

AIDS AND THE POLITICS OF DISABILITY IN THE 1980S

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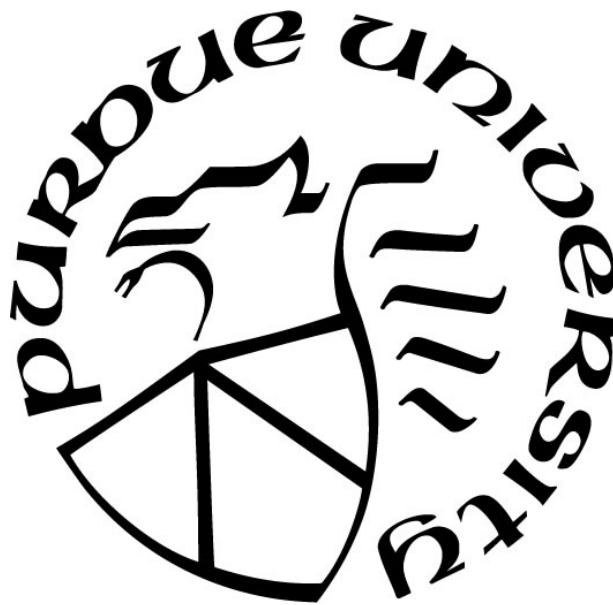
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For my brother Bill

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LIST OF ABBREVIATIONS

ACLU	American Civil Liberties Union
ADA	Americans with Disabilities Act
AIDS	Acquired Immune Deficiency Syndrome
APA	American Psychiatric Association
ARC	AIDS-Related Complex/Conditions
BEOG	Basic Educational Opportunity Grant
CDC	Centers for Disease Control
CRRA	Civil Rights Restoration Act
DOB	Daughters of Bilitis
DREDF	Disabilities Rights Defense & Education Fund
DSM	Diagnostic and Statistical Manual of Mental Disorders
EEOC	Equal Employment Opportunity Commission
FARO	Federation of AIDS Related Organizations
FCC	Federal Communications Commission
GAA	Gay Activist Alliance
GLF	Gay Liberation Front
GMHC	Gay Men's Health Crisis
GMTF	Gay Media Task Force
GRNL	Gay Rights National Lobby
HCFA	Health Care Financing Administration
HEW	Department of Health, Education and Welfare
HHS	Department of Health and Human Services
HIV	Human Immunodeficiency Virus
HRCF	Human Rights Campaign Fund
LCCR	Leadership Conference on Civil Rights
LOC	Library of Congress
NAACP	National Association for the Advancement of Colored People
NGTF/NGLTF	National Gay Task Force/ Gay and Lesbian Task Force
NYCCHR	New York City Commission on Human Rights
OCR	Office of Civil Rights
PHS	Public Health Service
SSA	Social Security Administration
SSDI	Social Security Disability Insurance
SSI	Supplemental Security Income

ABSTRACT

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This dissertation examines the political response of gay and lesbian organizations to the HIV/AIDS crisis through the lens of disability. When the National Gay Task Force (NGTF) formed in the 1970s, their early political efforts confronted the stigma and exclusion associated with the American Psychiatric Association's disabling label. In the 1980s, gay and lesbian organizations faced a deadly epidemic—AIDS. The high cost of medical care left people with AIDS destitute. NGTF pressed the Social Security Administration to modify their disability criteria to recognize AIDS and ARC as qualifying disabilities. Fear and homophobia left people with AIDS vulnerable to employment, housing and medical discrimination as well as social ostracism. Gay Men's Health Crisis and Lambda Legal Defense and Education Fund countered AIDS discrimination in New York through collaborative efforts with city and state agencies. Disability rights codes and laws offered people with AIDS some protection against discrimination. The Task Force, the Gay Rights National Lobby and the Disability Rights Defense & Education Fund joined the Leadership Conference on Civil Rights in 1982. While the Conference did not engage in the campaign for gay and lesbian rights in the 1980s, their extended legislative crusade for the Civil Rights Restoration Act would bring AIDS onto the battlefield. This study finds these various antecedents came into play during the Americans with Disabilities Act (ADA) to the extent that gay and lesbian organizations could describe the ADA as an "AIDS bill" in terms of both their political participation and the text protecting people with contagious diseases who were not a threat.

INTRODUCTION

“For immediate release: President Bush Signs Landmark AIDS Bill.”¹ The 1990 press release from the Human Rights Campaign Fund (HRCF), a national gay and lesbian political organization, could have referred to the Hate Crime Statistics Act or the Ryan White Comprehensive AIDS Resources Emergency Act. Instead, the statement on the AIDS bill described the signing ceremony for the Americans with Disabilities Act (ADA). In 2019, the lives of people with AIDS are largely hidden by medical treatments that manage the opportunistic infections or veiled by poverty and intravenous drug use. Television commercials advertising HIV/AIDS prevention and treatment depict healthy, active people. The ADA’s association with accessibility does not match the perceived needs of people with AIDS. In contrast, people with AIDS in the 1980s did not have effective treatment options and experienced discrimination due to fear and homophobia. Print campaigns focused on awareness and prevention with the risk of death from unsafe activity directly addressed or implied. The Americans with Disabilities Act offered hope and recourse against discrimination based on disability for people with AIDS. However, their full protection under the ADA remained uncertain until the day it passed as Congress debated an amendment that would carve out people with AIDS.

When Representative James Chapman (D-TX) successfully attached an amendment to the ADA that allowed employers to fire people with AIDS in food handling positions, Patricia Wright, lead lobbyist for a disability rights coalition, asserted at a press conference that “the disability community would pull out its support of the ADA if the Chapman amendment was part of the

¹ Gregory King, "President Bush Signs Landmark AIDS Bill, Lesbian and Gay Americans Among Those Invited to the White House," July 26, 1990, Box 7, Folder 4, Human Rights Campaign records (HRCF), Division of Rare and Manuscript Collections, Cornell University Library (Cornell).

bill.” Jonathan Young whose work provides a detailed political account of the ADA describes Wright’s statement as “A powerful demonstration of the disability community’s unity.”² Young mentions the HRCF’s lunch bag campaign against the Chapman amendment that coincided with the press conference but does not excavate the efforts of gay and lesbian rights organizations or AIDS activists to influence the political process. More recently, Lennard Davis examines the political backstory of the ADA. Davis notes, “many of the people fighting for disability rights and later the ADA were gay and lesbian,” identifying Patricia Wright, Chai Feldblum, Curt Decker, Tom Sheridan and Michael Iskowitz.³ He mentions the HRCF’s lunch bag campaign and additionally discusses homophobic support for the Chapman amendment; however, his riveting account focuses on individual contributors rather than on organizations.

This dissertation seeks to understand how the ADA became an “AIDS bill” by integrating the efforts of gay and lesbian rights organizations within the history of the Americans with Disabilities Act. The narrative begins in the 1970s as the national gay rights movement threw off the label of disabled and concludes with the political drama of the Chapman amendment from the point of view of the Human Rights Campaign Fund. The story is untidy with different gay and lesbian rights organizations carrying the action across intersections with disability policy at various locations. The expanded scope of this study reveals that the successful defeat of the Chapman amendment was more than an emotional moment of unity but rather the culmination of a social movement’s response to the exigencies of AIDS.

² Jonathon M. Young, *Equality of Opportunity: The Making of the Americans with Disabilities Act* (Washington, D.C.: National Council on Disability, 1997), 169. Wright repeated the claim in a meeting at the White House later in the day with support from the other attendees; Jonathan M. Young, “Same Struggle. Different Difference”: The Americans with Disabilities Act and the Disability Rights Movement, 1964-1990” (Ph.D. dissertation, University of North Carolina at Chapel Hill, 2002).

³ Lennard J. Davis, *Enabling Acts: The Hidden Story of How the Americans with Disabilities Act Gave the Largest US Minority its Rights* (Boston: Beacon Press, 2015), 79.

In 1989, the AIDS History Group of the American Association for the History of Medicine held a series of workshops to consider AIDS as a topic of historical inquiry. Speakers discussed clinical and biomedical research responses to AIDS and the response of government and society to AIDS. In closing remarks, co-chair Guenter Risse urged participants to broaden their “conceptual net.”⁴ Since then, scholarship on HIV/AIDS has flourished in interdisciplinary fields with important narratives from journalists and activists.⁵ Historians have more recently joined the dialogue, bringing research on race, gender, sexuality and class to better understand the place of HIV/AIDS in social, political and intellectual history. In a recent *Journal of American History* article, Jennifer Brier led historians in a discussion that reveals the state of the field is at a cusp of further expansion.⁶ For example, a panel at the American Historical Association 133rd Annual Meeting, “HIV/AIDS and the Historian, 2019,” examined how the construction of the HIV/AIDS crisis shaped and was shaped by concurrent social movements. Similarly, at the 2019 Organization of American Historians Annual Meeting | Conference on American History, several presenters on a lighting round panel, “Emerging Voices in LGBTQ History,” included an analysis of HIV/AIDS in their broader topics. My work joins the discussion by considering the political response to HIV/AIDS discrimination through the lens of disability.

⁴ *AIDS and the Historian: Proceedings of a Conference at the National Institutes of Health, 20-21 March 1989*. (Bethesda, MD: U.S. Department of Health and Human Services, 1991), 160.

⁵ Deborah B. Gould, *Moving Politics: Emotion and Act Up's Fight against AIDS* (Chicago: University of Chicago Press, 2009); Steven Epstein, *Impure Science: AIDS, Activism, and the Politics of Knowledge* (Berkeley: University of California Press, 1996); Paul Farmer, *AIDS and Accusation: Haiti and the Geography of Blame* (Berkeley: University of California Press, 1992); Patricia D. Siplon, *AIDS and the Policy Struggle in the United States* (Washington, DC: Georgetown University Press, 2002); Dennis Altman, *Power and Community: Organizational and Cultural Responses to AIDS* (Bristol, PA: Taylor & Francis, 1994); Randy Shilts, *And the Band Played On: Politics, People, and the AIDS Epidemic* (New York: St. Martin's Press, 1987); Philip M. Kayal, *Bearing Witness: Gay Men's Health Crisis and the Politics of AIDS* (Boulder: Westview Press, 1993); John-Manuel Andriote, *Victory Deferred: How AIDS Changed Gay Life in America*, Updated and Expanded ed. (Chicago: The University of Chicago Press, 2011).

⁶ "Interchange: HIV/AIDS and U.S. History," *The Journal of American History* 104, no. 2 (2017).

Vicki L. Eaklor notes many consider the seventies as “a kind of Golden Age” and “the lesbians’ and gays’ hour.”⁷ Chapter one examines the growing political strength of the gay and lesbian rights movement during the 1970s as activists confronted stigma, first in the successful demonstrations against the American Psychiatric Association’s pathologization of same sex attraction and sexual activity and second in the National Gay Task Force’s campaigns against harmful media stereotypes and the exclusion of gay and lesbian organizations from community television ascertainment requirements. Although the Task Force encountered financial and organizational challenges in the late 1970s and early 1980s, the political skills and networks that they developed contributed to their ability to engage with the federal bureaucracy and Congress in the early years of the AIDS crisis. This chapter adds nuance and detail to Ronald Bayer’s seminal account of the battle against the American Psychiatric Association label, uncovers the Task Forces’ early coalition building efforts and provides an inside view of their political endeavors.

In 1983, the Task Force’s executive director, Virginia Apuzzo, testified at a House hearing on the federal response to AIDS. In her written statement, Apuzzo noted, “Another issue that the AIDS crisis has brought home to the gay/lesbian community in letters writ large in dollar bills, is the cost of health care in the United States. Catastrophic illnesses bring catastrophic costs.”⁸ When people with AIDS applied for federal financial and medical assistance, some found the symptoms and cyclical opportunistic infections they experienced did not match the specific physical conditions defined as disabling. Others who applied for benefits encountered discrimination and rejection. Chapter two investigates the National Gay Task Force’s AIDS Program, a project that historians have not examined. During 1983 to 1985, the Task Force inserted the voice of the gay

⁷ Vicki Lynn Eaklor, *Queer America: A GLBT History of the 20th century* (Westport, CT: Greenwood Press, 2008), 156, 57.

⁸ *Federal Response to AIDS: Hearings before a Subcommittee of the Committee on Government Operations*, 98th Cong., August 1 and 2, 1983, 37.

and lesbian rights movement in the policy making process at high level meetings within the Department of Health and Human Services. At the meetings, the Social Security Administration agreed to implement a liaison system that provided a space for activists to monitor the welfare application process and assist clients. Additionally, in its role as an information clearinghouse, the AIDS Project provided educational materials to the public and AIDS service organizations on available federal benefits and the application process. In the process, activists grappled with overlapping models of disability. While federal benefits are often understood within the medical and benefit models of disability that focus on defining physical differences and bestowing charity to those deemed worthy of assistance, overcoming value-based discrimination is better understood within the social model of disability. The Task Force asserted that people with AIDS had the rights as members of the welfare state to federal benefits.

Chapter three considers two case studies that historians have not explored. Both demonstrate the early application of human rights laws that protected people with disabilities to address the discrimination that people with AIDS encountered. In New York, Gay Men's Health Crisis and Lambda Legal Defense and Education Fund worked with city and state human rights agencies to confront discrimination against people with AIDS. Documentation projects revealed the extent of discrimination people with AIDS and gay and lesbian individuals experienced. In New York City, the documentation swayed the City Council's decision to pass a gay and lesbian rights ordinance. Additionally, Lambda asserted that people with AIDS were covered under Section 504 of the Rehabilitation Act with the *Doe v. Charlotte Memorial Hospital* case. When the Office of Civil Rights (OCR) delayed their decision, Lambda worked with other organizations and legislative staff to pressure OCR to release a policy statement on Section 504 and AIDS. This chapter establishes that the gay and lesbian rights movement embraced disability laws as a means

to confront the discrimination people with AIDS faced prior to their involvement in the political campaigns for the Civil Rights Restoration Act and the Americans with Disabilities Act.

In 1982, the Leadership Conference accepted the National Gay Task Force, the Gay Rights National Lobby and the Disability Rights Education & Defense Fund as members. Chapter four details the Leadership Conference's early involvement in disability rights issues and compares the Conference's pursuit of disability rights to their silence on gay and lesbian rights. Additionally, the chapter provides important political context to the state of the broad civil rights movement in the 1980s. The Conference was highly critical of the Reagan Administration's civil rights policies and in an adversarial relationship with the Department of Justice. Prior to the legislative battle to overturn the Supreme Court's *Grove City College v. Bell* decision, the Leadership Conference successfully led the campaign to overturn the *City of Mobile v. Bolden* decision with the passage of the Voting Rights Act Amendments of 1982. Although historians have given slight attention to the Leadership Conference in the 1980s, their involvement in the Civil Rights Restoration Act (1988), the Fair Housing Act Amendments (1988), the Hate Crime Statistics Act (1990) and the Americans with Disabilities Act (1990) was essential to each of the Act's success. This chapter details the inner workings of the Leadership Conference.

When the Supreme Court ruled that Title IX of the Education Amendments of 1972 regulations only applied to the specific part of an educational institute that received federal funds, the House of Representatives quickly approved the Civil Rights Act of 1984 to overturn the *Grove City College v. Bell* decision; however, despite bipartisan support, the bill did not reach the Senate floor. The limited historical analysis of the ensuing attempts to overturn the *Grove City* decision focuses on the disagreements over Title IX abortion regulations. Nonetheless, the attempts also amended the Rehabilitation Act, the Age Discrimination Act and the Civil Rights Act of 1964.

Chapter five uncovers glimpses of homophobia in the testimony of those opposed to the Civil Rights Act of 1984 that would dramatically surface in the final days of debate over the Civil Rights Restoration Act in 1988. Although the Leadership Conference did not actively support a gay and lesbian rights bill, when the Moral Majority organized a final grassroots blitz against the Restoration Act with claims that religious organizations would be forced to hire gay individuals with AIDS and that the Act would function as a gay rights bill, the Conference supported the rights of people with AIDS. Chai Feldblum, the director of legal research for AIDS Action Council, worked with Senators Humphrey and Harkin to write an amendment that clarified people with contagious diseases who “would constitute a direct threat to the health or safety of other individuals” did not qualify as disabled under Section 503 and 504 of the Rehabilitation Act of 1973.⁹ The compromise appeased Representatives and Senators concerned about the political consequences of supporting the Civil Rights Restoration Act but did not exclude people with AIDS from the Act’s protection. This chapter uncovers how the rights of people with disabilities and the rights of people with AIDS fused at the national level. In the final days of debate over the Americans with Disabilities Act, Congress passed a similar compromise.

As President George H. W. Bush welcomed guests to the signing of the Americans with Disabilities Act (ADA) on June 26, 1990, he referred to the 1989 destruction of the Berlin Wall, noting how the wall had acted as a barrier to “the elusive promise of independence that lay just beyond.” Bush concluded his celebratory remarks about the ADA with the statement, “Let the shameful wall of exclusion finally come tumbling down.”¹⁰ His remarks alluded to President Reagan’s 1987 speech at the Brandenburg Gate in West Berlin in which he urged the leader of the

⁹ *Civil Rights Restoration Act of 1987*, Pub. L. No. 100-259, (1988).

¹⁰ Young, *Equality of Opportunity*, Appendix G. 233. His final statement was "God bless you all."

Soviet Union, Mikhail Gorbachev, to “Open this gate” and “Tear down this wall.”¹¹ Placing the Americans with Disabilities Act in the context of the symbolic end of the Cold War reveals the profound significance of the ADA to people in 1990. Although Reagan’s speech and pressure from the West influenced East Germany’s decision to open their gates in November 1989, the exodus of East Germans through other Eastern Bloc countries, protests and the resignation of East Germany’s leader Erich Honecker played a more significant role in the timing. Similarly, although this dissertation focuses on how the ADA became an AIDS bill, it points to a larger narrative of the dynamic civil rights movement in the 1980s by introducing new sites of resistance and uncovering unexplored collaborative efforts.

¹¹ Ronald Reagan. “Tear Down This Wall.” <http://www.historyplace.com/speeches/reagan-tear-down.htm>, June 12, 1987.

CHAPTER 1. THE NATIONAL GAY TASK FORCE: BUILDING A NATIONAL ORGANIZATION

During the late 1960s and early 1970s, the burgeoning gay rights movement experienced a period of organizational growth. New groups such as the Gay Liberation Front (1969) and the Gay Activist Alliance (1969) challenged the respectability politics of the homophile movement. The National Gay Task Force incorporated in 1973 to “systematically analyze and evaluate the special problems of homosexual women and men and to make recommendations and evolve strategies to solve these problems.”¹ As their name suggests, the Task Force focused on national level issues and federal legislation. Earlier efforts in the 1950s by the Mattachine Society to form a nationwide organization had failed due to east and west coast factionalism. In the 1960s, homophile groups formed coalitions such as the East Coast Homophile Organizations (1963) and the North American Conference of Homophile Organizations (1966) to work together on projects. However, disputes between members favoring respectability and members advocating radicalism led to their dissolution.² Though some of the founders of the National Gay Task Force (NGTF) had belonged to radical groups, the organization adopted a more moderate position in their quest to serve as the voice of the gay rights movement.

From the beginning, the Task Force set out to be an information clearinghouse, viewed their individual members as sources of grass roots activism, and collaborated with other groups. As soon as they formed, NGTF joined the protest against the American Psychiatric Association’s disabling label that other organizations including the Gay Liberation Front (GLF) and the Gay

¹ Bruce Voeller, "Certificate of Incorporation of The National Gay Task Force, Inc.," November 6, 1973, Box 3, Folder 32, National Gay and Lesbian Task Force records (NGLTF), Division of Rare and Manuscript Collections, Cornell University Library (Cornell): microfilm.

² John D’Emilio, *Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States, 1940-1970*, 2nd ed. (Chicago: University of Chicago Press, 1998); Lillian Faderman, *The Gay Revolution: The Story of the Struggle* (New York: Simon & Schuster, 2015).

Activist Alliance (GAA) had instigated with disruptive “zaps”. The NGTF also confronted harmful media representations of gay and lesbian individuals. In addition to mobilizing their members, the Task Force disseminated information to gay and lesbian organizations. They also developed political skills as they testified at hearings and worked through bureaucratic processes. The goals and strategies the Task Force adopted during the 1970s as they rejected the disabling label of mental disorder and denounced harmful media representations would be the same goals and strategies they employed when the AIDS crisis threatened their social progress.

Martin Duberman and John D’Emilio, historians and NGTF board members, provide insightful descriptions of the Task Force’s early years. Duberman, a founding board member who resigned in 1977, shares personal characteristics of NGTF leaders as well as describes conflicts over organizational structure and tension regarding the agenda of women and racial minorities.³ D’Emilio, whose groundbreaking work *Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States, 1940-1970* sets the foundation for understanding the organizational growth of the gay rights movement in the 1970s, was a board member of NGTF from 1988 to 1993 and a staff member from 1995 to 1997. Reflecting on the state of the Task Force in the late 1990s, D’Emilio notes, “NGLTF exists to fill the void.” In the 1970s, the void was the lack of an “organization [that] had national work as its mission.” When the AIDS crisis began in the early 1980s, NGTF filled the void by “seizing the initiative in Washington, where the federal government, for better or worse, held the future of the epidemic in its hands.”⁴ Duberman and D’Emilio’s insightful comments provide the insider’s view of the Task Force.

³ Martin B. Duberman, “The National Gay Task Force,” in *The Martin Duberman Reader* (New York: The New Press, 2013).

⁴ D’Emilio, *Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States, 1940-1970*; “Organizational Tales: Interpreting the NGTF Story,” in *Creating Change: Sexuality, Public Policy, and Civil Rights*, ed. John D’Emilio, William B. Turner, and Urvashi Vaid (New York: St. Martin’s Press, 2000), 519, 482.

By building a narrative based on organizational records, this chapter places the origin of the Task Force more firmly in the context of the growing strength of the gay rights movement and the development of a national outlook. Additionally, the chapter demonstrates the driving motivation of rejecting stigma during the 1970s. In his seminal work, *Stigma: Notes on the Management of Spoiled Identity*, Erving Goffman identifies three types of stigma: “abnormalities of the body,” “blemishes of individual character,” and “tribal stigma of race, nation and religion.” Goffman places homosexuality in the category of character blemish and frequently uses “homosexuality,” “cripples” and “mental patients” as examples to demonstrate the social problems people with perceived stigmas encounter.⁵ Archive records provide a broader view of organizational resistance to the American Psychiatric Association’s labelling of “homosexuality” as a disorder and demonstrate the continuity of the resistance across organizations and political stances. The Task Force also confronted stigmatizing representations of gays and lesbians in the media. A closer view of the Task Force’s efforts to marshal grassroots resistance to damaging television episodes and of their first political forays challenging the Federal Communications Commission’s (FCC) community ascertainment policies reveal they had developed foundational political skills prior to the AIDS crisis.

1.1 The Origins of the National Gay Task Force

In 1965, Dr. Harold Brown, the chief medical advisor to the Office of Economic Opportunity in Washington, D.C. stood alone in his apartment in shock. A new acquaintance had pulled a knife and demanded drugs. The assailant stole money and Brown’s watch. As he left, the assailant warned, “Don’t call for help or have me stopped downstairs, because if you do I’ll them

⁵ Erving Goffman, *Stigma: Notes on the Management of Spoiled Identity*, Touchstone ed. (New York: Simon & Schuster, 1986), 4.

you're a queer." Brown felt those words to be more dangerous than any weapon. He did not report the assault or theft and the assailant did not expose Brown's "homosexuality." Brown continued to thrive in his professional life. In 1966, the mayor of New York City appointed him as Commissioner of Health and the city's first Health Service Administrator. Once again, threat of exposure left Brown in a panic. After learning that the *New York Times* planned an exposé on homosexuals in the Mayor's office, Brown resigned the coveted position which he had envisioned as an opportunity to develop comprehensive community centered medical care. He recalled feeling that if the public knew he was a homosexual, "I would probably have had to commit suicide the next day."⁶ Brown's career shifted to academia as a professor in the Graduate School of Public Administration and the School of Medicine at New York University.

Six years later, Brown stood before a group of 600 physicians, newspaper reporters and television crews at a medical conference and announced, "I was invited here not as a medical expert but as a street homosexual."⁷ In 1973, the "coming out" of a prominent professional warranted the front page of the *New York Times*. In a following interview, Brown pledged to "become a 'militant' homosexual."⁸ Earlier, Brown had taken a few steps towards joining the burgeoning gay rights movement. He responded, for example, to a request from a colleague to help raise money for the Gay Activist Alliance (GAA) by asking professional gay men he knew for donations. As one of the post-Stonewall organizations, the GAA represented a break from the homophile organizations that employed respectability as a strategy to challenge anti-gay laws. Members of GAA engaged in acts of public disruption and performance and "zapped" public figures to advocate for gay liberation, fair housing, job equity and gay civil rights laws. Brown had

⁶ Howard Brown, *Familiar Faces, Hidden Lives: The Story of Homosexual Men in America Today* (San Diego: Harcourt Brace Jovanovich, 1989), 6, 225, 15, 19.

⁷ Marcia Chambers, "Doctors Called Ignorant of Sex Mores," *New York Times*, October 4, 1973, 49.

⁸ *Ibid.*; Marcia Chambers, "Ex-City Official Says He's Homosexual," *New York Times*, October 3, 1973, 1.

trouble identifying with the younger activists in GAA who “rejected the respectability I had worked so hard to achieve.” However, activists with similar professional backgrounds emboldened him to set aside his fears.

Brown credited his newfound public courage to role models in the gay movement, specifically Henry Messer, Martin Duberman and Bruce Voeller. A heart attack in 1972 also spurred him to action. Neurosurgeon and activist Henry Messer encouraged Brown to participate in the 1973 march in commemoration of the Stonewall riots. Shortly after the march, Messer invited him to speak at the symposium of physicians where Brown publicly acknowledged his “homosexuality.” Brown also read Martin Duberman’s work, *Black Mountain*, while recuperating from his heart attack. The story helped him relate to the similar problems of other gay men and inspired him to “come out for the sake of all homosexuals.”⁹ Brown sought Duberman’s friendship when he found they were neighbors and would later ask him to join the National Gay Task Force (NGTF) board of directors.¹⁰ Duberman, a professor of history at Lehman College and one of the founders of the Gay Academic Union in 1973, identified as a radical.¹¹ Bruce Voeller had left his faculty position in biochemistry at Rockefeller University to volunteer for the GAA in 1971. The next year, GAA members elected Voeller as their president. Voeller recalled that Brown had invited him to lunch upon hearing of his election. As Brown’s determination to devote his life to activism solidified, he and Voeller discussed the details of his public coming out. Voeller and GAA news and media chair Ronald Gold successfully recruited the press to cover Brown’s conference announcement.¹² Brown remembered the anxiety he felt about how his colleagues, the

⁹ Brown, *Familiar Faces, Hidden Lives*, 22-25.

¹⁰ *Ibid.*, 25.

¹¹ Martin B. Duberman, *The Martin Duberman Reader: The Essential Historical, Biographical, and Autobiographical Writings* (New York: The New Press, 2013), 270.

¹² Bruce Voeller, “My Days on the Task Force,” *Christopher Street* (1979): 56, 58-59.

public and the press would react. Yet, the audience applauded; Brown received supportive phones messages and letters from across the country; he was pleased with the amount and tone of the press coverage.¹³

Less than two weeks later, Brown presented the opening remarks at a press conference announcing the formation of the National Gay Task Force (NGTF). Brown had accepted the position of board chair and Voeller would be the executive director. Voeller recalled, he had resigned from his position as president of GAA early in October of 1973.¹⁴ Upon hearing about Voeller's resignation, Ronald Gold called Nathalie Rockhill, former GAA vice-president with hopes of finding a way to change Voeller's mind; however, Rockhill responded, "Forget it! Now we can start that national organization Bruce has been talking about."¹⁵ A few days after Voeller's resignation, Rockhill, Gold, Gregory Dawson, GAA political action chair, and Thomas Smith, GAA social and operations director, visited him to consider a proposal for a new national organization. The group engaged in an animated discussion of possible national level projects including convincing the American Psychiatric Association to remove homosexuality from the list of mental health disorders, persuading large corporations to adopt fair employment practices and educating the national media.¹⁶ At the center, the new group endeavored to act as a clearinghouse of information for local organizations and to develop a diverse grassroots base in order to establish truly national projects.

¹³ Brown, *Familiar Faces, Hidden Lives*, 27-79.

¹⁴ Voeller, "My Days on the Task Force," 56.

¹⁵ Faderman, *The Gay Revolution*, 260. Rockhill had stopped attending GAA meetings.

¹⁶ Voeller, "My Days on the Task Force," 56. The specific dates are unclear. Brown publically announced he was gay on 10/2/1973. Voeller mentions his resignation was early that October. (My Days on Task Force.) Nathalie Rockhill remembers Gold called to tell her the news of Voeller's resignation on 10/4/1973. (Interview with Faderman p.260.) A 10/7/1973 NYT article that interviewed Voeller refers to him as GAA president. The interview occurred after Brown's announcement. The group meeting of GAA members and Voeller occurred within a few days of Voeller's resignation. The press conference announcing NGTF and listing a 22 member board of directors occurred on 10/15/1973. It seems likely that some form of organizational planning occurred before Brown's announcement.

Voeller viewed Howard Brown as the key to expanding the appeal of gay rights activism beyond the “largely counterculture left” and “blue denim elitism” of organizations such as the Gay Liberation Front and the Gay Activist Alliance. He described Brown as “an altogether different kind of gay person from those with whom most of us had worked” and felt he “represented a gigantic gay community which had been largely neglected by gay activists.”¹⁷ Gold referred to Brown’s announcement as “an answer to a dream.” In a newspaper interview, Gold stated, “We knew right away that somebody with that kind of reputation . . . could be the spearhead of this new concept in gay liberation.”¹⁸

Brown enthusiastically responded to Voeller’s request to serve as the Chair of the new group’s board of directors and brought along Martin Duberman and Robert Carter, a Jesuit priest, as board members.¹⁹ Carter shared his experience of resolving his homosexuality and his faith in Brown’s *Familiar Faces Hidden Live*. Carter’s recent involvement in Dignity, a group that supported gay Catholics, and his participation in the June 1973 Pride parade fortified his decision to accept the request to join the NGTF board of directors which was tantamount to publicly revealing he was gay.²⁰ Carter recounted that some in the Catholic Church called for his removal while others supported his actions.²¹ Additional board members had experience in organizations including the Mattachine Society, the Gay Task Force of the American Library Association, the Bronx United Gays, the New York State Coalition of Gay Organizations, the Lesbian Feminist Liberation, the Gay Rights Committee of the Independent Democrats, the American Caucus of

¹⁷ "NGTF: Our Past and Future," in *It's Time: Newsletter of the National Gay Task Force*, Special Bonus Issue c. 1976, Box 99, Folder 10, Frank Kameny Papers, Manuscript Division, Library of Congress (LOC). Voeller used the terms "largely counterculture left" and "blue denim elitism" in his article.

¹⁸ "Massive Talent Array: Heavyweight national gay group formed," *Advocate*, November 7, 1973.

¹⁹ Voeller, "My Days on the Task Force," 59.

²⁰ Brown, *Familiar Faces, Hidden Lives*, 190-92. Brown used the pseudonym Father Ryan for Robert Carter in his memoir. Brown died on 2/1/1975. His estate published *Familiar Faces* posthumously.

²¹ Dennis Hevesi, "Robert Carter, Priest and Gay Activist, Dies at 82," *New York Times*, March 15, 2010, B11; Brown, *Familiar Faces, Hidden Lives*.

Gay Psychologists, the Gay Academic Union, the Queens Liberation Front and the Street Transvestite Action Revolution. Nine had been members of the Gay Activist Alliance.²² Voeller credited Brown for insisting that the staff be recognized and paid as professionals.

1.2 National Gay Task Force and Gay Activist Alliance

Although many of the leaders of the Task Force had come from the Gay Activist Alliance, the new organization set itself apart in structure, ideology, goals and strategy. The *Advocate*, the largest gay newspaper at the time, interviewed individuals from the Alliance and the Task Force after the split. The article noted, “Both sides said NGTF offered an alternatively structured organization with different purposes from GAA.”²³ The GAA described their structure as “participatory democracy” while the NGTF founders set-up a formal board to guide their organization.²⁴ GAA had an executive committee of elected officers, committee chairs and a delegate at large. A quorum of one-third to one-fourth of the total membership was required to conduct business.²⁵ The Task Force founders envisioned a cohesive board of directors and executive committee with a dues-paying membership. Before the first board meeting, Voeller set expectations. He urged board members to attend monthly meetings and emphasized, “It is important that this be a working Board of Directors . . . you must . . . set policy and direction.”²⁶ Members did not have a defined decision-making role.

²² "Massive Talent Array."; Roger Wetherington, "Homosexuals Form a National Group," *Daily News*, October 15 1973.

²³ "Massive Talent Array," 1.

²⁴ Ibid.

²⁵ "Constitution and Bylaws of the Gay Activists Alliance." <https://thelonglgbtrightsmovement.weebly.com/gaa-preamble.html>1972.

²⁶ Bruce Voeller, "To Board Member," October 19, 1973, Box 97, Folder 9, Frank Kameny Papers, LOC.

For some who had left the GAA, the mass membership decision-making process of participatory democracy seemed endless and ineffective.²⁷ Gold, perhaps facetiously, derided the five-hour meetings that might include a full debate on the purchase of postage stamps.²⁸ In their early months, NGTF faced similar problems, conducting lengthy meetings as they struggled to find the balance between staff and board led decision-making. After the first board meeting, board member Frances Doughty, a school administrator, sent a memo which brought up concerns about the undefined relationship between the board and the executive committee. She cautioned, "I'm afraid this lack of clarity has already caused some confusion."²⁹ After the December 1973 meeting, board member Frank Kameny described the event in terms reminiscent of the criticism leveled against the GAA. He acerbically noted, "We spent four hours unproductively dithering about matters of internal structure and organization which should have been disposed of . . . about three months ago." Kameny strongly asserted the need for a Statement of Purpose, Constitution and By-laws to clearly define the relationship between and responsibilities of the Board, Executive Committee, staff and membership. He also advised the board should "oversee and govern the operation of the NGTF rather closely and in considerable detail."³⁰ While it did take some time for NGTF to determine the function of the board, having the oversight of a board helped NGTF establish the appearance of legitimacy.

1.2.1 Political Ideology and Goals

A few press accounts suggest that the split between GAA and NGTF occurred due to political differences. Voeller is reported as saying that he left the GAA because the organization

²⁷ D'Emilio, "Organizational Tales: Interpreting the NGTF Story," 473.

²⁸ "Massive Talent Array."

²⁹ Frances Doughty, "Memo After the Board Meeting of Oct. 31, 1973," November 6 1973, Box 97, Folder 9, Frank Kameny Papers, LOC.

³⁰ Frank Kameny, "Organization (i.e. Non-organization) of NGTF," December 25, 1973, Box 97, Folder 9, Frank Kameny Papers, LOC.

“had been taken over by the Socialist Workers Party.” Morty Manford, the GAA member who replaced Voeller as president disagreed.³¹ Manford who had joined GAA in 1970 characterized the Alliance as an organization that “draw[s] together gays of all political persuasions.”³² The GAA Constitution prohibited any political alliance “not directly related to the homosexual cause.”³³ Manford contrasted NGTF “gay respectability” with GAA activism. “It [gay respectability] was an antiactivist type of gay theology.” Manford placed NGTF as representative of “conservative” and “Establishment” organizations that followed the general social trend away from street demonstrations.³⁴ Duberman offered a different view that suggested the philosophical differences were negligible. He described both the GAA and NGTF as reformist groups rather than radical organizations, characterizing Voeller, Rockhill and Gold as “incremental pragmatists” and describing the GAA as having a “practical-minded emphasis.”³⁵

Some of the perceived philosophical differences may have been based on age, class and experience. Brown described young members of GAA as “Poor, often living communally, bright but with little formal education.”³⁶ Manford was a student in his early twenties when he took office as GAA president.³⁷ In contrast, Voeller was 39, Brown was 49 and Duberman was 43. The NGTF founders sought “distinguished people” with skills and experience for the newly created board. while the camaraderie of a common cause and social activities drew members to GAA.³⁸

³¹ Mary Perot Nichols, "Dr. Brown's Coming Out: New Gay Task Force," *the village VOICE*, October 18, 1973; "Massive Talent Array."

³² Eric Marcus, *Making History: The Struggle for Gay and Lesbian Equal Rights, 1945-1990. An Oral History*, 1st ed. (New York, NY: HarperCollins Publishers, 1992), 203.

³³ "Constitution and Bylaws of the Gay Activists Alliance," 5.

³⁴ Marcus, *Making History*, 211.

³⁵ Duberman, *The Martin Duberman Reader*, 275-76.

³⁶ Brown, *Familiar Faces, Hidden Lives*, 22.

³⁷ Bruce Lambert, "Morty Manford, 41, a Lawyer and Early Gay-Rights Advocate," *New York Times*, May 15, 1992, D20.

³⁸ "Announcement of Formation of National Gay Task Force," October 15, 1973, Box 100.1, Frank Kameny Papers, LOC.

Despite their differences, the GAA and NGTF shared a mission to seek legislative protection against discrimination based on sexual orientation. Alliance founders sought an end to economic, social and political oppression through the passage of gay rights laws. The Task Force announced their goal was “ending all discrimination and prejudice against Gay people” and proclaimed their intent to begin an “immediate drive for the passage of Federal civil rights legislation.”³⁹ The organizations sought remedies at different political levels. Voeller explained his decision to leave GAA was due to their focus on local advancements. Most GAA actions protested local policies, politicians and businesses. Although recognizing that GAA had a few national goals, Voeller recalled, “I came to believe that the *main* goals of the gay movement should be national ones.”⁴⁰ Former GAA member Gold, the new communications director of NGTF, mentioned NGTF’s “potential for bringing gay liberation into the mainstream of the American civil rights movement” as one of the reasons for his GAA departure.

Additionally, the Task Force conceived their purpose as an information clearinghouse for other gay and lesbian groups. They sought membership from individuals and organizations across the county and felt their newsletters, updates and publications would help the broader gay and lesbian rights movement coalesce. The Alliance, in contrast, turned their efforts outside of New York to assist in the organization of local gay activist groups in other regions. Manford described GAA groups that toured the South and the Midwest. As a member of a Southern tour group, he came to realize how exceptional New York City was: “We were lucky if there was anybody in those towns who had heard about gay liberation.”⁴¹ The Alliance partnered with organizations such

³⁹ Ibid.

⁴⁰ Voeller, “My Days on the Task Force,” 56.

⁴¹ Marcus, *Making History*, 209-10.

as the Mattachine Society of New York and the Daughters of Bilitis but appeared to prefer collaboration with other groups rather than taking a position of leadership.⁴²

1.2.2 Strategy

An examination of Alliance and Task Force strategies finds similarities in rhetoric but differences in application. The GAA was known for their public protests whereas NGTF emphasized their “mainstream” efforts. Manford recalled GAA demonstrations that drew three to four hundred people in the early 1970s.⁴³ GAA picketed New York city mayor John Lindsay and interrupted his speeches in protest of police brutality; organized sit-ins and occupations in protest of discrimination; and held demonstrations and “kiss-ins” at bars that refused to serve them.⁴⁴ Members endured arrests as they confronted discrimination; however, their Constitution and By-Laws disavowed violence with the exception of self-defense and forbid association with organizations that advocated violence. GAA did employ more traditional modes of political persuasion. Their lobbyists worked to influence the New York City Council and the state legislature to enact civil rights legislation with some success.⁴⁵

The Task Force’s early statements suggested they might participate in demonstrations; however, in practice, they focused on building working relationships with other gay organizations, businesses and legislators. In the press release announcing NGTF’s formation, Voeller stated, “We will use all effective techniques, including militant, non-violent action.”⁴⁶ Brown responded to a question about GAA’s street demonstrations in an interview with the *Advocate*. He replied, “We’re not ruling out street activity ourselves. We’ll use it when we think it is appropriate, in conjunction

⁴² John D. Stinson. "Gay Activists Alliance Records, 1970-1983." Manuscripts and Archives Division, New York Public Library 1997.

