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ACCESSIBILITY LEGISLATION FOR THE HANDICAPPED: IS IT ENABLING OR DISABLING?

If you prick us, do we not bleed? If you tickle us, do we not laugh?

Merchant of Venice III

In 1957, Hugo Deffner of Oklahoma City was named "Handicapped American of the Year" for his one-man crusade against the unnecessary barriers that prevented him from moving freely about in his community. On the day he was honored, however, two marines had to carry him up the steps of a federal building to the stage where he received his award.¹ Within a decade, the first steps were taken to alleviate situations such as this.

In 1968, there were approximately twenty-two million people in the United States who, because of some form of physical handicap, were restricted in their ability to move from place to place.² With the Architectural Barriers Act of 1968 [the Act],³ the federal government made a commitment that federal and federally funded buildings be constructed to ensure accessibility to handicapped persons.

The Act mandates barrier-free design in federal and federally funded buildings. It places the General Services Administration, the Department of Housing and Urban Development, the Department of Defense and the United States Postal Service under its authority.⁴ The General Services Administration, which is often called the federal government's landlord, is responsible for designing, constructing, maintaining, and repairing federal buildings.⁵ The Department of Housing and Urban Development oversees publicly owned residential structures. The Department of Defense is responsible for defense structures that are open to the public or visited by the public, including hospitals, manufacturing facilities, administrative facilities, and educational facilities. However, every facility whose intended use is specifically re-

1. REPORT OF THE NATIONAL COMMISSION ON ARCHITECTURAL BARRIERS TO REHABILITATION OF THE HANDICAPPED, DESIGN FOR ALL AMERICANS, H.R. DOC. NO. 324, 90th Cong. 2d Sess. 5 (1968); *See generally* S. REP. NO. 1297, 93rd Cong., 2d Sess., 50-51, *reprinted in* [1974] U.S. CODE CONG. & AD. NEWS 6373, 6400-01.
2. [1968] U.S. Code Cong. & Ad. News, 3214, 3216.
3. 42 U.S.C. §§ 4151-57 (1976), *as amended by the Department of Education Organization Act*, Pub. L. No. 96-88, § 601, 93 Stat. 696, 20 U.S.C.A. § 3401 (1981).
4. 42 U.S.C. §§ 4152-54a (1976), *as amended by the Department of Education Organization Act*, Pub. L. No. 96-88, § 601, 93 Stat. 696, 20 U.S.C.A. § 3401 (1981). *See* 41 C.F.R. § 101-19.6 (1981) (GSA); 24 C.F.R. Part 40 (1981) (HUD); DEPT OF DEFENSE, DoD No. 4270.1-M, CONSTRUCTION CRITERIA, para. 5-6 (Jun. 1, 1978); UNITED STATES POSTAL SERVICE, STANDARDS FOR FACILITY ACCESSIBILITY BY THE PHYSICALLY HANDICAPPED, HANDBOOK RE-4 (1979).
5. Soloman, *Federal Landlord Pledges Full Accessibility*, AMICUS, Jul./Aug. 1978, at 31.

stricted to able-bodied military personnel is excluded.⁶ The United States Postal Service oversees postal offices for the public, as well as office areas for employees.

While the Act was strong in spirit, in reality, it was not effective in achieving accessibility. As a result, five years after the Act's passage, section 502 of the Rehabilitation Act of 1973 created the Architectural and Transportation Barriers Compliance Board [Board]⁷ to ensure compliance with the Architectural Barriers Act of 1968. One of the duties of the Board is to promulgate minimum guidelines to guarantee that the four agencies issue generally uniform standards.⁸

Political strife among the Board's members has undermined these minimum guidelines. The Board has proposed a compromise⁹ that erodes the Act's legal mandate of building accessibility. On the other hand, section 504 of the Rehabilitation Act of 1973,¹⁰ which protects the civil rights of handicapped persons, mandates program accessibility. This note will examine the differences between the section 502 *building accessibility standards* and section 504 *program accessibility standards* to determine whether the goals of both pieces of legislation have been realized.

