we will not allow that, that the door to the past is forever closed.

And finally, let us commit, today, to re-taking our place of leadership upon the world stage. In August 2006, a United Nations general assembly panel passed the UN Convention on the Rights of Persons with Disabilities, by the full UN General Assembly in December 2006, a treaty intended to expand the freedoms of 650 million people with disabilities, world-wide. The treaty, which is expected to take effect in 2008 or 2009, with the 20th member nation formally ratifying it, requires countries to guarantee freedom from exploitation and abuse, and protects against discrimination in all areas. It addresses access to the full range of human rights – civil, political, economic, social, and cultural, and focuses particular attention on the treatment of women and children with disabilities. Some of the primary principles set forth in the treaty include 1) the equal right to life for people with disabilities; 2) equal rights for women and girls with disabilities; 3) an end to enforced institutionalization; 4) the right to equal participation in the job market; and 5)

[15] Gregg Zoroya, *Key Iraq Wound: Brain Trauma*, USA Today (March 3, 2005), *available at* www.usatoday.com/news/nation/2005-03-03-brain-trauma-lede_x.htm.

removal of barriers to accessibility in the areas of transportation, public facilities, and communications, including the internet.

On March 30, 2007, the treaty opened for signature and ratification. More than 100 Member States and the European Community signed the Treaty, with Jamaica being the first country to go beyond endorsement to ratification. [To date, the United States has not signed this Treaty.] Let us see to it that this does not remain the case, and that America is not left behind. Let today's gathering, and the passage of the ADA Restoration Act, signal to the world that America is re-claiming her rightful place as a leader among nations, and re-committing herself to this cause – the cause of human rights, of equal opportunity and dignity for all of its citizens, and for those around the world.

I thank you all for your time and attention.