⁴³ Marcus, *Making History*, 211.

⁴⁴ Ibid., 206-09, 04; Stinson, "Gay Activists Alliance Records, 1970-1983," 4.

⁴⁵ Marcus, *Making History*, 203; Stinson, "Gay Activists Alliance Records, 1970-1983," 5.

⁴⁶ "Announcement of Formation of National Gay Task Force."

with or apart from GAA.” However, he concluded by asserting, “Yet I feel strongly that one also has to move on to court action and national civil rights legislation.”⁴⁷ Communications director Ron Gold who had participated in zaps as a GAA member, including some at APA conferences, expressed the same sentiment in NGTF’s first newsletter: “At the beginning of our media battle there was only one way to get attention to our cause or make complaints—to ‘zap’ the villains. Now, and we would like to think it’s as a result of our efforts, there are two ways. Sometimes we still need to zap, but more often all that’s required is to write a letter of complaint, point something inaccurate or abusive about gays that’s appeared on the air or in print, and ask for a meeting.”⁴⁸

Both groups hoped to marshal the energies of their membership. Each chose strategies that reflected their members’ interests and commitment. To become a GAA member, one had to attend meetings. GAA leased an old firehouse large enough to hold group meetings, social events and fundraisers. General membership meetings and social activities at the firehouse built the bonds of commitment that the Alliance needed to rally the group to public protest. To join NGTF, people sent in a form with \$15.00. The NGTF membership drives looked beyond New York City and their small office precluded social events. The connection between the leadership and membership was less personal. The Task Force encouraged their individual members to write letters and make phone calls while also seeking out other organizations to partner with. Their tactics allowed them to react to federal legislation with the voices of a geographically diverse constituent base.

An August 1974 letter received from a member suggests why NGTF moved away from demonstrations. The writer from the Midwest began, “When I became a member of the National Gay Task Force last January, I wanted to help support the cause of gay liberation, but I did not

⁴⁷ "Massive Talent Array."

⁴⁸ Ronald Gold, "Gays and Public Relations," in *It's Time: Monthly Newsletter of the National Gay Task Force*, May 1974, Box 99, Folder 10, Frank Kameny Papers, LOC.

want to fight personally for my rights as a homosexual.” After unjust treatment by law enforcement and the legal system, the writer had decided to fight back and, having heard informative talks by board member Frank Kameny on what steps to take if arrested, asked for advice and support.⁴⁹ As Howard Brown certainly understood, publicly identifying as gay in the 1970s was difficult. NGTF appealed to members who wanted to support the movement but did not desire or feel able to participate in public demonstrations.

The key differences between the Alliance and the Task Force were of scale and tactics. Both organizations fought to eliminate discrimination and secure civil rights. The Alliance was a New York City based group that primarily worked in the local realm to identify discrimination and demand changes. They had a constitution and by-laws and followed parliamentary procedures at their meetings. Most of the original Task Force board of directors also lived in the New York area. As an experienced group of activists, they broadened the scope of GAA efforts by seeking national changes. The presence of a board of directors emulated other successful national activist groups such as the American Civil Liberties Union and the Leadership Conference on Civil Rights and provided a sense of the gravitas that would be needed to appeal for corporate donors and foundation grants.

The flow of members from one group to another might be interpreted as the failure of the original group. In this case, exiting members shared a few personal gripes but ultimately appear to have been driven by an expanded vision. As the gay and lesbian rights movement continued to grow in the 1970s, new groups formed while other groups evolved. The plethora of groups provided opportunities to develop organization building skills and leadership training. Although it is difficult to track all the organizations, the fluctuating organizations and mobile membership

⁴⁹ name withheld, "Letter to National Gay Task Force," August 22, 1974, Box 97, Folder 9, Frank Kameny Papers, LOC.

suggest vision and energy rather than failure. The Task Force hoped to establish communication between the estimated 850 local organizations across the country.⁵⁰ Early attempts to work together stood as a precedent for the response to the AIDS crisis of the 1980s. Perhaps the significance of the founding of NGTF should not be that they presented themselves as the first national group with a board of directors but that in the New York City area alone there were experienced and talented people from multiple organizations available to join a board.

1.3 Confronting Disability: The American Psychiatric Association

In its first months, the National Gay Task Force challenged the American Psychiatric Association (APA) categorization of homosexuality as a mental disorder. Howard Brown brought attention to the issue in his October 1973 speech, asserting “The organized homosexual groups oppose strongly the idea that homosexuality should be classified as a disease.” If successful in their efforts to remove the label, the NGTF planned to employ the authority of science to confront discriminatory laws and policies.

Ronald Bayer’s seminal, *Homosexuality and American Psychiatry: The Politics of Diagnosis*, examines the history of the profession of psychiatry and its members’ shifting views on the medical diagnosis of homosexuality. His work provides an overview of the divisions within the American Psychiatric Association over the medical status of homosexuality and of the gay and lesbian protests against the APA Diagnostic and Statistical Manual of Mental Disorders (DSM) label. Bayer interviewed Ron Gold, Frank Kameny and Bruce Voeller.⁵¹ This section provides

⁵⁰ Faderman, *The Gay Revolution*, 259. Faderman suggests NGTF's estimate of 850 groups was "exaggerated a bit."

⁵¹ Ronald Bayer, *Homosexuality and American Psychiatry: The Politics of Diagnosis* (Princeton, NJ: Princeton University Press, 1987); Jennifer Terry, *An American Obsession: Science, Medicine, and Homosexuality in Modern Society* (Chicago: University of Chicago Press, 1999); P. M. Cryle and Elizabeth Stephens, *Normality: A Critical Genealogy* (Chicago: The University of Chicago Press, 2017). Although Terry and Cryle/Stephens do not interrogate the APA DSM dispute, their work explores the labelling of same sex attraction.

additional detail and insight based on archival research. It also provides a broader view of the Task Force's involvement after the initial vote to change the label. The Task Force's success would legitimize their position in the gay and lesbian rights movement.

1.3.1 Stigma

In the early 1970s, gay and lesbian individuals hid their sexuality in fear of family expulsion, loss of employment and housing, and violence. Howard Brown shared accounts of the internal struggles some felt as they recognized their attraction to others of the same sex. Many had grown up hearing negative stereotypes about homosexuals before they even understood what the term meant. Brown himself remembered knowing that, "Homos were mysterious, evil people, to be avoided at all costs." Even when he experienced same-sex attraction, Brown could not resolve his sexual feelings with the belief that homosexuals were evil.⁵² In his book, *Familiar Faces, Hidden Lives*, Brown described another man who "Raised to regard homosexuals as monsters, he could not help loathing himself."⁵³ Societal condemnation and internal conflicts contributed the secrecy many gay and lesbian individuals felt they must maintain.

A 1969 issue of *TIME* magazine that featured "The Homosexual in America" on its cover displayed the stereotypes and attitudes about homosexuality common at the time. The article inside, "The Homosexual: Newly Visible, Newly Understood," blended recent research studies, surveys, expert opinion and anecdotes to analyze homosexuality. The authors noted that many experts argued that medicalizing homosexuality as a pathology was "even more pejorative nowadays" than the imputation of sin. Other specialists compared homosexuality to "mental retardation" and "the neurotic" to explain the cause and need of treatment. The article concluded,

⁵² Brown, *Familiar Faces, Hidden Lives*, 32.

⁵³ *Ibid.*, 40.

“While homosexuality is a serious and sometimes crippling maladjustment, research has made clear that it is no longer necessary or morally justifiable to treat all invert as outcasts.”⁵⁴ Despite the attempt at an enlightened tone, the authors maintained that homosexuality needed to be discouraged and treated.

The previous week, *TIME* had covered the release of a report by the National Institute of Mental Health which encouraged states to abolish sodomy laws and employers to hire qualified homosexuals. In a similar vein, the earlier article concluded, “Americans can now recognize the diversity of homosexual life and understand that an undesirable handicap does not necessarily make everyone afflicted undesirable.”⁵⁵ John Ungaretti, a gay college student rebuffed the label. “I reject the implication that I have an ‘undesirable handicap’—for it is not my sexuality, but rather society’s insane reaction to it, that is the undesirable handicap.”⁵⁶ Ungaretti’s argument resembled the developing social model of disability which posited that barriers and societal constraints created disability rather than a specific impairment or difference.

While some people viewed homosexuals as sinful or dangerous in the 1970s, by the 1960s, the medical profession regarded homosexuality as a mental disorder. In the first *Diagnostic and Statistical Manual* (DSM-I) published in 1952, the American Psychiatric Association had classified homosexuality as a “sociopathic personality disturbance.” The second version, DSM-II, defined homosexuality as a “sexual deviation” under “Personality disorders and certain other nonpsychotic mental disorders.”⁵⁷ People who were distressed about their same sex attraction and had the means to afford it sought psychiatric treatment. Barbara Gittings, an early activist and

⁵⁴ “A Discussion: Are Homosexuals Sick?,” *TIME*, October 31, 1969; “The Homosexual: Newly Visible, Newly Understand,” *TIME*, October 31, 1969.

⁵⁵ “Homosexuality: Coming to Terms,” *TIME*, October 24, 1969, 82.

⁵⁶ John Ungaretti, “Letters,” *ibid.*, November 7.

⁵⁷ John D’Emilio and Estelle B. Freedman, *Intimate Matters: A History of Sexuality in America*, 3rd ed. (Chicago: The University of Chicago Press, 2012); Terry, *An American Obsession*.

member of the first NGTF board of directors, described the power of psychiatric pronouncements. “Because gay people were considered mentally sick, people turned to psychiatrists for answers to the questions of homosexuality. What causes it? What can we do about it? How can we eliminate it?”⁵⁸ Her partner Kay Lahusen concurred. “You don’t realize what it was like back then. They were the experts. They said we were sick, and that’s what most people believed.”⁵⁹ Psychoanalysts and behavioral therapists such as Charles Socarides and Irving Bieber claimed that homosexuality could be cured. Others, such as psychoanalyst/psychiatrist Judd Marmor, however, questioned the field’s assumption that homosexuality was a disorder.

1.3.2 Early Efforts: Pre-NGTF

NGTF board members Frank Kameny and Barbara Gittings began the work of confronting the APA in the early 1960s. Kameny’s personal battle against discrimination began in 1957 after the Army terminated his employment due to his homosexuality. His persistent legal efforts to appeal his dismissal ended with the denial of his *pro se* petition to the U.S. Supreme Court. In 1961, Kameny organized a Washington, DC chapter of the Mattachine Society. Although the Mattachine Society is better known for employing respectability tactics, Kameny described the Washington group as “an activist militant organization.”⁶⁰ Instead of accepting the views of authority figures who proclaimed, “We were sick; we were sinners, we were perverts,” Kameny asserted, “We are the experts on ourselves, and we will tell the experts they have nothing to tell us!”⁶¹ As a scientist, Kameny was especially critical of the lack of scientific evidence undergirding psychoanalysis. Kameny recalled, “I looked at it and found that whole sickness theory was [a]

⁵⁸ Marcus, *Making History*, 221.

⁵⁹ Ibid.

⁶⁰ Ibid., 98.

⁶¹ Ibid.

mixture of social, moralistic, religious value judgements couched in [the] language of science—but no substance of science.”⁶² Kameny continued his battle against government employment practices taking on the Civil Service Commission hiring restrictions and the Pentagon security clearance policies, while also challenging the authority of the psychiatric community. His numerous letters to politicians, government officials, the media and the psychiatric community along with his involvement in the larger homophile movement circulated his ideas beyond the Washington group.⁶³

In 1969, *TIME* magazine held a symposium on the status of homosexuality as an illness and printed excerpts of the discussion. Kameny served as a representative of the gay population. Other participants included an anthropologist, a sociologist, a psychologist, a psychoanalyst, an Episcopal priest and another member of the Mattachine society. Some excerpts of the discussion reflected an understanding of the cultural nature of homophobia and affirmed the possibility of healthy and satisfying homosexual relationships. Charles Socarides, a psychoanalyst and associate clinical professor of psychiatry who strongly resisted any changes to the APA nomenclature, received the most column space. He insisted “It must be declared that homosexuality is a form of emotional illness.” Kameny challenged the psychiatrists who based their conclusions on the clients they treated. He questioned, “So how do you know that all the ones who wouldn’t come near you are sick and suffer from anxieties?” He also described the consequences of the sickness label as “poisonous to the individual’s self-esteem and self-confidence.”⁶⁴ The symposium revealed a range of attitudes about the nature of homosexuality.

⁶² John-Manuel Andriote, "Frank Kameny, interview transcript," Box 2, Folder 31, John-Manuel Andriote *Victory Deferred* Collection, Archives Center, Smithsonian National Museum of American History.

⁶³ Michael G. Long, ed. *Gay is Good: The Life and Letters of Gay Rights Pioneer Franklin Kameny* (Syracuse, NY: Syracuse University Press, 2014).

⁶⁴ "A Discussion: Are Homosexuals Sick?."

Barbara Gittings joined the homophile organization Daughters of Bilitis (DOB) in 1958⁶⁵ and met Kameny at an East Coast Homophile Organizations (ECHO) meeting in the early 1960s.⁶⁶ She described Kameny “as an intellectual heavyweight who had a knack for using good, plain, strong English to package some of these ideas.”⁶⁷ As editor of the DOB magazine, *The Ladder*, Gittings published articles by Kameny that criticized the movement’s cooperation with psychiatric researchers; however, she met resistance from the DOB research director who felt that more research was needed to establish the mental health state of lesbians.⁶⁸ As Gittings’ frustration with DOB reticence grew, she joined the picket lines with Kameny. In 1968, she attended the American Psychiatric Association annual meeting in Boston to do reconnaissance for the Institute of Social Ethics on what the APA members were saying about homosexuality. She found the remarks were “all negative” and “pretty horrifying” particularly the descriptions by behavioral therapists who were using shock therapy to cure homosexuality. She noted that many of the attendees displayed an “ingrained, unexamined attitude” that the psychiatrist role was to ‘cure’ the homosexual.⁶⁹

After the Stonewall riots in 1969, Gittings and Lahusen briefly attended Gay Liberation Front meetings, as did Kameny; however, they felt gay issues were lost in the GLF’s leftist ideology.⁷⁰ Lahusen became one of the original twelve members of the Gay Activist Alliance. Gittings, whose first exposure to homophile organizations followed a meeting with Donald Webster Cory, author of *The Homosexual in America: A Subjective Approach*, joined a gay group

⁶⁵ Marcus, *Making History*, 113.

⁶⁶ *Ibid.*, 120.

⁶⁷ *Ibid.*, 121.

⁶⁸ *Ibid.*

⁶⁹ John-Manuel Andriote, "Barbara Gittings, Interview Transcript," Box 2, Folder 5, Andriote Collection, Smithsonian.

⁷⁰ Barbara Gittings and Kay Lahusen, "The Old Timers," in *Making History: The Struggle for Gay and Lesbian Equal Rights, 1945-1990. An Oral History*, ed. Eric Marcus (New York, NY: Harper Collins, 1992), 213-16. Gittings and Lahusen also describe tension between GLF members whom they viewed as newcomers to the movement and those who had been involved for years.

within the American Library Association.⁷¹ The group worked to make gay literature and information more accessible and to fight discrimination against gay library workers and gay library patrons.⁷² Gittings would join the Task Force as a founding board member.

In 1970, the APA held their annual meeting in San Francisco. Gittings and Kameny picketed the meeting.⁷³ Other demonstrators from the GLF and women's liberation groups entered sessions and shouted down panel speakers who were discussing aversion therapy. Articles from the UPI reported, "The psychiatrists became so enraged they stood around in groups after the meeting was adjourned, trading insults with the demonstrators."⁷⁴ In an attempt to thwart outbursts at the 1971 APA annual meeting in Washington, D.C., the APA organized a panel featuring homosexual speakers. Kameny was invited to join the panel along with activists Larry Littlejohn, Del Martin, Lilli Vincenz and Jack Baker. The panel title, "Lifestyles of Non-Patient Homosexuals," suggested that a person could be homosexual without being "sick." The platform gave Kameny and the rest of the panel members an opportunity to express the harm of psychotherapy. Their participation also provided networking opportunities with APA members. Kameny and Littlejohn, representing the Society for Individual Rights, asked for an opportunity to meet with the Committee on Nomenclature and secured a follow-up meeting in New York.⁷⁵

While Kameny had engaged in a respectable form of participation at the Washington, D.C. conference, he also participated in a disruptive protest with the GLF at the Convocation of Fellows lecture. Kameny, who had been invited to attend, grabbed the microphone and declared psychiatry

⁷¹ Marcus, *Making History*, 211, 18.

⁷² *Ibid.*, 221.

⁷³ Jack Drescher and Joseph P. Merlino, *American Psychiatry and Homosexuality: An Oral History* (New York: Harrington Park Press, 2007), 21. Based on John Fryer's recollection. Fryer also remembers Gittings crashing the Convocation of Fellows in Washington, DC.

⁷⁴ "Disrupt Meeting: Gay Liberation Front in Action," *The Bakersfield Californian*, May 15, 1970, 2.

⁷⁵ Andriote, "Frank Kameny, interview transcript," 3b. Kameny describes the meeting as the beginning of bringing their demand to the APA. Bayer concludes "little came of that effort." (p. 107)

was an enemy as a staged group of protestors burst in. Bayer notes, “Fist-shaking psychiatrists, infuriated by the invaders, compared their tactics to that of Nazi stormtroopers.”⁷⁶ Some activists led by Gittings clandestinely entered the exhibit area, staged protests against a booth on aversion therapy that displayed slides of anti-homosexual material, and succeeded in getting the exhibit removed.⁷⁷ Gittings recalled, “Frank and I were fuming, shouting at this man. . . . We really raised a hell of a stink.”⁷⁸ Despite the rancor, Bayer concludes, “The process of transforming general outrage into a specific political demand had been set in motion.”⁷⁹

The 1972 annual meeting held in Dallas, Texas, afforded additional opportunities for activists to educate APA members. Psychiatrist Kent Robinson, who had organized the Washington, D.C. panel, secured a grant from the Maurice Falk Medical Fund to pay travel expenses for three members of a new panel and fees for an exhibit booth.⁸⁰ The panel, “Psychiatry: Friend or Foe to Homosexuals—A Dialogue,” included Kameny and Gittings as well as psychiatrists Robert Seidenberg, Judd Marmor, and an anonymous gay psychiatrist in disguise who were critical of their profession’s treatment of homosexuals. Gittings described the difficulty of finding a gay psychiatrist willing to join the panel. After many calls across the country, they found “Dr. H. Anonymous.”⁸¹ The masked psychiatrist shared, “My greatest loss is my honest humanity. How incredible that we homosexual psychiatrists cannot be honest in a profession that calls itself compassionate and helping.”⁸² The extent of his disguise which included a wig, a dramatic mask, oversized clothing and voice distortion bares his fear of exposure.

⁷⁶ “Frank Kameny, interview transcript,” Box 2, Folder 31, Andriote Collection, Smithsonian; Bayer, *Homosexuality and American Psychiatry*, 105.

⁷⁷ *Homosexuality and American Psychiatry*, 106.

⁷⁸ Andriote, “Barbara Gittings, Interview Transcript,” 2. Gittings recalled the zap was during 1972. Other sources including Bayer and a NGTF press release date the zap in 1971.

⁷⁹ Bayer, *Homosexuality and American Psychiatry*, 10.

⁸⁰ Kent Robinson, “A note of thanks to Leon Falk,” January 9, 1974, Box 122 folder 9, Frank Kameny Papers, LOC.

⁸¹ Mark Moran, “Activists Forced Psychiatrists to Look Behind Closet Doors,” *Psychiatric News*, November 3, 2006.

⁸² Aaron Levin, “Masked Man Challenged Psychiatrists’ Views on Homosexuality,” *ibid.*, April 28, 2016.

Twenty-two years later Dr. H. Anonymous revealed himself to be John Fryer, MD. Kameny and Gittings received the first APA John E. Fryer Award presented to individuals who contributed to the mental health of sexual minorities. In her acceptance speech, Gittings recalled the 1972 panel, "He [Fryer] really rocked the audience, speaking as a closeted gay person to his own colleagues, telling why he couldn't be open in his own profession. To back up John Fryer, I read excerpts from letters I'd solicited from the other gay psychiatrists who felt they had to decline to be on the panel"⁸³ The "Gay, Proud and Healthy: The Homosexual Community Speaks" exhibit at the 1972 meeting staffed by Kameny and Gittings included positive pictures of gay couples and literature. Gittings recalled, "Some people came and took literature; others made very obvious detours."⁸⁴ The booth presented the message of normalcy to a larger and more informal audience than a single panel could.

As members of the New York GAA, Ron Gold and Bruce Voeller zapped the Association for the Advancement of Behavior Therapy in protest of aversion therapy in 1972.⁸⁵ At the meeting, Gold met Robert Spitzer, a member of the APA Nomenclature Committee, and convinced him to arrange for the GAA to make a formal proposal to the Nomenclature Committee. The meeting occurred on February 8, 1973. GAA spokesperson Charles Silverstein, a doctoral student of psychology, crafted a speech that demonstrated how the various labels applied to homosexuality were socially rather than scientifically constructed. He invoked the language of disability to elicit sympathy for the damage done by psychiatric labels. "We are told that we are emotional cripples forever condemned to an emotional status below that of the "whole" people who run the world."⁸⁶

⁸³ Moran, "Activists Forced Psychiatrists to Look Behind Closet Doors."

⁸⁴ Marcus, *Making History*, 222.

⁸⁵ Voeller, "My Days on the Task Force," 57.

⁸⁶ Bayer, *Homosexuality and American Psychiatry*, 119; Drescher and Merlino, *American Psychiatry and Homosexuality*, 30. Silverstein was a founding editor of the "Journal of Homosexuality" (1975) and wrote several books about homosexuality including *The Joy of Gay Sex* and *A Parent's Guide*.

Silverstein's statement exposes ablest stereotypes of people with disabilities—to be a “cripple” was to be less than whole and of lower status. For the professionals who later joined the board of directors of NGTF, to be “sick” or “mentally ill” may have been particularly demeaning as a failure to recognize their status and ability.

The February 8th meeting strengthened the working relationship between activists and the APA Nomenclature Committee. Ron Gold convinced Spitzer to include him on a panel at the 1973 APA annual meeting in Honolulu, Hawaii titled “A Symposium: Should Homosexuality Be in the APA Nomenclature?”⁸⁷ Kameny served as “Chief Discussant.”⁸⁸ The presence of an estimated 1,000 conference attendees demonstrated APA members' interest in the topic.⁸⁹ Gold's paper began with a statement that characterized attitudes about mental illness in the early 1970s: “To be viewed as psychologically disturbed in our society is to be thought of and treated as a second-class citizen.” He shared the harmful impact of his own psychiatric treatment which had included injections of sodium pentothal and urged audience members, “Take the damning label of sickness away from us. Take us out of your nomenclature.” The rest of the speakers generally agreed that homosexuality was caused by childhood trauma or a disturbed parent-child relationship but differed in their opinions on how a well-adjusted person with same-sex attraction should be categorized by psychiatry.⁹⁰

Ron Gold, Frank Kameny and Robert Spitzer had an informal meeting at a Waikiki gay bar during the 1973 APA conference. Kameny shared his draft of the “Position Statement on

⁸⁷ Andy Humm, "Ron Gold, Pioneer in Challenging Sickness Label, Dies," *Gay City News*, May 16, 2017.

⁸⁸ Frank Kameny, "VICTORY !!!! We have been "cured" !," December 15, 1973, Box 122 folder 9, Frank Kameny Papers, LOC.

⁸⁹ Bayer, *Homosexuality and American Psychiatry*, 125.

⁹⁰ Robert J. Stoller et al., "A Symposium: Should Homosexuality Be in the APA Nomenclature," *American Journal of Psychiatry* 130, no. 11 (1973).

Homosexuality and Civil Rights” which the APA Board of Trustees would adopt that December.⁹¹ Kameny viewed the bar meeting as the event that set things in motion by putting the resolutions for civil rights and to remove homosexuality from DSM-II into the pipeline.⁹² Bayer credited progress that had occurred between the February 8th meeting in New York and the May annual meeting in Hawaii. The APA bureaucratic process continued after the annual meeting with approval from the Nomenclature Committee in June, the Council on Research and Development in October, the Reference Committee in November, the Assembly of District Branches in November and then to the Board of Trustees for a vote on December 15, 1973. Kameny, Gold and others remained involved in “pushing and prodding” the resolutions through.⁹³

1.3.3 NGTF Involvement

When the APA Board of Trustees affirmed the proposed change to the DSM-II nomenclature and the resolution in support of civil rights legislation that December day, NGTF board members and staff Howard Brown, Barbara Gittings, Ron Gold, Frank Kameny, Jean O’Leary, Charles Silverstein and Bruce Voeller were in attendance.⁹⁴ The Task Force press release proclaimed, “Psychiatric Turnaround: The Greatest Gay Victory—A Major Socio-Historic Change.”⁹⁵ In May, NGTF’s first newsletter credited the victory to efforts by the NGTF staff and

⁹¹ Frank Kameny, "Position Statement on Homosexuality and Civil Rights," 1973, Box 122 Folder 10, Frank Kameny Papers, LOC. In a signed note in his papers, Kameny claimed that the statement was drafted by him in response to gay-related security clearance cases. In a thank you note to supporters, he writes, "we drafted." Bayer claims Spitzer and Gold drafted the resolution. The language seems more similar to Kameny's style of legalistic writing. Bayer also mentions an occasion where Gold and Spitzer visited a gay bar. It's not clear if this is the same event.

⁹² "VICTORY !!!! We have been "cured" !." Bayer mentions discussion and intellectual work that occurred from the February 8 meeting to the May annual meeting.

⁹³ Ibid. Kameny sent at least two Letters to the Editor of "The Psychiatric News" during this period. May 27, 1973 in response to Canadian research on aversion therapy as an example of why change was needed and September 27, 1983 in response to letter to the editor by Juan Formento in response to confusion about APA process.

⁹⁴ Voeller, "My Days on the Task Force," 57.

⁹⁵ National Gay Task Force, "Psychiatric Turnaround: The Greatest Gay Victory--A Major Socio-Historic Change," December 15 1973, Box 100 folder 1, Frank Kameny Papers, LOC.

the board of directors.⁹⁶ Although Gold was a staff member and Gittings and Kameny joined the board of directors, most of their efforts had occurred while they were members of other organizations including the Mattachine Society, the GLF, and the GAA.

As the gay community and NGTF celebrated, psychiatrists who disagreed with the Board of Trustees' vote made plans to challenge the decision. Two days after the vote, psychiatrist Harold Voth sent comments to APA's newspaper, *Psychiatric News*, for publication. The article titled "A Disgusted Reaction to the Trustees' Vote on Homosexuality" voiced strong opposition to the change and questioned the trustee's professional competence. Roth began, "Anyone who has studied homosexuality in depth knows very well that the choice of the same sex in preference to the opposite sex is a manifestation of psychopathology" and concluded, "To call homosexuality nothing more than a sexual orientation disturbance is akin to the ridiculous claim that schizophrenics aren't sick but that they just communicate in a way that is different from the rest of us. How very sad."⁹⁷ Herb Gant, managing editor of the *Psychiatric News*, sent Frank Kameny an unedited copy of Voth's article that indicated which sections would be deleted due to personal "intemperate language." In the deleted sections, Voth blamed "Gay Lib pressure" for the Board's "shameful" decision. "They [the Trustees] are afraid to stand up like men and look the Gay Libbers in the eye and call a spade a spade."⁹⁸

Charles Socarides forwarded a letter with similar statements from psychiatrist Abram Kardiner to the *Psychiatric News*. Kardiner blamed the Board's decision on "a powerful lobby of 'gay' organizations" and warned the change was part of "egalitarianism." He also employed the

⁹⁶ "The Earth is Round," in *It's Time: Monthly Newsletter of the National Gay Task Force*, May 1974, Box 99 folder 10, Frank Kameny Papers, LOC; Bruce Voeller, "What is the National Gay Task Force?," *ibid.*

⁹⁷ Harold M. Voth, "A Disgusted Reaction to the Trustees' Vote on Homosexuality," December 17, 1973, Box 122, Folder 9, Frank Kameny Papers, LOC.

⁹⁸ *Ibid.*

classification of schizophrenia to assert the seriousness of the Board's error by claiming "even schizophrenia is being promoted to the category of life style." He continued his warning: "But this egalitarianism is bound to exact a high price from the community in the form of sporadic and wanton murders or others forms of antisocial behavior." Kardinar and Voth's extreme language suggests the climate a gay or lesbian individual might have faced in a therapy session and indicate the high level of determination of those opposed to the declassification of homosexuality.⁹⁹

Opponents of the DSM-II change solicited enough signatures to force a member referendum vote. Task Force staff worked behind the scenes to encourage APA members to support the Trustees' decision. Mindful that their direct involvement might cause public controversy and dissuade APA supporters, the Task Force sent a letter to APA members from APA leaders who supported the board decision. Voeller explained that APA members drafted the letter that was then signed by the three candidates for president-elect Judd Marmor, Herbert Modlin and Louis Jolyn as well as the vice presidents Harold Visotsky and M. Mitchell-Bateman.¹⁰⁰ Voeller recalled that a "closeted man" who worked at the APA headquarters told him how to purchase a mailing list of the APA members' addresses. The estimated cost for the list, printing and mailing expenses was \$2500. Though just months old at the time, the Task Force turned to their members and friends to raise the money and succeeding in securing the needed funds.¹⁰¹

In their effort to avoid public attention or embarrassment that would create a backlash, the NGTF letter nevertheless generated strong objections. After Voth wrote a letter of complaint to

⁹⁹ Abram Kardiner and Charles W. Socarides, "Cover Letter and To Psychiatric News," January 25, 1974, Box 122.9 Frank Kameny Papers, LOC. Socarides notes that Dr. Kardiner is "the author of many widely known and highly esteemed studies in the field of social psychiatry."

¹⁰⁰ Voeller, "My Days on the Task Force," 58. Voeller mentions APA members as authors of the letter; Bayer, *Homosexuality and American Psychiatry*, 152. Bayer identifies Robert Spitzer, an APA member, as the author. Other speculation suggests Ron Gold assisted in the letter writing.

¹⁰¹ National Gay Task Force, "To Friend," February 13, 1974, Box 97, Folder 9, Frank Kameny Papers, LOC; Judd Marmor, Herbert Modlin, and Louis Jolyon, "To APA Member," February 28, 1974, Box 97, Folder 9, Frank Kameny Papers, LOC. \$2,500 equalled \$14,051 in 2018 dollars <http://www.usinflationcalculator.com/>.

the president of the APA, a committee was formed to investigate allegations that the NGTF lobby had unduly influenced APA members who may not have known of NGTF's connection to the letter.¹⁰² Irrespective of the ongoing investigation, the APA counted the referendum ballots. Opponents failed to rescind the Trustee vote with 5854 ballots (58.4%) supporting the change to the Nomenclature, 3810 ballots (37.8%) opposing the change and 367 returned ballots (3.8 %) abstaining. In celebration, Kameny announced "So we are permanently healthy!!!"¹⁰³

During the referendum process, NGTF recognized their tenuous position. They sought to avoid embarrassing their supporters in the APA with a public protest that would reveal the conflict within the APA. However, their efforts to stay in the background reinforced their opponents' claims of the power of the gay rights movement. Opponents claimed NGTF had secretly manipulated the process. Although NGTF's claims to have played a critical role in the initial vote of the APA ring hollow, their work during the referendum dispute indicate their influence and sophistication. NGTF's ability to secure the mailing list and quickly raise funds for the mailing demonstrate their potential strength.

While referendum efforts were still ongoing, the NGTF pressed forward to capitalize on the DSM-II changes. In January, Voeller sent APA Medical Director Walter Barton a list of discussion topics for a meeting scheduled in March. He noted, "Though other rationales are often used for discrimination in many of these areas, in every instance the APA's previous diagnosis of homosexuality has been a factor."¹⁰⁴ The list included issues such as repealing state sodomy laws; confronting federal exclusionary regulations on immigration, military service, civil service and security clearances; addressing child custody, adoption and foster care; obtaining better healthcare,

¹⁰² Bayer, *Homosexuality and American Psychiatry*, 147.

¹⁰³ Frank Kameny, "To Barbara," April 8, 1974, Box 122, Folder 9, Frank Kameny Papers, LOC.

¹⁰⁴ Bruce Voeller, "Letter to Walter Barton," January 29, 1974, Box 97, Folder 9, Frank Kameny Papers, LOC.

education and training of professionals and the public; and securing the right to assemble. Voeller listed Howard Brown, Kameny, Gittings, Gold and himself as NGTF's representatives at the March meeting. He also requested the inclusion of Marilyn Haft, a representative from the American Civil Liberties Union Sexual Privacy Project, and Bill Thom, founder and attorney for the Lambda Legal Defense and Education Fund.¹⁰⁵ NGTF's extensive list of remedies indicates the far-reaching impact of the medicalization/categorization of homosexuality as a mental disorder. The stigma of mental health in the 1970s could be devastating for an individual. For gay and lesbian individuals, the civil exclusions and legal ramifications further limited their participation as full members of society and left them vulnerable to discrimination.

1.3.4 Progress

Within a few months of the referendum's failure, the APA and NGTF began joint efforts to apply the DSM-II changes to immigration policy. In July, both groups sent a letter to Leonard Chapman, Director of US Immigration and Naturalization Service (INS) about changing policies to reflect the new classification of homosexuality. John Spiegel, APA president, informed the INS of APA's removal of homosexuality from "the list of sexual deviations and mental disorders" and noted the earlier removal of the label "psychopathic personality." He also mentioned the APA's support of efforts to advance "civil liberties of homosexuals." Spiegel requested that Chapman "use your statutory powers of discretion to refrain from the exclusion, deportation or refusal of citizenship to homosexual aliens." The tone was respectful and hopeful. Spiegel did not raise or imply any consequences for non-compliance.¹⁰⁶ The NGTF sent a more forceful communication a

¹⁰⁵ NGTF founders used the ACLU structure to organize NGTF. Bill Thom, LLDEF founder, was a member of GAA. LLDEF was also a young organization. New York denied Thom's original request to form a voluntary association for legal assistance. Thom's legal appeal was granted on October 18, 1973, a few days after NGTF's press release announcing their formation. (Andersen p2-3) It is likely that NGTF's former GAA members knew Thom.

¹⁰⁶ John Spiegel, "Communication to Leonard Chapman, Director, INS," July 17, 1974, Box 97 Folder 9, Frank Kameny Papers, LOC.

few days later with the additional support of the American Civil Liberties Union, Lambda Legal Defense and Education Fund, Inc, the National Organization for Women and an individual from the American Bar Association Committee on Equal Protection of the Law.¹⁰⁷ Referring to APA's DSM-II change, NGTF's letter declared "your policy is without any valid basis in law or medicine." In addition to requesting that Chapman use his statutory powers to "cease and desist" discriminatory practices, the organizations threatened, "If such action is not taken, proper legal action will be instituted."¹⁰⁸

Two years later, a NGTF newsletter suggested progress had been made. The newsletter referenced two letters from Sam Bernsen, General Counsel to the INS, one from 1974 and the other from 1976. In the 1974 letter, Bernsen explained that homosexuals were "precluded from establishing the good moral character required for admission to citizenship." The 1976 letter from Bernsen indicated flexibility, noting that being "a practicing homosexual . . . is not, in itself, a sufficient basis for finding that he lacks the necessary moral character [required for naturalization]."¹⁰⁹ The positive tone of the newsletter article hid NGTF's continued dispute with Bernsen over his assertion that a policy change would need to come through legislative direction rather than administrative decision. In a follow-up to Attorney General Edward Levi, co-executive directors Voeller and Jean O'Leary refuted Bernsen's position and insisted continued immigrant exclusion "is unconstitutionally arbitrary and capricious."¹¹⁰ Once again, NGTF used the

¹⁰⁷ The individual, E. Carrington Boggan, was Bill Thom's law partner and one of the founders of LLDEF. He was also a member of GAA.

¹⁰⁸ Bruce Voeller et al., "Communication to Leonard Chapman, Director, INS," July 23, 1974, Box 97 Folder 9, Frank Kameny Papers, .

¹⁰⁹ "Naturalization Policy Changes," in *It's Time: Monthly Newsletter of the National Gay Task Force*, October 1976, Box 99, Folder 10. Frank Kameny Papers, LOC.

¹¹⁰ Bruce Voeller and Jean O'Leary, "Correspondence to US Attorney General Edward Levi," August 26, 1976, Box 97 Folder 10. Frank Kameny Papers, LOC. On October 8, 1974, Bernsen answered the NGTF and APA letters to Chapman. On August 20, 1976, Bernsen answered a NGTF letter to AG Levi. I do not have copies of Bernsen's replies. The 8/26/1976 NGTF letter to AG Levi disputes Bernsen and asks Levi to intervene.

American Psychiatric Association and American Psychological Association rulings as supportive evidence. A discussion of the full extent INS policy changes is beyond the scope of this dissertation; however, during the AIDS crisis of the 1980s and beyond, immigration restrictions essentially targeted gay men as diseased, continuing a long history of excluding sexual minorities.

In addition to the letter sent to the INS, APA president John Spiegel released a statement advocating legislation to protect gay and lesbian civil rights. He reiterated the APA's resolution that "homosexuality per se implies no impairment in judgment, stability, reliability, or general social or vocational capabilities." Spiegel specifically addressed public fears about "homosexuals as teachers" explaining that having a homosexual teacher did not "affect the sexual orientation of their students" and that no evidence indicated a homosexual teacher was any more likely to seduce a student than a heterosexual teacher was.¹¹¹ Additionally, when Judd Marmor was president of the APA, he supported the integration of the armed forces and assisted NGTF efforts against discrimination in the U.S. Job Corps.¹¹²

1.3.5 Resistance

The 1973 resolutions and defeat of the referendum did not end NGTF concern about the language in the revised versions of the DSM-II and DSM-III. Frank Kameny, John Fryer and others continued to push the Nomenclature Committee to fully remove "homosexuality" from the manuals. The seventh edition of the DSM-II published in the fall of 1974 replaced "Homosexuality" with "Sexual Orientation Disturbance" to apply to "people whose sexual interests are directed primarily towards objects other than people of the opposite sex." In response,

¹¹¹ John Spiegel, "American Psychiatric Association Press Release," March 25, 1975, Box 122 Folder 10. Frank Kameny Papers, LOC.

¹¹² Bruce Voeller, "Update Letter to NGTF Members," February 1976, Box 97, Folder 10. Frank Kameny Papers, LOC.

Kameny sent a letter to Robert Spitzer, then the chair of the Task Force on Nomenclature and Statistics, pointedly explaining that the entire category of *Sexual Deviations* under which “Sexual Orientation Disturbance” was classified “needs to be extensively re-thought; etc., etc., etc.”¹¹³ Spitzer’s reply to Kameny failed to address any of Kameny’s specific concerns and suggested the problems would be addressed in DSM-III which “will have an entirely different approach to sexual problems. . . . I am sure that you will keep us on our toes as we formulate the sexual problem area section in DSM-II.”¹¹⁴ Spitzer’s perhaps light-hearted reply did not satisfy Kameny. He responded with a request for defined “channels of communication” and wrote to Voeller asking to be informed and involved in NGTF’s interactions with the APA.¹¹⁵ Spitzer’s continued framing of same-sex relationships as sexual problems indicates the disjuncture between the gay and lesbian vision of the removal of homosexuality from future DSM versions and the psychiatric community’s continued interest in defining and controlling normalcy.

In 1975, the APA supported the Task Force by donating space at their annual meeting for an exhibit booth. The Task Force display “Women Loving Women” included photographs of lesbians as parents and in various occupations. Staff members distributed 1,500 brochures.¹¹⁶ During the 1976 meeting, NGTF with assistance from Baltimore Gay Alliance, the Center for Dialog, Florida International University in Miami and volunteers presented a booth titled “Homophobia: Time for a Cure.” Ginny Vida concluded that the response was “overwhelmingly positive” but also noted some booth visitors continued to reference “the old medical model [which]

¹¹³ Frank Kameny, "To Robert Spitzer Re: DSM-II 7th Edition", September 5, 1974, Box 122, Folder 9. Frank Kameny Papers, LOC.