ACCESSIBILITY STATUTES FOR THE HANDICAPPED

The passage of the Architectural Barriers Act of 1968 marked a new era in federal policy towards handicapped persons. It requires that certain federally owned, leased, or funded buildings be made accessible to the physically handicapped. The Act states the following:

the term 'building' means any building or facility (other than (A) a privately owned residential structure not leased by the Government for subsidized housing programs and (B) any building or facility in a military installation designed and constructed primarily for use by able bodied military personnel) the intended use for which either will require that such building or facility be accessible to the public, or may result in employment or residence therein of physically handicapped

6. DEPT OF DEFENSE, DoD No. 4270.1-M, CONSTRUCTION CRITERIA, para. 5-6 (Jun. 1, 1978).
7. 29 U.S.C. 792(a) (Supp. II 1978), *as amended by* Education Amendments of 1980, Pub. L. No. 96-374, § 1321, 94 Stat. 1499, 29 U.S.C.A. § 792 (1981).
8. In November 1978, Congress enacted the Rehabilitation, Comprehensive Services and Developmental Disabilities Amendments of 1978, Pub. L. No. 95-602, 92 Stat. 2955 (codified in scattered sections of 29, 38, 42 U.S.C.). The 1978 Act directs the Board to "establish minimum guidelines and requirements pursuant to the . . . Architectural Barriers Act" for the four standard-setting agencies listed. 29 U.S.C. § 792(b) (Supp. II 1978), *as amended by* Education Amendments of 1980, Pub. L. No. 96-374, § 1321, 94 Stat. 1499, 29 U.S.C.A. § 792(b)(1981).
9. 47 Fed. Reg. 3939-4014 (1982).
10. 29 U.S.C. 794 (1976), *as amended by* Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. No. 95-602, 29 U.S.C.A. § 794 (1981). "No otherwise qualified handicapped individual in the United States, as defined in Section 7(6), shall solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive Agency or by the United States Postal Service."

persons,¹¹

The Act requires the Administrator of General Services, the Secretary of Housing and Urban Development, the Secretary of Defense, and the Postmaster General to prescribe standards for the design, construction, and alteration of each agency's buildings.¹² The purpose of these standards is to ensure that the physically handicapped will have "ready access to, and use of, such buildings."¹³

To strengthen the enforcement of the Architectural Barriers Act, Congress enacted section 502 of the Rehabilitation Act of 1973, which created the Architectural and Transportation Barriers Compliance Board.¹⁴ The Board's functions include the following (1) to establish minimum guidelines for the standards created by the Act;¹⁵ (2) to insure compliance with the Act's standards and to insure that all waivers or modifications of standards are based upon findings of fact;¹⁶ (3) to