¹¹⁴ Robert Spitzer, "To Frank Kameny in reply to 09/05-1974 letter," September 11, 1974, Box 122, Folder 9. Frank Kameny Papers., LOC.

¹¹⁵ Frank Kameny, "To John Spitzer re 09/11/1974 communication," September 13, 1974, Box 122, Folder 9. Frank Kameny Papers, LOC; "To Bruce Voeller re NGTF and APA," October 7, 1974, Box 97, Folder 9. Frank Kameny Papers, LOC.

¹¹⁶ Ginny Vida, "Psychiatrists Meet Lesbians," in *It's Time: Newsletter of the National Gay Task Force*, June-July 1975, Box 99, Folder 10, Frank Kameny Papers, LOC.

describes homosexuality as an illness caused by ‘fixation’ and ‘arrested development.’” The annual meeting included four sessions of a videotaped panel, “The Impact of the APA’s Removal from the List of Mental Disorders,” that featured NGTF staff members.¹¹⁷ These positive experiences built productive relationships between NGTF leaders and APA members and provided an opportunity for NGTF staff to develop professional skills that could be applied in later legislative efforts.

The signs of individual resistance that booth staffers had noted were evident at the organizational level. At the 1975 meeting, Oscar Legault, a delegate from the Washington Psychiatric Society, introduced a discussion item at the meeting of the assembly with the approval of the Area III Council. In his opening statement Legault argued, “The publicity surrounding the change and the effects and the use to which the gay liberation movement has attempted to put the psychiatric definition reveal this as a political action rather than a change in nomenclature reflecting increased psychiatric knowledge of the nosological item.” He presented a list of recommendations urging the Task Force on Nomenclature and Statistics to rely on experts from the specific field and on scientific methods. As an alternative, the recommendations suggested the DSM-III listing should recognize the differing opinions including “Some psychiatrists state that homosexuality is evidence of psychiatric disorder or the major manifestation of a complex underlying characterological disorder.”¹¹⁸ In October 1977, as the printing date for the DSM-III loomed, the Advisory Committee on Psychosexual Disorders to the Nomenclature Task Force had still not come to agreement about the categorization of homosexuality, particularly the separate

¹¹⁷ "Psychiatrists Treated for Homophobia," in *It's Time: Newsletter of the National Gay Task Force*, June-July 1976, Box 99, Folder 10, Frank Kameny Papers, LOC.

¹¹⁸ Oscar Legault, "Item 24 Meeting of the Assembly," May 3-4, 1975, Box 122, Folder 10. Frank Kameny Papers, LOC. Today, Area III is the MidAtlantic. A handwritten note on the document states the item was disapproved by standing vote.

category for “homosexuals in conflict over their homosexual arousal patterns.” A minority group of the Advisory Committee as well as then president Judd Marmor disagreed with the adoption of the category and indicated they wanted to take their position to the full Nomenclature Task Force and potentially to the full assembly. Spitzer assigned Dr. Michael Mavroidis, a Falk Fellow, to review the correspondence and statements of those most involved in the discussion over the past three years as well as to poll members of the APA Task Force on what position they would endorse.¹¹⁹

Draft versions of the DSM-III were distributed in April and May 1975. John Fryer, who had not yet identified himself as Dr. H Anonymous, objected to the continued use of sexual object choice disorders that included “Homosexual Arousal.” He wrote, “I would like to register a strong complaint to the committee in this area.” He also scoffed at the proposed category 302.828 for Sexual Object Choice Disorders-Other Human Objects. “Further I cannot for the life of me imagine what you mean. . . . I can let my fantasies run wild, but I am not sure that is appropriate either!” A second letter from Fryer responded to Spitzer’s suggestion that the problem was a misunderstanding. “No, Bob [Spitzer], I do not feel there is a misunderstanding. I feel very simply that the prejudices and biases which are rooted deeply in psychiatric practice are simply being expressed again.”¹²⁰ Fryer sent copies of the exchange to Barbara Gittings, Frank Kameny and Judd Marmor.

Kameny wrote two candid letters to Spitzer in response to the drafts. “I was appalled to receive, some weeks ago, the Initial Draft Version of DSM-III,” he asserted. After a pointed

¹¹⁹ Robert Spitzer, “To Task Force on Nomenclature and Statistics and Advisory Committee on Psychosexual Disorders re Homosexual Conflict Disorder,” October 18, 1977, Box 122, Folder 9. Frank Kameny Papers, LOC.

¹²⁰ John Fryer, “To Robert Spitzer re DSM-III draft concerns,” May 28, 1975 1975, Box 122, Folder 9. Frank Kameny Papers, LOC; “To Robert Spitzer re DSM-III misunderstanding,” August 18, 1975, Box 122, Folder 9. Frank Kameny Papers, LOC.

analogy that compared the APA to a “dog with an old, worn, meatless bone,” Kameny continued, “Leaving aside the basic and inherent objections to listing Homosexuality at all, in ANY version, form, guise, disguise, or semantic setting, the manner in which it is listed in the proposed DSM-III is objectionable on several counts.” In his characteristic use of logic, Kameny raised several points to show how inconsistently the draft treated homosexuality compared to other issues. The second letter bluntly insisted the Task Force on Nomenclature either treat homosexuality and heterosexuality with symmetrical language or remove homosexuality all together.¹²¹ Kameny sent copies to Gittings and Fryer and wrote Judd Marmor a letter of concern.¹²² Spitzer’s reply was brief and dismissive. He apologized for the delayed reply to Kameny’s “delightful letters” and suggested the he himself was of victim of Kameny. “The image of the dog makes me feel that maybe you are the dog poking and pawing at me.”¹²³

The conversation continued in the spring of 1977 with Kameny sending detailed letters and Spitzer being “glad that you are keeping us on our toes” or acknowledging the receipt of his letters but not responding to the content.¹²⁴ Falk Fellow Mavroidis reached out to Kameny prior to his October 1977 assignment to review the background and correspondence of the “Homosexual Conflict Disorder.” He sent Kameny the most current draft of applicable DSM-III sections and asked for his feedback. Mavroidis also asked Kameny to circulate the drafts “with interested people

¹²¹ Frank Kameny, "To Robert Spitzer re dismay over DSM-III," 1975, Box 122.9, Frank Kameny Papers, LOC; "To Robert Spitzer re symmetrical language," August 19, 1975, Box 122.9, Frank Kameny Papers, LOC.

¹²² "To Judd Marmor re letter of concern," August 23, 1975, Box 122.9, Frank Kameny Papers, LOC. Marmor responded on 09-05-1975 with assurances that he would follow-up with Spitzer. "I hope I can persuade him to treat the issue of homosexuality as irrelevant in a diagnostic nomenclature dealing with mental illness."

¹²³ Robert Spitzer, "To Frank Kameny in reply to 08-11-1975 and 08-19-1975 letters," September 29, 1975, Box 122, Folder 9. Frank Kameny Papers, LOC.

¹²⁴ Frank Kameny, "To Robert Spitzer re March 18 Psychiatric News with draft of DSM-III," March 19, 1977, Box 122, Folder 9. Frank Kameny Papers, LOC; Robert Spitzer, "To Frank Kameny re DSM-III Draft," April 8, 1977, Box 122, Folder 9. Frank Kameny Papers, LOC; Frank Kameny. "To Robert Spitzer re Response to DSM-III draft." 2, April 18, 1977; Robert Spitzer, "To Frank Kameny re Kameny comments on DSM-II draft," June 28, 1977, Box 122, Folder 9. Frank Kameny Papers, LOC.

such as gay rights activists or organizations or gay professionals who might wish to have some input into how this issue is dealt with.”¹²⁵ Ronald Bayer noted that Voeller and Kameny had received copies of some of the letters sent during Mavroidis’ later investigation but concluded, “They appear to have remained bystanders.”¹²⁶ However, Kameny’s pointed letters, repeated requests to be included in the discussion and the recognition that he could serve as a conduit to other gay rights interests as well as Voeller’s efforts to secure regular meetings with the APA indicate more involvement than that of a bystander.

When the Task Force proclaimed the 1973 APA vote to remove homosexuality from the category of mental disorders “The Greatest Gay Victory,” they held an expansive view of its significance. The Task Force press release described the negative effects of the APA label.

The diagnosis of homosexuality as an illness has been the cornerstone of oppression for a tenth of our population. It has forced many gay women and men to think of themselves as freaks. It has burdened their families and friends with fear and guilt. It has been used as a tool of discrimination in the private sector, and in the civil service, military, immigration and naturalization service, health services, adoption and child-custody courts. It is the rationale for perpetuating the sodomy laws of 43 states.

In what might seem a naïve prediction, the paragraph concluded, “In a single stroke, the Dec. 15 Psychiatric Assn. vote would wipe out this oppressive tool.”¹²⁷ Following the April 1974 referendum vote, the Task Force remained hopeful but less optimistic of immediate change. The Task Force’s May newsletter expected, “This change in psychiatry’s attitude, however, now opens the door for changing such open discrimination.” In addition to the issues listed in the press release,

¹²⁵ Michael Mavroidis, "To Frank Kameny re DSM-III draft feedback," September 27, 1977, Box 122, Folder 9, Franklin Kameny Papers, LOC. Bayer refers to Mavroidis as someone who "had been serving as a liason between the [APA] Task Force and the gay community." p. 175. he quotes an October 31, 1977 letter Mavroidis sent to Kameny. In the September letter, Mavroidis introduces himself to Kameny as being assigned to the APA's Task Force on Nomenclature and Statistics.

¹²⁶ Bayer, *Homosexuality and American Psychiatry*, 177, fn p. 233.

¹²⁷ National Gay Task Force, "Psychiatric Turnaround." Although released on NGTF letterhead and written by Ron Gold who identified himself as the Communications Director of the National Gay Task Force, the press statement did not mention the NGTF's role in its description of "the Gay Liberation Push."

the newsletter mentioned discrimination at “addiction programs, child welfare centers, graduate schools and professions” as well as “involuntary commitment of gay people to mental institutions.” In the following years, their efforts to further remove homosexuality from the DSM-II revision and the DSM-III and to convince the Immigration and Naturalization Service to stop excluding immigrants based on sexuality demonstrated how difficult it would be to push open the door. The APA decision certainly gave the NGTF a boost in recognition and increased the authority of their demands for policy changes; however, resistance by some remained strong.

1.4 Confronting the Media

The declassification of “homosexuality” provided NGTF and other gay rights organizations medical evidence to use in support of attempts to rescind discriminatory government policies such as immigration restrictions and employment exclusion. However, the movement still did not hold enough political power to secure immediate change. The NGTF divided their continued efforts into six project areas: social service equality; media equality; religious support; building the national and international movement; developing a strong financial base, and legal reform.¹²⁸ Communications director Ron Gold explained, “For me, the ‘political’ things we do (civil rights laws, sodomy repeal, the psychiatric changeover) are simply tools to dramatize our existence as real human beings.” He felt confronting stereotypes of gays and lesbians would “let them [gay people] know there’s a community out there to which they belong.”¹²⁹ This section examines media equality and legal reform projects as they intersected with the building a national movement goal.

¹²⁸ "Statement of Purpose," November 25, 1974, Box 94, Folder 4. Frank Kameny Papers, LOC

¹²⁹ Gold, "Gays and Public Relations," 8.

1.4.1 Media Equality

The Task Force's protest of a *Marcus Welby, M.D.* episode is one of their best-known media equality endeavors during the 1970s. The ABC program featured a personable family doctor played by Robert Young, the star of the 1950s family show *Father Knows Best*. In *Marcus Welby, M.D.*, Young portrayed a "doctors know best" character who was compassionate and knowledgeable. John Burnham notes that the show highlighted "the doctor's personal talents, abilities and power" at a time when U.S. health care was becoming increasingly specialized.¹³⁰ The popularity of the program and the character's appealing qualities and perceived expertise had the potential to shape cultural values. By the summer of 1974, NGTF had established a working though ineffectual relationship with ABC. Alfred Schneider, an ABC staff member, sent NGTF a copy of an upcoming *Welby* episode to review before production had begun. The plot of the episode titled "The Outrage" examined the trauma of a fourteen-year-old male student who had been sexually assaulted by his male science teacher. Bruce Voeller discussed the script with Schneider and urged him to cancel production. Voeller informed him that statistically more female children are molested than male children and explained how the episode would reinforce the "myth of homosexuals as child molesters."¹³¹ John J. O'Connor for the *New York Times* further described NGTF's objection: "The Task Force maintains that, no matter the intentions, a story using the rape of one male by another can't help but have a 'chilling effect' on pending legislation in several cities and states that 'would protect gays from discrimination in employment and housing.'"¹³²

¹³⁰ John C. Burnham, *Health Care in America: A History* (Baltimore, MD: Johns Hopkins University Press, 2015), 408. Burnham uses the "Marcus Welby Syndrome" to describe the expectation of physicians' abilities. (He did not coin the phrase.)

¹³¹ Bruce Voeller, "To Station Managers re Marcus Welby episode," September 30, 1974, Box 97, Folder 9. Frank Kameny Papers, LOC. Letter identifies Schneider as the ABC contact.

¹³² John J. O'Connor, "Pressure Groups Are Increasingly Putting the Heat on TV," *New York Times*, October 6, 1974, 19.

When ABC rejected the request to drop the program, the Task Force marshalled additional public pressure against the network.

The Task Force's response demonstrated their growing media savvy, networking skills and ability to sway affiliate decisions. They organized a member letter writing campaign; collaborated with other gay and lesbian organizations and the gay media; and received support from the American Psychiatric Association, the United Federation of Teachers, religious groups and some legislators.¹³³ Two weeks before the scheduled October 8 broadcast of the "The Outrage" episode, national coordinator Nathalie Rockhill sent a news flash to members urging them to contact sponsors and ad agencies as well as to call local ABC affiliate station managers and Elton Rule, the president of ABC.¹³⁴ The national protest involved large cities and smaller communities such as Moscow, ID, New Bedford, MA, and Yellow Springs, OH. By September 30, stations in Philadelphia and Boston had cancelled their broadcast of the episode. Show sponsors Warner Lambert, Ralston-Purina, Colgate-Palmolive Co., Shell Oil and Thomas J. Lipton Inc. dropped their advertisements for the show.¹³⁵ In testimony at a 1976 Congressional hearing, Newton Deiter of the Gay Media Task Force stated that internal sources had revealed "that particular episode aired in prime time with no paid commercials."¹³⁶

The Task Force's efforts received national attention. An article in *The Wall Street Journal* quoted an ABC spokeswoman who credited "the homosexual campaign" for keeping the episode

¹³³ Nathalie Rockhill, "Philadelphia Kills Marcus Welby," September 25, 1974, Box 100, Folder 1. Frank Kameny Papers, LOC; Steven Capsuto, *Alternate Channels: The Uncensored Story of Gay and Lesbian Images on Radio and Television*, 1st ed. (New York, NY: Ballantine Books, 2000), 108. Capsuto-United Federation of Teachers.

¹³⁴ Rockhill, "Philadelphia Kills Marcus Welby," 2.

¹³⁵ Ibid.; "Two Stations Drop Homosexual Episode of 'Marcus Welby'," *The Wall Street Journal*, September 30, 1974; Loretta Lotman, "Media and the Message," in *It's Time: Newsletter of the National Gay Task Force*, May 1975, Box 99, Folder 10, Frank Kameny Papers, LOC. Lotman noted 11 national sponsors had removed their ads, ABC had to lower their ad rate, and 7 stations refused to show it. Others gave airtime to gay organizations to refute the program.

¹³⁶ *Sex and Violence on TV: Hearings Before the House Subcommittee on Communications of the Committee on Interstate and Foreign Commerce*, 94th Cong., July 9; August 17 and 18, 1976, 256.

off the air in some areas. A spokesman from Philadelphia's WPVI station concurred. "If it weren't for all this mail, the show would have run like any other show." After viewing previews, some stations found the content insensitive. In Boston, Robert Bennet, WCVB vice president and general manager, said, "He feared the show would reinforce the notion that homosexuals are commonly child molesters. 'That isn't true, but that's what would come through to an audience.'" Other stations dropped the show because the topic itself was deemed offensive.¹³⁷ Although the episode still ran, albeit with a few modifications meant to appease the protesters, NGTF and the groups they had collaborated with had succeeded in bringing attention to the harm caused by the stereotypical treatment of gay men and gay teachers.

Prior to the *Welby* protest spearheaded by the NGTF, groups such as the Gay Activist Alliance (GAA), the Gay Liberation Front (GLF) and the Lesbian Feminist Liberation (LFL) had confronted broadcast stereotypes. In *The Uncensored Story of Gay and Lesbian Images on Radio and Television*, Steven Capsuto documents media protests that occurred before NGTF was founded, identifying the fluid membership between organizations. Ginny Vida who became the NGTF media director in 1976, for example, had protested media insensitivity as a member of the GAA and LFL. As members of GAA, Voeller and Gold had protested a February 1973 *Marcus Welby, M.D.* episode, "The Other Martin Loring," that exemplified the cultural reach of APA's label. The storyline blamed a man's health and marriage problems on confused sexual identity with the Welby character convincing the ailing man to seek psychiatric care so that he could be "normal."¹³⁸ *TV Guide* magazine later identified Ronald Gold as the first person to bring the networks attention to the bigotry their programming promoted.¹³⁹ Soon after the Task Force

¹³⁷ "Two Stations Drop Homosexual Episode of 'Marcus Welby'."

¹³⁸ Capsuto, *Alternate Channels*.

¹³⁹ Richard M. Levine, "How the Gay Lobby Has Changed Television," *TV Guide*, May 30, 1981. NGTF distributed copies of the 2 part series as pamphlets. Gold had been a staff reporter for Variety magazine at the time.

formed, the founders continued previously established discussions with the National Association of Broadcasters Television Code Authority and met with the Writers and Directors Guilds and the Association of Motion Picture and Television Producers.¹⁴⁰ The *New York Times* reported that a NGTF meeting with NBC had resulted in an agreement from NBC to seek advice from “homosexual organizations” in the future.¹⁴¹ The television industry’s previous association with the leadership of NGTF certainly contributed to their willingness to work with the new organization.

In addition to promoting fair media coverage, Task Force’s media equality project advanced the organization’s goal of developing a national movement. During the protests of the 1974 *Marcus Welby, M.D.* episode, NGTF took a lead role in coordinating media efforts. Media director Loretta Lotman claimed. “By working together, we produced the largest, most coordinated action in the history of the movement.”¹⁴² The Task Force also developed a working relationship with the Gay Media Task Force (GMTF) in Los Angeles, California. Capsuto notes the organizations’ locations on opposite coasts facilitated a broader reach of their influence. NGTF contacted network executives in New York and GMTF focused on the production side of the business in California.¹⁴³ Newton Deiter, a GMTF spokesperson, described the organizations’ relationship. NGTF provided input to networks on a national level and a corporate level in New York while GMTF confined their reach to the corporate level and production contacts in

¹⁴⁰ "National Gay Task Force Comments on Gay Portrayals in New TV Season," 1976, Box 100, Folder 1. Frank Kameny Papers, LOC; Levine, "How the Gay Lobby Has Changed Television." Levine noted that shortly after national protest of the Welby "The Outsider" episode, the NAB Television Code Review Board informed members that the treatment of homosexual relationship fell under the rule prohibiting exploitive and irresponsible treatment of material with sexual connotations.

¹⁴¹ Les Brown, "N.B.C. Acts After Complaints by Homosexual Organizations," *The New York Times*, October 27, 1973, 63. The article also mentions GAA efforts.

¹⁴² Lotman, "Media and the Message," 2.

¹⁴³ Capsuto, *Alternate Channels*, 97-98.

California.¹⁴⁴ The relationship provided NGTF insider information from the California studios which the Task Force could share with their members across the nation.

In NGTF's first press conference, Nathalie Rockhill had predicted the Task Force would act "as a clearinghouse to exchange information, so success in one place can be duplicated elsewhere."¹⁴⁵ The Task Force created the Gay Media Action Network (G-MAN) to expedite communications between gay and lesbian organizations and to coordinate mailing and lobbying efforts around the nation.¹⁴⁶ By 1976, NGTF was sending media alerts to 200 organizations spread out across broadcast markets. They also sent "Action Reports" to all known gay and lesbian organizations that included suggestions on how to effectively respond to both positive and negative programming and contact information for network executives.¹⁴⁷ Additionally, they produced a seventeen-page report, *Summary: National Gay News, January 1975 through June 1976*, that documented newsworthy stories about gay and lesbian issues which the media had ignored and included lists of gay rights laws, gay rights supporters and professional gay caucuses. The Task Force mailed the report to "all executives, producers and assignment editors in network news, plus key people at the wire services and news weeklies." As a result, NGTF board members and staff were invited to appear on NBC's *Today* show as well as to attend meetings with *Newsweek* and

¹⁴⁴ *Sex and Violence on TV: Hearings Before the House Subcommittee on Communications of the Committee on Interstate and Foreign Commerce*, 248-57; Newton Deiter, "West Coast Media Group Plays Vital Role," in *It's Time: Newsletter of the National Gay Task Force*, April 1976, Box 99, Folder 10, Frank Kameny Papers, LOC. Deiter was a clinical psychologist from LA, a columnist for the Advocate and a member of NGTF. He described GMTF as a resource group. In reference to GMTF influence, he noted, "all three networks have, in the past, given lip service to cooperating, but has had to have a major flap created and fueled by NGTF and other organizations in order for the networks to sit down and accept our expertise." An editor's note to Deiter's article mentions NGTF had "helped to create" the GMTF in 1972. Since the NGTF was not formed until 1973, the date could be a typo or refer to the involvement of then current NGTF leaders.

¹⁴⁵ Ralph Blumenthal, "Homosexual Civil-Rights Groups is Announced by Ex-City Aide," *New York Times*, October 16, 1973, 37.

¹⁴⁶ Capsuto, *Alternate Channels*, 124; "National Gay Task Force Comments on Gay Portrayals in New TV Season," 2. A 1976 NGTF press release which included a section titled "Gays and the TV Networks: A Brief History," referred to the network as "a nationwide Gay Media Alert Network."

¹⁴⁷ Ginny Vida, "Media Report for Board Meeting," October 23-24, 1976, Box 97, Folder 4. Frank Kameny Papers, LOC.

*U.S. News and World Report.*¹⁴⁸

As the Task Force circulated updates and alerts to other organizations, they fostered a sense of common goals and accomplishments within the movement. The member organizations chose their own strategies of response such as zaps, pickets or letter writing campaigns but collectively protested the same target. By 1977, the Task Force's membership had reached over 6,500 with members in every state.¹⁴⁹ Task Force newsletters kept members informed of national political concerns and the organization's events and actions. Newsletters frequently had a section informing members of upcoming television shows with offensive content and asked readers to respond with phone calls and letters. Participating in the shared protests of negative and insensitive gay and lesbian portrayals in national television programming encouraged individual members to view themselves as part of a national movement.

1.4.2 Legal Reform

The Task Force's media equality project intersected with the goals of their legal reform project. When NGTF's Ginny Vida and GMTF's Newton Deiter testified at a 1976 House Subcommittee on Communications on television sex and violence, the NGTF newsletter reported, "It was the first time that gay representatives had been invited to speak at congressional hearings."¹⁵⁰ In addition to the discussion of how the family viewing hour limited representations

¹⁴⁸ "NGTF Challenges Media to Cover Gay News," in *It's Time: Newsletter of the National Gay Task Force*, October 1976, Box 99, Folder 10, Frank Kameny Papers, LOC; Vida, "Media Report for Board Meeting," 1. Vida reports over 100 were sent to tv networks, over 50 to broadcast media and additional copies to wire services and news weeklies; "Summary: National Gay News, January 1975 through June 1976," 1976, Box 74, Folder 4. Frank Kameny Papers, LOC.

¹⁴⁹ "NGTF Members Per State," in *It's Time: Newsletter of the National Gay Task Force*, November 1977, Box 99, Folder 10, Frank Kameny Papers, LOC. Total membership of 6545 included a few international members. The three states with the most membership were NY-1889, CA-1190, IL-356. States with less than 10 members included Idaho, Wyoming, North Dakota, Mississippi and Vermont.

¹⁵⁰ "Gays Testify at TV Hearings," in *It's Time: Newsletter of the National Gay Task Force*, October 1976, Box 99, Folder 10, Frank Kameny Papers, LOC. Both Vida and Deiter were invited to testify at a subcommittee meeting in Washington, DC the next month on radio and television license renewals. When the Subcommittee condensed their schedule, they had to submit written testimony.

of gay and lesbian individuals in programming, Vida and Deiter had a short exchange with first-term Representative Henry Waxman (D-CA [LA]) and the Subcommittee on Communications Chair Lionel Van Deerlin (D-CA [San Diego]).¹⁵¹ Shortly after taking office, Waxman had agreed to co-sponsor H.R. 5452 to amend the Civil Rights Acts of 1964 and 1968 to prohibit discrimination based on affectional or sexual preference. Since the hearing was held in his district, Waxman presented opening remarks and actively participated in questioning witnesses. After a short discussion between Vida and Deiter, Waxman joined, “I think that when we have rules that talk about the FCC making sure that our licensees, both television and radio licenses, cannot defame minority groups, that ought to include gays and the FCC should have the obligation to be sure that the networks live up to the standard that both of you have outlined for us today.” Waxman committed to further investigation of the issue and stated, “I will offer the change of the law to be sure that we put that language in.”¹⁵² In the 1980s, Waxman would chair the Energy and Commerce on Health and the Environment—a critical committee that considered issues such as mandatory AIDS testing policies. This first political foray shaped a crucial relationship and provided opportunities for political skill development.

The FCC licensing standards that Waxman referred to would occupy the NGTF media group for the next four years. In 1971, the Federal Communications Commission (FCC) had issued guidelines that required broadcast applicants to identify “significant community groups,” interview the groups’ leaders to ascertain the community’s needs and consider programming to address the needs.¹⁵³ Asserting that the gay and lesbian community was a “significant group,” the

¹⁵¹ On November 4, 1976, a US District Court ruled the restrictions of the family hour were a violation of the First Amendment. *Writers Guild of America, West, Inc. v. FCC*

¹⁵² *Sex and Violence on TV: Hearings Before the House Subcommittee on Communications of the Committee on Interstate and Foreign Commerce*, 257.

¹⁵³ Arthur DeLuca, “FCC Broadcast Standards for Ascertaining Community Needs,” *Fordham Urban Law Journal* 5, no. 1 (1976): 55-56.

Task Force pressed the FCC for recognition. In October 1976, Gary Van Ooteghem, NGTF board co-chair, testified at an FCC meeting in Houston about access to the media. Vida spoke at an FCC meeting in November. Her remarks pointed out the failure of radio and television stations to serve the public interests and emphasized that “Gay people, who represent at least 10% of every broadcaster’s audience, are a significant segment by any definition.”¹⁵⁴ Vida’s media reports reveal the learning curve of working within the legal environment of laws and regulations. After her November FCC presentation, Vida discovered that the FCC had changed station license rules the previous January (1976).¹⁵⁵ Instead of requiring stations to survey “each significant group” as part of the community ascertainment mandate, the new rules provided stations with a checklist of 19 specific groups to interview as part of their licensing process.¹⁵⁶ In response, the Task Force adapted their strategy to apply pressure on the FCC to add gay and lesbian groups to the list.

The extended process demonstrated the perseverance required to affect legal changes and also furthered opportunities to strengthen national networks. The Task Force developed a petition to add gay and lesbian groups to the ascertainment checklist with the assistance of the Media Access Project law firm. In February 1977, they sent out a “Gay Media Alert” asking groups in their networks to join the petition.¹⁵⁷ In August 1977, NGTF filed the petition with the backing of 143 gay and lesbian organizations from 49 states.¹⁵⁸ Considering the limited number of NGTF

¹⁵⁴ "Media Notes," in *It's Time: Newsletter of the National Gay Task Force*, December 1976, Box 99, Folder 10, Frank Kameny Papers, LOC.

¹⁵⁵ Ginny Vida, "Media Director's Report," December 12, 1976, Box 97, Folder 4. Frank Kameny Papers, LOC. The typed date on this report is 2/12/1976 but the content occurred after that date and suggest the accurate date is 12/12/1976.

¹⁵⁶ DeLuca, "FCC Broadcast Standards for Ascertaining Community Needs," 73, fn 108. Applicants were to interview leaders from each category. Agriculture; Business ;Charities; Civic, Neighborhood and Fraternal Organizations; Consumer Services; Culture; Education; Environment; Government; Labor; Military; Minority and Ethnic Groups; Org. of/for Elderly; Org. of/for Youth and Students; Professions; Public Safety, Health and Welfare; Recreation; Religion

¹⁵⁷ "Gay Media Alert!," February 1977, Box 97, Folder 4. Frank Kameny Papers, LOC.

¹⁵⁸ "NGTF Files Petition Asking FCC to Require Ascertainment of Gay Leaders," in *News from NGTF*, August 4, 1977, Box 100, Folder 1, Frank Kameny Papers, LOC; "1977: The Year In Review," in *It's Time: Newsletter of the*

members in states such as North Dakota, Mississippi and Vermont, securing support from organizations in each state was quite an accomplishment.¹⁵⁹ A year later, the NGTF was hopeful the FCC would rule in their favor after a July 12, 1978 FCC meeting at which the commissioners had agreed to include “all significant groups in a community, including gays and the handicapped.”¹⁶⁰ As part of the final approval process, the FCC offered a period for interested parties to comment. In response, Ron Gold quickly sent a request soliciting support for the rule change to individuals and groups. As an indication of NGTF’s growing network, Gold appealed to “gay and non-gay communities.” He also noted, “groups representing the interest of the handicapped” had filed a similar petition.¹⁶¹ NGTF’s October 1978 newsletter continued to encourage local organizations to ask non-gay organizations in their area to send support.¹⁶² Gold predicted the FCC would issue a positive ruling in the spring of 1979.

The Task Force’s early media efforts were synchronous with the rise of religious conservatism and an anti-gay backlash in the late 1970s. In the spring of 1978, Anita Bryant launched a campaign “against the portrayal of homosexuality on TV as an alternate lifestyle.” The NGTF responded with an education project called “We Are Your Children” and turned to their members for action. A newsletter exhorted, “Folks, this means we’ve got to launch our own campaign!” and warned, “It’s not too late! The last thing we need is to go back into the closet on

National Gay Task Force, December 1977, Box 99, Folder 10, Frank Kameny Papers, LOC. Some sources mention 142 groups. Those that mention 143 include the NGTF in the number. Some sources mention every state.

¹⁵⁹ “NGTF Members Per State.”; “Statement of Purpose,” 4.

¹⁶⁰ Ginny Vida, “Media Director’s Report,” August 2, 1978, Box 97, Folder 5, Frank Kameny Papers, LOC.

¹⁶¹ Ronald Gold, “NGTF Asks for Letters Supporting FCC Proposal for Rulemaking,” August 15, 1978, Box 97, Folder 5, Frank Kameny Papers, LOC; “FCC Rules Favorably on NGTF Petition,” in *It’s Time: Newsletter of the National Gay Task Force*, August-September 1978, Box 97, Folder 5, Frank Kameny Papers, LOC.

¹⁶² “Letters Urged for FCC Proposal,” in *It’s Time: Newsletter of the National Gay Task Force*, October 1978, Box 99, Folder 10, Frank Kameny Papers, LOC. The monthly “Members and Friends” letter also urged recipients to write a letter of support to the FCC.

TV.”¹⁶³ The newsletter urged members and gay and lesbian organizations to write letters. That summer, Bryant and the National Association of Religious Broadcasters included the FCC ruling in favor of NGTF’s petition on community ascertainment in their assault on “homosexuals.” A letter to the editor of *Garden City Telegram* reveals the extreme reaction to the perception of the “gay threat.” The writer tied the FCC petition by a “gaggle of gays” to a plan by lesbians to have “500,000 test-tube babies” as a way to increase their political impact; the ERA which “would permit homosexual ‘marriages’ and allow such couples to adopt children”; and, a plot to force stations to “consult with openly immoral elements of society.”¹⁶⁴ The FCC received a barrage of mail. Initially, the Bryant supporters’ letters of opposition outnumbered letters of support by a 25:1 ratio.¹⁶⁵ The FCC extended the deadline for comments.

Behind the scenes, the Media Access Project worked with Vida to craft a written reply to objections and filed a response against the National Religious Broadcasters’ motion to strike sections of the NGTF response.¹⁶⁶ The FCC released their decision March 12, 1980, three years after the NGTF had filed their petition. The ruling did not add gay and lesbian groups or the disabled to the ascertainment checklist but did require broadcasters to consider any “significant group” in the category of “other”. The FCC report noted the “gay community” and “the handicapped” used similar arguments about the need for inclusion to address stereotypes based on ignorance.¹⁶⁷ The onus, however, was on the group to identify themselves to the broadcasters,

¹⁶³ "Media Notes: Bryant's TV Campaign," in *It's Time: Newsletter of the National Gay Task Force*, March 1978, Box 99, Folder 10, Frank Kameny Papers, LOC. The campaign against the media occurred after Bryant's successful campaign to repeal a Dade County, FL ordinance to prohibit discrimination based on sexual orientation. June 7, 1977.

¹⁶⁴ Mrs. John Melcum, "An Outrageous Proposal," *Garden City Telegram* 1978, 4.

¹⁶⁵ William Hunt, "1978: The Year in Review," in *It's Time: Newsletter of the National Gay Task Force*, January 1979, Box 99, Folder 10, Frank Kameny Papers, LOC. Letters available in NGLTF folder 143.21.

¹⁶⁶ Ginny Vida, "Media Director's Report, February 8, 1979," February 8, 1979, Box 98, Folder 2. Frank Kameny Papers, LOC.

¹⁶⁷ William J. Tricario. "FCC 80-134 Primers on Ascertainment of Community Problems Before the Federal Communications Commission." 401-21. hathitrust.org1982.

leaving the authority to determine which groups were significant to local broadcasters. Although the language of inclusion was weak, a written statement by the FCC chair Charles Ferris indicated the intention was to include gay and lesbian groups: "Our action today does acknowledge that groups constituting significant elements of the community—handicapped, gays, new immigrant arrivals such as the Vietnamese in some areas—are part of our diverse American people. Whether wealthy or impoverished, politically powerful or weak, they deserve to be heard."¹⁶⁸

The NGTF newsletter gave the ruling a positive spin; however, after four years of effort, the position of groups representing gays and lesbians was not much different than it had been when the process started. They still had to prove they were a significant element in each location; however, broadcasters could no longer summarily exclude them. Moreover, the FCC had rejected the concerted efforts of the religious right who had claimed, "There are few developments more threatening to the moral well-being of this nation than requiring broadcasters to consult with openly immoral groups." The Word Today and Streater Broadcasting Corporation contended including gay groups would force them to provide programming to groups identified by their illegal acts.¹⁶⁹ The ruling which came as an anti-gay backlash was growing fortified hope that the gay and lesbian rights movement could succeed in the legal environment.

¹⁶⁸ Ibid., 401-21; "FCC Acts on NGTF Petition," in *It's Time: Newsletter of the National Gay Task Force*, April 1980, Box 99, Folder 10, Frank Kameny Papers, LOC. The report noted, "This proposal was thought not only to serve petitioners but to benefit other elements most notably the handicapped" (p. 404). It did not list the 143 groups representing gay organizations or the groups representing people with disabilities. Appendix D which listed all parties who filed comments was not included in the printed report. A few groups are mentioned in the body of the report and include Maturity, Dignity-Chicago, the Gay Activists Alliance, The Atlanta Feminist Alliance, the Council of Organizations Serving the Deaf of Metropolitan Baltimore, the Epilepsy Foundation of American, the California Association of the Physically Handicapped and the National Center for Law and the Deaf. On March 6, the FCC had denied the California Association of the Physically Handicapped, Inc. (CAPH) request to be included in FCC EEO rules. Houston Gay Political Caucus submitted comments.

¹⁶⁹ Tricario, "FCC 80-134 Primers on Ascertainment of Community Problems Before the Federal Communications Commission," 407.

While the NGTF held meetings with the FCC and developed the petition, the House of Representatives held hearings on H.R. 13015, The Communications Act of 1978. The Act would have replaced ascertainment groups with a directive to “treat controversial issues of public importance in an equitable manner.”¹⁷⁰ In his testimony to the Subcommittee on Communications on September 8, 1978, Gold expressed his frustration with the proposed Act’s deletion of ascertainment requirements after the NGTF and other organizations had just secured the FCC’s preapproval for inclusion in the ascertainment process. Speaking to the subcommittee chair Van Deerlin’s contention that there were enough licenses available to meet the public interests, Gold stressed, “He is wrong if he thinks that the way to solve the problem is to rescind rather than to broaden and strengthen the ascertainment requirement.” Gold was also critical of then current FCC policy which only required stations to provide programming to address the top 10 responses from surveys of ascertainment groups. In his testimony, he situated NGTF’s complaint within the scope of other groups including “racial, ethnic, and religious minorities, of the elderly, [and] the handicapped.”¹⁷¹ NGTF joined the newly formed Telecommunications Consumer Organization organized by Everett Parker of the United Church of Christ that included consumer, religious and nonprofit organizations to strengthen their status.¹⁷² Although the sources I have searched do not indicate the extent of NGTF’s collaboration with disability rights groups in the FCC ascertainment petition or in their response to the House Communications Act for 1978, both groups shared a

¹⁷⁰ "H.R. 13015 Communications Act Summary," 1978, Congress.gov: Library of Congress. Based on the site, it does not appear the bill left the subcommittee.

¹⁷¹ *Volume V-Part 2, The Communications Act of 1978: Hearings Before the House Subcommittee on Communications of the Committee on Interstate and Foreign Commerce*, 95th Cong., September 8, 1978, 377, 78; "Gays Testify on Communications Act Rewrite," in *It's Time: Newsletter of the National Gay Task Force*, November 1978, Box 99, Folder 10, Frank Kameny Papers, LOC. Other representatives of gay and lesbian organizations submitted testimony at field hearings.

¹⁷² "Gays Testify on Communications Act Rewrite."; "Telecommunications Network to Educate Consumers," *Consumer Federation of America News*, September 1978. Benjamin Hooks, executive director of the NAACP and leader in the Leadership Conference of Civil Rights, was on the steering committee.

common goal of receiving federal protection from discrimination and fought some of the same battles.¹⁷³

As the NGTF waited for the FCC petition decision, they entered a period of financial crisis. A burst of increased membership revenue generated in response to the anti-gay campaign in Dade County in 1977 failed to sustain the growth rate the NGTF had predicted when they set their 1978 and 1979 budgets. In August of 1979, NGTF members received notice about “the difficult financial crisis” from co-executive director’s Charles Brydon and Lucia Valeska. The co-executives predicted, “NGTF would be insolvent by January 1980 unless drastic steps were taken.” The new ‘drastic’ budget would cut expenditures by 20% and reduce staff. The media director position held by Vida was on the list of cuts.¹⁷⁴ Capsuto notes that NGTF shifted their media efforts away from entertainment programming and towards news coverage during the same period, partly to concentrate their limited resources on legislative issues.¹⁷⁵ When the FCC issued the “Deregulation Report and Order” in August 1984 eliminating the ascertainment requirement, the Task Force was immersed in the AIDS crisis.¹⁷⁶

Tina Fetner’s analysis of the gay rights movement response to Bryant’s campaign suggests the national attention generated by Bryant had positive benefits. Fetner argues that Bryant became a figure the gay and lesbian community could use to personify and identify the discrimination that had heretofore been invisible to many heterosexuals. She concludes that the anti-gay religious

¹⁷³ See supra note 163.