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11. 42 U.S.C. § 4151 (1976); *as amended by* the Department of Education Organization Act, Pub. L. No. 96-88, § 601, 93 Stat. 696, 20 U.S.C.A. § 3401 (1981). This statute, read with the Board's minimum guidelines, 36 C.F.R. § 1190 (1981), held that these buildings or facilities were (1) to be constructed or altered by or on behalf of the United States; (2) to be leased in whole or in part by the United States; (3) to be financed in whole or in part by a grant or loan made by the United States after August 12, 1968, if the building or facility may be subject to standards for design, construction, or alteration issued under the law authorizing the grant or loan; or (4) to be constructed under the authority for the National Capital Transportation Act of 1960, the National Capital Transportation Act of 1965, or Title III of the Washington Metropolitan Area Transit Regulation Compact. *Id.*
 12. 42 U.S.C. §§ 4152-4154a (1976), *as amended by* the Department of Education Organization Act, Pub. L. No. 96-88, § 601, 93 Stat. 696, 20 U.S.C.A. § 3401 (1981). See 41 C.F.R. § 101-19.6 (1980) (GSA); 24 C.F.R. Part 40 (1980) (HUD); DEPT OF DEFENSE, DoD No. 4270.1-M, CONSTRUCTION CRITERIA, para. 5-6 (June 1, 1978); UNITED STATES POSTAL SERVICE, STANDARDS FOR FACILITY ACCESSIBILITY BY THE PHYSICALLY HANDICAPPED, HANDBOOK RE-4 (1979).
 13. *Id.* Title II of the Public Buildings Cooperative Use Act of 1976 extended the coverage of the Architectural Barriers Act of 1968 to all government-leased buildings and facilities intended for public use or in which the physically handicapped might be employed, all privately owned buildings leased to the government for public housing, and the Postal Service. Public Buildings Cooperatives Use Act of 1976, Pub. L. No. 94-541, tit. II, § 201, 90 Stat. 2508 (codified at 4152-4154a (1976), *as amended by* the Department of Education Organization Act, Pub. L. No. 96-88, § 601, 93 Stat. 696, 20 U.S.C.A. § 3401 (1981). The amendment gives the four standard-setting agencies clearer authority to prescribe standards manifested in the words "shall prescribe" (formerly, "is authorized to prescribe such"). The words "as may be necessary to insure" were changed to "insure whenever possible." *Id.* In addition, the law imposed upon the agencies the obligation to conduct a system of continuing surveys to insure compliance.
 14. 29 U.S.C. 792 (Supp. II 1978), *as amended by* Education Amendments of 1980, Pub. L. No. 96-374, § 1321, 94 Stat. 1499, 29 U.S.C.A. § 792 (1981). The Board was composed in part of representatives from ten Federal departments or agencies. The 1980 amendment to the Higher Education Act of 1965 increased the number to eleven, adding the Department of Education. They include the following: (1) Department of Health and Human Services, (2) Department of Transportation, (3) Department of Housing and Urban Development, (4) Department of Labor, (5) Department of the Interior, (6) Department of Defense, (7) Department of Justice, (8) General Services Administration, (9) Veterans Administration, (10) United States Postal Service, and (11) Department of Education. The Board's eleven remaining members must be appointed by the President from among members of the general public, of whom five shall be handicapped. The Chairman of the Board shall be elected by a majority of the Board for a term of one year. *Id.*
 15. 29 U.S.C. 792(b) (Supp. II 1978), *as amended by* Education Amendments of 1980, Pub. L. No. 96-374, § 1321, 94 Stat. 1499, 29 U.S.C.A. § 792 (1981).
 16. *Id.*

identify efforts to eliminate barriers for the handicapped and to propose alternate solutions;¹⁷ and (4) to advise the President and Congress on action required to eliminate barriers not covered by the Act.¹⁸ The Board has the authority to establish minimum guidelines for the four standard-setting agencies.¹⁹

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of physical and mental hardship in every federally assisted program or activity or in any program or activity conducted by any executive agency or by the United States Postal Service.²⁰ This law, with its implementing regulations and enforcement provisions, provides program accessibility to the handicapped.

In establishing the minimum guidelines, the Board drew upon the standards set by ANSI Standard Number A117.1, entitled, *The American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped*.²¹ In 1961, the American National Standards Institute [ANSI], an organization established to coordinate the development of voluntary national standards, issued this Standard. This 1961 Standard represented the first design specification of any kind for the disabled.²² Because of its significance, this early Standard was adopted or referenced in every state access code as well as used on the federal level.²³ The Administrator of General Services, the Secretary of Housing and Urban Development, the Secretary of Defense, and the Postmaster General all used this Standard after the enactment of the Architectural Barriers Act of 1968.²⁴

In 1974, the Department of Health and Human Services, the President's Committee on Employment of the Handicapped, and the National Easter Seal Society began a project to expand the 1961 Standard.²⁵ The project took six years to complete and the result is the

17. *Id.*

18. *Id.*

19. 36 C.F.R. Part 1190 (1981).