¹⁷⁴ Charles Brydon and Lucia Valeska, "To Members and Friends," August/September 1979, Box 98, Folder 2. Frank Kameny Papers, LOC; Ginny Vida, "Media Director's Report, August 9, 1979," August 9, 1979, Box 98, Folder 2. Frank Kameny Papers, LOC. In her report to the co-executive directors, Vida notes, "As you have already informed the Board, my resignation takes effect October 15." It is not clear if Vida resigned first and then co-executives decided not to replace her or if they asked her to resign due to the budget cuts.

¹⁷⁵ Capsuto, *Alternate Channels*, 170-71.

¹⁷⁶ Heidi Young, "The Deregulation of Commercial Television," *Fordham Urban Law Journal* 12, no. 2 (1985): 374. Young notes the FCC ascertainment decision was related to cost and believe that market needs would drive broadcasters to be responsive to their community. DeLuca mentions citizen group petitions to deny licenses.

movement “reinvigorated” gay and lesbian organizations and brought national attention to their message. She also notes that pressure from the Bryant and later the religious right as well as the AIDS crisis contributed to NGTF’s transition to a larger more corporate-like structure.¹⁷⁷ Voeller and O’Leary shared a few positive outcomes of the Dade loss with NGTF members. In addition to the increase in memberships and donations, the co-executives noted, “We have had many more opportunities to present gay issues and lifestyles in the media.” They mentioned an increase in requests for information from other gay organizations—which indicates their growing stature—and felt the publicity “has had a salutary effect on public attitudes and has triggered a variety of efforts by church groups, legal organizations and the like to combat the bigotry of Anita Bryant and her supporters.”¹⁷⁸

The long-term impact of NGTF’s media equality project is difficult to measure. Gold had anticipated NGTF media efforts would build a national community. Television shows that degraded people whose gender expression or sexual orientation varied from heteronormative assumptions contributed to isolating negative self-images. The process of publicly identifying and confronting negative popular culture stereotypes was an experience that individuals could share with others across the nation. NGTF newsletters drew members into the protest process. They informed readers of upcoming offensive programs as well as programs worthy of praise. Those who might be timid about making a phone call or writing a letter could still participate by reporting any negative stereotypes they had viewed to the Task Force. The FCC’s community ascertainment process existed in a space hidden from most television viewers. NGTF’s communication with various layers of the television industry brought their attention to the underlying structural issues

¹⁷⁷ Tina Fetner, *How the Religious Right Shaped Lesbian and Gay Activism* (Minneapolis: University of Minnesota Press, 2008), 39, 43, 61.

¹⁷⁸ Jean O’Leary and Bruce Voeller, “To Members and Friends,” October 1977, Box 98, Folder 1. Frank Kameny Papers, LOC.

that limited gay and lesbian access to community representation. In the process of asserting their inclusion, the NGTF and 142 additional gay and lesbian rights organizations claimed the status of significant community members. Media efforts, which had originated in the rejection of a disability label, brought the gay and lesbian rights movement alongside groups representing people with disabilities in a legal battle that identified their shared goals and experiences. During the AIDS crisis, the circle would complete. The National Gay Task Force and other organizations fought for the rights of people disabled by AIDS to receive federal entitlements and to obtain legal protection against discrimination under disability rights laws.

1.5 Conclusion

The National Gay Task Force formed during an optimistic period of growth for the gay rights movement. Its leaders' ability to bring the efforts of APA protestors to fruition reflected the Task Force's goal of educating "the public to increase understanding of homosexual persons, their social problems and their contributions as useful and productive members of society" at a visible and national level.¹⁷⁹ The Task Force gained further national attention as a clearinghouse and organizational leader during the protests they directed against radio and television programming that presented negative stereotypes of gay and lesbian individuals. Within just a few years, the Task Force appeared to have established itself as a nationally recognized leader in the gay rights movement. The moments of glory may have shielded the struggles the Task Force faced in converting the APA decision into federal policy changes and gay rights laws. Bureaucracies and legislators moved slowly. While a well-organized protest could convince broadcasters to alter their

¹⁷⁹ Voeller, "Certificate of Incorporation."

programming, securing a place as a significant community group under FCC regulations required political skill and patience as well as funds to pay staff and legal costs.

The Task Force would have other visible successes in the 1970s including the first meeting of gay and lesbian representatives at the White House in 1977 and the defeat of the Briggs initiative to ban gay teachers in California in 1978. Many of the accomplishments described in the end-of-the-year-review newsletters mention government meetings, court updates, publications and conferences that although less visible were still critical to addressing structural inequality. However, transitions in the late 1970s left the Task Force in a weakened position. In 1979, co-executive directors Bruce Voeller and Jean O’Leary resigned. Their replacements Charles Brydon and Lucia Valeska struggled to work together and the Task Force faced financial difficulties. A seventh anniversary issue of the NGTF newsletter looking forward to “NGTF in the 1980s” revealed the lack of direction. Rather than list goals or initiatives for the 1980s, the section read like a standard update with information on immigration, FCC policies, educational projects and national organizing. The article did mention an intention to “devote more of our resources to the development and support of local organizations and to the formation of national networks and coalitions supportive of our goals.” Valeska hoped to “build a coalition between women and men” while Brydon envisioned “the 1980s [as] a period of growth for gay organizations’ which he predicted would lead to increased political influence.¹⁸⁰ In *Out for Good: The Struggle to Build a Gay Rights Movement in America*, Dudley Clendinen and Adam Nagourney describe NGTF’s waning position in the public eye: “Few people were paying much attention to what the National Gay Task Force was doing in New York at the start of the 1980s.”¹⁸¹

¹⁸⁰ “NGTF in the 1980s,” in *It’s Time: Seventh Anniversary Issue*, November/December 1980, Box 99, Folder 10, Frank Kameny Papers, LOC.

¹⁸¹ Dudley Clendinen and Adam Nagourney, *Out for Good: The Struggle to Build a Gay Rights Movement in America* (New York: Simon & Schuster, 2016), 455.

Though the fate of the Task Force seemed uncertain in 1981, the national gay rights movement had grown and made progress in the 1970s. In 1976, the Task Force had played a role in the founding of the Gay Rights National Lobby (GRNL) which after a difficult start had been able to support a full-time lobbyist in Washington, D.C. in 1978. Director and lobbyist Steve Endean founded the Human Rights Campaign Fund, a political action committee, in 1980. On October 14, 1979, the National March on Washington for Lesbian and Gay Rights drew an estimated 75,000 to 125,000 participants. Amin Ghaziani, author of *The Dividends of Dissent: How Conflict and Culture Work in Lesbian and Gay Marches in Washington*, examines the infighting that preceded the march and concludes, "First and most important, the 1979 march stitched a national movement out of the scattered fabrics of local activity and skepticism."¹⁸² Although the Task Force had been on the skeptical side, they endorsed the march in August and planned a National Lobby Day with GRNL and the Third World Caucus for the day after the march.¹⁸³ When Howard Brown had stood anxious before reporters and a crowd of his peers six year earlier, the idea of a national march with close to 100,000 participants would have been unimaginable. Brown died of a heart attack in 1975 but lived to see the APA vote and the early media protests. The National Gay Task Force would survive to face the AIDS crisis. Their ability to confront stigma and stereotypes in the 1970s flowed out of early movement efforts. As the gay and lesbian rights movement grew, the Task Force's skills and experience would flow forward as AIDS service organizations formed to respond to the crisis.

¹⁸² Amin Ghaziani, *The Dividends of Dissent: How Conflict and Culture Work in Lesbian and Gay Marches on Washington* (Chicago: University of Chicago Press, 2008), 64, 68.

¹⁸³ "NGTF Endorses DC March; Announces 'Petition the President' Campaign," in *It's Time: Newsletter of the National Gay Task Force*, August/September 1979, Box 99, Folder 10, Frank Kameny Papers, LOC.

CHAPTER 2. THE TASK FORCE AIDS PROGRAM AND FEDERAL ENTITLEMENTS, 1983-1985

In August 1983, a House Intergovernmental Relations and Human Resources Subcommittee chaired by Ted Weiss (D-NY) heard testimony on the federal response to AIDS. Witnesses with AIDS testified, revealing the financial hardships people with AIDS experienced. Michael Callen, a paralegal from New York City, explained that his insurance company had denied a \$6,000 hospital bill based on the assumption that his AIDS diagnosis was a preexisting condition. Even with insurance coverage, Roger Lyon, a sales representative for a leasing company in San Francisco, had to pay approximately \$3,000 of the over \$11,000 in medical bills he had incurred. Though still employed, Lyon told the committee about others he knew without private insurance who depended on disability benefits or were hoping to obtain assistance from social security. Lyon observed, “Many people are just indigent in this area.” A federal employee who had full medical coverage still worried about the extreme cost of the new experimental drugs and the likelihood that insurance companies would not pay for experimental treatment. In their closing remarks, the men emphasized the need for resources and “that there be a very clear master plan.”¹ Their full testimony exposed the personal and financial cost of AIDS.

Leaders representing the Gay Men’s Health Crisis (GMHC), the National Gay Task Force (NGTF) and the Gay Rights National Lobby (GRNL) shared a broader perspective on the human cost of AIDS.² Mel Rosen, a spokesperson for GMHC, described the desperate plight of some of the service organization’s clients. He explained, “People with AIDS are being discharged from hospitals penniless and homeless.” One man who had been making \$40,000 a year lost everything

¹ *Federal Response to AIDS: Hearings before a Subcommittee of the Committee on Government Operations*, 14, 15.

² The panel also heard from representatives from Lambda Legal Defense and Education Fund, Dallas AIDS Project and Mariposa Education and Research Foundation.

he had. People with insurance were “wiped out after numerous hospital stays.” Many were destitute.³ In her written testimony, NGTF’s executive director Virginia Apuzzo noted, “The cost of medical care for persons with AIDS is one of the more staggering aspects of this crisis.” She shared a letter published in the *Journal of American Medical Association* that identified the poverty and malnutrition experienced by individuals who were hospitalized due to AIDS. The researchers explained, “Once discharged, they can neither eat well enough to bolster their deficient nutritional state nor afford the many drugs required for their multiple infections.”⁴ Apuzzo summed up an underlying frustration with the federal government’s response to AIDS: “The AIDS epidemic reveals that the health care system of the wealthiest country in the world is, quite simply, not equipped to meet the needs of its citizens in an emergency or an extended crisis.”⁵ In reference to “the staggering medical bills,” GRNL’s executive director Steve Endean remarked, “Many are forced to give up all their property and rely on Medicaid and public hospitals.” Like Apuzzo, he argued the public health care system could not provide adequate care.⁶ At this point, almost 2,000 people had been diagnosed with AIDS.

The opportunistic infections and progressive decline of AIDS resulted in fatigue, severe weight loss, fevers, diarrhea, respiratory distress, skin rashes and sores, blindness, and mental confusion. In 1983, researchers had not identified the cause of the immune deficiency or developed any effective treatments. Thirty-nine percent of the individuals who had been reported as having AIDS had died. The Centers for Disease Control reported that 90% of the people with AIDS were 20-49 years old, typically the age range when people are productively employed. Seventy-one

³ *Federal Response to AIDS: Hearings before a Subcommittee of the Committee on Government Operations*, 178, 81.

⁴ Howard Holtz et al., “Psychosocial Impact of Acquired Immune Deficiency Syndrome,” *Journal of the American Medical Association* 250, no. 2 (1983): 167; *Federal Response to AIDS: Hearings before a Subcommittee of the Committee on Government Operations*, 34-35. NGTF 12-13.

⁵ *Federal Response to AIDS: Hearings before a Subcommittee of the Committee on Government Operations*, 17, 23.

⁶ *Ibid.*, 39.

percent of the individuals identified as gay or bisexual.⁷ The urgent physical needs of people living with AIDS brought them into contact with local, state and federal social services. Federal entitlements offered income assistance and health care benefits to the disabled deemed worthy of public support. Regulations determined who legitimately deserved assistance and who should be excluded from government care based on specific evidence of known medical conditions. The eligibility criteria, however, did not match the physical manifestations of AIDS and the lengthy processing time left the eligible waiting for assistance. Efforts to secure expedited disability determinations for a broader range of people with AIDS symptoms would occupy the attention of AIDS service organizations and gay and lesbian rights organizations for several years.

Historical research on the relationship between national gay and lesbian rights organizations and the welfare state is limited. In the *Straight State: Sexuality and Citizenship in Twentieth-Century America*, Margot Canaday excavates the state's categorization of homosexuality as a tool of exclusion in immigration policies, the military and New Deal economic assistance programs. Her exploration of the Department of Veteran Affairs' denial of G.I benefits to those with "undesirable discharges," a classification commonly given to soldiers accused of homosexuality, offers an example of the state refusing entitlements to individuals based on their sexual orientation.⁸ Jonathan Bell interrogates the idea of the "straight state" in a recent article in the *Journal of American History* with an analysis of the race, gender and class bias inherent in the limited definition of AIDS that recognized indicators of the syndrome more likely to be experienced by white gay men and rejected the symptoms that women and people of color typically experienced. Bell's critique of American health care finds the state, "gradually and fitfully

⁷ "Current Trends Acquired Immunodeficiency Syndrome (AIDS Update--United States)," *Morbidity and Mortality Weekly Report* 32, no. 24 (1983).

⁸ Margot Canaday, *The Straight State: Sexuality and Citizenship in Twentieth-Century America* (Princeton, NJ: Princeton University Press, 2009).

integrated sexual minorities into older categories of ‘deserving’ in federal welfare politics, leaving a state that was no longer as much ‘straight’ as more determined to close down universal claims to the public purse.”⁹ Although not specifically a discussion of federal entitlements, Katie Batza’s investigation of gay health networks in *Before AIDS: Gay Health Politics in the 1970s* reveals a network of local gay health clinics enmeshed with the state through collaborative research on hepatitis B and the acceptance of state and federal funding. Batza argues that the experiences of working with the bureaucracy and political system helped health activists respond to the dual crisis of federal health care cuts and AIDS in the early 1980s. Similar to Bell’s, her work demonstrates the failing exclusionary power of the “straight state.”¹⁰

This chapter joins the conversation about the crumbling “straight state” with a case study that exposes how AIDS expanded the relationship between sexual minorities and the welfare state. It considers early organizational attempts to modify regulations that limited the ability of people with AIDS to access federal entitlements. The chapter follows the efforts of the National Gay Task Force from 1983 when they instigated their AIDS Program to 1985 when they had established a relationship with the Social Security Administration and achieved some success.¹¹ As activists pressed the Social Security Administration (SSA) and the Health Care Financing Administration (HCFA) to recognize AIDS as a presumptive disability and expedite the application process, they asserted that people with AIDS, i.e. gay men, were worthy recipients and full citizens in the welfare

⁹ Jonathan Bell, "Rethinking the "Straight State": Welfare Politics, Health Care, and Public Policy in the Shadow of AIDS," *Journal of American History* 104, no. 4 (2018): 952.

¹⁰ Katie Batza, *Before AIDS: Gay Health Politics in the 1970s* (Philadelphia: University of Pennsylvania Press, 2018). Batza used enmeshment to describe the health clinics dependance on state funding and the state's use of the clinics to provide services for the gay and lesbian population.

¹¹ NGTF was the most established national gay rights organization in 1983. The Gay Rights National Lobby was experiencing a leadership crisis in 1983 and would disband in 1985. NGTF's location in NYC placed them at the site of the largest number of people with AIDS. Gay Men's Health Crisis, a service organization in NYC, successfully raised money to fight AIDS and provided financial assistance and counsel to NGTF. As part of its mission, the Task Force AIDS Program sought to act as clearing house for AIDS information.

state. The Task Force also asserted the right of people with AIDS to be participants in the policy decision-making process. As they negotiated with the SSA and communicated with their own membership and the broader gay and lesbian public, the Task Force developed a stronger identification with the challenges faced by people with disabilities and a keener understanding of disability rights.

This chapter expands Jonathan Bell's brief discussion of the Task Force's involvement with the Social Security Administration during the first years of the AIDS crisis. In comparison to Bell whose larger project considers health care delivery, I consider the Task Force AIDS Project as an antecedent to the protection of people with AIDS under the Americans with Disabilities Act. The excavation of AIDS Project records uncovers a stronger effort by the Task Force, GMHC and other organizations to include people with ARC in the definition of disability.¹² It also builds on the early examples of enmeshment that Katie Batza uncovered. I conclude that the AIDS crisis drew sexual minorities further into the welfare state as beneficiaries and as stakeholders.

2.1 Federal Benefits for the Disabled:

2.1.1 Income

The federal government offered a modicum of financial assistance to adults who were unable to work under two distinct disability programs. People who had contributed to FICA for a minimum number of quarters and who were unable "to do any substantial gainful activity" were eligible for monthly Social Security Disability Insurance (SSDI) benefits. When created in 1956, SSDI only paid benefits to people with disabilities between the ages of 50 and 64 and to a few

¹² Bell, "Rethinking the "Straight State": Welfare Politics, Health Care, and Public Policy in the Shadow of AIDS," 939. Bell refers to a May 1984 meeting based on a follow-up note sent to AIDS Service Organizations in May. Press releases and further communication from the NGTF archives date the meeting in April.

limited categories of family members. Over time, Congress expanded SSDI coverage by removing the age requirement and providing more benefits to family members of workers who had been disabled. Social Security Disability Insurance payments were presented as an earned benefit and not as public aid. At times, people referred to the payments as “early retirement.”

Congress established the Supplemental Security Income (SSI) program in 1972 in order to meet the needs of poor elderly, the blind and the disabled who were not eligible for SSDI. At the time it was conceived, SSI was viewed as an adult welfare program for the worthy. It replaced separate federal programs of aid for the elderly, the blind and the disabled that had been administered by state governments. In the discontinued programs, the qualifications and amount of assistance offered varied from state to state and carried the stigma of welfare. Congress envisioned that a program administered by the Social Security Administration with uniform eligibility requirements and a standard contribution from the federal government would establish a just and modern welfare system. Supplemental Security Income guaranteed those eligible a minimum income; however, states still had the option to include an additional sum in the monthly payment so the cash benefit individuals received continued to vary across states.¹³

From the start, the SSI program experienced operational difficulties that brought negative media attention. The premature roll-out of a state-of-the-art but untested computer system resulted in computer crashes and errors. Offices were inundated with angry recipients who had not received their scheduled checks. When Congress passed the SSI legislation in 1972, legislators had expected the elderly to be the major recipients and had not anticipated the increased number of applications

¹³ Edward D. Berkowitz and Larry DeWitt, *The Other Welfare: Supplemental Security Income and U.S. Social Policy* (Ithaca: Cornell University Press, 2013); Edward D. Berkowitz, *Disabled Policy: America's Programs for the Handicapped* (New York: Cambridge University Press, 1987); John Kearney, "Social Security and the "D" in OASDI: The History of a Federal Program Insuring Earners Against Disability," *Social Security Bulletin* 66, no. 3 (2005/2006); Robert M. Ball, "Social Security Amendments of 1972: Summary and Legislative History," *ibid.* 36(1973).

from people with disabilities. The unexpected costs incurred due to the influx of new claimants caused alarm. Additionally, 1970s inflation triggered benefit cost-of-living increases. As a corrective, the Social Security Disability Amendments of 1980 adjusted the benefit calculation to lower federal expenses.¹⁴

The 1980 Amendments also established a schedule for federal review of the state agencies' disability determinations for both SSDI and SSI.¹⁵ The Reagan administration used the reviews to aggressively pursue the removal of unqualified recipients. Soon after, the media began reporting distressing stories of individuals who had been unjustly removed from the program after the reviews. Edward Berkowitz and Larry DeWitt argued, "In fact, this [review provision] would spark the greatest period of controversy in the history of the disability program."¹⁶ The Social Security Agency would later recognize, "broad-based concerns that the continuing disability review requirements of the 1980 amendments resulted in unforeseen hardships to beneficiaries whose benefits were terminated even though their conditions may have been unchanged."¹⁷ As the AIDS crisis grew in 1982 and 1983, the SSI program struggled to complete the mandated number of reviews, had earned the displeasure of the public and Congress and was losing lawsuits over policy decisions.¹⁸

¹⁴ "Social Security Disability Amendments of 1980: Legislative History and Summary of Provisions," *ibid.* 44, no. 4 (1981).

¹⁵ *Ibid.*, 28. The Amendment required review of 15% in 1981, 35% in 1982 and 65% percent in 1983.

¹⁶ Berkowitz and DeWitt, *The Other Welfare*, 122. The Social Security Disability Amendments of 1980 also provided incentives to encourage people with disability to work.

¹⁷ Katharine P. Collins and Anne Erfle, "Social Security Disability Benefits Reform Act of 1984: Legislative History and Summary of Provisions," *Social Security Bulletin* 48, no. 4 (1985): 6.

¹⁸ Berkowitz and DeWitt, *The Other Welfare*; "Social Security Disability Amendments of 1980."; Collins and Erfle, "Social Security Disability Benefits Reform Act of 1984." In 1984, Congress revised the reevaluations standards to include procedural safeguards. The 1984 Amendments also provided guidance on the evaluation of pain and multiple impairments.

2.1.2 Health Care

The federal programs Medicare and Medicaid offered health insurance to the elderly, disabled and poor. The Social Security Amendments of 1965 created both the Medicare and Medicaid health insurance programs.¹⁹ Medicare provided hospital insurance to those over the age of 65 and included a supplementary medical insurance option. After 1968, Medicare was only available for those who were entitled to Social Security benefits. The same Act that created SSI in 1972, expanded Medicare coverage to include people who had been enrolled in SSDI for at least two years. In the early 1980s, there were no effective treatments for AIDS. People with AIDS receiving SSDI benefits who did not have private medical insurance often did not survive the two year wait for Medicare coverage. If impoverished, they might be eligible for Medicaid.

Medicaid provided medical funding for the elderly, blind, disabled and needy who had been previously covered by various federal public assistance titles. State governments determined financial eligibility and shared costs with the federal government. The federal government set minimum levels of coverage for areas such as physician services, hospital care and nursing home care. States could include additional medical services if they desired. Since states had varying financial eligibility standards for public assistance, individual eligibility for Medicaid differed across states as did the covered services. In 1972, new SSI regulations established a standard income level for federal public assistance eligibility for those who were elderly, blind or disabled. In most states, financial eligibility for SSI conferred eligibility for Medicaid.²⁰ In all states, individuals applying for assistance from SSI or Medicaid had to meet the financial qualifications before the administrators would determine if they qualified as disabled. Medicaid coverage

¹⁹ The Amendments did not specifically name the programs.

²⁰ Teresa Coughlin, Leighton Ku, and John Holahan, *Medicaid since 1980: Costs, Coverage and the Shifting Alliance Between the Federal Government and the States* (Washington, DC: The Urban Institute Press, 1994), 40.

provided access to essential health care, for people disabled by AIDS who lacked private insurance and had few resources.²¹

In 1980, prior to the identification of an unusual number of people with pneumocystis pneumonia and Kaposi's sarcoma, the Department of Health and Human Services had updated their disability determination regulations in the *Federal Register*. The new guidelines were intended "to make them clearer and easier for the public to use." The update included a detailed list of severe impairments for reference in disability determinations. The variable characteristics of AIDS did not precisely match any of conditions on the severe impairment list. Although administrators could consider the "medical equivalence" of impairments that were not on the list in their determination of disability, anecdotal reports indicated that some applicants with AIDS had not qualified for disability status. Additionally, the stringent evidence standards that required applicants to submit approved medical evidence caused difficulty since the medical community had not established a standard diagnostic protocol for AIDS.²²

2.1.3 Social Security and AIDS: Early Concerns

The Social Security Administration acknowledged the AIDS crisis in an April 1983 directive on AIDS eligibility that acted as a temporary regulation while the SSA considered adding the rule to the *Federal Register*. On July 15, the SSA added instructions to the "Program Operations Manual System" on the evaluation of AIDS. The manual insert included a list of opportunistic infections and diseases associated with AIDS; however, it did not assign AIDS a

²¹ Wilbur J. Cohen and Robert M. Ball, "Social Security Amendments of 1965: Summary and Legislative History," *Social Security Bulletin* (1965); Ball, "Social Security Amendments of 1972."; Coughlin, Ku, and Holahan, *Medicaid since 1980*; Jonathan Engel, *Poor People's Medicine: Medicaid and American Charity Care since 1965* (Durham: Duke University Press, 2006); Laura Katz Olson, *The Politics of Medicaid* (New York: Columbia University Press, 2010); Jonathan Oberlander, *The Political Life of Medicare* (Chicago: University of Chicago Press, 2003).

²² "Federal Old Age, Survivors, and Disability Insurance Benefits; Supplemental Security Income for the Aged, Blind, and Disabled," *Federal Register* 45, no. 163 (1980): 55566-67.

code on the list of impairment. The instructions suggested codes for cases of Kaposi's sarcoma or other cancers. Other manifestations of AIDS fell under the medical equivalency standard that involved an assessment of the applicant's ability to engage in "substantial gainful activity." Adjudicators were advised, "In the evaluation of AIDS, the important aspect of this definition is 'expected to result in death.'" The callous advice omitted the second part of the instruction that concluded, "or which has lasted or can be expected to last for a continuous period of not less than 12 months."²³ The instructions contributed to some confusion as to whether or not every person diagnosed with AIDS qualified as disabled.

Although a step towards recognizing the seriousness of the growing number of AIDS cases, the new manual instructions provided a narrow definition of AIDS. Moreover, people with what was then called ARC, AIDS Related Complex (alternatively, AIDS Related Conditions), often had episodic bouts of illnesses with periods of apparent remission. Although the illnesses could be incapacitating, it was not known if ARC would become "full-blown-AIDS." To qualify as an eligible disability, the illnesses needed to be continuous. As a result, many people with ARC did not meet the SSA disability criteria. During his testimony at the August hearings, Mel Rosen objected to the limited usefulness of the July policy manual instructions. He protested, "This [definition] forces people with prodromal symptoms to continue to work when it is possible that working could hasten a case of full-blown AIDS."²⁴ Rosen also noted GMHC's role in the manual

²³ Ibid., 55615; "Program Operations Manual System." Box 127, Folder 47, National Gay and Lesbian Task Force records(NGLTF), Division of Rare and Manuscript Collections, Cornell University Library (Cornell): Social Security Administration, US Department of Health and Human Services July 15, 1983.

²⁴ *Federal Response to AIDS: Hearings before a Subcommittee of the Committee on Government Operations*, 178. Minutes from a 3/15/1983 GMHC board of directors meeting noted GMHC was working with attorney Jay Lipner and that Lambda was researching the SSI regulations. NYPL GMHC b-1 f-2; "Current Trends Update on Acquired Immune Deficiency Syndrome (AIDS--United States)," *Morbidity and Mortality Weekly Report* 31, no. 37 (1982). The CDC definition specifically mentioned KS, PCP and serious OOI. It also noted the definition did not include all possible symptoms or diseases potentially part of "the full spectrum of AIDS manifestations" and listed "fever, weight loss, generalized, persistent lymphadenopathy" and "tuberculosis, oral candidiasis, herpes zoster" as specific examples.

update: “We [GMHC] assisted numerous legislators to put pressure on the Social Security Administration to create a definition for AIDS so people could get disability insurance.” Pressing the federal government to develop efficacious definitions for AIDS and ARC remained a priority as the epidemic grew.

Mervyn Silverman, Director of Health for San Francisco, also suggested a change in the AIDS disability determination process during the hearing. The SSA had a second shorter list of impairments that qualified for a presumptive determination of disability. A finding of presumptive disability allowed the claimant to receive benefits while the full determination was completed. Silverman suggested AIDS be added to the list of presumptive disabilities “to facilitate the immediate granting of SSI.” He also noted the Social Security Administration could choose to interpret the SSA regulations in a way that would include AIDS on the presumptive list prior to an official ruling.²⁵ For those in need, the opportunity to receive funding within a few weeks rather than a few months could make a critical difference in their ability to receive care.

Additionally, activists expressed concern about the complicated application process for federal benefits. Individuals applying for SSDI and SSI had to first visit the federal SSA office to determine financial eligibility.²⁶ After passing the first screen, applicants had to visit the state Office of Disability Determination. Those who qualified for SSDI were eligible for Medicare but would not receive any benefits until after a two-year waiting period. Depending on the state, individuals eligible for SSI qualified for Medicaid which involved a trip to the state’s Welfare Department. Employees at the Disability Determination Office and the Welfare office often did

²⁵ *Federal Response to AIDS: Hearings before a Subcommittee of the Committee on Government Operations*, 273. Silverman also suggested that AIDS patients should be eligible for medicare coverage immediately. For those receiving SSDI, the mandated wait period for Medicare was 2 years.

²⁶ SSDI based on if applicant had contributed to FICA for a sufficient number of quarters. SSI eligibility based on income and resources.

not refer applicants to other available services so some eligible individuals did not receive full information about the available benefits. Application processing time also varied. In order to address the various concerns, the NGTF collaborated with other organizations and meet with high-level staff at various federal offices.

AIDS service organizations compiled reports of discrimination that people with AIDS encountered as they applied for benefits. Assistant Secretary for Health, Edward Brandt, sent the Secretary of Health and Human Services, Margaret Heckler, a memo in June 1983 informing her of reports that SSA personnel were refusing to interview people with AIDS. He asserted, "This situation must be corrected."²⁷ Heckler responded with a memorandum to all SSA employees assuring them that AIDS was not transmitted through casual contact and setting the expectation that people with AIDS would be treated professionally. Her message pledged, "We will service their needs and rights" and concluded with a sentimental appeal. "I ask each of you to join me and your fellow employees in setting an example that demonstrates the compassion of our government."²⁸

2.2 The Task Force AIDS Program, 1983

The National Gay Task Force began to address AIDS concerns in the spring of 1982 as they met in New York City with representatives from other gay rights organizations including Lambda Legal Defense and Education Fund (Lambda) and Gay Men's Health Crisis (GMHC), city liaisons and health officials. The Ad-hoc Task Force on AIDS would become the New York

²⁷ Edward N. Brandt Jr., "To The Secretary of Health and Human Services. Re: Concern about the Transmission of Acquired Immune Deficiency Syndrome," June 22, 1983, Box 127, Folder 47. NGLTF Records, Cornell.

²⁸ Margaret Heckler, "Memorandum To All SSA Employees. Re: Concern about the Transmission of Acquired Immune Deficiency Syndrome (AIDS)," July 7, 1983, Box 127, Folder 47. NGLTF Records, Cornell.

AIDS Network (NYAN).²⁹ According to an August 1983 article in *Gay Community News*, “Much of New York’s policies or legislative recommendations are established here [NYAN], or more accurately, reported out of committees and unofficial political liaisons.”³⁰ A 1983 Task Force report noted that during 1982, “NGTF did not have an AIDS Program per se.”³¹ However, during 1982, NGTF sponsored the first AIDS Forum in Dallas, Texas; met with the Centers of Disease Control (CDC) to persuade them to quit using the term GRID (Gay-Related Immune Deficiency); and participated in Public Health Service meetings about blood transfusions.³²

2.2.1 Establishing Networks

The Task Force hired Virginia Apuzzo as executive director in November 1982. Apuzzo had experience as a public speaker, had been selected as a delegate to the 1980 Democratic National Convention, had served as the founding co-chair of the Gay Rights National Lobby (GRNL) and continued to serve on the board of directors for the National Lobby and the Human Rights Campaign Fund. At the time the Task Force hired her, Apuzzo was the executive director for the NGTF Fund for Human Dignity. She would lead both organizations.³³ As soon as she was hired, Apuzzo lead the staff in an assessment of the national community needs regarding AIDS. The resultant AIDS Program adopted goals that reflected NGTF’s larger objectives: community

²⁹ "The AIDS Program of The National Gay Task Force 1982-1984: An Overview of its Accomplishments and Future Goals," October 1, 1984, Box 109, Folder 8, online, Gale

³⁰ Peg Byron, "AIDS and the Gay Men's Health Crisis of New York," *Gay Community News*, August 6, 1983.

³¹ National Gay Task Force, "AIDS Program," 1983, Box 117, Folder 5, NGLTF online, Gale.

³² "Dallas Leadership Conference Forum on Acquired Immune Deficiency Syndrome," August 13-15, 1982, Box 10, Folder 10, National Lesbian and Gay Health Association records, Cornell; Dudley Clendinen and Adam Nagourney, *Out for Good: The Struggle to Build a Gay Rights Movement in America* (New York, NY: Simon & Schuster, 1999). "Out for Good" authors describe the conference as a catastrophe due to a poorly delivered keynote address by NGTF exec dir Lucia Valeska but session notes reveal informative sessions; William Foege, "Summary Report on Open Meeting of PHS Committee on Opportunistic Infections in Patients with Hemophilia," August 6, 1982, Box 113, Folder 32, NGLTF records, Cornell; "The National Gay Task Force AIDS Program 1984 presented to The PlayBoy Foundation," January 26, 1984, Box 109, Folder 8, online, Gale.

³³ "NGTF Hires Virginia Apuzzo as Executive Director," November 16, 1982, Box 36, Folder 252, NGLTF records, Cornell: microfilm.

organizing, lobbying and public education. The Playboy Foundation, GMHC, Chicago Resource Center and Joint Foundation Support provided funding.³⁴ Administrative assistant John Boring, a biologist, took on the responsibility of the AIDS Program Coordinator in 1983.³⁵ Additionally, the Task Force hired Jeff Levi as their Washington representative to act as “liaison with congressional staff members, the bureaucracy of the executive branch, the lobbyist of the Federation of AIDS-Related Organizations [FARO], the staff members of Washington-based civil rights organizations [ex. LCCR], and the members of the local Washington gay community.”³⁶ Levi would assist the Weiss subcommittee in their preparation for the August hearings.³⁷ The newly implemented Crisisline helped Task Force achieve their public education goal.

During the first year of the AIDS Program, Task Force representatives attended various events, establishing relationships with policy makers and legislative staff and validating their position as a national leader. In January, Task Force spokespersons, Dr. Roger Enlow and Dr. Bruce Voeller, attended meetings at the Centers for Disease Control and the American Association of Blood Banks that “helped to avert a policy change that would have stigmatized gay men.”³⁸ On May 12, Apuzzo testified before a House Appropriations about the need for federal AIDS research funding and the importance of developing a national agenda and on June 12, she asked the US Conference of Mayors AIDS Task Force in Denver to fund services for people with AIDS and for

³⁴ National Gay Task Force, "AIDS Program," 1-3,7.Playboy-\$3,000; GMHC for crisisline-\$12,000; through Fund for Human Dignity: Chicago Resource Center-\$10,000; Joint Foundation Support-\$3,500.

³⁵ Fund for Human Dignity. "The AIDS Program 1984 presented to Chicago Resource Center." 1-6, June 29, 1984.

³⁶ National Gay Task Force, "AIDS Program," 1. Levi was hired in March 1983.

³⁷ Jeff Levi, "Washington Office Staff Report," August 5, 1983, Box 24, Folder 7, NGLTF records, online. Levi worked with committee staff on witness lists, Q&A for witnesses, briefing witnesses and discussion of issues.

³⁸ "Representatives From NGTF and Gay Health Care Community Play Crucial Role in National Blood Policy Decision," January 10, 1983, Box 36, Folder 254, NGLTF records, Cornell: microfilm. At the time, the viral cause of AIDS had not been identified though there were indications that the syndrome was being transmitted through blood donations. NGTF resisted donor questioning about sexual preference and public requests for voluntary abstention. With Tim Westmoreland, B. Deyton and Dr. Larry Mass, they developed an alternate proposal to screen all blood for the Hepatitis B antibody. Enlow also represented the American Association of Physicians for Human Rights (AAPHR), an organization that NGTF would continued to collaborate with.

the community groups that provided services for people with AIDS.³⁹ On June 21, Apuzzo and Jeff Levi along with Marcus Conant of the AIDS/KS Foundation in San Francisco, and Michael Callen of Gay Men with AIDS (later People with AIDS) made a presentation to Judi Buckalew, special assistant to the President for Health Issues and Thomas Donnelly, Assistant Secretary of Health and Human Services. Apuzzo again requested the federal government develop a plan that would include “research, public health education, confidentiality of public health surveillance of the gay community, patient care, and assistance to local government.” NGTF AIDS Program reports referred to the meeting with Buckalew and Donnelly as “a watershed in our communication with the Administration” and concluded it “demonstrated that the AIDS epidemic and NGTF efforts were being taken seriously.”⁴⁰ A few days later, Apuzzo and Levi expressed their concerns about the Public Health Service AIDS hotline at a meeting with Shelley Lengel, Director of the Office of Public Affairs of the Public Health Service.⁴¹ In July, Levi spoke about confidentiality at the Conference of Local Health Officers.⁴² NGTF issued press releases, newsletter articles and reports that highlighted the meetings as examples of the AIDS Program’s success.

³⁹ *Departments of Labor, Health and Human Services, Education and Related Agencies Appropriations for 1984: Hearings Before A House Subcommittee of the Committee on Appropriations, Part 8*, 98th Cong., May 12, 1983, 1146-48. After her remarks, Rep. Bill Green (NY) mentioned their previous conversations on AIDS issues. (Subcomm on Labor, HHS and Ed chaired by William Natcher.); Judy Burns and Jeff Levi, "Apuzzo Testifies Before U.S. Mayors' AIDS Task Force," in *Task Force Report*, May/Aug 1983, Box 341, Folder 8, Gay Men's Health Crisis records (GMHC), Manuscripts and Archives Division, The New York Public Library (NYPL); Bart Church, "Gay Rights National Lobby Addresses Mayors Conference on AIDS," June 12, 1983, Box 45, Folder 6, GMHC records, NYPL. Jerry Weller, GRNL's board of directors co-chair also spoke at the conference. He supported Congressional bills that increased research funding and an Interagency Public Health Emergency Fund.

⁴⁰ National Gay Task Force, "AIDS Program," 4. In her research, Jennifer Brier found this meeting to be the only one between "the political arm of the Reagan administration and gay and lesbians activists."; Jennifer Brier, *Infectious Ideas: U.S. Political Responses to the AIDS Crisis* (Chapel Hill: University of North Carolina Press, 2009), 219, fn 14; "The AIDS Program of The National Gay Task Force."; Warren Weaver Jr. and James F. Clarity, "Briefing: Seeking Answers on AIDS," *New York Times*, June 22, 1983. The New York Times covered the meeting.

⁴¹ Jeff Levi and Judy Burns, "NGTF Meets with Reagan Administration to Urge National AIDS Program," in *Task Force Report*, May/Aug 1983, Box 341, Folder 8, GMHC records, NYPL.

⁴² Jeff Levi, "Washington Office Report," *ibid.* May/August.

2.2.2 Investigations

The AIDS Program addressed multiple areas of concern; however, initially, its objectives did not include social security benefits.⁴³ Jeff Levi, working with congressional staff members, began to monitor the implementation of the April 1983 SSA directive on AIDS in May.⁴⁴ The July program manual update required field offices to route copies of all their AIDS case material to Herbert Blumenfeld, MD, in Baltimore, Maryland. Blumenfeld shared an early summary of the case data he collected with Levi.⁴⁵ During the summer, the AIDS Program staff gathered additional information on SSA office performance through phone calls to State Disability Determination Units and contacts they had with regional SSA representatives in New York. Their research helped them understand, “what legitimately can be expected from the system in terms of the timely delivery of services and how problems can be overcome.”⁴⁶ After analyzing the data, the AIDS Program compiled a set of recommendations. Due to discrepancies between Blumenfeld’s data and the data NGTF had collected, the majority of the recommendations offered improved record collecting procedures. Intern Ben Schatz, the author of the internal NGTF report, feared, “The most disturbing aspect of this unreliability is the great potential for whitewashing which it creates.” The Task Force also found the low number of received disability applications troubling. Schatz argued, “Quite simply, the vast majority of people with AIDS appear to be either ignorant of potential benefits or unwilling or unable to file for them.”⁴⁷ Schatz shared his findings the same

⁴³ Virginia Apuzzo, "To Rebecca Sive-Tomashefsky, executive director The Play Boy Foundation," August 30, 1983, Box 109, Folder 8, NGLTF records, Cornell: online. Update mentioned 3 emerging areas: confidentiality of medical records, securing social security benefits and investigating discrimination.

⁴⁴ National Gay Task Force, "AIDS Program," 5.

⁴⁵ Virginia Apuzzo, "To Dr. Blumenfeld," July 19, 1983, Box 127, Folder 47. NGLTF Records, Cornell. Levi was NGTF executive director 1985-1989.

⁴⁶ "The AIDS Program of The National Gay Task Force," 12.

⁴⁷ Ben Schatz, "Interoffice Memo Re: AIDS and Social Security," August 2, 1983, Box 127, Folder 47. NGLTF Records, Cornell. The report noted SSA had identified 180 SSA applicants. By August, the number had grown to 230. Schatz critically noted reporting discrepancies by SSA.

day Apuzzo testified at the August House hearing on the federal response to AIDS which may explain why she did not address the need for Social Security policy changes in her testimony.⁴⁸

In response to the limited use of Social Security benefits, Schatz proposed that NGTF take a role in alerting the gay and lesbian press about benefit availability and that the Social Security Administration assist claimants with the identification of other state and federal benefits. Eight days later, they issued a press release to the 120 gay and lesbian publications on their networking list. The release contained basic information about how to apply for SSI and Title II “early retirement income” [SSDI]. The *New York Native* printed the release in full.⁴⁹ The press statement indicates NGTF did not have a full understanding of all the benefits people with AIDS could be eligible for. It made no mention of Medicaid or Medicare. While NGTF’s report had questioned the validity of Blumenfeld’s data, the press statement optimistically assured readers “that fully 96 percent of these applications have been accepted.”⁵⁰ The release also claimed, “The great majority of people with AIDS who are no longer employed are eligible for SSI or Title II grants [SSDI]” and noted “the widespread availability of social security benefits.” The confident projection did not recognize that people who could not work due to ARC symptoms were not eligible for either SSI or SSDI or that strict SSI financial requirements disallowed applicants with modest savings. At the same time, it is unreasonable to expect that the NGTF staff would have developed a proficient knowledge of Social Security regulations in such a short time.

⁴⁸ *Federal Response to AIDS: Hearings before a Subcommittee of the Committee on Government Operations*. Apuzzo made one statement, “The only federal response has been to make persons with AIDS eligible for Social Security disability.” During this period, John Boring was on medical leave.

⁴⁹ “NGTF Urges People with AIDS to Apply for Social Security Benefits,” *New York Native*, August 29-September 11, 1986. Mention of this release and the 120 publications from 07/27/1984 letter from John Boring to Patricia Owens.

⁵⁰ Ben Schatz, “NGTF Urges People with AIDS to Apply for Social Security Benefits,” in *News From NGTF*, August 10, 1983, Box 127, Folder 47. NGLTF Records, Cornell. The statistic did not include people who had been rejected due to financial ineligibility.

The Task Force turned to their networks to develop a more comprehensive understanding of Social Security issues. With assistance from the Social Security Administration, Representative Ted Weiss' office, GMHC and Lambda Legal Defense and Education Fund, the Task Force published a detailed seven-page document on the social security application process in December. The "AIDS Advisory" included practical information on topics such as the SSI and Medicaid spend down requirements, the need to document monetary gifts and assistance from service organizations as loans, and how to establish the 'date of onset.'⁵¹ The technical nature of most of the document suggests it was meant to share with AIDS service organizations rather than clients. In January 1984, Boring extolled "the success of the gay community's public education outreach to persons with AIDS," noting "a far better rate of acceptance than was the case two months earlier."⁵² The Task Force also provided instructions for their Crisisline staff on how to answer callers' questions about Social Security.⁵³

2.2.3 The Task Force at the Table

Meetings with officials within the Department of Health and Human Services provided the Task Force with crucial information and opportunities to influence policy. Shortly after the August House hearing, Apuzzo and others met with Assistant Secretary for Health, Dr. Edward Brandt, Jr., in what NGTF described as a "pivotal" meeting.⁵⁴ The participants discussed research funding,

⁵¹ "AIDS Advisory: Applying for Social Security Benefits: The Basic Facts (Plus Some Notes on Medicaid and Medicare)," December 1983, Box 127, Folder 28. NGLTF Records, Cornell: National Gay Task Force.

⁵² John Boring, "Reports for NGTF Board of Directors: AIDS Program," January 25, 1984, Box 24, Folder 10, NGLTF records, online. Boring reported that by late December 1983, the SSA had granted benefits to 670 people with AIDS, more than double the 280 reported in August.

⁵³ "To Crisisline staffers Re: Social Security Benefits," November 22, 1983, Box 127, Folder 47. NGLTF Records, Cornell. GMHC provided funding for NGTF's Crisisline.

⁵⁴ Virginia Apuzzo, "To Rebecca Sive-Tomashefsky, executive director, The Playboy Foundation," January 27, 1984, Box 109, Folder 8, NGLTF records, Cornell: online. ; National Gay Task Force, "Gay Leaders Meet with Assistant Secretary for Health," August 9, 1983, Box 36, Folder 269, NGLTF records, Cornell: microfilm. Also in attendance: Dr. Marcus Conant, exec director AIDS/KS Foundation; Micael Callen, PWA; Roger McFarlane, exec dire GMHC; Jeff Levi, NGTF; "The AIDS Program of The National Gay Task Force," 2. The Task Force believed the May and

the blood policy and the need to include those affected by AIDS in policy decisions. Brandt, who had been appointed by President Reagan in 1981, had limited, if any experience, with gay and lesbian health concerns prior to the AIDS crisis. Dr. Marcus Conant, a physician from San Francisco, recalled that Brandt had told the group, “You’re the first homosexuals I’ve ever met.”⁵⁵ Despite his narrow social experiences, Brandt would maintain a regular schedule of communication with the Task Force after their first meeting. In a January 1984 grant report, Apuzzo noted the relationship had provide the Task Force with access to information about federal block grants available to AIDS service organizations and allowed them to obtain prompt answers to questions about Public Health Service policies. Additionally, the Public Health Service (PHS) involved the Task Force in the development of public education tools such as pamphlets and video tapes and consulted with Crisisline staff on training for the PHS AIDS hotline. Contact with various policymakers also opened lobbying opportunities regarding research funding proposals. The report concluded, “Establishing our credibility with the Public Health Service ensures that the perspective of the gay and lesbian community will be sought out when health care issues relating to AIDS arise.”⁵⁶

The relationship with Brandt led to an October meeting with Dr.Carolyn Davis, Administrator of the Health Care Financing Administration (HCFA), to discuss Medicare and Medicaid policy and processing concerns. In preparation for the meeting, the Task Force prepared an outline that demonstrated their growing sophistication in its depth and use of detailed

August hearings, “helped to bring about our initial meetings with top level representatives from the Public Health Service.”

⁵⁵ Maria La Ganga, "The First Lady who Looked Away: Nancy and the Reagans' Troubling AIDS Legacy," *The Guardian*, March 11, 2016. Conant was one of the first physician to recognize immune problems in gay men.

⁵⁶ Apuzzo, "To Rebecca Sive-Tomashefsky, executive director, The Playboy Foundation."; National Gay Task Force, "AIDS Advisory: Block Grant Programs: Federal Funds Available to States," December 1983, Box 109, Folder 2, NGLTF records, Cornell: online; "NGTF AIDS Update: Federal Money Available to Local AIDS Service Organizations," October 24, 1984, Box 109, Folder 3, NGLTF records, Cornell: online.

evidence.⁵⁷ Jay Lipner, special counsel to GMHC, joined Apuzzo and Levi at the meeting with Davis, Donald Young, Deputy Director of HCFA's Policy Bureau, and Dennis Siebert of the HCFA Office of Public Affairs. At the meeting, the Task Force brought up the issue of entitlement education that Ben Schatz had identified in his August report, asserting the "Notification of Medicaid eligibility should be standard with SSI award letters." Apuzzo framed the request as a universal benefit: "We are not asking for special treatment or special benefits; we are asking that a mechanism be put in place that improves communication for all potential beneficiaries." Davis agreed to discuss the issue with the Social Security Administration and continued to communicate with the Task Force about "policies and procedures that will benefit persons with AIDS (as well as other disabled persons) in need of support."⁵⁸

At the August hearing, Roger Lyon had worried about insurance coverage of experimental treatment. California's Medicaid policies validated his concerns. Medi-Cal did not cover hospital costs when experimental treatments were used and deemed pentamidine, a standard treatment for AIDS related pneumonia, experimental. At the meeting, HFCA Deputy Director Young agreed to expedite reviews of experimental treatments that were not covered by Medicare.⁵⁹ (The following January, the Task Force reported that their discussion with HCFA had contributed to California's decision to include coverage for pentamidine for state Medicaid recipients.⁶⁰) The Task Force also pressed HFCA to support Representative Ted Weiss' Public Health Emergency Prevention and Treatment Fund proposal to assist public hospitals and locations faced with high AIDS-related

⁵⁷ "Outline for Davis Meeting, 10/18/83," 1983, Box 118, Folder 18, NGLTF records, Cornell: online; "John re Davis meeting," 1983, Box 118, Folder 18, NGLTF records, Cornell: online.

⁵⁸ Virginia Apuzzo, "NGTF Discusses Medicaid Eligibility Rules with Administration Officials," October 19, 1983, Box 127, Folder 49, NGLTF Records, Cornell; "Outline for Davis Meeting, 10/18/83."; Boring, "Reports for NGTF Board of Directors: AIDS Program," 10. Second quote from Boring report.

⁵⁹ The press release noted that state Medicaid policies often followed Medicare standards.

⁶⁰ John Boring, "To: NGTF Board of Directors, Re: Reports for February 4 & 5 Exec. Committee," January 25, 1984, Box 109, Folder 25, NGLTF records, Cornell: online. Boring mentions NGTF worked with the National Gay Rights Advocates (NGRA); Apuzzo, "To Rebecca Sive-Tomashefsky, executive director, The Playboy Foundation," 3.

expenses. Additionally, Apuzzo criticized the structural failure of the US health care system, concluding, “We hope this Administration’s interest in all aspects of the AIDS crisis will result in some fundamental changes in how our health care system deals with health emergencies and educates the public about programs to which they are entitled.”

2.2.4 Communication and Collaboration

While the AIDS Project focused their disability benefit conversations with the SSA and the HFCA on education and process, they kept in contact with AIDS service organizations, medical experts and city governments to keep abreast of technical issues. For example, they received a copy of a communication between Ed Power of the AIDS/KS Foundation and Meryl Silverman, Director of Health for San Francisco that discussed the social service needs of people with AIDS Related Conditions (ARC) and explained the medical distinctions between AIDS and ARC. Power noted that people with ARC needed to reduce stress and fatigue to remain healthy and added that, “the severity of symptoms and the lack of social service support has resulted in ARC patients committing suicide.” Based on the Foundation’s experience working with individuals with ARC who were not eligible for assistance from state and federal programs that relied on the CDC based definition of AIDS, Power recommended that the medical community “develop a workable definition of ARC” and that the SSA “be pressured to recognize ARC patients as disabled.”⁶¹ In December, the New York Physicians for Human Rights’ offered such a medical diagnosis of the “prodrome of full-blown AIDS” for use in disability determination. Their diagnostic criteria required the presence of three symptoms or test results which alone would not suggest a disabling

⁶¹ Ed Power, "Re: Social Service needs of ARC Patients," September 13, 1983, Box 127, Folder 40. NGLTF Records, Cornell.

condition but combined indicated ARC.⁶² These organizations and others in more direct contact with individuals who were applying for federal assistance helped the Task Force develop a better understanding of the obstacles people with ARC or AIDS faced when they applied for benefits.

Cities with a large number of AIDS cases focused their attention on the use of presumptive disability to improve patient care and to save money. The Liz Robbins Associates consulting firm provided information and policy recommendations to San Francisco Mayor Dianne Feinstein and to AIDS Program director John Boring. In August, the firm predicted that San Francisco could save close to a million dollars in the next year with the application of presumptive disability to AIDS. Liz Robbins noted the firm had already discussed the issue with HHS officials and encouraged Feinstein, “When we have solidified support here in Washington, I am sure you will want to call Secretary Heckler to promote the idea.”⁶³ In December 1983, the Social Security Administration released a circular that promoted the use of presumptive disability in AIDS cases. In response, Feinstein noted the cost for treating a person with AIDS at San Francisco General Hospital was near \$2,000 a week. She expected, “More extensive use of this procedure [presumptive disability] will expedite needed funds to the individual and should substantially reduce City costs for medical care.”⁶⁴

A legislative associate from the Robbins firm sent a copy of the December SSA circular on presumptive disability along with additional material to Boring. She mentioned that Heckler’s office had told them that the official publication in the *Federal Register* was “on the fast track.”⁶⁵

⁶² Leonard Rubin, "To Jay Lipner. Official Position of the New York Physicians for Humans Rights," December 1, 1983, Box 127, Folder 40. NGLTF Records, Cornell.

⁶³ Liz Robbins, "To Mayor Dianne Feinstein Re: SSI Change Could Save San Francisco Up to \$ 1 Million Next Year for Medical Care and Income Support for AIDS Victims," August 5, 1983, Box 127, Folder 42. NGLTF Records, Cornell.

⁶⁴ Tom Eastham, "AIDS Patients Eligible for Speeded-Up S.S.I. Payments," December 6, 1983, Box 127, Folder 42. NGLTF Records, Cornell.

⁶⁵ Sharon Mooers, "To John Boring, National Gay Task Force," December 9, 1983, Box 127, Folder 42. NGLTF Records, Cornell.

The enclosed material indicated that the usage of presumptive disability should reduce the applicant waiting time for first check “from the current 3-6 months to 2-3 months in most cases.” The information appeared to have been prepared for city officials. After calling attention to the expected reduction in state and city costs for the New York Home Relief program, the report recommended that city officials work with the regional SSA director to insure local offices received and applied the instructions.⁶⁶ State and municipal stakeholders’ concerns amplified the voices of the National Gay Task Force and AIDS service organizations.

2.2.5 1983 Accomplishments

During 1983, the Social Security Administration had taken first steps in response to the AIDS crisis. The April directive had recognized AIDS as a disabling condition. In July, Margaret Heckler, Secretary of Health and Human Services, confronted accounts of Social Security employees who had been unwilling to handle claims from “AIDS victims.”⁶⁷ A week later, the Administration distributed the new “Program Operations Manual System” instructions on the evaluation of AIDS as a disability.⁶⁸ In December, the SSA issued a circular that directed staff to “consider a finding of Presumptive Disability for AIDS cases when the evidence or information indicates that there is a high degree of probability that the Presumptive Disability finding will be confirmed when complete evidence is obtained.”⁶⁹ Although the circular did not add AIDS to the list of “impairment categories which may warrant a finding of presumptive disability” in the *Federal Register*, its publication suggests the SSA recognized the imperative need for rapid claims

⁶⁶ "Re: Potential Savings to New York City Through Expedited Federal SSI Procedures," December 7, 1983, Box 127, Folder 42. NGLTF Records, Cornell.

⁶⁷ Heckler, "Memorandum To: All SSA Employees," 1-2; Brandt Jr., "To: The Secretary of Health and Human Services."

⁶⁸ "Program Operations Manual System."

⁶⁹ "Disability Insurance/Social Security Administration," in *FARO update*, January 1984, Box 10, Folder 16, National Lesbian and Gay Health Association records, #7613. Division of Rare and Manuscript Collections, Cornell University Library. .

processing.⁷⁰ As 1983 came to a close, organizations responding to the AIDS crisis had opened channels of communication at several levels in the Department of Health and Human Services and saw indications that the administration would include them future discussion.

Organizations such as the National Gay Task Force and the Gay Rights National Lobby that had not listed Social Security procedures as a priority at the beginning of 1983 took steps to understand the process and engage with the SAA during the year. The Task Force held several meetings with key officials in the Department of Health and Human Services and developed communication networks within the Department. After investigating the process and experience, NGTF developed recommendations and shared information about the SSA application process with AIDS service organizations. Gay Men's Health Crisis financed NGTF's AIDS Program and the services of attorney Jay Lipner who assisted NGTF in the development of a publication to educate their member organizations about Social Security benefits and attended policy meetings. AIDS service organizations had formed the Federation of AIDS Related Organizations in hopes of developing networks to share and distribute information.

Responding to the AIDS crisis provoked increased understanding within the gay rights movement of systemic problems in U.S. healthcare that middle class activists may not have been aware of previously. As a FARO steering committee member, Levi argued, "FARO should attempt to lobby not just for AIDS, but to respond to an ongoing crisis in the health care system, in which AIDS is an example of how that system failed."⁷¹ In an article about GMHC, journalist Peg Byron noted, "AIDS is acting as an awful social leveler on gay men, exposing them to the kinds of

⁷⁰ The circular directive was expected to be entered in the Federal Register in March 1984. This did not occur.

⁷¹ Caitlin Ryan, "Edited Minutes: FARO Steering Committee Meeting, San Francisco, CA, November 12-13, 1983," 1983, Box 10, Folder 22. National Lesbian and Gay Health Association records, #7613. Division of Rare and Manuscript Collections, Cornell University Library. Ryan used recordings of the meeting to compile the edited minutes. Punctuation indicates these are Levi's words and not a summary of what he said. Levi also requested help with a NGTF effort to assemble a list of Medicaid guidelines for each state.

medical and social abuses women, Jews, IV drug users, Haitians and other people of color have long experienced.”⁷² Byron interviewed Virginia Apuzzo who similarly remarked, “The appropriation of research funding is crucial, but is small comfort to the AIDS patient who, fired from his job without insurance, joins poor women and other disenfranchised people on the stingy welfare rolls.”⁷³ As NGTF and other groups developed a working knowledge of Social Security policies and procedures, they learned about the bureaucratic challenges people with disabilities faced. Accepting the label of disabled to receive subsistence and medical care placed the gay rights movement within the sphere of other civil rights movements. Apuzzo concluded her interview with Byron with a piercing question. “This crisis . . . takes us back to the fundamental question of oppression. This is the most poignant time to ask this question of the gay movement: what is the power for?”⁷⁴

2.3 The Task Force AIDS Program, 1984

In their submission to FARO’s 1984 *AIDS Directory of Services*, the Task Force listed their primary organizational goals as civil rights advocacy, national community organizing and public education. AIDS advocacy and education fell under the category of major program areas alongside anti-violence efforts, media education, monitoring the upcoming 1984 presidential election, and lobbying the federal government, the US Conference of Mayors and the Governors’ Conference. Within the program area of AIDS advocacy, NGTF identified three priorities: Lobbying, Education/Community Organizing and Direct Assistance.⁷⁵ Lobbying the Social Security Administration was one of many priorities the Task Force pursued. The full scope of the NGTF’s

⁷² Byron, "AIDS and the Gay Men's Health Crisis of New York."

⁷³ Ibid. This is the author's paraphrase of Apuzzo's remark.

⁷⁴ Ibid. Apuzzo quote.

⁷⁵ National Gay Task Force, "FARO Resource Directory Organization Information Sheet: National Gay Task Force," March 1984, Box 124, Folder 25. NGLTF Records, Cornell.

AIDS Program included federal funding for AIDS research, blood donor policies, protecting confidentiality, the expected introduction of an AIDS blood test, maintaining and advancing the Crisiline, civil rights concerns, AIDS discrimination and media education.⁷⁶

Early in the year, the Social Security Administration took additional steps to respond to the AIDS crisis. The December 1983 SSA program circular encouraging the use of presumptive disability was followed by a *Program Operation Manual System* change in February 1984. The manual update streamlined the approval process by excluding AIDS cases from the “deferral of nondisability development” procedure. In the standard process, district offices would wait until the Disability Determination Services made a ruling of medical disability eligibility before they verified information such as age, past employment, living arrangements, marital status and citizenship. The update “excluded” the claims of people with AIDS from the deferral process. The instructions mandated, “In these excluded claims, the district office must immediately initiate all nondisability development.”⁷⁷ The parallel processing reduced the wait for eligibility determination.

2.3.1 April 30, 1984 SSA Meeting: Preparation

On February 29, 1984, Virginia Apuzzo sent a meeting request to Martha McSteen, the Social Security Administration Commissioner, to discuss concerns about benefit acquisition delays and the limited medical definition of AIDS. The Task Force would later include one of

⁷⁶ "The AIDS Program of The National Gay Task Force."

⁷⁷ "Program Operations Manual System," February 28, 1984, Box 127, Folder 46, NGLTF Records, Cornell: Social Security Administration, US Department of Health and Human Services. Several communications mention that the SSA planned to publish new regulations in the Federal Register in March 1984. This did not occur. Instead, the SSA issued a Social Security Ruling, PPS-11 SSR 84-19 on the evaluation of AIDS in July. The SSA did not publish regulations on presumptive disability in the Federal Register until 2/11/1985. Jefferson Woodcox and Social Security Administration, "To John Boring, National Gay Task Force," March 23, 1984, Box 127, Folder 37, NGLTF Records, Cornell; "The CDC's Case Definition of AIDS: Implications of the Proposed Revisions--Background Paper." hathitrust.org: Office of Technology Assessment, US Congress August 1992; "Titles II and XVI: Evaluation of Acquired Immune Deficiency Syndrome," in *Rulings: Social Security Rulings. Cumulative Edition 1984, SSR 84-1 to SSR 84-27*, 1984, hathitrust.org: Social Security Administration, Department of Health and Human Services

their 1983 objectives—having the SSA provide applicants with automatic referrals to other federally-funded programs such as Medicaid—to the meeting agenda. To establish NGTF's authority as a voice for AIDS service organizations, Apuzzo described NGTF's role: "As a clearinghouse for over 50 AIDS service organizations, we disseminate basic information on government policy—notably Social Security entitlements." She also shared NGTF's concern for the hardships people with AIDS faced: "As a representative of a community that has been affected to a disproportionate degree by AIDS, [NGTF] has an abiding interest in the welfare of those who have been disabled in the course of the epidemic." Apuzzo was an experienced and political savvy administrator. She adopted a conciliatory tone in her meeting request, recognizing the helpful policy changes SSA had enacted and the positive relationship that had been established during the October 1983 meetings with the Health Care Financing Administration. In her acceptance of the meeting request, McSteen highlighted the areas of success Apuzzo had acknowledged and agreed to "discuss items of mutual interest."⁷⁸

The Social Security Administration arranged the meeting agenda with input from the Task Force. Presentations by the SSA Medical Consultant Staff and the Office of Disability filled most of the agenda with NGTF's concerns scheduled at the end of the meeting. The SSA dedicated most of their time on the agenda to educating NGTF about the regulations that governed the determination of disability, the SSA definition of AIDS and the AIDS disability evaluation criteria. The agreed objective of "discussion of issues and problems," and singular goal of "provid[ing] benefits to AIDS victims as fairly and expeditiously as possible," fail to indicate the complex issues to be discussed.⁷⁹ The Task Force arrived at the meeting prepared to engage in topics that

⁷⁸ Virginia Apuzzo, "To Hon. Martha McSteen," February 29, 1984, Box 127, Folder 37. NGLTF Records, Cornell; Martha McSteen, "To Ms. Apuzzo," April 9, 1984, Box 127, Folder 37. NGLTF Records, Cornell.

⁷⁹ "Social Security Administration-National Gay Task Force Meeting," April 30, 1984, Box 127, Folder 27. NGLTF Records, Cornell.

pushed the boundaries of the agenda with detailed recommendations that not only addressed the agreed upon topic of procedural delays but also challenged the inadequate medical definition of AIDS.

In her opening letter to McSteen, Apuzzo had introduced NGTF as a clearinghouse for information dissemination. The Task Force's list of questions for SSA indicate they also embraced responsibility for public oversight of SSA's operations. After discovering discrepancies in Blumenfeld's data the previous August, the NGTF had remained vigilante about the accuracy of SSA information. At the meeting, they assigned Jay Lipner, Special Counsel to GMHC, to interrogate the AIDS case data Blumenfeld had collected over for the past year. (Blumenfeld was not in attendance.) NGTF sought to identify the number of denied AIDS cases and the reasons for the denials; the number of ARC cases granted and denied; reasons so few people with AIDS had received benefits despite high reported approval rates, and the availability of teleservice and home visits to those outside of Washington and New York. They would not be satisfied with the instructional tone the Administration sought to maintain.⁸⁰

The Task Force's notes for their presentation reflected their networking skills and revealed their improved understanding of disability determination procedures. They turned to their member organization across the United States for information. Prior to the meeting, the Task Force had conducted a survey of AIDS service organizations and incorporated data from the responses into their recommendations. For example, Ed Power of the AIDS/KS Foundation in San Francisco shared a liaison system the Foundation had developed with the Department of Social Services. The liaison could schedule a same-day appointment if needed to secure emergency food stamps and

⁸⁰ "Agenda for Meeting with Martha A. McSteen, Commissioner of Social Security Administration," 1984, Box 127, Folder 27. NGLTF Records, Cornell; "SSA meeting/April 30, 1984," 1984, Box 127, Folder 54. NGLTF Records, Cornell.s

housing and could contact the local social security office to help expedite paperwork.⁸¹ The Task Force would recommend the creation of a liaison system between AIDS service organizations and SSA offices at the April 30 meeting. The Social Security Administration agreed.

Additionally, Jeff Levi took advantage of his position on the FARO steering committee to communicate with AIDS service organization leaders about benefit issues. During a February 1984 steering committee meeting, Levi participated in a discussion of claims denial issues associated with applying the CDC definition of AIDS in the determination of disability. Levi shared the alternative AIDS definition authored by the New York Physicians for Human Rights (NYPHR) with the steering committee and asked others for additional guidelines. John Boring was also in frequent contact with other organizations. Beginning in 1982, the Task Force had collaborated with the newly formed American Association of Physicians for Human Rights (AAPHR) to monitor the Food and Drug Administration blood donor policy.⁸² Boring's connection to Paul Paroski, a member of the AAPHR board of the directors, helped foster the relationship between NGTF and AAPHR which NGTF would rely on to complete post-meeting action items.⁸³ The Task Force built their recommendations for procedural improvements on the solid evidence they had gathered from the survey, AIDS service organizations and medical experts.⁸⁴ Many had been successfully modeled in New York and Washington.

As a result of their collaborative efforts, NGTF's presentation notes on "those disabled with AIDS-like conditions," demonstrated a solid grasp of SSA policies such as sequential

⁸¹ Ed Power, "To John Boring," 1983, Box 127, Folder 47, NGLTF Records, Cornell.

⁸² "The AIDS Program of The National Gay Task Force," 6.

⁸³ John Boring, "To Ginny Re: Information for your AAPHR Speech," November 6, 1983, Box 124, Folder 16, NGLTF records, Cornell. AAPHR was founded in the spring of 1982. Paroski shared critical, 'insider' information with Boring about AAPHR background, projects and attitudes which Boring then shared with Apuzzo.

⁸⁴ Caitlin Ryan, ed. *Edited Minutes: FARO Steering Committee Meeting, Atlanta, GA, February 18-19, 1984* (Box 10, Folder 30. National Lesbian and Gay Health Association records, #7613. Division of Rare and Manuscript Collections, Cornell University Library: 1984), 2-3,5; "SSA meeting/April 30, 1984.", 4; "Agenda for Meeting with Martha A. McSteen, Commissioner of Social Security Administration," 1-11.

evaluation and the narrow application of “equal to” that prevented people with ARC from receiving needed benefits. In 1982, the Social Security Administration had issued several rulings on general disability assessment including one on the sequential evaluation process. The ruling delineated precise steps to follow in the determination of disability. After determining the applicant was not engaged in “substantial gainful employment,” the adjudicator considered the severity of the applicant’s impairment and then whether or not the impairment met or equaled any of those on the “Listing of Impairments.” The level of severity determination weighed the individual’s ability to engage in “basic work-related functions invol[ving] a capacity for sitting, standing, walking, lifting, pushing, pulling, handling, seeing, hearing, communicating, and understanding and following simple instructions.” Since this step had to be passed before the impairment classification would be evaluated, people with ARC who at times could perform basic work-related functions might not qualify. If an impairment such as ARC was assessed as severe but not on the listing, the adjudicator could also consider the individual’s past relevant work, their residual functional capacity, their age, education and training to determine their eligibility. Adjudicators were instructed, “Reasonable inferences may be drawn, but presumptions, speculations and suppositions should not be substituted for evidence.”⁸⁵ NGTF came to the meeting prepared to discuss sequential evaluation and shared their concern that the process “seems still to exclude too many who fall in this category [severe ARC].”⁸⁶

In practice, the disability determination process for all claimants was subject to interpretation. The Task Force used examples they had collected from their survey of AIDS service organization and other network connections to expose the human impact of inadequate policies

⁸⁵ "Titles II and XVI: The Sequential Evaluation Process," in *Social Security Rulings On Federal Old-Age, Survivors, Disability, Supplemental Security Income; and Black Lung Benefits: Cumulative Edition 1982, 1982*, hathitrust.org: Social Security Administration, Department of Health and Human Services, .

⁸⁶ "Agenda for Meeting with Martha A. McSteen, Commissioner of Social Security Administration," 7.

and field office noncompliance. The meeting notes included the experience of a person with “clear CDC defined AIDS” who was rejected because he could lift 10 lb. weight.⁸⁷ An adjudicator could have employed the presumptive disability procedures and processed the claim with an exclusion of delayed nondisability development. Instead, it appears the adjudicator considered the ability to lift 10 lbs. as demonstration of the ability to work. This and other examples of inappropriate application of disability evaluation steps helped the Task Force establish that field offices were not uniformly applying the instructions on the SSA’s circular that encouraged the use of presumptive disability procedures. Reports from AIDS service organizations further pointed to noncompliance issues. Survey respondents from California indicated that the state was not allowing the use of presumptive disability for SSI claimants. Evidence from Baltimore and Georgia revealed inconsistent application.⁸⁸ NGTF combined anecdotal experiences with state level service information to pressure the Social Security Administration to change policies.

The Task Force also collected examples of “typical ARC cases” that highlighted the inadequacy of the Administration’s definition of AIDS. For instance, they shared the struggle of an individual whose disability claim had been denied in August because the applicant did not exhibit any of the listed opportunistic infections. In December, the man developed Kaposi’s sarcoma, an SSA defined indicator of AIDS; however, he was still unable to obtain benefits and had to turn to the appeals process to secure assistance. As further evidence, the Task Force shared NYPHR’s proposed medical definition of ARC and the memo from Ed Power about the need for policy changes to recognize disabling conditions caused by ARC that included a list of common medical conditions people with ARC experienced. Although the Task Force intentionally chose not to “attempt to negotiate a medical definition of ARC at this [April] meeting,” their

⁸⁷ Ibid., 4.

⁸⁸ Ibid.

recommendations to SSA included procedural changes to “make it easier to allow benefits” using the “equal to provision” and the sequential evaluation process. These procedures held the potential to expand access to federal benefits for people with ARC.⁸⁹ Further medical discussion occurred outside of the meeting.

2.3.2 April 30, 1984 SSA Meeting, Post-Meeting

After the April meeting, the Task Force issued an optimistic press release that emphasized the points the Administration had agreed to address. Apuzzo noted, “The meeting demonstrates a willingness on the part of Social Security to be more responsive to the needs of persons with AIDS and to move beyond the helpful but not wholly adequate policy initiatives that they have made in the past year.”⁹⁰ A follow-up note sent to AIDS service organizations in May noted the SSA had made “some significant commitments” and listed the details. The Task Force encouraged recipients to offer suggestions and asked that they report any problems their clients experience in accessing “benefits to which they are entitled.”⁹¹

The SSA confirmed the agreement in a follow-up communication. Their action items encompassed Office of Field Operations compliance, procedural issues, claimant education and medical issues.⁹² The Administration issued a memo and a program circular to improve Field Operations compliance. In the June 27 memo, Lawrence Hendricks, the Associate Commissioner for Field Operations, reminded regional commissioners, area directors and district managers about their information referral responsibilities; the recent Program Operations Manual System update

⁸⁹ Ibid., 8, 10.

⁹⁰ Virginia Apuzzo, “NGTF Meets with Social Security Commissioner to Discuss AIDS Benefits,” May 2, 1984, Box 127, Folder 47, NGLTF Records, Cornell.

⁹¹ John Boring, “Follow-up on Meeting with Social Security Administration Officials,” May 29, 1984, Box 127, Folder 59, NGLTF records, Cornell: microfilm: NGTF AIDS Program.

⁹² Social Security Administration, “Meeting Report,” 1984, Box 127, Folder 37, NGLTF Records, Cornell; Virginia Apuzzo, “To Commissioner,” May 22, 1984, Box 127, Folder 54, NGLTF Records, Cornell. Apuzzo's letter included the same basic points of agreement.

on the exclusion of deferred development for disability claims from people with AIDS; and, the appropriateness of special claims taking procedures including “teleclaims, self-help, assistance of third parties, and home visits by field personnel.” Hendricks concluded the memo with the expectation that “all of us are constantly mindful of our obligations to treat everyone who contacts us with respect as we provide service that is, at all times, courteous, friendly and helpful.”⁹³ The exhortation was likely in response to a NGTF request for SSA staff education due to reports NGTF had received of discourteous treatment and “delays linked to reluctance to handle AIDS claims.”⁹⁴

On July 18, the SSA Office of Disability issued a program circular that reiterated the established documentation and procedures to follow in the evaluation of claims from people with AIDS. The circular did not use the term “presumptive disability,” instead asserting “Once an individual has a confirmed diagnosis of AIDS, the level of severity of AIDS is such that he or she will be found to have an impairment which meets or equals the Listing of Impairments.” The circular did not specify ARC as a condition but affirmed, “Individuals should not be denied merely because their impairment does not meet the CDC definition.” Disability adjudicators could apply the “equal to” standard. In cases where the “equal to” standard was not met, the program circular required the use of a sequential evaluation assessment.⁹⁵ Neither the memo nor the program circular altered procedures. Other than printing and mailing expenses, the distribution had little cost or potential political ramifications. Their distribution suggests a gesture of goodwill from the Social Security Administration.

⁹³ Lawrence E. Hendricks, "Processing Claims for Acquired Immune Deficiency Syndrome Victims--INFORMATION," June 27, 1984, Box 127, Folder 28. NGLTF Records, Cornell.

⁹⁴ "Agenda for Meeting with Martha A. McSteen, Commissioner of Social Security Administration." Also mentioned in 5/22/1984 letter from Apuzzo to McSteen (p.2).

⁹⁵ Office of Disability Social Security Administration, "SSA Program Circular Disability Insurance: Disability Evaluation: Acquired Immune Deficiency Syndrome," July 18, 1984, Box 127, Folder 28. NGLTF Records, Cornell.

The liaison system that had been agreed upon held the potential to improve the application experience. The Task Force envisioned the SAA liaison as “ombudspersons when unexplained or unacceptable delays are problems develop” and expected the new position would “alleviate the general problem of dealing with a faceless bureaucracy and make it easier to remedy specific problems as they arise.”⁹⁶ The Task Force would identify cities and states that had need of liaison services as well as provide the SSA a list of the AIDS service organizations and the individuals at each organization who would work with the SSA. The Administration would identify staff members at the regional offices who would serve as the AIDS liaison. On June 1, John Boring sent the SSA Office of Field Operations NGTF’s lists and a copy of FARO’s *AIDS Resource Directory* that included contact information for service organizations.⁹⁷ On August 14, the SSA responded with their list of AIDS Coordinators who would act as AIDS liaisons.⁹⁸ The SSA also provided NGTF with contact information for James MacDonald, the Chief of the Medical Evaluation Branch, Office of Disability, for use “when they believe that a claim has not been properly processed” as another level of communication.⁹⁹ The liaison system established a partnership between NGTF and AIDS service organizations, and regional and local offices. As principal coordinator, the Task Force gained national visibility, strengthening their claims of national leadership in the gay rights movement. The establishment of the liaison system also afforded additional avenues to monitor the application process and directly engage in immediate solutions.

⁹⁶ John Boring, "To AIDS Service Organizations (and their public assistance/social security advocates in particular.)," September 17, 1984, Box 127, Folder 27, NGLTF records, Cornell.

⁹⁷ "To Connie Eaton, Office of Field Operations, Division of Programs," June 1, 1984, Box 127, Folder 37. NGLTF Records, Cornell.

⁹⁸ Lawrence E. Hendricks, "To Virginia M. Apuzzo," August 14, 1984, Box 127, Folder 37. NGLTF Records, Cornell. In this letter, Hendricks noted most of the April 30 meeting agreements had been completed. ; Boring, "To AIDS Service Organizations." Boring shared the list and copies of June 27 SSA memo and July 18 circular with the ASOs.

⁹⁹ Social Security Administration, "Meeting Report," 2. MacDonald's contact information was not meant for general distribution. Information about dissemination restrictions found in Boring letters to AAPHR, BAPHR, NYPHR.

Efforts to increase adjudicator awareness of AIDS disability evaluation procedures as well as the implementation of the liaison system certainly had some impact on improving the claims process for people with AIDS. Nevertheless, the improvements did not alter the medical criteria used to make a determination of disability. The codification of presumptive disability that had been assured in the fall of 1983 and expected for publication in the March 30, 1984 *Federal Register* had yet to occur.¹⁰⁰ At the April 30th meeting, the SSA mentioned a Program Policy Statement (PPS) ruling that would be published that July.¹⁰¹ When published in September, the PPS ruling did not confer AIDS a presumptive disability status. Instead, the ruling continued to rely on a list of qualifying opportunistic infections and on the assumption that the severity of AIDS would “equal to” other disabilities on the “Listing of Impairments.” Adjudicators were still advised they could use codes related to cancers if applicable. For other individuals with “immune system dysfunction [that] do not have a confirmed diagnosis of AIDS,” the rules substantively repeated the information from a previous program circular.¹⁰² Apuzzo received information from the Region II SSA AIDS Coordinator (New York area) that the delayed implementation of promised presumptive disability regulations was a result of a conflict between the Social Security Administration and the Office of Management and Budget.¹⁰³ Regardless of the effort NGTF had expending preparing for the meeting and SSA’s seeming good faith attempts, one encounter would not be enough to revise policies and regulations.

¹⁰⁰ Woodcox and Social Security Administration, "To John Boring, National Gay Task Force."

¹⁰¹ "The CDC's Case Definition of AIDS: Implications of the Proposed Revisions--Background Paper," 34. A PPS bound “all components of the SSA including State DDS examiners, administrative law judges, and the SSA Appeals Council. . . . However, they [were] not binding on Federal or State courts.”

¹⁰² "Titles II and XVI: Evaluation of Acquired Immune Deficiency Syndrome," 81-83. NGTF did not seem to have access to the ruling. In 1985, Apuzzo reacted with surprise when SGA was included in the 2/11/1985 *Federal Register*. The SSA issued a new ruling, PPS-123 SSR 86-8, on sequential evaluation effective August 20, 1986 to "explain and clarify the provisions so there is a better understanding of this policy which will result in the correct and consistent application of these provisions of the regulations. It superseded PPS 81-SSR 82-56.

¹⁰³ Virginia Apuzzo, "To Mr. Hendricks," January 29, 1985, Box 127, Folder 37. NGLTF Records, Cornell.

While the general tone of NGTF's press release about the April 30th meeting had been positive, underneath the public façade, John Boring expressed reservations about the Administration's willingness to change the evaluation criteria of AIDS to encompass ARC conditions. The Administration had agreed to designate a "physician to be SSA liaison with NGTF on medical issues concerning AIDS" which they did. Although they had agreed to review the medical information that Task Force planned to submit and to meet with NGTF recommended physicians to discuss ARC as a disability, the Administration did not commit to any specific policy changes.¹⁰⁴ NGTF's follow-up with the SSA revealed higher expectations. Apuzzo wrote, it had been "agreed that the Social Security Administration would: . . . Work with physicians in the gay/lesbian community who are experienced in the diagnosis of AIDS in order to devise a definition(s) that will cover those persons suffering from AIDS-related conditions that are disabling."¹⁰⁵ Boring shared his skepticism in letters with several physicians he contacted for assistance. He cautioned against optimism, "Unfortunately, it was clear from what the physicians from SSA said in response to our presentation that they had come into the meeting convinced that it was not possible to reliably define severe ARC for the purposes of defining a listed disability."¹⁰⁶

Despite his skepticism, Boring contacted physicians Kent Sack, president of the Bay Area Physicians for Human Rights (BAPHR), Peter Seitzman, of the New York Physicians for Human Rights (NYPHR) and Neil Schram, president of the American Association of Physicians for Human Rights (AAPHR) for assistance. A few days before the April 30 meeting, AAPHR had approved a statement on "Research Directions in AIDS" that recognized the need for an expanded definition of AIDS for the purpose of disability and SSI benefits. On the same day, they approved

¹⁰⁴ Social Security Administration, "Meeting Report," 2.