20. On April 28, 1977, the regulations to the Rehabilitation Act were signed by Joseph Califano, Secretary of the Department of Health, Education, and Welfare (now Department of Health and Human Services) and became effective on June 3, 1977. Guidelines for the issuance of federal regulations were mandated by Executive Order 11914, 3 C.F.R. 117 (1977). This executive order mandated that section 504 agencies issue their own regulations in compliance with the guidelines issued by the Department of Health and Human Services. On November 2, 1980, this authority was transferred to the Department of Justice by Executive Order 12250, 3 C.F.R. 298 (1981). Executive Order 12250 provides that the Department of Health and Human Service's guidelines are deemed to have been issued by the Attorney General pursuant to this order and shall continue in effect until revoked or modified by the Attorney General. *Id.*

21. AMERICAN NATIONAL STANDARDS INSTITUTE, INC., No. 1171.1-1961, AMERICAN NATIONAL STANDARD SPECIFICATIONS FOR MAKING BUILDINGS ACCESSIBLE TO AND USABLE BY THE PHYSICALLY HANDICAPPED (1961) [Reaffirmed, 1971 and Revised, 1980].

22. R. Mace, *Physical Facilities and the Handicapped* (Prepared for the United States Commission on Civil Rights: Consultation on Civil Rights Issues of Handicapped Americans, at 9.

23. *Id.* The drawbacks of the 1961 Standard are discussed in Farber, *The Handicapped Plead For Entrance—Will Anyone Answer?*, 64 KY. L.J. 99 (1975).

24. Mace, *supra* note 22, at 9.

25. *Id.* at 13.

more comprehensive 1980 ANSI Standard.²⁶ The 1980 Standard makes specific recommendations to the adopting authorities.²⁷ For example, every specification of "at least one" is combined with a recommendation to provide a "reasonable number" of the type of accessible element at issue.²⁸ Secondly, the 1980 Standard addresses housing requirements such as accessible bathrooms and kitchens which were ignored in the 1961 Standard.²⁹ Thirdly, detailed technical provisions are included.³⁰ Finally, the 1980 Standard includes an appendix of additional information to help designers understand its guidelines.³¹ As of January, 1982, only the Department of Defense's standards closely followed the research of the 1980 ANSI Standard.

Section 502 Minimum Guidelines

On January 6, 1981, the Board adopted "Minimum Guidelines and Requirements for Standards for Accessibility of Federal and Federally Funded Buildings and Facilities by Physically Handicapped Persons."³² The goal of the minimum guidelines is to bring the four standard-setting agencies into conformity with the full building accessibility mandate of the Architectural Barriers Act of 1968. Standards issued under the Act by the Administrator of General Services, the Secretary of Housing and Urban Development, the Secretary of Defense, and the Postmaster General that conform to or exceed these guidelines are deemed to be in compliance with the Act.³³ Over two years in the making, the guidelines have given the four agencies a firm basis upon which to issue their respective accessibility standards.

Within six months of the issuance of this final rule, however, the twenty-two member Board, which is comprised of eleven federal agency members and eleven public members, proposed, by a vote of twelve to ten, to rescind the minimum guidelines.³⁴ Some members of the Board felt that the cost-data effect of the proposed guidelines and requirements on public expenditures had not been adequately studied.³⁵ Roger Craig, an assistant postmaster general, stated that "the

26. AMERICAN NATIONAL STANDARDS INSTITUTE, INC., No. A117.1-1980, AMERICAN NATIONAL STANDARDS SPECIFICATION FOR MAKING BUILDINGS ACCESSIBLE TO AND USABLE BY PHYSICALLY HANDICAPPED PEOPLE (1980) [hereinafter cited as ANSI STANDARD].

27. ANSI STANDARD, *supra* note 26, at 2.1-2.3.

28. ANSI STANDARD, *supra* note 26, at 2.2.3. This kind of specification ensures a minimal degree of accessibility, but the provision of only a single accessible element is insufficient to satisfy the need at many buildings and facilities. For example, to provide only one accessible parking space at an apartment complex having twenty accessible dwelling units undersupplies the need. *Id.*

29. ANSI STANDARD, *supra* note 26, at 4.34.

30. ANSI STANDARD, *supra* note 26, at 4. The number of pages increased from six pages in the 1961 ANSI Standard to sixty pages in the 1980 Standard.

31. ANSI STANDARD, *supra* note 26, at Appendix.

32. 36 C.F.R. Part 1190 (1981).

33. 36 C.F.R. § 1190.4(b) (1981).

34. *Agency Softens Rules on Access for Handicapped*, The New York Times, Dec. 2, 1981, at A16, col. 5.

35. 46 Fed. Reg. 39764 (1981).

Board had set standards instead of guidelines for standards."³⁶ He drafted a proposal for rescission. Ironically, all of the federal agency Board members voted to propose rescission. Only one of the public members, Kay Neil, of Nebraska, voted in favor of rescission. At the same time, the Board rejected, also by a vote of twelve to ten, attempts by the Chairman and the other public members to consider a compromise.³⁷

Because the Board is under statutory obligation to issue guidelines, rescission of the minimum guidelines would have resulted in an obligation to issue further guidelines. Consequently, the Board later voted unanimously to develop compromise guidelines.³⁸ The proposed compromise, however, contains extensive loopholes and vague language in the scoping provisions of the minimum guidelines. These shortcomings will permit federal agencies to sidestep the congressional mandate of building accessibility as set forth in the Architectural Barriers Act of 1968. Fourteen years after the Act's passage, federal agencies have yet to achieve Congress's goal. Arguably, the alternative, rescission of the guidelines, would preclude all hope of achieving full accessibility since the agencies cannot set standards in compliance with guidelines that do not exist. Nonetheless, erosion of the minimum guidelines illustrates the trend in government to give the handicapped low priority as Congress implements the current administration's policy of fiscal restraint.

Impact of the Compromise on Section 502 Minimum Guidelines

To better understand the effect of the Board's compromise on the minimum guidelines, it is important to realize that the guidelines are divided into two areas: technical provisions and scoping provisions.³⁹ In the area of technical provisions, the proposed compromise has closely followed the research of the 1980 ANSI Standard. In addition, it includes some specifications absent from the 1980 ANSI Standard.⁴⁰ Most importantly, changes in language bring the minimum guidelines in closer conformity to the ANSI Standard.

However, the Board has made some crucial changes with regard to

36. United States Architectural and Transportation Barriers Compliance Board, Access America 1 (June/July 1981) (press release).

37. *Id.*

38. *Agency Softens Rules on Access for Handicapped*, The New York Times, Dec. 2, 1981, at A16, col. 4. The Board voted unanimously for a compromise on December 1, 1981. The proposed compromise was published in the Federal Register on January 27, 1982. 47 Fed. Reg. 3939-4014 (1982). The forty-five day comment period ended on March 15, 1982. At a point thereafter, the Board must vote on a final compromise. The compromise will then become a final rule.

39. Subpart C has minimum requirements for scope, and Subpart D has minimum requirements for technical provisions. 36 C.F.R. Part 1190 (1981).