¹⁰⁵ Apuzzo, "To Commissioner," 3.

¹⁰⁶ John Boring, "Letters: Peter Seitzman 05/21/1984, Neil Schram 5/23/1984, Kent Sack 5/25/1984, Paul Paroski 6/7/1984," 1984, Box 127, Folder 54. NGLTF Records, Cornell.

a statement on “Disability and A.I.D.S.” that affirmed, “We strongly urge the Social Services Administration to develop an appropriate set of clinical criteria to include as disabled those individuals who are clinically disabled with A.I.D.S.-like symptoms whether or not they meet the CDC surveillance criteria.” The AAPHR also identified three physicians who were willing to provide assistance.¹⁰⁷

In his communication to Sack, Seitzman and Schram, Boring placed the responsibility for developing an expanded definition of AIDS on the physicians. Boring would assume the role as a coordinator as necessary. He asked the physicians to send him copies of their letters to SSA and shared suggestions on how to proceed but asserted, “How best to proceed in persuading the physicians of SSA to adopt an auxiliary definition is the prerogative of AAPHR.” As for NGTF, Boring assured the physicians, “If it transpires that SSA physicians appear insufficiently committed to arriving at a workable definition for disabling cases of ARC, NGTF will be glad to exercise political pressure to help move the process along.”¹⁰⁸ NGTF and AAPHR were both members of the FARO steering committee. By marshalling their networks, the Task Force brought medical expertise to their SSA discussions.

2.3.3 1984 Accomplishments

At the August 1983 House hearing, Apuzzo had argued, “We in America pride ourselves on our democratic system. It should mean we have a fundamental right to participate in decisions that effect our lives.”¹⁰⁹ In 1984, the Task Force influenced decisions in the meeting with the

¹⁰⁷ American Association of Physicians for Human Rights, “Statement on Research Directions in AIDS,” April 27, 1984, Box 124, Folder 17. NGLTF Records, Cornell; “Statement on Disability and AIDS,” April 27, 1984, Box 124, Folder 17. NGLTF Records, Cornell. Three physicians: Evelyn Fisher, Paul Paroski and Dennis Passer. Boring knew Paroski. It’s unclear if the NGTF had AAPHR’s statement to share at the April 30 meeting.

¹⁰⁸ Boring, “Letters: Peter Seitzman 05/21/1984, Neil Schram 5/23/1984, Kent Sack 5/25/1984, Paul Paroski 6/7/1984.”

¹⁰⁹ *Federal Response to AIDS: Hearings before a Subcommittee of the Committee on Government Operations.*

Commissioner of Social Security to discuss concerns about delayed benefit processing and the narrow definition of AIDS. At the meeting, the Task Force demonstrated their increased knowledge and sophistication and revealed the significance of securing greater access to federal benefits.

Additionally, the Task Force and AIDS service organizations strengthened their communication networks, resulting in the dissemination of AIDS information. In March, FARO distributed their *Directory of AIDS Services* to their member organizations. This collection of information from AIDS service organizations across the country contained several pages of information submitted by NGTF including the December *AIDS Advisory* on applying for Social Security benefits. The *Directory* was also marketed to hospitals and public agencies. In April, the Gay and Lesbian Community Services Center in Los Angeles (GLCSC) received a grant from California's Department of Health Services to launch the "Computerized AIDS Information Network" (CAIN). In addition to the type of material found in the FARO directory, the network offered clinical data and a bulletin board forum.¹¹⁰ In November, AIDS Action Council published information about federal, state and local government resources in *Programs Providing Support Services for People with AIDS*.¹¹¹ The flow of information helped connect communities encountering AIDS outside of the coastal epicenters with those who had more experience and expertise.

When FARO's Resource Clearing House Project disbanded in June, NGTF took the responsibility to keep AIDS service organizations informed on Social Security issues. The Task

¹¹⁰ James Staebler, "To All Community Based Organizations and Interested AIDS Conscious Individuals," April 23, 1984, Box 10, Folder 11, National Lesbian and Gay Health Association records, #7613. Division of Rare and Manuscript Collections, Cornell University Library. The network ran on Delphi. It was marketed to service organizations, clinics, health departments and physicians and health care workers. The San Francisco AIDS Foundation was added as a co-sponsor.

¹¹¹ "Council Publishes Support Services Manual," in *AIDS Action Update*, November 1984, Box 332, Folder 4, GMHC records, NYPL.

Force viewed their role as that of “a broker of information.”¹¹² Boring sent a packet of Social Security information to AIDS service organizations that highlighted the April 30 meeting and NGTF’s expertise on Social Security benefits.¹¹³ In September, Boring mailed another packet of information to the “public assistance/social security advocates” of AIDS service organizations that included the list of SSA coordinators, the June memo from Hendricks and the July SSA Program Circular. The service organizations were encouraged to contact NGTF if the coordinators “are not doing their jobs well” or if they had any other questions about Social Security benefits. Although NGTF did not provide direct services to people with AIDS, Borings noted individual claimants could contact NGTF’s Crisisline for assistance.¹¹⁴ Since its founding in 1982, the Crisisline had received more than 9,000 calls from individuals, AIDS service organizations and healthcare professionals. NGTF had various packets of information available to send to callers.

Throughout 1984, the Task Force educated themselves about what it meant to be disabled according to federal regulations. They advocated for courteous and fair treatment, situated AIDS service organizations within SSA procedures and challenged regulations that did not meet the needs of people with AIDS. Although the Social Security Administration had been responsive, the fundamental structure of eligibility determination limited those who could access entitlements. Only those who were impoverished and experiencing severe impairments qualified for needs-based assistance. By controlling the definition of “severe impairment,” the SSA could further limit those entitled to assistance. A summer newsletter from the Whitman Walker Clinic articulated a lesson learned about disability insurance, both private and public. “What is becoming clear to all

¹¹² "The AIDS Program of The National Gay Task Force," 14, 2.

¹¹³ John Boring, "To AIDS Service Organizations," June 5, 1984, Box 127, Folder 54. NGLTF Records, Cornell.

¹¹⁴ "To AIDS Service Organizations."

of us in this AIDS epidemic is that, generally speaking, disabled people are woefully underserved in our society. We deserve a better world than that.”¹¹⁵

2.4 The Task Force AIDS Program, 1985

By 1985, the Task Force’s relationships with different areas of the HHS had matured and they confidently asserted the needs of people with AIDS as they responded to the slow pace of change. In August 1984, Associate Commissioner Lawrence Hendricks had sent Virginia Apuzzo a letter informing her that most of the actions which SSA and NGTF had agreed upon at the April 30 meeting had been accomplished.¹¹⁶ The Task Force, however, continued to monitor SSA’s performance and push for improvements.

2.4.1 Continued Monitoring

In January 1985, Apuzzo wrote a letter of concern to Hendricks about continued reports from AIDS service organizations of delayed processing attributed to the “failure on the part of the DDSs to make consistent use of the Presumptive Disability (PD) option for clear cut AIDS diagnoses.”¹¹⁷ When the long-awaited presumptive disability regulations were finally published in the *Federal Register* on February 11, 1985, the Task Force immediately sent notification to AIDS service organizations on how to use the regulations; however, Apuzzo expressed dismay about problematic additions to the text. The September 1984 Program Policy Statement had required district offices to verify that the claimant was not working. The new regulation required the district office to also confirm that “the individual is unable to work” with evidence from a

¹¹⁵ Whitman Walker Clinic, "Disability Insurance: It's Time Has Come," in *Newsletter: AIDS Education Fund*, April/May 1984, Box 122, Folder 7. Frank Kameny Papers, LOC.

¹¹⁶ Hendricks, "To Virginia M. Apuzzo."

¹¹⁷ Apuzzo, "To Mr. Hendricks."

“physician or some other medical or treating source.”¹¹⁸ Apuzzo submitted an official public comment under the Administrative Procedure Act emphasizing that the regulation was unnecessary as the existing diagnosis of AIDS already recognized the severity of the disease.¹¹⁹ Advocates were concerned that the addition of another step of medical confirmation would result in delayed or denied claims because the varied medical staff consulted might not understand the criteria for “unable to work.” Purportedly, the additional step was necessary to secure the Office of Management and Budget approval.¹²⁰ The regulation did not bode well for attempts to expand the definition of AIDS to cover less severe or episodic symptoms.

John Boring had been skeptical about the Social Security Administration’s agreement to meet with Task Force recommended physicians, nevertheless, on March 11, 1985, three physicians from AAPHR and Boring met with Dr. James Krajewski, the SSA liaison physician for AIDS, and staff from both the SSA and the HCFA. The agenda included medical review of AIDS cases and discussion of medical criteria with time scheduled for the AAPHR to share concerns and recommendations.¹²¹ During the meeting, participants examined diagnostic challenges such as how to weigh symptoms like pain without a specific diagnosis and “defining the borderline.” Krajewski noted the ARC criteria needed to be mindful of the individual and responsible to the system. The group discussed using alternate assessment guidelines such as the Karnofsky oncology

¹¹⁸ "Supplemental Security Income for the Aged, Blind and Disabled; Presumptive Disability and Presumptive Blindness; Categories of Impairments--AIDS," *Federal Register* 50, no. 28 (1985): 5573-74. The action was an "interim regulation with request for comments and was in effect for 3 years unless extended or revised..

¹¹⁹ Virginia Apuzzo, "To Commissioner," March 6, 1985, Box 127, Folder 37, NGLTF Records, Cornell. On 2/9/1988, the *Federal Register* published the "Final rule." It included summaries of public comments but did not specify who made the comment. One could have been Apuzzo's. It objected to the need for medical evidence to prove an individual was unable to work prior to a determination of presumptive disability. The SSA agreed. The final ruling added allegations of AIDS with one or more specific manifestation to the category of impairments that allowed "finding of presumptive disability . . . without obtaining any medical evidence."

¹²⁰ John Boring, "AIDS Advisory: New Social Security Regulation," February 28, 1985, Box 127, Folder 28, NGLTF Records, Cornell.

¹²¹ "Meeting Agenda: Social Security Administration and American Association of Physicians for Human Rights, March 11, 1985," 1985, Box 127, Folder 32, NGLTF records, Cornell: online.

scale or procedures such as directed questions or a special form to evaluate ARC/AIDS cases.¹²²

In a draft press release, Dr. Brett Cassens, president of the AAPHR, “called the meeting productive and promising in terms of clarifying remedies to current obstacles persons with AIDS and ARC may encounter in filing for disability.”¹²³ The press release implied the discussion between AAHPR, SSA and HCFA would be ongoing; however, a few months later the Task Force described the progress as “unfortunately at too slow of a pace.”¹²⁴

The Task Force conducted a second survey of AIDS service organizations from December 1984 through April 1985 to appraise the Social Security Administration’s implementation of the measures they had agreed to in April 1984. In a press release, Boring recognized “the hard work of AIDS service organizations (ASOs) at the grass roots level” and credited the agreements reached at the April meeting for some improvement.¹²⁵ Although progress was noted, the findings revealed long waits, inconsistent application of presumptive disability and rejection of ARC applications continued. Half of the resultant recommendations related to the need for “additional [SSA] effort to implement the measures agreed upon at the 4/30/84 meeting at the local district office level.” The other half included procedures for better processing and monitoring as well as sensitivity training and improved outreach.¹²⁶ When the Social Security Administration agreed to follow-up meeting in August, Boring reached out to the survey respondents for additional updates on the

¹²² "Meeting with SSA," March 1985, Box 127, Folder 32, Cornell: online.

¹²³ Brett Cassens, "Press Release-Draft," March 19, 1985, Box 127, Folder 32, NGLTF records, Cornell: online; "To John Boring," March 19, 1985, Box 127, Folder 32, NGLTF records, Cornell: online.

¹²⁴ Jeff Levi, "To GMHC Board of Directors. Re: Funding Proposal for NGTF AIDS Program," July 15, 1985, Box 341, Folder 8. GMHC records, NYPL.

¹²⁵ John Boring, "NGTF Completes Survey on Social Security Benefits for Persons with AIDS and ARC," April 12, 1985, Box 109, Folder 3, NGLTF records, Cornell: online. Boring lists 3 measures from the meeting: the liaison system, claim personnel use of expediting procedures and guideline to medical personnel about ARC.

¹²⁶ "The Availability of Social Security Administration Benefits to Persons with AIDS ad ARC: Compiled Responses to National Gay Task Force Survey of AIDS Service Organization and Social Service Advocates," 1985, Box 127, Folder 27, NGLTF Records, Cornell. The report recognized that some of the surveys had been collected before the 2/11/1985 Federal Register listing.

experiences of people with ARC.¹²⁷ He also shared a summary of the survey findings with Janice Warden, Acting Director, Field Liaison and Support Staff and Patricia Owens, Associate Commissioner for Disability, as they planned for the meeting. In a separate letter to Owens, Boring asked for additional data on AIDS claims.¹²⁸

The follow-up meeting occurred on September 29, 1985 with representatives from NGTF, GMHC, AAPHR and other AIDS services organizations and officials including Warden, John Scully, Deputy Associate Commissioner for Disability, Dr. Bonnet from the Office of Disability and additional specialists. In their introductory remarks, the Task Force identified their role “as a clearinghouse for ASOs and Soc. Serv. Advocates, to convey their ideas for consideration, their problems for remedy.” They identified the “diagnostic grey zone” people with ARC faced and disclosed the experiences of people in localities without organized advocates or “where the prevailing climate of societal opinion is not so favorable or sympathetic to PWAs as in NYC or Boston.” As a solution, the Task Force argued that the SSA needed “to develop written guidelines for those inside the system . . . that are more specific and emphatic than the helpful but relatively terse two bulletins the SSA issued,” in response to the April 1984 meeting. They also urged the SSA to provide written educational material for those outside the system. The Task Force offered data from their survey and from a phone survey they had conducted the past week.¹²⁹ Additionally,

¹²⁷ John Boring, "Upcoming Meeting with Social Security Administration," August 14, 1985, Box 190, Folder 2, NGLTF records, Cornell: online.

¹²⁸ "To Ms. Warden," June 17, 1985, Box 127, Folder 37. NGLTF Records, Cornell; "To Ms. Owens," August 14, 1985, Box 127, Folder 37. NGLTF Records, Cornell; "Current Trends Revision of the Case Definition of Acquired Immunodeficiency Syndrome for National Reporting--United States," *Morbidity and Mortality Weekly Report* 34, no. 25 (1985). AAPHR representatives had met with the Administration on March 11, 1985. At the meeting, they discussed the example of non-Hodgkin's Lymphoma which had been assessed as an ARC condition. The CDC issued a revised definition of AIDS on June 28, 1985 that included diseases and symptoms as identifying of AIDS in the absence of opportunistic infections that included non-Hodgkin's Lymphoma among others. Boring asked how the SSA would apply the CDC's new case definition

¹²⁹ "Introduction," September 1985, Box 127, Folder 56, NGLTF records, Cornell: microfilm.

AIDS service organizations offered their experiences working with people as they applied for services.¹³⁰

The SSA offered some promising information in response to NGTF's continuing concern about the inadequacy of the eligibility definitions for AIDS and ARC. Dr. Bonnet's comments left the Task Force with the impression that the SSA "had made considerable progress towards developing a definition for determining ARC disability" and that "the formal addition of AIDS to the official list of impairments was in the works." The Task Force concluded, "it seems quite possible" new instructions would be issued in 1986. However, in discussion about system-wide procedural issues, the SSA resisted suggestions to mandate the recommendations that the Task Force and other participants offered. In particular, the liaison system was left for each area "to decide locally on how active they will be in terms of community liaison and case-by-case problem solving." Boring surmised the resistance represented "fear that they might appear to deferential to a 'special interest group,' or perhaps as a reflection of the brand of federalism . . . that prevails in the current Administration." In an update sent after the meeting, the Task Force asked AIDS service organizations to "keep the pressure on SSA regarding ARC" and to send the files of any cases that experienced difficulty to Owens. The update also mentioned that the Task Force was preparing a revised packet of information on Social Security benefits that "will include some of the more arcane information that SSA provided us with during and subsequent to the meeting"; however, it did not mention plans for future conversations.¹³¹

¹³⁰ John Boring, "To: AIDS Service Organizations, Re: Summary of Meeting with Social Security Administration," 1985, Box 109, Folder 2, NGLTF records, Cornell: online.

¹³¹ Ibid.

2.4.2 NGTF Stumbles

As 1985 came to a close, the Task Force was in a state of organizational and financial turmoil. Early in the year, executive director Virginia Apuzzo had resigned to take a position as vice chair of the New York State AIDS Advisory Council.¹³² In her place, the Task Force adopted a bifurcated organizational structure with two leaders, appointing Jeff Levi to the newly created position of Director of Governmental and Political Affairs and hiring Rosemary Kuropat to serve as the Director of Administration and Finance.¹³³ The split responsibilities resulted in tension and disagreement over the boundaries between the ill-defined roles. In June, the Task Force's financial situation became apparent when they made plans to borrow money to pay their taxes, vendors and to reimburse staff with the expectation that board members would raise the money.¹³⁴

Despite the turmoil, the Task Force went forward with future planning. At the end of September, the Task Force presented a funding proposal to offer local groups AIDS informational material and technical assistance that included entitlement education workshops.¹³⁵ In October, representatives from the Task Force, Lambda and AIDS Action Council met with Assistant Secretary of Health Dr. James Mason, Dr. Hank Meyer from the FDA, George Hardy, Jr., from the CDC and the PHS general counsel Richard Riseberg.¹³⁶ At the private meeting, participants discussed "the civil liberties and public policy implications of AIDS," specifically fears about the misuse of testing and reportability, and censure of sexually explicit educational materials.

¹³² Ron Najman, "Apuzzo to Return to Government Service," February 5, 1985, Box 37, Folder 3, NGLTF records, Cornell: microfilm. Apuzzo remained on the NGLTF board of directors.

¹³³ "NGTF Board of Directors Creates Two New Post," March 19, 1985, Box 37, Folder 11, NGLTF records, Cornell: microfilm; "Rosemary Kuropat Named Director of Administration and Finance," July 3, 1985, Box 37, Folder 21, NGLTF records, Cornell: microfilm.

¹³⁴ "Minutes of the Board of Directors Meeting," June 22-23 1985, Box 3, Folder 29, NGLTF records, Cornell: microfilm.

¹³⁵ "To: AIDS Service Organizations, Re: Proposal for Organizing and Technical Assistance on AIDS-related Civil Rights Issues," September 30, 1985, Box 109, Folder 26, NGLTF records, Cornell: online.

¹³⁶ Jeff Levi, "Talking Points for Mason Meeting, October 31, 1985," 1985, Box 126, Folder 32, NGLTF records, Cornell: online. From the handwritten notes and draft document, representatives likely included Jeff Levi, Gary MacDonald-AAC, Abby Rubinfeld-Lambda and possibly Lambda attorney Alan Koral.

Activists asked for assistance with a disability case within the Health and Human Services Office of Civil Rights, most likely the *Doe v. Charlotte Memorial Hospital* case. John Boring resigned in December 1985 to pursue interests in San Francisco.¹³⁷ His final report revealed a busy last month that included distributing information about the SSA policy meeting, PHS's occupational guidelines, HTLV-III Blood Testing, NGTF's statement on bathhouses, and an update on AIDS funding; supervision of the New York State AIDS Institute grant; year-end reports, and presentations and meetings with representatives from various organizations.¹³⁸ Despite the organizational disorder, the AIDS Program appeared to have had a productive and effective year.

In 1986, the AIDS Program went silent. At the February 1986 board meeting, Levi and Kuropat aired their grievances and disagreements about the scope of their respective positions with Levi asserting full responsibility for all policy and political decisions and Kuropat arguing she could not effectively manage the administration and financing without a say in the policies. The tension had reached the point that a board member suggested "a committee be created to mediate the disputes."¹³⁹ Although the February meeting had begun with a resolution of appreciation for Boring, further discussion did not mention the future of the AIDS Program. In March, the board held several teleconference meetings to deal with the impending financial emergency and organizational crisis at which time they decided to leave the AIDS Program position vacant.¹⁴⁰ After Kuropot resigned, the board appointed Levi as the interim director and then executive

¹³⁷ "Some Changes at the National Gay Task Force," circa December, 1985, Box 109, Folder 3, NGLTF records, Cornell: online. The notice also mentioned the AIDS Program staff would be moving to Washington, DC under Levi.

¹³⁸ John Boring, "To Jeff Levi, Re: Staff Report for Nov. 10 through December 30," December 30, 1985, Box 127, Folder 42, NGLTF records, Cornell.

¹³⁹ "Minutes of the Meeting of the Board of NGLTF," February 8 and 9, 1986, Box 193, Folder 1, NGLTF records, Cornell: online.

¹⁴⁰ Peter Fowler, "To Board Members, Re: Special Meeting of the Board of Directors," March 24, 1986, Box 193, Folder 1, NGLTF records, Cornell: online.

director when the Task Force moved to Washington, DC in the summer.¹⁴¹ In an April summary of his AIDS-related activities, Levi mentioned a consensus statement he was developing on antibody testing, and meetings with the National Association of Insurance Commissioners, the Surgeon General and the association of State and Territorial Health Officers.¹⁴² Like his predecessor Apuzzo, Levi addressed a Congressional hearing to discuss the federal response to AIDS. After identifying areas of need, Levi offered five recommendations to the Senate committee regarding funding for the Public Health Service, broader educational efforts, expansion of clinical trials, further research on the disposition of ARC and the implementation of home care service programs—left out were federal entitlement policies and procedures.¹⁴³

2.5 Conclusion

The Gay Men's Health Crisis published their first newsletter in June 1982. The issue included articles on how to manage the medical, financial and social hardships associated with AIDS. A short one-page section titled, "Bankrolling your health care" advised readers without insurance to investigate buying insurance. In a separate section detailing GMHC's plan to offer assistance to people with AIDS, the newsletter noted, "The victims of AID disorders often find themselves swamped by a tide of problems over and above the desperate problems of health. Too ill to work, too impoverished to afford private medical care, these men find the world a cruel place."¹⁴⁴ Although GMHC initially connected their clients' financial needs to insurance and

¹⁴¹ Jeff Levi, "NGLTF Board Consolidates Organization in Washington," May 8, 1986, Box 37, Folder 40, NGLTF records, Cornell: microfilm.

¹⁴² "To Board of Directors, Re: April Staff Reports," April 17, 1986, Box 193, Folder 1, NGLTF, Cornell: online. When the Consensus Statement was issued on May 30, 1986 "more than 50 organizations from around the country" had endorsed it. NGLTF 193.1 online.

¹⁴³ "The Impact of AIDS on the Gay Community and the Federal Response: Testimony, Senate Committee on Labor and Human Resources," April 16, 1986, Box 113, Folder 26, NGLTF records, Cornell: online.

¹⁴⁴ "AID: Acquired Immune Deficiency," in *G.M.H.C. Newsletter*, July 1982, Box 43, Folder 7, GMHC records, NYPL.

private medical care, by the following March, they were working with attorney Jay Lipner and Lambda to ensure that AIDS would be listed as a disability eligible for Social Security Disability benefits.¹⁴⁵ The Task Force began their response to AIDS in the spring of 1982 through their involvement in New York AIDS Network. In the beginning, the AIDS Program focused on lobbying and public education with the addition of federal entitlements in the late spring of 1983. For both organizations, securing Social Security benefits was one of many AIDS objectives.

The professional backgrounds of GMHC and NGTF leadership may have limited their recognition of the essential need for income-based federal entitlements and delayed their organizations' interaction with the Social Security Administration. At the same time, the leaders' professional background and business experience likely contributed to their ability to secure meetings with high-level officials within the Department of Health and Human Services. In the period from 1983 to 1985, the NGTF AIDS Program transformed from a project that was unaware of federal entitlements to one that educated others about entitlement issues. At meetings with the Administration, leaders came to the table with clearly defined objectives and status reports based on information they had gathered from AIDS service organizations. The Task Force developed a sophisticated grasp of Social Security procedures and regulations and successfully cultivated relationships within the Administration. They used their privileged relationships with officials to gather and distribute SSA procedure updates and policy decisions in a timely manner and touted their role as information broker to increase their standing within the LGBT community and to apply for grants. Although the Task Force had hoped the liaison system would be more uniformly structured across regions, the system did provide AIDS service organizations and other participating groups a defined role in the application process and enabled the Task force to monitor

¹⁴⁵ "GMHC, INC. Board of Directors Meeting," March 15, 1983, Box 1, Folder 2, GMHC records, NYPL.

the implementation of the presumptive disability directives and the experiences of people with ARC. During the three-year span, the Administration's response to AIDS included incremental changes that benefited people with AIDS. The Task Force AIDS Program certainly did not succeed in convincing the Administration to adopt all their recommendations; however, their voice had been acknowledged and considered.

The health and financial calamity of AIDS brought people with AIDS, most of whom were gay men, in contact with local, state and federal income assistance programs. The Social Security Administration had taken steps in 1983 to ensure that gay men with AIDS were eligible for federal benefits. In 1985, the Administration added AIDS "to the impairment category in §416.934 to permit presumptive disability decisions for this disease."¹⁴⁶ Although it is difficult to measure the influence of the Task Force over that of other organizations and factors, during the early years of the crisis, their efforts addressed urgent needs. Their work helped people with AIDS secure access to their right to entitlements. On an organizational level, the Task Force entered into a quasi-partnership with the Administration. Although not an equal partner, NGTF was more than a worthy supplicant. NGTF's financial crisis occurred during a critical time during the AIDS epidemic. The identification of the viral agent responsible for AIDS in 1984 and the introduction of the antibody test in 1985 contributed to a backlash against people with AIDS. Support for mandatory testing and even quarantine circulated in the public and political spheres. The Task Force narrowed their attention to funding and civil rights issues. It appears that AIDS Action Council, which the Task Force was a leading member of, guided later movement work in the area of federal entitlements. The early success of the AIDS Program is absent from accounts of the late 1980s that are justifiably critical of the CDC and SSA's failure to expand the definition of AIDS to include the medical

¹⁴⁶ "Presumptive Disability and Presumptive Blindness; Categories of Impairments--AIDS," 5573.

issues women, drug users and people of color experienced. However, the narrative of the Task Force AIDS Program reveals that NGTF responded to the pressing issues of the time—expediting the application process and broadening the definition of AIDS. Congress had enacted SSI and Medicaid to assist people with disabilities. While funding for research, education and services remained inadequate, the bureaucracy’s mission would override the straight state.

CHAPTER 3. AIDS AND CIVIL RIGHTS, 1983-1986

In July 1983, two heterosexual men in Stony Brook, New York, kicked out their gay roommate because they feared he had AIDS due to his sexual orientation. He was given one day to pack up and leave. In September 1983, a computer business in San Antonio, Texas, dismissed a gay man with AIDS and revoked his health insurance policy when it learned of his health condition. In October 1984, a restaurant in Brooklyn, New York, fired a woman and her boyfriend because they lived with the woman's uncle who had AIDS. Also in October, the wife of a man with AIDS reported that the landlord had turned off their heat and hot water in an effort to get the family to leave. In January 1985, the County Health Department for Badenton, Florida, interfered in the funeral service for a person with AIDS, limiting the number of mourners and prohibiting pallbearers due to fear of airborne contagion. In 1985, the New York City AIDS Discrimination Unit took multiple complaints from social workers whose clients with AIDS in need of nursing care were rejected from nursing homes. Social workers and individuals reported difficulty securing medical transport from ambulances and ambulette services. These few examples taken from reports received by the National Gay Task Force (NGTF) Crisis Line and by the New York City Commission of Human Rights suggest the pervasiveness of discrimination against people with AIDS and those perceived to have AIDS.¹

Adding AIDS to the Social Security list of presumptive disabilities helped individuals with AIDS qualify as disabled so that they could receive income support and health benefits in a timely manner. Social Security payments did not help with the economic and social discrimination people

¹ "NGTF AIDS Update: AIDS-Related Discrimination," circa 1985, Box 326, Folder 2, Gay Men's Health Crisis records (GMHC), Manuscripts and Archives Division, The New York Public Library (NYPL); "NYC Commission on Human Rights Report on Discrimination Against People with AIDS November 1983 - April 1986," 1986, Box 326, Folder 3, GMHC Records, NYPL.

with AIDS experienced; however, laws that protected the civil rights of people with disabilities held some promise. During the 1960s and 1970s, the disability rights movement had coalesced. The federal Rehabilitation Act of 1973 included a section that protected the rights of people with disabilities in programs receiving federal funds. As recipients of federal funds, many state and local governments adopted similar provisions in their statutes and codes. Disability under civil rights or human rights laws typically involved having an impairment that substantially interfered with a significant life activity but did not assume the individual was incapable of employment. The mosaic of federal, state and local laws provided varying levels of protection against exclusion from employment, housing and public accommodation. Some regulations included protection for those “regarded as” or “perceived to be” disabled. Inclusion rather than benefits was the objective of disability rights laws.

The role of civil and human rights law during the early years of the AIDS crisis is largely absent from historic accounts. This chapter examines the transition from considering AIDS a medical condition whose sufferers deserved state assistance to recognizing that people with AIDS deserved the same civil rights protection as other people with disabilities. Two case studies reveal the use of civil rights laws during the early years of the AIDS crisis when public fear and hysteria prompted widespread discrimination against people with AIDS. The first considers the New York State Division of Human Rights, New York City Commission on Human Rights and activist groups such as the Task Force, Gay Men’s Health Crisis (GMHC) and Lambda Legal Defense and Education Fund (Lambda). Examples of collaboration, litigation and advocacy shed light on early efforts to confront AIDS discrimination with disability rights laws. The disparity between the civil rights protection for people with AIDS and the lack of civil rights protection for sexual minorities highlighted the need for civil rights protection for sexual minorities. The second investigates a

little-known legal case, *Doe v. Charlotte Memorial Hospital*, that was the first federal case filed which considered AIDS and Section 504 of the Rehabilitation Act. The case intersects with the controversial memorandum on AIDS and Section 504 issued by Charles Cooper of the Department of Justice and the Supreme Court's *Nassau v. Arline* decision on contagious disease. It shifts the timeline of the successful battle to include people with AIDS under the protection of the Americans with Disabilities Act (1990) earlier than more well-known antecedents such as the President's Commission on the HIV Epidemic recommendations in 1988 and the contagious disease amendment to the Rehabilitation Act in the Civil Rights Restoration Act of 1988. The case provides an inside perspective on the work of activists and on the conflict over the protection of people with AIDS under Section 504.

3.1 Disability Rights Law Background:

3.1.1 Federal

Federal disability policy originated in the pensions and survivor benefits paid to injured soldiers and their families. The expense of Civil War and Spanish American War pension payments spurred a political backlash against the state of dependency the benefits appeared to encourage. During World War I, Congress passed legislation to provide injured soldiers with vocational rehabilitation with the intention of reducing pension payments.² Beth Linker argues that Progressive Era concerns about “manliness” contributed to the adoption of a rehabilitation model that expected soldiers to work after injury rather than to rely on the government for financial support.³ After the war, Congress extended vocational services to civilians with disabilities (Smith-Fess Act-1920). Vocational Rehabilitation Amendments continued to expand the scope of

² National Defense Act-1916; The Smith Hughes Act-1917; The Smith-Sears Rehabilitation Act-1918.

³ Beth Linker, *War's Waste: Rehabilitation in World War I America* (Chicago: University of Chicago Press, 2011).

government services offered and extended eligibility to people with more significant physical impairments and people with cognitive and mental health impairments. In 1968, Congress passed the Architectural Barriers Act which required most buildings financed with federal funds to be accessible to people with physical disabilities and established a process to develop accessibility standards.⁴

Congress debated the Rehabilitation Act of 1973 in the context of the growing recognition of the rights of people with disabilities. In the 1960s and 1970s, deinstitutionalization and the burgeoning Independent Living Movement had brought public attention to the capabilities and needs of people with disabilities. However, despite the growing awareness, the Civil Rights Acts of 1968 (Fair Housing Act-Title VIII) had not included people with disabilities as a protected class. Likewise, a 1972 legislative attempt by Senators Hubert Humphrey (D-MN) and Charles Percy (R-IL), and Representative Charles Vanik (D-OH) to add “physical or mental handicap” to the protected classes under the Civil Rights Act of 1964 failed to reach the floor of Congress.⁵ Activists did not expect the 1973 Act to address the civil rights of people with disabilities.

The Rehabilitation Act of 1973 replaced the employment-focused Vocational Rehabilitation Act Amendments of 1965. Although President Nixon vetoed the Act twice due to objections over the projected expense, much of the lengthier 1973 replacement followed the pattern of expanding services and eligibility as the earlier Vocational Acts had. The Rehabilitation Act of 1973 addressed the needs of “those with the most severe handicaps, so that they may prepare for and engage in gainful employment.” It also mandated a study on how to assist individuals who “cannot reasonably be expected to be rehabilitated for employment but for whom a program of

⁴ *Architectural Barriers Act of 1968*, Pub. L. No. 90-480, (1968).

⁵ Richard K. Scotch, *From Good Will to Civil Rights: Transforming Federal Disability Policy*, 2nd ed. (Philadelphia: Temple University Press, 2001), 43-45. Scotch suggests the amendment may have been opposed out of concern it would weaken the enforcement of the Civil Rights Act rather than for ideological opposition.

rehabilitation could improve their ability to live independently or function normally within their family and community.” The declaration of purpose statement mentioned the need to continue the evaluation and enforcement of architectural barriers and transportation regulations. Still, nothing in the statement explicitly suggested the Act would become the focal point for civil rights protections for people with disabilities.⁶

The last part of the Rehabilitation Act of 1973, originally labelled “Title V—Miscellaneous,” established federal rules for the employment of the disabled and concluded with a brief section on “Nondiscrimination under Federal Grants.” Section 501 of Title V required executive branch departments, agencies and instrumentalities to develop an affirmative action program plan for the employment of people with disabilities. Section 503 required federal contractors to “take affirmative action to employ and advance in employment qualified handicapped individuals.” Section 504, modeled on Title VI of the Civil Rights Act of 1964, prohibited discrimination against “otherwise qualified handicapped individuals . . . under any program or activity receiving federal financial assistance.”⁷ Referring to Section 504, Richard Scotch concluded, “At the time of its inclusion and throughout the consideration of the Rehabilitation Act by Congress and the president, neither members of Congress nor those concerned with disabilities issues took note of the section.”⁸ Jonathon Young described Section 504 as “a stealth measure in the midst of a backlash against civil rights.”⁹ In 1974, clarification amendments modified the definition of handicapped to include people with a record of impairment or regarded as having an impairment. The modified definition had potential to provide legal

⁶ *Rehabilitation Act of 1973*, Pub. L. No. 93-112, (1973), 357, 74.

⁷ *Ibid.*, 393-94. This included universities, states, hospitals and federal assistance programs; *Third Handicapped Aid Bill Signed After Two Vetoes*. 29th ed., CQ Almanac 1973 (Washington, DC: Congressional Quarterly, 1974).

⁸ Scotch, *From Good Will to Civil Rights*, 52. Scotch also notes that OCR rejected the inclusion of ‘homosexuals.’ p. 69.

⁹ Young, *Equality of Opportunity*, 12.

protection to people with AIDS and others such as gay men whom people perceived as having AIDS.

The Office of Civil Rights, which had been tasked by Caspar Weinberger, Secretary of the Department of Health, Education and Welfare (HEW), with developing regulations for Section 504, did not formally consult with disability rights activists in the early stages of the process.¹⁰ As a result of the lack of communication, disability rights organizations did not actively engage with the Office of Civil Rights until 1975 at which time the regulations had already been written. Nevertheless, the prolonged delay in the publication and implementation of the 504 regulations joined cross disability activists in protest. After demonstrators occupied several HEW regional offices in April 1977, the new Department Secretary, Joseph Califano, finally signed the 504 regulations.¹¹

A few years later, President Reagan's Task Force for Regulatory Relief threatened to cut the Education of All Handicapped Children Act and Section 504 regulations. Members of the Disability Rights Education and Defense Fund (DREDF) and the American Coalition of Citizens with Disabilities (ACCD) formed a coalition of 126 organizations supporting people with disabilities to exert political pressure. Leaders met with the Department of Justice, lobbied Congressional staff, and organized grassroots support.¹² As a result, the administration received over 27,000 letters of protest and dropped their efforts to trim the regulations.¹³ During the process of securing section 504 regulations, disability rights organizations developed political savvy and

¹⁰ Scotch, *From Good Will to Civil Rights*, 79, 84-85.

¹¹ Ibid.; Doris Zames Fleischer and Frieda Zames, *The Disability Rights Movement: From Charity to Confrontation*, Updated ed. (Philadelphia: Temple University Press, 2011).

¹² Disability Rights Education and Defense Fund, "Update: DREDF Activities on Section 504 Regulatory Reform," May 3, 1982, Unprocessed collection 20912, Box 4, Leadership Conference on Civil Rights records (LCCR), Manuscript Division, Library of Congress (LOC). LCCR supported DREDF and ACCD efforts.

¹³ Berkowitz, *Disabled Policy*, 222-23. Berkowitz states 27,000 letters. Shapiro claims 40,000; Joseph P. Shapiro, *No Pity: People with Disabilities Forging a New Civil Rights Movement*, 1st pbk. ed. (New York: Times Books, 1994), 120; Fleischer and Zames, *The Disability Rights Movement: From Charity to Confrontation*, 49-70.

increased the public's awareness of disability rights concerns. As Scotch and many others have noted, Section 504 became a critically important piece in the advancement of disability rights.

3.1.2 New York State Human Rights Law

Since states received federal monies in areas such as education, social services and various block grants, many responded to the 1973 Act by adding people with disabilities to their employment and housing antidiscrimination laws. By 1985, forty-nine states and the District of Columbia prohibited employment discrimination on the basis of handicap.¹⁴ In New York State and City, people with disabilities received additional protection from discrimination under human rights laws and executive orders. New York had a long history of civil rights legislation. New York State passed anti-discrimination legislation in the first half of the twentieth century. In 1939, the State banned racial and religious discrimination in publicly owned housing.¹⁵ When President Roosevelt's World War II Executive Order 8802 barred religious and racial discrimination by defense contractors (1941), New York State's War Council also confronted employment discrimination (1942). As the war drew to a close, a Temporary Commission Against Discrimination was formed to prepare permanent anti-discrimination legislation (1944). The resulting Ives-Quinn Act of 1945 created the State Commission Against Discrimination to "eliminate and prevent discrimination because of race, creed, color or national origin."¹⁶ The Act established an administrative process to investigate complaints and invested the Commission with

¹⁴ Deborah Titus, "AIDS as a Handicap Under the Federal Rehabilitation Act of 1973," *Washington and Lee Law Review* 43, no. 4 (1986): 1519, fn 15. Titus referred to the Fair Empl. Prac. Manual, 8A Labor Rel. Rep. (BNA) summary of state laws.

¹⁵ Michael Schill, "Local Enforcement of Laws Prohibiting Discrimination in Housing: The New York City Human Rights Commission," *Fordham Urban Law Journal* 23(1996): fn 59, p. 1006.