40. For example, there is an illustration of carpet height in the proposed compromise, and there is no illustration in the ANSI Standard. 47 Fed. Reg. 3963 (1982). Furthermore, the proposed compromise indicated that the maximum thickness of pile, cushioning, and backing shall not exceed ½ inch, while the ANSI Standard says only that the pile height shall not exceed ½ inch. ANSI STANDARD, *supra* note 26, at 4.5.3.

the scoping provisions. The compromise creates significant loopholes in two areas: leased buildings and facilities,⁴¹ which include approximately three-fourths of the postal offices; and vertical access,⁴² which covers transit stations. It is estimated that these and other changes will cut government expenditures by hundreds of millions of dollars.⁴³ For example, the Postal Service, which proposed the rescission of the minimum guidelines, will not have to upgrade approximately 15,000 buildings.⁴⁴ In addition, the Department of Transportation's concern that elevators would have to be included in future renovations of subway stations has been alleviated. Thus, by reducing the scope or coverage of Congress's mandate of building accessibility, the Board is shaving federal budgets at the expense of the handicapped.

The language of the compromise allows the Postal Service to avoid full compliance with the mandate of building accessibility. The guidelines, as published on January 16, 1981, specifically required that "all buildings and facilities leased by the Federal government must be accessible at the time the building or facility is leased."⁴⁵ On December 1, 1981, the Board voted to reserve this provision for the future because the question of the applicability of the Act to leased buildings is a "legal one on which the Board expresses no position."⁴⁶ In effect, the Board no longer specifies when or whether the Standard applies to leased buildings and facilities.

The second area of the minimum guidelines undermined by the scoping compromise concerns vertical access for the handicapped. The minimum guidelines provided that when an escalator or a stairway was planned or installed, where none existed previously, vertical access was required, *i.e.*, a ramp, elevator or platform lift.⁴⁷ Under the compromise, however, if the cost of installing an elevator in a transit station is fifty percent or greater than fifty percent of the cost of installing a stairway or an escalator, then the requirement to install an elevator is waived. Moreover, though the cost of installing an elevator may be less than fifty percent of the cost of installing a stairway or an escalator, there is no requirement to install the elevator if it would be "structurally impracticable."⁴⁸ Under these compromise provisions, the Department of Transportation can modernize existing transit stations by

41. 47 Fed. Reg. 3950-51 (1982).

42. *Id.* at 3949.

43. *Agency Softens Rules on Access for Handicapped*, The New York Times, Dec. 2, 1981, at A16, col. 4.

44. *Id.*

45. 46 Fed. Reg. 4275 (1981).

46. 47 Fed. Reg. 3951 (1982).

47. 36 C.F.R. § 1190.33(a)(2) (1981). "Stairway" refers to a stairway requiring major structural changes, other than one installed to meet emergency exit requirements. *Id.*

48. "Structural impracticability" means having little likelihood of being accomplished without removing or altering a load-bearing structural member and/or at an increased cost of fifty percent or more of the value of the element of the building or facility involved. 47 Fed. Reg. 3944 (1982). The vertical access requirements in the compromise apply only to transit stations. For a full discussion of the relevant provision, see 47 Fed. Reg. 3949 (1982).

installing escalators and stairways. The 500,000 to 750,000 handicapped people who are wheelchair-bound, however, would still be denied access to the stations.⁴⁹

Section 504 Guidelines

In addition to the guidelines issued by the Board, the Department of Health and Human Services had issued its own guidelines to help federal agencies develop regulations implementing section 504 of the Rehabilitation Act of 1973.⁵⁰ On November 2, 1980, the authority to issue the latter guidelines was transferred by Executive order to the Department of Justice.⁵¹ The Department of Justice therefore now has the responsibility to oversee the implementation of section 504 by all federal agencies that extend federal funds to any program or activity or that conduct any program or activity themselves.⁵²

In particular, the implementing rules of the Department of Health and Human Services set forth enforcement procedures, standards for determining which persons are handicapped, and guidelines for determining what practices are discriminatory.⁵³ The implementing regulations do not forbid architectural barriers. Instead, the regulations prohibit "the exclusion of handicapped persons from programs by virtue of architectural barriers. . . ."⁵⁴ A key phrase used in the discussion of program accessibility is that a program or activity "when viewed in its entirety"⁵⁵ must be accessible. This language is subjective and invites conflicting interpretations and abusive application of the standards by the section 504 agencies. Applying this language, one agency's standard of accessibility may differ dramatically from another agency's standard.