¹⁶ Ives-Quinn was renamed the Human Rights Law in 1968. Article 15 section 292 of the Executive Law. The Commission became the New York State Division of Human Rights at the same time.

the authority to “take such affirmative action as hiring, reinstatement or upgrading employees with or without back pay.” Labor union practices were also under the law’s purview.¹⁷

In 1974, the New York State Legislature amended their Human Rights Law (formerly Ives-Quinn Act) to include protection for people with disabilities “against discrimination, in employment, housing and places of public accommodation, resort or amusement.”¹⁸ Governor Hugh Carey issued Executive Order 51 establishing the Office of Advocate for the Disabled in 1977. The Office concentrated on structural issues such as increasing employment opportunities that matched the needs of people with disabilities, coordinating government efforts to draft needed legislation and developing community initiatives.¹⁹ In 1979, the Legislature amended the definition of disability to more clearly reflect the intent of the law to protect those who could perform “in a reasonable manner the activities involved in the job.”²⁰ New York’s human rights law had a broader reach than Section 504 in that it encompassed housing and public accommodation.²¹

In 1983, the State Legislature further modified the definition of disability to more closely correspond to the language of Section 504. The amendment added those regarded as or perceived as having a disability to the definition of those disabled.²² Also in 1983, Governor Mario Cuomo signed executive orders to form an Interagency Task Force on AIDS and to prohibit discrimination

¹⁷ Terry Lichtash, “Current Legislation: The Ives-Quinn Act--The Law Against Discrimination,” *St. John's Law Review* 19, no. 2 (1945): 170, 73.

¹⁸ (Executive Law § 296 [1][a], L 1974, ch. 988 § 2) Judge Jasen. “State Division of Human Rights v. Xerox.” <https://law.justia.com/cases/new-york/court-of-appeals/1985/65-n-y-2d-213-0.html> 1985.

¹⁹ Executive Order 51.1 June 3, 1977. The Office of Advocate for the Disabled replaced the State Advisory Council on the Handicapped created by Carey’s EO 33, March 24, 1976. New York State Office of Advocate for the Disabled, “Catalyst for Change,” circa 1983, Box 322, Folder 3, GMHC records, NYPL. The Legislature codified the Office of Advocate for the Disabled in Chapter 718 of the Laws of 1982. [pamphlet]

²⁰ Paula Ettelbrick and Mark Barnes. “Amicus Curiae Brief of Lambda Legal Defense and Education Fund, Inc.” 1-28. books.google.com, December 19, 1986.

²¹ Section 504 barred exclusion from participation in, the benefits and discrimination under “any program or activity receiving Federal financial assistance.

²² Ettelbrick and Barnes, “Amicus Curiae Brief of Lambda Legal Defense and Education Fund, Inc.,” 12-13.

on the basis of sexual orientation in the provision of State services and in State employment. Additionally, the State Legislature created the AIDS Institute within the State Department of Health.²³ The AIDS Institute provided funding to the Gay Men's Health Crisis (GMHC) and used GMHC as a model in their development of community-based organizations in other regions. Mel Rosen, GMHC's first executive director, left his position at GMHC when he was appointed the first director of the AIDS Institute.²⁴ As the AIDS crisis continued, New York State had a legal framework in place to confront discrimination against people with AIDS. The State Division of Human Rights recognized people with AIDS as disabled and under protection of the Human Rights Law (1983).²⁵ However, civil rights protection for gays and lesbians was limited. Executive Order 28 barred discrimination based on sexual orientation by state agencies and departments; yet, the State Legislature would not pass comprehensive protection until 2002.

3.1.3 New York City Human Rights Law

New York City's civil rights law development ran parallel to the state's path. Mayor Fiorello La Guardia responded to race riots in 1935 and 1943 by appointing a biracial committee to investigate the roots of the 1935 riots and forming the Mayor's Committee on Unity to investigate continued discrimination after the 1943 riots. Also in 1943, the City Council broadened the reach of the 1939 State law barring discrimination in public housing by prohibiting

²³ Mario M. Cuomo, "Executive Order No. 28: Establishing a Task Force on Sexual Orientation Discrimination," November 18, 1983, govt.westlaw.com; "Executive Order No. 15: Establishing an Interagency Task Force on Acquired Immune Deficiency Syndrome (AIDS)," May 16, 1983, govt.westlaw.com; New York State Department of Health AIDS Institute, "The New York State Department of Health AIDS Institute, July 30, 1983-July 30, 2008: 25 Years of Leadership Service and Compassion," May 2010, Albany, NY: New York State Department of Health.

²⁴ "The New York State Department of Health AIDS Institute, July 30, 1983-July 30, 2008: 25 Years of Leadership Service and Compassion," 3-6. Chapter 823 of the Laws of 1983 Article 27-E Section 2775

²⁵ Liz Abzug, "To Roger McFarlane," December 5, 1983, Box 326, Folder 1, GMHC records, NYPL. Abzug was Deputy Commissioner In-Charge of Operations of the State of New York Division of Human Rights. The letter informing McFarlane of their policy mentioned earlier Division contact with LLDEF.

discrimination in “any housing which benefited from tax exemptions” in the City.²⁶ The Council established the Commission on Intergroup Relations in 1955 and renamed it the Commission on Human Rights in 1962. The name-change came with increased authority “to prosecute discrimination based on race, creed, color and national origin in employment, public accommodations and housing, as well as commercial spaces.”²⁷ In the interim (1955-1962), Mayor Robert Wagner signed Executive Order 41 (1957) banning employment discrimination by city agencies and the City Council barred discrimination in private housing (1958).²⁸ The City Council added people with disabilities as a protected class under the NYC Human Rights Law in 1968.²⁹ Mayor Abraham Beame issued Executive Order 14 in 1974 to bring the city’s employment practices in line with federal and state equal employment opportunity regulations for “qualified minorities, women, and the physically handicapped.”³⁰ As the AIDS crisis grew, the City Commission on Human Rights formed an AIDS Discrimination Unit in the summer of 1983 to respond to complaints and proactively investigate systemic discrimination against people with AIDS as individuals with disabilities.³¹

Gay and lesbian residents of New York City received some protection against discrimination earlier than state residents did. Mayor Koch issued an executive order in 1978 prohibiting city entities from discrimination based on sexual orientation or affectional

²⁶ Schill, "Local Enforcement of Laws Prohibiting Discrimination in Housing: The New York City Human Rights Commission," 1006; Marta Varela, "The First Forty Years of the Commission on Human Rights," *ibid.*, no. 4: 985.

²⁷ NYC Human Rights. "Inside CCHR: Commission's History." www.nyc1.gov, 6/22/2018 2018. 1965 Human Rights Law: Chapter I, Title B, later Title 8, of the Administrative Code of the City of New York

²⁸ Varela, "The First Forty Years of the Commission on Human Rights," 985. Fair Housing Practices Law, Local Law 80 (December 30, 1957). Signed 1958.

²⁹ New York, NY, Local Law No 95 (1968). Schill, "Local Enforcement of Laws Prohibiting Discrimination in Housing: The New York City Human Rights Commission," 1010.

³⁰ Abraham D. Beame, "Office of the Mayor Executive Order No. 14," May 21, 1974, www1.nyc.gov/site/records/.

³¹ Douglas Crimp et al., "The Second Epidemic," *October* 43(1987): 127-30.

preference.³² Koch's 1980 Executive Order 50, established the Bureau of Labor Services to secure equal employment opportunities in city contracts "without unlawful discrimination as to race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or affection preference in all employment decisions."³³ In 1986, after a 15 year effort by gay and lesbian activists, the New York City Council amended their Human Rights Code to ban discrimination on the basis of sexual orientation.³⁴ Documentation of the discrimination gay and lesbian individuals experienced collected by the Commission on Human Rights helped sway the Council's decision.

Unlike Social Security regulations that applied the same definition of disability to every person who applied for benefits, disability rights laws varied across federal, state and local jurisdictions. Section 504 was written in the spirit of a civil rights law; however, it did not include the broader employment and housing protection offered by the Civil Rights Acts of 1964 and 1968. The scope of protection only encompassed entities that received federal monies. The various United States Departmental Offices for Civil Rights enforced the regulations as related to their department with the Department of Justice responsible for oversight. In New York, legislators added people with disabilities to existing human rights law that banned discrimination in employment, housing and public accommodations. The State Division on Human Rights and the City Commission on Human Rights employed administrative and judicial action to enforce the human rights laws.

³² Edward Koch, "Executive Order No. 4. Discrimination on Account of Sexual Orientation or Affectional Preference," January 23, 1978, <https://www1.nyc.gov/site/records/>. The City Council codified the Executive Order in 1986. New York Local Law 2 prohibited discrimination based on sexual orientation (Schill p. 1010).

³³ "Executive Order No. 50 Bureau of Labor Services," April 25, 1980, <https://www1.nyc.gov/site/records/>. Religious organizations challenged the order. In 1984, a judge found executive order 50 unconstitutional. NY Supreme Court reversed the decision 5/14/1985; David Dunlap, "Judge Upsets Koch Order Barring Bias Against Homosexuals in Jobs," *New York Times*, September 6, 1984.

³⁴ "Historical Background on Homosexual Rights Legislation in the New York City Council," circa 1984, Box 326, Folder 4, GMHC records, NYPL; Joyce Purnick, "Homosexual Rights Bill is Passed by City Council in 21-to-14 Vote," *New York Times*, March 21, 1986, A1. The first NYC "homosexual rights" legislation was introduced in 1971 and introduced repeatedly with "increasingly close votes" in the following years.

3.2 AIDS Discrimination in New York

In the first years of the AIDS crisis, more people with AIDS lived in New York City than any other city. In June 1983, the CDC reported 1,641 cases of AIDS. Forty-five percent of the individuals were located in New York City in comparison to 10% in San Francisco and 6% in Los Angeles.³⁵ News updates indicated that the syndrome had spread to people receiving blood transfusions, women and children. An article in the *Journal of the American Medical Association* suggested that the AIDS symptoms of children in the study were “related in some way to household exposure.”³⁶ Public panic about AIDS contagion spread. People with AIDS or who were assumed to have AIDS were fired, evicted, refused service by nursing homes, ambulances and funeral homes and received inadequate medical care. Katy Taylor, City Commission Deputy Director, recalled the first case the Commission received was that of a grandmother who could not find a funeral home willing to bury her granddaughter who had died of AIDS related complications.³⁷ *TIME* magazine argued, “For homosexuals, the AIDS scare is also a political setback: after a decade of social gains and increasing tolerance, gays are suddenly pariahs again.”³⁸

In 1983, the New York AIDS Network, which included city liaisons, health officials, and representatives of the National Gay Task Force, Lambda Legal Education and Defense Fund, Gay Men’s Health Crisis and other interested groups, met weekly to discuss health policies, legislative recommendations and the needs of people with AIDS. The group described the meetings as “a forum to share accurate and current information, investigate rumors, and develop and carry out

³⁵ "Current Trends Acquired Immunodeficiency Syndrome (AIDS Update--United States)."The total only counted people who met the CDC surveillance definition. "These cases were diagnosed in patients who had Kaposi's sarcoma (KS) or an opportunistic infection suggestive of an underlying cellular immunodeficiency."

³⁶ J. Oleske et al., "Immune Deficiency Syndrome in Children," *Journal of the American Medical Association* 249, no. 17 (1983).

³⁷ Crimp et al., "The Second Epidemic," 127. First report received 6/1983. (Mentioned in April 1986 Report)

³⁸ John Leo, Elizabeth Taylor, and Dick Thompson, "The Real Epidemic: Fear and Despair," *TIME*, July 4, 1983.

unified strategies to meet the mounting problems around AIDS.”³⁹ At both the state and city level, New York human rights agencies recognized people with AIDS as part of the legally protected class of disabled. Lambda and GMHC worked with the New York State Division of Human Rights and New York City Commission on Human Rights (NYCCHR) to document discrimination, educate government agencies and the public, and address complaints of discrimination.

3.2.1 Collaboration

In New York City, a 1978 executive order prohibited discrimination based on sexual orientation in municipal employment, housing and the provision of services. The Mayor tasked the City Commission on Human Rights with investigating complaints.⁴⁰ Prior to tackling their first AIDS litigation case, Lambda had established a working relationship with the New York City Commission on Human Rights. Early in 1983 after experiencing an increase in phone calls about discrimination, Lambda’s Legal Committee met with NYCCHR Deputy Commissioner Alberta Fuentes to discuss the complaints. After the meeting, Pat Maher, Lambda’s Public Education coordinator, developed a series of staff training session for the Commission. The pilot project sought to “increase the effectiveness of municipal human rights enforcement agencies.” Participants discussed the legal status of gay men and lesbians; learned about the legal battles involving economic and family discrimination; and, discovered how myths, stereotypes and the lack of legal protection impelled discrimination. Maher asserted, “We feel that this [workshop] is a very important first step in working more closely with the City around issues of anti-gay discrimination incidences of which are all to frequent.”⁴¹ In May, Lambda provided training for

³⁹ "AIDS-Related Organizations and Services in the Greater New York Area," August 1983, Box 332, Folder 12, GMHC records, NYPL.

⁴⁰ Executive Order 4 Discrimination on Account of Sexual Orientation or Affectional Preference, Edward Koch, 1/23/1978.

⁴¹ "Lambda Works with Human Rights Commission," Spring 1983, Box 76, Folder 8, Frank Kameny Papers, Manuscript Division, Library of Congress (LOC); Tim Sweeney, "Lambda Kicks Off Pilot Educational Project with

the City Bureau of Labor Services. The sessions “aimed at strengthening the Bureau’s requirement that contractors post and publicize statements of non-discrimination in workplaces.”⁴² Lambda also provided training to the State Division on Human Rights. They hoped the pilot project would “serve as a model for use in other municipalities to implement existing human rights law.”⁴³ Additionally, the city had a contract with GMHC for providing social services and hospital training in 1983.⁴⁴

Organizations such as Lambda Legal Defense and Education Fund, Gay Men’s Health Crisis and the National Gay Task Force collaborated with the state and city as they applied disability rights laws to AIDS discrimination. One of the first tasks undertaken was assessing and documenting the types and volume of discrimination. The New York State Division of Human Rights documented cases of employment discrimination, threatened evictions, and refusal of medical care.⁴⁵ In addition to documenting complaints, the City Commission conducted surveys of AIDS discrimination, actively soliciting examples of AIDS discrimination from groups such as social work service agencies, individual social workers and AIDs service organizations.⁴⁶ Keith O’Connor, Director of the Pattern & Practice Division of the Commission on Human Rights, asked

New York City Human Rights Commission," March 21, 1983, Box 166, Folder 67, NGLTF Records, Cornell: microfilm; Tim Sweeney and Michael Seltzer, "Correspondence: Request for AIDS Litigation Project grant," August 3, 1983, Box 45, Folder 1, GMHC records, NYPL. As a result of the March training sessions, Lambda developed a pamphlet to assist gay and lesbian communities understand gay rights laws.

⁴² "Correspondence: Request for AIDS Litigation Project grant." Mayor Koch's E.O 50 banning discrimination on the basis of sexual orientation by city contractors had created the Bureau; Tim Sweeney, "Correspondence: Additional Supporting Evidence for GMHC Grant," August 19, 1983, Box 45, Folder 10, GMHC records, NYPL.

⁴³ "Lambda Kicks Off Pilot Educational Project."; "Starting the Second Decade," November 7, 1983, Box 166, Folder 67, NGTLF Records, Cornell: microfilm: Lambda Legal Defense and Education Fund, Inc.

⁴⁴ Edward Koch, "Statement by Mayor Edward I. Koch," June 6, 1983, Box 11, Folder 44, NLGHA records, Cornell.

⁴⁵ Felicitia Clavell, "Press Release: The number of discrimination complaints," December 4, 1985, Box 326, Folder 2, GMHC records, NYPL. The report, "AIDS Based Discrimination: A Summary of Reported Instances" included cases from September 1983-October 1985.

⁴⁶ Rosemary Moynihan and Esther Chackes, "To Members of the AIDS/KS Social Work Discussion Group Questionnaire for Social Work Services for Acquired Immune Deficiency Syndrome," May 10, 1984, Box 326, Folder 1, GMHC records, NYPL; Keith O' Connor and Katy Taylor, "Social Worker Survey," 1984, Box 326, Folder 1, GMHC records, NYPL; Keith O' Connor, "To Roger McFarlane," May 22, 1984, Box 326, Folder 1, GMHC records, NYPL; Keith O' Connor and Katy Taylor, "To Friend draft," May 24, 1984, Box 326, Folder 1, GMHC records, NYPL.

Roger McFarlane, Director of GMHC, for assistance getting input on developing the questionnaire from people with AIDS and help distributing the surveys to people with AIDS.⁴⁷ The National Gay Task Force (NGTF) also documented cases of individuals who lost their job, were denied housing, received poor medical care or were refused care by hospitals and first responders, were threatened verbally or physically assaulted because they were assumed to have AIDS.⁴⁸

The City's Human Rights Code protecting people with disabilities had a broader reach than the city's executive order on sexual orientation. The code barred discrimination against people with disabilities in employment, housing and public accommodations. During the summer of 1983, Barry Davidson of Gay Men's Health Crisis and Keith O'Connor discussed the possibility of covering AIDS discrimination under the City's Human Rights Code. In an August letter, O'Connor delineated the roles of the Mayor's Office for the Handicapped and of the City Commission on Human Rights. O'Connor suggested that individuals encountering problems related to AIDS should visit the Mayor's Office as a first step. Although not a law enforcement agency, the Mayor's Office had assigned a staff member to advocate for individuals with AIDS who had experienced problems in employment, housing and other areas. If the Mayor's Office could not solve the issue through advocacy, O'Connor advised GMHC that the City Commission would accept and investigate complaints in cases of employment, housing and public accommodation discrimination. The Commission had authority to order compliance and award compensatory damages.⁴⁹ O'Connor assured Davidson that the code "definitely covers AIDS"

⁴⁷ O' Connor, "To Roger McFarlane."

⁴⁸ National Gay Task Force, "Telephone Log," circa 1983, Box 49, Folder 2, GMHC records, NYPL; "Precis of Some Anti-Gay/Lesbian Violence Reports Documented by NGTF," July 1984, Box 326, Folder 1, GMHC records, NYPL; "NGTF AIDS Update: AIDS-Related Discrimination," 1985, Box 326, Folder 2, GMHC records, NYPL.

⁴⁹ "Your Rights in Employment, Housing and Public Accommodations," circa 1984, Box 326, Folder 6, GMHC records, NYPL.

and also covered people “viewed as a high-risk group and are thus perceived as possibly AIDS-prone,” referring to gay men.⁵⁰

In practice, due to the urgent nature of many of the incidents, the Commission attempted to solve problems outside of the slower investigative and hearing process. Katy Taylor, who was hired by O'Connor to work on the AIDS cases, described their efforts as “‘cowboy advocacy’—like the Wild West, it was all new territory, there were no rules, so you figured it out as you went along.” O'Connor pressured the Commission to respond aggressively to the growing incidents of AIDS discrimination. In the summer of 1983, the Commission formed the AIDS Discrimination Unit. Four years later, the Unit employed 16 full-time staff members to pursue complaints, document AIDS discrimination, issue reports and educate the community and other city agencies about AIDS discrimination.⁵¹

The New York State Division of Human Rights took similar steps to confront AIDS discrimination. Late in 1983, Deputy Commissioner Liz Abzug reached out to Roger McFarlane to inform him of the Division's policy to recognize AIDS as a disability under protection. State human rights law would protect the rights of people perceived to have AIDS or who were assumed to belong to a group susceptible to AIDS including individuals related to or residing with someone who had AIDS. Abzug indicated that the Division had already “successfully investigated complaints of AIDS victims, which have been referred to us by the LAMBDA Legal Defense Fund.”⁵² In 1984, the National Gay Task Force organized an information display at a statewide

⁵⁰ Keith O' Connor, "To Barry Davidson," August 4, 1983, Box 49, Folder 2, GMHC records, NYPL. Additionally, the Mayor's AIDS Inter-Agency Task Force brought together representatives of NYC Department of Health and stakeholders including GMHC, the NY AIDS Network and People with AIDS, to discuss medical and social issues. GMHC's Barry Davidson attended the June 27, 1983 meeting. On August 8, Keith O'Connor attended the meeting to discussed the steps NYCCHR was taking to deal with discrimination complaints including their communication with GMHC and their involvement in the employment discrimination case at Columbia University. Box 49, Folder 2, GMHC, NYPL.

⁵¹ Crimp et al., "The Second Epidemic," 127-28.

⁵² Abzug, "To Roger McFarlane."

conference on human rights sponsored by the State Division. In 1985, Lambda and NGTF held a workshop on Anti-Gay/Lesbian Violence at the second annual human rights conference.⁵³ By 1985, the State Division's AIDS Discrimination Project and GMHC were conducting weekly AIDS Discrimination Clinics. Additionally, the Division issued reports and fact sheets as well as offered presentations and seminars to communities and other government agencies. According to a state information sheet, "The Project is regularly contacted by the national press and television networks as well as the legal and medical press."⁵⁴

The state took complaints regarding discriminatory treatment in employment, housing, credit and public accommodations. It received far fewer complaints of AIDS discrimination than the city did. From September 1983 through December 1984, the state received six formal complaints which increased to 30 reports in the first 10 months of 1985. The State Human Rights Commissioner Douglas White noted, "The Division of Human Rights has received numerous anecdotal reports as well as reports of instances of discrimination which did not lead to a formal complaint being filed."⁵⁵

The State Division shared the City Commission's mission to investigate systemic discrimination and recommend mitigating legislation. In November 1983, New York Governor Mario Cuomo signed an executive order to establish a Task Force to investigate Sexual Orientation Discrimination. The order also barred discrimination based on sexual orientation in state

⁵³ Esmeralda Simmons, "To Ms. Apuzzo," March 3, 1984, Box 52, Folder 42, NGLTF, Cornell: microfilm: State of New York Division of Human Rights; "State of Human Rights in New York State Conference Program," March 25, 1985, Box 52, Folder 42, NGLTF, Cornell: microfilm: New York State Division of Human Rights; Abby Rubinfeld, "To Kevin, Jim, and Bruce," March 26, 1985, Box 52, Folder 42, NGTLF, Cornell: microfilm. Dr. James Haynes of the State University College at Buffalo and Bruce Kogan, investigator for the State Crime Victims Board were also on the panel.

⁵⁴ New York State Division of Human Rights, "AIDS Discrimination Project," circa 1985, Box 326, Folder 3, GMHC records, NYPL.

⁵⁵ "PR #35," December 4, 1985, Box 326, Folder 2, GMHC records, NYPL; "17 AIDS Discrimination Cases Filed in 1st 10 Months of '85," *New York Times*, December 5, 1985. Of the 30 reports, 17 resulted in formal complaints. The NYT notes an additional 19, which would raise the total to 36 for 1985.

employment and in the provision of services.⁵⁶ In April 1984, Abzug contacted GMHC to request their assistance in alerting the GMHC membership about the Division's concern about discrimination based on sexual orientation. Although New York State law did not offer legal remedies in cases of sexual orientation discrimination, the Division offered to advocate for those who experienced discrimination. Like the City Commission, they sought to document the complaints and intended to use their findings to advocate for legal change. Abzug explained, "Your [GMHC] effective outreach about our work will certainly help the Division in its advocacy for protective legislation to combat the discrimination and violence experienced by the gay community in New York State."⁵⁷ Additionally, the Governor's Task Force on Gay Issues worked with Lambda to document discrimination based on sexual orientation. As a member of the Governor's Task Force, Abby Rubenfeld, Lambda's managing attorney, attended hearings across the state to gather testimony about anti-gay/lesbian discrimination. Rubenfeld helped develop a training program for state employees "on the existence and meaning of the Governor's Executive Order [28] on sexual orientation" and was a member of the State Advisory Council for the State Division on Human Rights.⁵⁸ The city and state reports on discrimination based on AIDS status and sexual orientation brought attention to the severity of discrimination.

3.2.2 Litigation

During 1983, Lambda successfully engaged in federal and state litigation. In the same week that GMHC received the August letter from Keith O'Connor affirming people with AIDS qualified for protection under human rights codes, Lambda requested a \$10,000 grant from GMHC to fund

⁵⁶ Executive Order No. 28: Establishing a Task Force on Sexual Orientation Discrimination. Mario Cuomo 11/18/1983.

⁵⁷ Liz Abzug, "To Mel Rosen," April 20, 1984, Box 326, Folder 1, GMHC records, NYPL. Governor Cuomo had issued EO 28 barring discrimination based on sexual orientation in state agencies on 11/18/1983.

⁵⁸ Abby Rubenfeld, "Monthly Report for February 1985," February 7, 1985, Box 166, Folder 67, NGLTF Records, Cornell: microfilm; "Monthly Report for April 1985," April 2, 1985, Box 166, Folder 68, NGLTF Records, Cornell: microfilm.

an AIDS Litigation Project.⁵⁹ In addition to litigation, the project would include research and public education components. At the time of the grant application, LLDEF had taken on several cases involving AIDS discrimination including an employment case that considered disability.⁶⁰

3.2.2.1 Columbia University

In July 1983, Lambda filed a complaint against Columbia University due to their alleged policy of refusing to employ people with AIDS. As contractor to the federal government, Columbia was required to comply with Section 503 of the Rehabilitation Act of 1973 regarding employment of people with disabilities. Lambda's grant application to GMHC argued, "The case is important in terms of fitting AIDS discrimination within the purview of federal, state and local laws banning disability-based discrimination." The client also filed a complaint through the City Human Rights Commission hoping the City could secure his rehire. Attorney Arthur Leonard asserted, "The current rash of discrimination cases which Lambda is receiving must not turn into an epidemic of discrimination parallel to the medical epidemic."⁶¹ Although Lambda's claim that Columbia "stands to lose all its federal contracts" if found in violation exaggerated the possible outcome, the case itself reveals Lambda's growing understanding of the potential recourse offered by disability rights law.⁶² The case resolved with Columbia reinstating the client and changing their policy restricting the employment of people with AIDS. LLDEF's December newsletter summary of the case identified the limits of the potential protection: "Lambda used the disability law as its legal

⁵⁹Tony Whitfield and Pat Maher, "Understanding Our Role," in *LLDEF Newsletter*, Winter 1983, Box 76, Folder 8, Frank Kameny Papers, LOC; "AIDS in the workplace and other cases," in *Lambda Update*, December 1983, Box 76, Folder 8, Frank Kameny Papers, LOC. Pat Maher estimated Lambda received 100 requests for legal assistance a month from individuals and lawyers. On average, five of the calls were about AIDS related discrimination encompassing a wide range of topics from employment, to custody, hospital care and insurance. LLDEF devoted their resources to a few precedent setting cases and provided information and referrals to other requests.

⁶⁰ First AIDS related employment case where a complaint was filed.

⁶¹ Pat Maher, "News Release: Lambda Files Complaint Against Columbia University's Policy of AIDS Employment Discrimination," August 1, 1983, Box 166, Folder 67, NGLTF Records, Cornell: microfilm.

⁶² Sweeney and Seltzer, "Correspondence: Request for AIDS Litigation Project grant."; Sweeney, "Correspondence: Additional Supporting Evidence for GMHC Grant."

handle. Disability law protects gay people from discrimination insofar as they are disabled by AIDS; there is no protection because they are gay.”⁶³ Lambda’s publications often noted the disparity in protection.

3.2.2.2 People v. 49 West 12 Tenants Corp: Sonnabend

In the fall of 1983, Lambda pursued a precedent setting disability rights case. The case they selected dealt with housing discrimination. Lambda’s executive director Tim Sweeney explained, “The case . . . would seek to have a New York Supreme Court declare the Board’s action illegal discrimination based on disability and perceived-disability in violation of New York’s Human Rights Law.” He continued, “Such a precedent . . . could be utilized in cases covering the whole spectrum of discrimination against people with AIDS and those perceived to be people with AIDS, i.e. gay men in general.” Sweeney also suggested the media coverage of the case would help education the public about the irrational fears of contagion directed at people with AIDS. Lambda had already assisted in a variety of AIDS cases without pursuing legal recourse. For this “potential major test case,” they proceeded after retaining a respected law firm and receiving a commitment from New York’s Attorney General to act as joint counsel. Days before they filed the complaint, Lambda secured \$20,000 to aid in legal expenses.⁶⁴ The suit was believed to be the first AIDS discrimination case filed in court.

William Hibsher, Lambda’s attorney for the case, had convinced Attorney General Robert Abrams to join the suit as co-counsel and helped solicit funding for legal costs from GMHC and the Arthur and Mathilde Krim Foundation.⁶⁵ Lambda and Abrams filed suit against an apartment

⁶³ "AIDS in the workplace and other cases."

⁶⁴ Tim Sweeney, "AIDS Test Case Litigation Grant Proposal 9/27/1983," 1983, Box 45, Folder 10, GMHC records, NYPL; "Minutes: Gay Men's Health Crisis, Inc. Board of Directors Meeting," September 28, 1983, Box 1, Folder 2, GMHC records, NYPL.

⁶⁵ "Hibsher: successful and out," in *Lambda Update*, Winter 1983, Box 76, Folder 8, Frank Kameny Papers, LOC. Lambda requested \$15,000 from GMHC on 9/27/1983. The Krim Foundation had already committed to \$5,000.

building cooperative in Greenwich Village that had attempted to evict Joseph Sonnabend, a physician who treated people with AIDS in his ground floor medical office. The co-op president explained to Sonnabend that the eviction was due to fear of Sonnabend's patients with AIDS and worry that apartment values would drop.⁶⁶ The suit charged the co-op with violating Sonnabend's human rights. Attorney General Abrams requested an immediate temporary restraining order to prevent eviction from State Supreme Court Justice Thomas J. Hughes. Two weeks later, State Supreme Court Acting Justice Ira Gammerman granted a preliminary injunction.⁶⁷ Lambda's account of the injunction hearing noted that the co-op had disputed that the apartment lobby qualified as a public accommodation and had argued that Sonnabend had no standing to sue on behalf of his patients but did not dispute that the presence of people with AIDS was the reason for eviction.

The co-op's acknowledgement that their action was directed against people with AIDS was the critical factor in Gammerman's injunction ruling. Newspaper accounts quoted Gammerman: "The eviction 'would cause irreparable harm not so much to the doctor but to the people who are his patients.'" In response to the defense attorney's claim that the office was a private space, the judge responded, "that the doctor and his patients have standing to claim discrimination, there is no question."⁶⁸ A year later, Sonnabend and the co-op reached a settlement. Sonnabend received \$10,000 in damages and a new lease, and the co-op paid \$1,000 in legal costs to the Attorney

GMHC set aside \$15,000 as needed on 9/28/1983. The funding was approved two days before the suit was filed; Sweeney, "AIDS Test Case Litigation Grant Proposal 9/27/1983."; "Minutes: Gay Men's Health Crisis, Inc. Board of Directors Meeting."; *ibid.*, 2.

⁶⁶ Phil Shenon, "A Move to Evict AIDS Physician Fought by State," *New York Times*, October 1, 1983; "Winning for Sonnabend: Lambda fights the first AIDS Lawsuit to reach court," in *Lambda Update*, Winter 1983, Box 76, Folder 8, Frank Kameny Papers, LOC.

⁶⁷ *People v. 49 West 12 Tenants Corp.*, No. 43604/83 (Sup. Ct. N.Y. County October 17, 1983)

⁶⁸ "AIDS Doctor Gets Stay of Eviction," *New York Times*, October 15, 1983; "Doctor Fights Eviction," *Farmington Daily Times, New Mexico*, October 15, 1983, 8.

General's office.⁶⁹ Although the co-op board agreed not to discriminate against people with disabilities in future leases, they did not admit to any wrong.⁷⁰

The Sonnabend case began in victory when the Attorney General agreed to pursue the case. Abrams' involvement indicated that New York State would recognize people with AIDS as disabled under human rights laws. Passing the hurdle of the preliminary injunction also demonstrated that the court recognized people with AIDS had standing under human rights law. Although the weight of the precedent would have been stronger if established by judgment rather than settlement, in New York, the case supported administrative decisions already in place. The City Commission had accepted AIDS discrimination cases prior to the Sonnabend settlement. They used the injunction decision to substantiate their policy. In their 1986 report on AIDS Discrimination, the Commission argued that the State Supreme Court Justice's acknowledgement that the claim had standing under human rights law "implicitly affirmed the Attorney General's conclusion that AIDS was a handicap covered by state law."⁷¹

Lambda also applied the case to future actions. In a 1986 amici curiae brief for the *School Board of Nassau County v. Gene H. Arline* contest, the friends of the court including Lambda listed the Sonnabend injunction decision in a section on States that had applied laws analogous to Section 504 to AIDS discrimination. The brief noted that the New York case was one of only three AIDS cases that had been reached after court decision.⁷² Additionally, Sonnabend's eviction story was covered across the country, fulfilling Lambda's hope that the case would educate the public about the discrimination people with AIDS experienced.

⁶⁹ Timothy Gilles, "News from Attorney General Robert Abrams: Lambda and Abrams Announce Settlement of Nation's First AIDS Discrimination Suit," October 17, 1984, Box 166, Folder 68, NGLTF records, Cornell: microfilm.

⁷⁰ "AIDS doctor wins lawsuit," *The Post, Frederick, MD*, October 18, 1984, D8.

⁷¹ "NYCCHR Report on Discrimination Against People with AIDS 11/83-4/86," 1.

⁷² Employment Law Center et al. "Brief as Amici Curiae in Support of Respondent, Gene H. Arline." 1-18. westlaw.com, September 19, 1986. At least 28 administrative agencies had also recognized AIDS as a disability.

In a press release following the decision, Sonnabend revealed his intentions in pursuing the case. He explained, “I could not stand by and see my patients victimized by unfounded fears.” Lambda’s managing attorney Abby Rubinfeld and Attorney General Abrams predicted the future impact of the case. After highlighting the “hundreds of telephone calls” Lambda received and the “callous discrimination” people experienced, Rubinfeld asserted, “The Sonnabend case should let all persons know that blatant and cruel discrimination of this sort will not be tolerated.” Abrams focused on people’s “ignorance and fear.” He simply stated, “This case demonstrates that New York law protects people with AIDS against discrimination.” Lambda’s counsel, William Hibsher, hoped the case would “establish legal precedent and stop those who would discriminate against this population, which is deserving of our compassion.”⁷³ Unfortunately, people’s fears of AIDS did not abate. The number of complaints the City Commission and State Division received continued to increase.

3.2.3 Advocacy

As 1983 drew to a close, the City Commission on Human Rights received an increased number of calls about discrimination against gay men and lesbians because respondents perceived them as having AIDS. The Commission could pursue these complaints as violation of human rights code. However, except in cases involving city employees, the Commission did not have authority to initiate action against discrimination due to sexual-orientation. Katy Taylor recalled, “We knew that AIDS had triggered an antigay backlash, so we began a Lesbian and Gay Discrimination Documentation Project.”⁷⁴ The City Commission also communicated with the NGTF regarding the Task Force’s NYC Gay/Lesbian Violence Project that documented instances from across the

⁷³ Gilles, "News from Attorney General."

⁷⁴ Crimp et al., "The Second Epidemic," 128. The Gay and Lesbian Discrimination Project did not conduct a survey or solicit complaints.

country. Kevin Berrill, NGTF's Violence Project Director explained, "[The Project] has documented more than 1,000 anti-gay/lesbian incidents, and believes that is only the tip of the iceberg."⁷⁵ In New York, the Commission recorded 82 complaints in the first eight months of their documentation project.⁷⁶

In 1984, Keith O'Connor and Taylor appeared on the Gay Cable News program *Pride and Progress*. Both discussed AIDS discrimination and its relationship to the marked increased in complaints about gay and lesbian discrimination that the Commission had received as well as the tragedy of AIDS discrimination. Correspondent Ed Nichols interviewed Taylor in October to discuss the preliminary results of the Gay and Lesbians Discrimination Project. Asked why there had been such a sharp increase in complaints, Taylor replied, "Largely I think it has to do with the Commission starting to handle AIDs and AIDS-related complaints of discrimination. This brought to our attention a lot of the discrimination that gay men and lesbians were experiencing based solely on their sexual orientation." Taylor continued, "The discrimination that people with AIDS have been experiencing is profound. It's drastic."⁷⁷

O'Connor appeared in a December segment, speaking about the testimony the Commission had recently presented to a City Council Committee on gay and lesbian discrimination. O'Connor shared the latest documentation figures with the Committee in a report that included descriptions of the incidences. After 13 months, the Commission had received 154 complaints of lost jobs, evictions, inability to get insurance, medical neglect, violence and other various forms of discrimination against gay and lesbian individuals. When asked why the number of complaints

⁷⁵ Kevin Berrill, "To Katy Taylor," November 2, 1983, Box 52, Folder 40, NGLTF, Cornell: microfilm.

⁷⁶ "NYC Rights Agency Cites Rise in Complaints of Anti-Gay Bias," *Bay Area Reporter*, September 20, 1984.

⁷⁷ "Interview with Katy Taylor," in *Pride and Progress*, October 4, 1984, Gay Cable News, Fales Library and Special Collections. <http://dlib.nyu.edu/media/clip/rxwdbvhg/mode/embed>.

had risen from virtually none to 154, O'Connor responded, "We have to think it's AIDS, don't we."⁷⁸ He emphasized:

"AIDS cases are horrible. If you go to a hospital and you have AIDS, basically you're going to experience not being fed properly. You're going to have your room cleaned every three weeks. This is a regular occurrence. People don't get adequate care when they have AIDS. So, we can deal with those points. We can take jurisdictional complaints. This is a disability. It's covered under the disability laws. So, AIDS complaints are covered. Gay people are not and we are still suffering the offshoot of that AIDS discrimination."⁷⁹

O'Connor explained the Commission had previously expressed the need for comprehensive gay rights law to the City Council Committee; however, in the past, the members had been skeptical of the existence of discrimination. When presented with the striking number of cases, O'Connor told the reporter that the Committee had reacted with questions and concern.

The Commission had engaged in the documentation projects to assist in the identification of systemic forms of discrimination. The results pointed out the disparity between the civil rights protections afforded to people with disabilities and the lack of protection for sexual minorities. During the two-year period, the Commission had received reports of 474 cases of anti-gay bias and violence with an additional 304 examples of threats and hate mail received by gay and lesbian organizations.⁸⁰ Katy Taylor included her own story of violence in the report, sharing that a neighbor who frequently shouted anti-lesbian insults and threats had assaulted her, resulting in an

⁷⁸ Suzanne Golubsk, "Gay Bias Complaints Increase," *Daily News*, August 28, 1984. Golubsk reported there had been a total of 11 complaints from 1978 to 11/1983.

⁷⁹ "Interview with Keith O' Connor," in *Pride and Progress*, Dec 4, 1984, Gay Cable News, Fales Library and Special Collections. online:<http://dlib.nyu.edu/media/clip/47d7wpms/mode/embed>.

⁸⁰ Marcella Maxwell, "Testimony of Marcella Maxwell, Chairperson New York City Commission on Human Rights before the General Welfare Committee of the New York City Council," March 11, 1986, Box 326, Folder 4, GMHC records, NYPL.

injury that required 15 stitches. A year after the incident, the neighbor continued to menace Taylor, her partner and her guests while they waited for the case to be heard in court.⁸¹

The Commission used the preliminary data to advocate for change. Marcella Maxwell, who had been appointed the Chair of the Commission on Human Rights in May 1984, was a strong supporter of gay and lesbian rights. By September, she concluded, "The large number of complaints received by this commission alleging anti-Gay discrimination indicates the immediate need for protective legislation."⁸² When she testified before the General Welfare Committee of the New York City Council as the Committee considered adding sexual orientation to the Human Rights Code in March 1986, she adamantly proclaimed, "I have gone on record many times now as a staunch advocate of legislation which would protect the rights of gay men and lesbians. That position has not changed."

Maxwell referred to the Gay and Lesbian Documentation Project which had been shared with the Council to support her position. Maxwell noted that in the second year, 32.8% of all the complaints received by the Commission concerned sexual orientation discrimination. Maxwell tied the increase in reports to the AIDS crisis: first, in the timing that corresponded to early AIDS discrimination complaints and second, because "AIDS provides an 'excuse' for discriminating against lesbians and gay men in that people use the existence of this disease to rationalize anti-gay or -lesbian bias."⁸³ Many diligently lobbied the Council for the addition of sexual orientation to the city's human rights laws. The Coalition for Lesbian and Gay Rights orchestrated supporters' testimony, organized a letter writing campaign, held a demonstration and attended the March 20

⁸¹ Katy Taylor, "Testimony of Katy Taylor, Human Rights Specialist, New York City Commission on Human Rights, before the New York State Task Force on Gay Issues: Hearings on Anti-Gay Discrimination," January 17, 1985, Box 326, Folder 6, GMHC records, NYPL.