The Department of Justice, a section 504 agency, has incorporated into its own regulations the standard of "when viewed in its entirety."⁵⁶ Some law enforcement operations require citizens to appear at the fa-

49. *Truce Reached on Handicapped Access*, The Washington Post, Dec. 2, 1981, at A25, col. 3.

50. 29 U.S.C. 794 (1976), as amended by Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. No. 95-602, 29 U.S.C.A. § 794 (1981). The following section 504 agencies have yet to issue final regulations and are subject to legal action: Department of Environmental Protection, Department of Defense, General Services Administration, Department of Housing and Urban Development, Department of Commerce, Civil Aeronautics Board, Department of the Interior, Department of Agriculture, and National Science Foundation. *Paralyzed Veterans of America v. Smith*, No. C-V 79-1979 (C.D. Cal., filed May 30, 1979).

51. Executive Order 12250, 3 C.F.R. 298 (1981); see note 20 *supra*.

52. 45 C.F.R. Part 85 (1980).

53. *Id.* at § 85.31. (a) "Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. In § 111(a) of the Rehabilitation Act Amendments of 1974, Congress amended the definition of "handicapped individual" for purposes of section 504 and the other provisions of Titles IV and V of the Rehabilitation Act so that the definition is no longer limited to the dimension of employability. Pub. L. No. 93-516, § 111(a), 88 Stat. 16 (amending 29 U.S.C. § 706) (amended 1978).

54. 45 C.F.R. §§ 85.56-58 (1980).

55. 45 C.F.R. §§ 85.57 (1980).

56. 28 C.F.R. Part 42 (1980).

cility, for example, to view a lineup or examine physical evidence. In such a case, accessibility requirements can be fulfilled by making home visits or visits to alternate sites.⁵⁷ The regulations' standard that service be provided in "the most integrated setting" has no application on a one-to-one basis.⁵⁸ Although there is no requirement that all courtrooms be made fully accessible, areas of all courtrooms set aside for the general public should be made accessible to all wheelchair users. Unfortunately, the above options are open to abuse: what one local law enforcement agency may consider to be appropriate would not suffice in another locale. The regulations have encouraged virtual non-accessibility for the handicapped by allowing each section 504 agency to determine its definition of program accessibility.

CONCLUSION

A barrier-free environment, which most able-bodied citizens take for granted, has historically been denied the handicapped. Handicapped persons hoped that the Board's minimum guidelines would result in building accessibility. The Board's compromise results in clear, precise technical language and illustrations. However, the scoping provisions under the compromise create large loopholes which nullify the legal mandate of the Architectural Barriers Act of 1968. Some argue that the alternative to the Board's compromise is a virtual rescission of the minimum guidelines, but it is impossible to ignore the gradual yet definite erosion of the Board's minimum guidelines. If the scoping provisions continue to be used to dilute a fairly comprehensive set of guidelines for the sake of fiscal restraint, the minimum guidelines will have as much effectiveness as section 504's vague definition of program accessibility—"when viewed in its entirety."⁵⁹ This subjective standard has resulted in much less than full program accessibility by recipients of federal funds and those benefitting from federal programs. The Board's action dealt a severe blow to the Act's commitment to accessibility for the handicapped in federal and federally funded buildings. Let us hope that recent trends do not herald a return to the status of "back-door"⁶⁰ citizens for the handicapped of this country.

*Constance A. Ebert**

57. *Id.*

58. *Id.*

59. 45 C.F.R. § 85.57 (1980).

60. *Accessibility of Public Buildings to Physically Handicapped: Hearings on S. 222 Before the Subcommittee on Public Buildings and Grounds of the Senate Committee on Public Works*, 90th Cong., 1st Sess. 71 (1967).

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