⁸² "NYC Rights Agency Cites Rise in Complaints of Anti-Gay Bias."

⁸³ Maxwell, "Testimony of Marcella Maxwell," 1, 2, 3, 6.

meeting when the Council voted to approve the bill.⁸⁴ The documentation project validated the testimony of individuals who shared their own encounters with discrimination.

State Commissioner Douglas H. White testified at the same City Council Committee meeting on gay and lesbian rights that Maxwell had. White, who had been the director of the City Bureau of Labor Services prior to his 1984 appointment as State Commissioner, noted the success the Division had had in application of disability rights to assist people with AIDS and to healthy individuals who were assumed to have AIDS. During his testimony, White emphasized, “There is a huge gap in our protection. Healthy gays and lesbians lack basic protection given to those with AIDS or perceived AIDS.” As he concluded his testimony, White asserted the justness of the amendment to the City Council’s Human Rights Law: “Lesbians and gay men deserve equal protection simply because they are equal.” White also read Governor Cuomo’s written statement of support at the City Council meeting.⁸⁵ On March 20, 1986, the New York City Council passed the gay and lesbian rights bill 21-14 in what *New York Times* reporter Joyce Purnick described as “an unexpectedly wide margin.”⁸⁶

3.2.4 Civil Rights Protection in other Cities

Los Angeles and San Francisco confronted AIDS discrimination by passing ordinances to protect people with AIDS against discrimination. In Los Angeles, the City Council unanimously approved an ordinance that banned discrimination in employment, housing and public

⁸⁴ Joyce Hunter, "To friend of lesbian and gay rights,," February 23, 1986, Box 326, Folder 3, GMHC Records, NYPL; Coalition for Lesbian and Gay Rights, "Coalition Newline: D-Days Abound in March," March 1986, Box 326, Folder 3, GMHC Records, NYPL. The Newline reported the Coalition had collected more than 3,000 letters of support.

⁸⁵ Douglas H. White, "Statement by Douglas H. White State Commissioner of Human Rights in Favor of Intro 2," March 11, 1986, Box 326, Folder 3, GMHC records, NYPL: New York State Division of Human Rights; Michael Oreskes, "Cuomo Picks Human Rights Commissioner," *New York Times*, August 30, 1984, 9; New York State Division of Human Rights, "Governor Cuomo and State Commissioner of Human Rights Douglas H White Support Ban on Discrimination Against Homosexuals," 1986, Box 326, Folder 3, GMHC records, NYPL.

⁸⁶ Purnick, "Homosexual Rights Bill is Passed by City Council in 21-to-14 Vote," A1.

accommodation including medical and dental services in August 1985. The civil ordinance allowed an individual to receive incurred damages, legal costs and punitive damages. Ordinance sponsor Joel Wachs believed, "We have an opportunity to set an example for the whole nation to protect those people who suffer from AIDS against invidious discrimination." The city's deputy attorney Maureen Siegel explained, "Los Angeles was the first major city in the nation to pass such a law."⁸⁷ San Francisco passed an AIDS discrimination ordinance that went into effect December, 1985, barring discrimination "on the basis of AIDS/ARC in employment, housing, business establishments, public accommodations, educational institutions, and City services and facilities." The San Francisco Human Rights Commission investigated and mediated complaints, reserving individuals the right to file a civil action under the city ordinance. San Francisco's Municipal Code also prohibited discrimination based on sexual orientation and disability.⁸⁸ Public health scholar Lawrence Gostin noted that in comparison to state statutes that often limited protection to state employment and public housing, "Local ordinances, such as in San Francisco and Los Angeles, are more comprehensive in prohibiting discrimination in business establishments, public accommodations, educational institutions, and city facilities or services."⁸⁹

In Washington, D.C., activists debated whether the existing human rights laws were sufficient to protect people with AIDS or if a specific AIDS ordinance would be better. It appears that the City's 1977 law protecting individuals with physical disabilities and those perceived to have physical disabilities was not applied to any 1981-1984 incidences of AIDS discrimination. In 1985, City Councilmember John Ray requested an advisory opinion from the D.C. Corporation

⁸⁷ "Los Angeles Council Votes to Bar Bias Against People with AIDS," *ibid.*, August 15, 1985.

⁸⁸ "Are you being DISCRIMINATED AGAINST because of AIDS/ARC?," circa 1986, Box 321, Folder 6, GMHC records, NYPL.

⁸⁹ L. O. Gostin, "Public Health Strategies for Confronting AIDS: Legislative and Regulatory Policy in the United States," *Journal of the American Medical Association* 261, no. 11 (1989): 1628.

Counsel's office on the application of the D.C. Human Rights Act to people with AIDS and those perceived to have AIDS. Acting Corporation Counsel John Suda issued a 13-page opinion that concluded the D.C. Act did protect people with AIDS in employment and most public facilities; however, it did not apply to insurance companies. Ray had planned to introduce a bill that would specifically prohibit discrimination against people with AIDS; however, members of the D.C. Gay Activists Alliance had expressed concern that his bill could trigger a backlash, particularly because it would need to be reviewed by Congress. Activist Steve Smith noted, "Suda's opinion strengthens GAA's view that the Ray bill on AIDS discrimination may not be needed so long as existing legislation protects against such discrimination."⁹⁰

When the D.C. City Council passed a bill to prohibit insurance companies from denying coverage to people who tested positive for viral antibodies in 1986, Senator Jesse Helms and Representative William Dannemeyer with the support of the Moral Majority introduced resolutions to overturn the Council's decision. The House District Committee rejected the resolution. In the Senate, Helms succeeded in passing a resolution; however, it was dropped in conference.⁹¹ The Human Rights Campaign Fund (HRCF) had lobbied in support of the Council and viewed the successful defeat of Congress' attempt to overturn the insurance bill as a significant victory.⁹² Vic Basile, HRCF executive director, noted, "This is not just a District of Columbia issue. Whatever happens here could very likely happen all across the country."⁹³

⁹⁰ Lou Chibbaro Jr., "DC Law Does Protect Some AIDS Patients," *The Washington Blade*, October 18, 1985.

⁹¹ *Congressional Quarterly Almanac, 99th Congress, 2nd Session . . . 1986*, (Washington, D.C.: Congressional Quarterly, Inc., 1987), 563; Arthur Brisbane, "D.C. AIDS Bill Draws Challenge in Congress, City 'Snookered' on Insurance Says Helms," *Washington Post*, June 20, 1986; Sandra Evans, "House Panel Blocks Bid to Kill D.C. AIDS Bill," *ibid.*, July 17; "AIDS Bill Backed By Council, Measure Would Bar Insurance Policy Bias in the District," *Washington Post*, May 14, 1986; Lou Chibbaro Jr., "Moral Majority Set up Historic Gay Win," *The Washington Blade*, August 1, 1986.

⁹² "Legislative Update--A Major Victory," in *The Campaign Fund Report*, Summer 1986, Box 323, Folder 6, GMHC records, NYPL.

⁹³ "D.C. AIDS/Insurance Law Challenged in Congress," in *The Campaign Fund Report*, Summer 1986, Box 323, Folder 6, GMHC records, NYPL.

In 1990, Lawrence Gostin examined court decisions on the social impact of AIDS in areas such as AIDS education, blood policies, surveillance and criminal law and on discrimination against people with AIDS for the AIDS Litigation Project supported by the Public Health Service. Gostin reviewed 469 cases, 149 cases of which related to discrimination regarding education, employment, housing, nursing homes, public accommodations, insurance, social services and health care. Lambda's *Sonnabend* case, their *Doe v. Charlotte Memorial Hospital* case and others were listed in the compilation. After discussing the limited scope of the federal Rehabilitation Act, Gostin noted, "All states also have handicap statutes, all but four of which prohibit discrimination in the private, as well as the public, sector." By 1990, most states had recognized that their disability rights laws applied to people with HIV/AIDS.⁹⁴ Gostin predicted the expected passage of the Americans with Disabilities Act would provide comprehensive protection for people with AIDS.

3.2.5 Section Summary

Cities such as New York, Los Angeles and San Francisco with larger numbers of residents with AIDS confronted AIDS discrimination with the application of existing disability rights laws or the enactment of AIDS specific discrimination laws. In New York, government officials and activists made recurrent statements about the incongruity of human rights laws that covered gay men and lesbians who were presumed to have AIDS because of their identification as an AIDS risk group while at the same time gay and lesbian individuals who encountered discrimination outside of the AIDS umbrella only had the limited protection afforded by city and state executive orders. Mitchell Karp who had been the attorney for the City Commission on Human Rights during

⁹⁴ Lawrence Gostin, "The Aids Litigation Project: A National Review of Court and Human Rights Commission Decisions, Part II: Discrimination," *Journal of the American Medical Association* 263, no. 15 (1990): 2086-87.

the first years of the AIDS Discrimination Unit argued, “Unfortunately, much of the history of the gay movement has involved a denial of disenfranchisement or an attempt to sneak in the back door to become enfranchised. But AIDS has shown us that gay men are entirely disenfranchised.”⁹⁵ Disability rights laws offered a glimmer of hope for people with AIDS; they also shed light on the tenuous social, political and economic status of gay and lesbian individuals. In New York City, AIDS challenged the marginalization and exclusion of sexual minorities by bringing attention to the discrimination they experienced which contributed to the City council’s decision to add sexual orientation to the Human Rights Code.

3.3 AIDS and Section 504

In July 1984, while the settlement of the *Sonnabend* case in New York was still under consideration, Lambda took on another precedent-setting federal case in an attempt to establish that Section 504 of the Rehabilitation Act covered people with AIDS. At the time, tension between the Reagan administration and civil rights advocates ran high over issues such as voting rights; affirmative action; Reagan’s opposition to the Equal Rights Amendment; Reagan’s firing of members of the Civil Rights Commission who disagreed with him; and, the Administration’s shifting position on the *Grove City College v. Bell* case before the Supreme Court. The Leadership Conference on Civil Rights (LCCR) began 1984 with a strong critique of Reagan’s “terrible record on civil rights.”⁹⁶ In February 1984, The American Civil Liberties Union (ACLU) issued a report condemning the Administration’s “drastic curtailment of civil rights protection for millions of Americans.”⁹⁷ During the year, LCCR leaders accused the Reagan Administration of “seiz[ing]

⁹⁵ Crimp et al., “The Second Epidemic,” 132.

⁹⁶ Leadership Conference on Civil Rights, “Statement of the LCCR Executive Committee,” January 25, 1984, Box 4, Folder 2, LCCR, LOC.

⁹⁷ Muriel Morisey Spence, “In Contempt of Congress and the Courts: The Reagan Civil Rights Record,” February 27, 1984, Box 51, Folder 6, LCCR, LOC.

every opportunity to weaken our civil rights laws and to restrict the remedies that have long been available to victims of unlawful discrimination” and expressed concern about a Department of Health and Human Services (HHS) pilot project that would encourage voluntary compliance agreements without respect to regulation standards or timeframes.⁹⁸ Lambda’s new case, *Doe v. Charlotte Memorial Hospital*, fell under the jurisdiction of the HHS Office of Civil Rights; however, the Department of Justice (DOJ) had oversight of Section 504 regulations. The case would test the relationship between the HHS and the DOJ while strengthening the ties between activists and legislators.

Lambda’s case also intersected with the Department of Justice’s attempts to limit the scope of the Rehabilitation Act of 1973. In 1983, disability rights advocates had successfully dissuaded the Presidential Task Force on Regulatory Relief from adding an “undue burden of defense” clause to Section 504 regulations. However, shortly after the decision, the DOJ had proposed a new category of regulations for “federally-conducted” programs that included an “undue burden clause.” The Disability Rights Defense and Education Fund (DREDF) warned that other federal agencies would follow the Department of Justice’s lead and suggested that Assistant Attorney General Reynolds was “trying to undermine the victory of the disabled community which was announced by the Vice President.”⁹⁹ Stewart Oneglia, Chief of the Coordination and Review Section of the DOJ Civil Rights Division, wrote a lengthy analysis of the new language included in the proposed regulations. She argued, “Indeed, inclusion of this new language flaunts

⁹⁸ Benjamin Hooks, Ralph Neas, and William Taylor, "To Betty Lou Dotson, Director, Office of Civil Rights, Dept of Health and Human Services," October 19, 1984, Box 9, Folder 1, LCCR, LOC.

⁹⁹ Disability Rights Education and Defense Fund, "Department of Justice Proposes Section 504 Regulation For Its Own Programs and Activities Which is Weaker Than the Existing Section 504 Regulation for Recipients of Federal Financial AIDS," 1984, Box 31, Folder 7, LCCR, LOC; "Department of Justice Proposes Undue Burden Defense Under Section 504 For Federally Conducted Programs on December 16, 1983," January 1984, Box 31, Folder 7, LCCR, LOC. Federally conducted programs included federal agencies and the programs they administered such as Social Security and veterans benefits.

Congressional intent, is contrary to the recent Supreme Court decision, and is inconsistent with every federally-assisted regulation promulgated by federal agencies with respect to section 504.”¹⁰⁰ Opponents feared that most of the other Departments would add the language of “undue burden” to their 504 regulations.

Others expressed concern about enforcement of existing regulations. Robert Dinerstein who had worked as an attorney for the Department of Justice Civil Rights Division from 1977 to 1982 noted, “In the four years since the passage of CRIPA [Civil Rights of Institutionalized Persons Act] the Reagan Administration has not litigated *any* cases, and filed only *one* under the statute on behalf of institutionalized disabled people.” Dinerstein concluded, “The Department of Justice has manifestly failed to extend to institutionalized disabled persons the rights that are properly theirs.”¹⁰¹ The Supreme Court’s decision in *Grove City College v. Bell* further concerned disability advocates. Although the decision narrowed the definition of “program or activity” regarding Section IX of the Education Amendments of 1972, Reynolds indicated he would apply the decision to other civil rights laws that prohibited discrimination in programs or activities that received federal financial assistance including Section 504 of the Rehabilitation Act. DREDF encouraged their membership, “We need to let Brad Reynolds and the Reagan Administration know that: WE ARE STILL WATCHING!”¹⁰²

The potential for a delay or dismissal in the *Charlotte AIDS* discrimination case was high even without the complicating factor of the untested status of AIDS as a qualifying disability under

¹⁰⁰ Stewart Oneglia, "Re: Enforcement of Nondiscrimination on the Basis of Handicap in Department of Justice Programs NPRM; December 16, 1984; Supplemental Notice: March 1, 1984," 1984, Box 31, Folder 8, LCCR, LOC. Oneglia is referring to the Consolidated Rail Corporation v. Darrone case; Wm. Bradford Reynolds, "To Heads of Executive Agencies, Subject: Instructions for Using Prototype Regulation," April 15, 1983 1983, Box 31, Folder 7, LCCR, LOC. Reynolds delegated Oneglia to answer any questions about the proposed regulations.

¹⁰¹ Robert D. Dinerstein, "The Absence of Justice," *Nebraska Law Review* 63, no. 4 (1984): 683, 708; "Curriculum Vitae." <https://www.wcl.american.edu/community/faculty/cv/dinerstein/>.

¹⁰² Disability Rights Education and Defense Fund, "Department of Justice Proposes Undue Burden Defense " 3.

Section 504 regulations. Although the *Doe v. Charlotte* case has not received attention in historic scholarship on the AIDS crisis, it uncovers several critical elements on the path to the Americans with Disabilities Act. Behind the scenes, gay and lesbian rights activists, AIDS activists, disability rights activists and legislative staff used the case to shape federal policy on AIDS discrimination. The HHS took over two years to reach a decision on the case during which time the DOJ released a problematic opinion on the status of AIDS as a disability under Section 504 that allowed fear-based discrimination. The *Doe v. Charlotte* case was under consideration during the early years of the Civil Rights Restoration Act campaign and while friends of the court wrote amicus curiae briefs for the *Nassau v. Arline* Supreme Court decision. Additionally, the narrative reveals how civil rights policy and enforcement touched the lives of people with AIDS. It is the story of a man who died waiting for vindication while the politics of AIDS played out.

3.3.1 Charlotte Memorial Hospital

In May 1984, Lambda's client, a male registered nurse at Charlotte Memorial Hospital in North Carolina, had consulted with a hospital physician about weight loss, fatigue and a recent accidental needle stick that occurred during an injection to a patient known to have been exposed to the AIDS virus. The hospital physician determined the client had AIDS based on his symptoms and a low white blood cell count. Without the nurse's permission, the physician held a meeting with hospital administrators and medical staff at which time the attendees determined that he would not be allowed to continue working at the hospital. On May 20, the hospital gave the man the choice to request a medical leave of absence or be terminated. The client consulted with physicians outside of the hospital staff and submitted a letter to the hospital from a physician on June 5 that indicated an AIDS diagnosis could not be confirmed and that the client could work at "many other hospital jobs that do not involve direct patient contact." Although a hospital physician

offered him a temporary clinic job that did not involve patient contact, the Office of Personnel ordered him to leave on his first day. The nurse retained the counsel of John Boddie, a coordinating attorney for Lambda, who filed a complaint with the Atlanta Office of Civil Rights accusing the hospital of violating Section 504 on July 9, 1984.

The first legal hurdle was cleared when the Office of Civil Rights replied with an acknowledgement that they had jurisdiction over the dispute and would conduct an investigation. As a recipient of federal financial assistance through the acceptance of Medicaid and Medicare payments, the hospital had to comply with Section 504 regulations. The communication from regional manager Marie Chretien advised, "Within 105 days, a determination regarding the validity of your complaint should be made." Lambda informed the Office of Civil Rights that the organization had been retained by the nurse in September. More than a month after the initial promised date of determination had passed, Boddie had a phone conversation with the Director of the Investigative Unit who informed the attorney that he would "begin a full-scale investigation of [Mr. Doe's] complaint within the next 20 days."¹⁰³ By this point, the client had received a diagnosis of AIDS. He qualified for Social Security disability benefits in December 1984. Although the client was no longer able to perform the duties of a nurse, the case went forward in hopes of securing him back pay, insurance, and other financial relief for the period of time after

¹⁰³ John Harbin Boddie, "To Office of Civil Rights," July 9, 1984, Box 120, Folder 18, NGLTF records, Cornell; Marie Chretien, "Re: Boddie vs. Charlotte Memorial Hospital and Medical Center," July 25, 1984, Box 120, Folder 17, NGLTF records, Cornell; "To Charlotte Memorial Hospital Administrator," in *Oversight of the Office for Civil Rights at the Department of Health and Human Services: Hearings before a subcommittee of the Committee on Government Operations*, August 5, 1986, hathitrust.net; "Findings and Recommended Decision: DRAFT," in *Oversight of the Office for Civil Rights at the Department of Health and Human Services: Hearings before a subcommittee of the Committee on Government operations*, August 5, 1986, hathitrust.org; Abby Rubinfeld, "To Office of Civil Rights," September 6, 1984, Box 120, Folder 17, NGLTF records, Cornell; John Harbin Boddie, "To Lloyd A. Givens, Jr., Director Investigative Division," December 20, 1984, Box 120, Folder 17, NGLTF records, Cornell. The client's name is redacted in public records so I chose to redact it in other communications.

the hospital terminated his employment to the date his health declined to the point that he was unable to perform the job duties required of his position.

Lambda engaged in settlement negotiations with the hospital in the spring of 1985. Their June monthly report noted, "Settlement is close."¹⁰⁴ By July, the prediction had turned to disappointment. The monthly report stated, "The terms of the settlement as drafted by the Hospital are totally unacceptable . . . we are investigating the possibility of a state court action."¹⁰⁵ Lambda's managing attorney, Abby Rubenfeld, requested the Office of Civil Rights intervene in the settlement process but was informed that the Office of Civil Rights role was "limited to being a signatory to the agreement." The correspondence revealed that the investigation and a report had been completed and were under review. Marie Chretien, the regional manager, assured, "A determination will be made in the matter in the near future and you will be notified in writing of our decision."¹⁰⁶ Lambda's August monthly report explained, "Settlement has fallen apart" but remained hopeful that damages might be secured for the client.¹⁰⁷ Over a year had passed since Lambda had filed the complaint.

In frustration, Lambda attempted to circumvent the process. At the end of August 1985, Rubenfeld wrote directly to Margaret Heckler, Secretary of the Department of HHS, bypassing Betty Lou Dotson, the Director of the Office of Civil Rights. Rubenfeld reminded Heckler of a December 1984 meeting the Secretary had held with Lambda's Tim Sweeney and representatives of the National Gay Task Force and the Federation of AIDS Related Organizations (later AIDS Action Council) and of her assurances "that AIDS-related discrimination would not be tolerated."

¹⁰⁴ Abby Rubenfeld, "Monthly Report for June 1985," June 10, 1985, Box 166, Folder 68, NGLTF records, Cornell: microfilm.

¹⁰⁵ "Monthly Report for July 1985," July 1, 1985, Box 166, Folder 68, NGLTF records, Cornell: microfilm.

¹⁰⁶ "To Dwight Robinson, Investigative Division," July 12, 1985, Box 120, Folder 17, NGLTF records, Cornell; Marie Chretien, "To Ms. Rubenfeld," August 5, 1985, Box 120, Folder 17, NGLTF records, Cornell.

¹⁰⁷ Abby Rubenfeld, "Monthly Report for August 1985," August 20, 1985, Box 166, Folder 68, NGLTF records, Cornell: microfilm.

Rubinfeld asked Heckler to “take some action to ensure it [the case] is resolved within your Department in the immediate future.”¹⁰⁸ Three months later, under the direction of Heckler, Dotson replied with claims that the delay had been due to the length of time it took to receive material from the hospital, the limited resources, and the hope that the parties would negotiate a settlement. Dotson noted, “Such delays are unfortunate but not unusual”; yet, Dotson would later testify before a House committee that the average time it took to close a complaint in FY 1985 was 150 days. When Dotson sent her reply to Rubinfeld on November 18, 1985, it had been 497 days since Lambda’s attorney had filed the nurse’s complaint. Dotson repeated the information from Chretien’s August letter reiterating that the report had been completed and that they were “analyzing the findings.” Unlike Chretien’s optimistic assurance of a decision in “the near future,” Dotson predicted, “The analysis will take some time.”¹⁰⁹

In addition to contacting Heckler, Rubinfeld met and corresponded with Richard Riseberg, Assistant General Counsel for Public Health, at the end of 1985.¹¹⁰ Rubinfeld asked for assistance in determining the status of the case but also used the exchange to emphasize the need for HHS to make a public statement on their AIDS discrimination policy. As Rubinfeld noted, “Such a statement both would have tremendous psychological impact and, more importantly, would greatly increase the avenues of legal recourse open to victims of discrimination.” In written response, Riseberg did not respond to the lack of a clear HHS AIDS discrimination policy. Lambda’s December report listed the status of the *Doe v. Charlotte Memorial Hospital* case as “no change.” Additionally, the update mentioned that the client was pursuing a separate claim against worker’s

¹⁰⁸ “To Secretary Heckler,” August 27, 1985, Box 120, Folder 17, NGLTF records, Cornell.

¹⁰⁹ Betty Lou Dotson, “To Ms. Rubinfeld,” November 18, 1985, Box 120, Folder 17, NGLTF records, Cornell.

¹¹⁰ Abby Rubinfeld, “Monthly Report,” November 6, 1985, Box 166, Folder 68, NGLTF records, Cornell; microfilm; “To Mr. Riseberg,” December 2, 1985, Box 120, Folder 17, NGLTF records, Cornell; Richard Riseberg, “To Ms. Rubinfeld,” November 21, 1985, Box 120, Folder 17, NGLTF records, Cornell; Rubinfeld, “To Mr. Riseberg.”

compensation due to the needle stick injury and consequent AIDS diagnosis.¹¹¹ The client's health had declined rapidly after he was diagnosed with AIDS. A year before the exchange with Riseberg, he had qualified for Social Security Disability benefits at which point he was in chronic pain, short of breath and facing "a number of potentially fatal illnesses on a daily basis."¹¹² Tragically, the man died February 26, 1986, before a resolution was reached.

3.3.2 The Politics of Section 504

Lambda did not work alone. Ellen Ann Andersen, author of *Out of the Closets & Into the Courts*, characterizes Lambda's second decade (1983-1992) as a period of increased mobilization. Tim Sweeney had more than tripled Lambda's operating budget in his tenure as executive director (1980-1985). His replacement, Tom Stoddard, joined Lambda in December 1985 with political experience as the legislative director of the New York Civil Liberties Union. Stoddard also coauthored New York City's gay rights ordinance.¹¹³ In 1985, Lambda counted the ACLU, NOW LDEF, NAACP LDEF and the American Public Health Association among others as allies and coalition members. They also held a monthly call with the "six major gay/lesbian [legal] groups around the country" which included the National Gay Rights Advocates (NGRA) in San Francisco.¹¹⁴ In 1986, Lambda hosted bi-weekly meetings with the ACLU, the NYCLU, CCR and

¹¹¹ "Monthly Report for December, 1985," December 6, 1985, Box 166, Folder 68, NGLTF, Cornell: microfilm.

¹¹² Marilyn Bellamy, "DRAFT: Findings and Recommended Decision " in *Oversight of the Office of Civil Rights at the Department of Health and Human Services Hearings Before a Subcommittee of the Committee on Government Operations*, August 6 and 7, 1986, hathitrust.org.

¹¹³ Ellen Ann Andersen, *Out of the Closets and into the Courts: Legal Opportunity Structure and Gay Rights Litigation* (Ann Arbor: University of Michigan Press, 2005), 37, 41,45. Lambda 1982 income: \$79,527; 1985 income:\$299,854; 1986 income: \$897,814.

¹¹⁴ Lambda Legal Defense and Education Fund, "The AIDS Project: A Proposal," October 17, 1985, Box 20, Folder 1, GMHC records, NYPL. NGRA was a well-established legal firm based in San Francisco with ties to NGLTF. Jean O'Leary, NGRA exec director, had been NGTF co-chair. Ben Schatz, who was NGRA's AIDS project director, had worked for NGTF and GRNL. Other groups included the Lesbian Rights Project, Texas Human Rights Foundation, Gay and Lesbian Advocates and Defenders, and Custody Action for Lesbian Mothers. GMHC 383.17. Group of six was also mentioned in 2/85 monthly report.(NGTF 166.67).

GMHC to discuss the misuse of the new HTLV-III antibody test and resulting discrimination.¹¹⁵ Andersen describes competition between organizations for resources and public recognition. Yet, she also notes, “The groups quickly became intertwined with one another—trading staff, filing amicus briefs in each other’s cases and coordinating litigation processes.”¹¹⁶

The *Charlotte* case drew Lambda into the national political sphere as they worked with other activists on common goals. Rubinfeld’s follow-up letter to Riseberg in November had been part of a strategic group plan between Lambda, NGTF and AIDS Action Council. NGTF’s Jeff Levi had organized the meeting that has also included Assistant Secretary of Health Dr. James Mason, Dr. Hank Meyer from the FDA and George Hardy, Jr., from the CDC.¹¹⁷ Handwritten notes from the meeting indicate Riseberg had agreed to investigate the case and arrange a follow-up meeting. Instead, his reply to Rubinfeld directed her back to a contact in the OCR. Rubinfeld shared copies of the letter exchanges between Rubinfeld and OCR personnel, Dotson, Chretien and Riseberg, with Levi in December.¹¹⁸ The next week, Levi sent Tim Sweeney, Abby Rubinfeld and Tom Stoddard a memo on the OCR 504 policy with several strategy suggestions for Lambda to consider as they pursued a decision on the case and a public policy statement. Although Levi indicated NGTF would take “strictly a supporting/liaison role on this one,” he mentioned future joint meetings with officials including an upcoming meeting with the acting Assistant Secretary for Health, Donald MacDonald, where the issue could be discussed.¹¹⁹

¹¹⁵ Abby Rubinfeld, "Monthly Report for January 1986," January 7, 1986, Box 166, Folder 68, NGLTF records, Cornell: microfilm. CCR is likely the Center for Constitutional Rights located in NYC based on other sources that connect the organizations.

¹¹⁶ Andersen, *Out of the Closets and into the Courts*, 41.

¹¹⁷ Levi, "Talking Points for Mason Meeting, October 31, 1985."

¹¹⁸ Michael Conley, "To Jeff Levi," December 18, 1985, Box 120, Folder 17, NGLTF records, Cornell.

¹¹⁹ Jeff Levi, "To Tim, Abby, Tom Re: OCR policy on 504," December 26, 1985, Box 120, Folder 17, NGLTF records, Cornell. NGTF changed their name to NGLTF in 1986.

Additionally, Levi's note uncovered part of the reason for delay and suggested several tactics that would come into play over the next few months. Levi referred to conversations he had had "with sources within HHS's OCR regarding what is happening (and not happening) internally regarding a policy on application of section 504 to AIDS and perceptions of AIDS." He explained,

The problem, it is claimed, is with the political level appointees, not at the staff level. Staff level attorneys in Washington recognize that there is a need for a general policy, it should be favorable and should involve an expedited procedure for handling complaints. The political people (the director of OCR [Dotson] and HHS general counsel [Ronald Robertson]) are looking for ways not to cover AIDS under 504. There has been established an internal working group that so far has only collected information, it is not near developing a policy.

A couple weeks prior to Levi's note, Reagan had replaced Secretary Heckler with former Indiana Governor Otis Bowen, MD. Levi suggested writing Bowen with a request for a Department-wide policy on AIDS based on the Public Health Service guidelines. Additionally, he laid out a plan to bring Congressional attention to the problem by soliciting Representatives Ted Weiss and Henry Waxman to make inquiries of Bowen and Dotson about HHS's AIDS policies. Levi mentioned the OCR would be responsive to Weiss who had oversight of the OCR because he had recently led an investigation that had "brought down the head of the Education Department's OCR." If the OCR failed to produce a policy by March, Levi suggested turning to Senator Weicker and to use the upcoming appropriation hearings to put pressure on HHS.¹²⁰

The scathing resignation letter of Hal Freeman, Regional Manager of the Office of Civil Rights, Region IX (San Francisco office) and openly gay man, appears to have set in motion an organized chain of events that were similar to Levi's suggestion. Freeman's resignation letter criticized Dotson's refusal to recognize AIDS as a "handicap" and her decision to instead refer the issue to the Office of the General Counsel for an opinion, particularly since the Social Security

¹²⁰ Ibid.

Administration recognized AIDS as a disability. He also rebuked Dotson's failure to recognize that the full reach of Section 504 covered people regarded as having a disability or perceived to have a disability. Freeman stressed the critical need for OCR to develop and publicly disseminate a protective AIDS policy as a step towards curtailing discrimination. In his resignation letter, Freeman included excerpts of conversation with Dotson and her assistants that suggested, "The decision to move 'cautiously' is politically motivated, in part, from prejudice towards gay people and the concomitant erroneous assumption that AIDS is a gay disease." Freeman concluded, "It is clear to me that OCR will dodge this issue as long as possible and try to avoid taking jurisdiction over any case involving AIDS."¹²¹ In interviews following his resignation and in later testimony, Freeman indicated he was aware of the lack of action in the *Charlotte* case.¹²²

On the same day Freeman resigned, Tim Westmoreland, assistant counsel for the House subcommittee on Health and the Environment chaired by Henry Waxman, had a memo prepared for interested staff members with attachments that included a copy of Freeman's resignation letter, information and legal analysis on Section 504 and a list of applicable Congressional committee members and staff. Westmoreland began with a statement predicting, "Discrimination and AIDS will be widely discussed in the next few weeks." In the body of the memo, Westmoreland asserted, "Without doubt, in the law and the regulations AIDS and AIDS-related conditions (ARC) qualify as handicapping conditions." The note criticized the Office of Civil Rights failure to develop a policy and discussed which House committees could provide oversight. The dissemination of the Westmoreland's memo on the same day that Freeman resigned with Freeman's resignation letter

¹²¹ Hal Freeman, "To Betty Lou Dotson," February 20, 1986, Box 120, Folder 17, NGLTF records, Cornell.

¹²² *Oversight of the Office for Civil Rights at the Department of Health and Human Services: Hearings before a House subcommittee of the Committee on Government Operations*, 99th Cong., August 6-7, 1986, 73; Marlene Cimon, "U.S. Rights Aide Charges Gay Bias, Quits," *Los Angeles Times*, February 22, 1986, 4.

attached suggests that Westmoreland had knowledge of Freeman's intent to resign prior to his submission of a resignation letter.¹²³

As Westmoreland had predicted, AIDS discrimination received attention in the following weeks. The *Washington Post* and *Los Angeles Times* covered Freeman's resignation the following day.¹²⁴ Jeff Levi's late December note had suggested that the group solicit Representatives Henry Waxman and Ted Weiss involvement in OCR's delay in addressing Section 504 and AIDS discrimination.¹²⁵ Waxman and Weiss were obvious choices as they came from districts significantly impacted by the AIDS crisis and had already proven their support for the needs of people with AIDS in earlier hearings and legislation. Waxman had strong words for the Office of Civil Rights after Freeman's resignation. Assuming the accusations were accurate, Waxman stated, "The agency has behaved disgracefully. We should not allow our laws and dignity to collapse in the face of this epidemic."¹²⁶ A few days after Freeman's resignation, Weiss, chair of the Intergovernmental Relations and Human Resources subcommittee, sent Dotson a request for various OCR documents as part of an oversight review. Weiss mentioned "recent reports" that claimed OCR was applying different criteria to AIDS discrimination cases and asked Dotson to "clarify it for me in writing, giving legal substantiation and precedents."¹²⁷

On the same day Weiss contacted Dotson, Senator Alan Cranston (D-CA) sent a letter to Secretary Otis Bowen expressing "great disappointment about reports that the Department of Health and Human Services' Office for Civil Rights has interfered with its regional office staffs'

¹²³ Tim Westmoreland, "To Interested Staff, Re: Discrimination against the handicapped and AIDS," February 21, 1986, Box 41, Folder 39, HRCF records, Cornell. Westmoreland note is dated 2/21/1986. He refers to Freeman's resignation as happening "today." The date on Freeman's resignation is 2/20/1986. HRCF and NGLTF archives contained a draft of the resignation letter.

¹²⁴ Jay Mathews, "HHS Worker Resigns in Protest: Regional Officer Says Help Barred in AIDS Discrimination Cases," *Washington Post*, February 22, 1986; Cimon, "U.S. Rights Aide Charges Gay Bias, Quits."

¹²⁵ Levi, "To Tim, Abby, Tom Re: OCR policy on 504."

¹²⁶ Mathews, "HHS Worker Resigns in Protest," A24.

¹²⁷ Ted Weiss, "To Betty Lou Dotson," February 26, 1986, Box 120, Folder 17, NGLTF records, Cornell.

assisting AIDS victims.” Cranston specifically referred to Hal Freeman’s resignation comments. He also pointed out that the Social Security Administration, under HHS, recognized AIDS qualified for presumptive determination of disability. Cranston did not mince words. He told Bowen, “In my view, any notion that AIDS . . . is not an impairment under section 504 is totally preposterous and a blatant disregard for the law your Department is charged with enforcing.” Similar to Weiss’ request of Dotson, Cranston asked Bowen to answer specific questions about OCR’s AIDS discrimination policy.¹²⁸

William Mayo Lee, Energy Department Attorney and leader for the D.C. Gay Activist Alliance, played a role in helping activists navigate the political environment in Washington. On March 1, Lee sent Gary MacDonald of AIDS Action Council, Vic Basile of HRCF, Jim Graham, of Whitman Walker Clinic, Richard Llewellyn of the Washington D.C. Gay Activist Alliance and Jeff Levi a memo with insider information on the political climate. Lee identified the upcoming appropriation hearings as an opportunity to press Bowen and Dotson to testify that people with AIDS, ARC and others perceived to have AIDS or ARC qualified as handicapped under Section 504. Lee explained, “This will require educating sympathetic committee members and getting them to ask the ‘right questions’ at the upcoming hearings.”¹²⁹

Lee’s assessment of the interaction between HHS and the Justice Department exposed the difficulties activist would need to overcome. Lee mentioned that the OCR had sent the issue to the HHS General Counsel, Ronald Robertson, for interpretation; however, Assistant Attorney General Reynolds in the Department of Justice was “opposed to ‘expanding’ the definition of handicapped.” According to Lee, “Reynolds is putting a lot of pressure on the HHS GC to rule

¹²⁸ Alan Cranston, "To Honorable Otis Bowen," February 26, 1986, Box 120, Folder 17, NGLTF records, Cornell.

¹²⁹ Mayo Lee, "To Gary MacDonald, Jeff Levi, Vic Basile, Rich Llewellyn and Jim Graham Re: Section 504 Protections for Persons with AIDS, ARC, or Perceived to Have These Conditions," March 1, 1986, Box 41, Folder 39, Human Rights Campaign records (HRCF), Cornell.

accordingly.” He predicted, “The HHS GC will do nothing” and claimed, “The GC at HHS has been designated the person to hold-up, if not permanently kill, the issue being resolved.” Regarding Reynolds, Lee advised he would likely claim the current information about AIDS was just “medical theory.” On Dotson, Lee surmised, “Dotson likes to argue that discrimination is against homosexuals, which are not covered under 504 and that homosexuals are attempting to use the ‘perception of AIDS’ coverage to bootstrap themselves into protection which they are not entitled to.”¹³⁰ On March 11, HHS General Counsel Robertson delegated his responsibility to the Justice Department with a formal request to Charles Cooper, Assistant Attorney General for the Office of Legal Counsel in the Department of Justice for a legal opinion on the status of AIDS as a qualifying disability under Section 504.¹³¹

3.3.3 Cooper 504 Memorandum

Virginia Apodaca replaced Freeman as Regional IX manager. In an interview with Roberta Ann Johnson, author of *Whistleblowing: When It Works—and Why*, Apodaca described the move to involve the Justice Department as “unprecedented” and “a delaying tactic.” In Apodaca’s opinion, “There was ‘sufficient legal talent in HHS to make the determination’.”¹³² However, General Counsel Robertson had only recently been confirmed in his position at HHS after serving as Chief Counsel for the Reagan-Bush 1984 campaign. His background in private practice and

¹³⁰ Ibid., 1-3. Eric Rosenthal, HRCF Assistant for Program and Development, sent a letter to Senator John Kerry's legislative assistant, Sally Yozell, on March 13, 1986. He mentioned Freeman's resignation and knew the HHS General Counsel was reviewing the policy. Rosenthal asked for Kerry's assistance in "obtaining a commitment from the Administration to enforce Section 504 with respect to discrimination claims brought on account of AIDS." Box 41, Folder 39, HRCF records, Cornell.

¹³¹ Ronald Robertson, "To The Honorable Charles Cooper," March 11, 1986, Box 120, Folder 18, NGLTF records, Cornell.

¹³² Roberta Ann Johnson, *Whistleblowing: When it Works--and Why* (Boulder: L. Rienner Publishers, 2003), 66. Johnson cites a July 9, 1986 memo to her staff. She also interviewed Apodaca on February 13, 1989.

teaching did not include experience in health administration policy.¹³³ Mayo Lee's summation that Robertson would not act alone proved accurate.

In August 1986, Representative Ted Weiss held an oversight hearing on the HHS Office of Civil Rights "to examine the Department's overall enforcement record."¹³⁴ At an April 1986 Appropriations hearing, Dotson had submitted a written response that indicated the DOJ had requested "the issue of the extent to which AIDS may be a handicapping condition within the meaning of Section 504 be referred to them."¹³⁵ At the August hearing, none of the participants could recall who had written the April statement Dotson had submitted. Under questioning, Dotson, Cooper, Robert Charrow, deputy general counsel for OCR, and George Lyon, acting chief counsel for the HHS Civil Rights Division, could not recall with certainty how Reynolds had come to recommend that Robertson should ask for an opinion from the Department of Justice. Deputy general counsel Charrow indicated that the DOJ had not made a request. Charrow thought Robertson had advised Reynolds about an upcoming decision and in response, Reynolds had recommended the case be referred to the DOJ. Cooper testified, "Apparently there was some kind of a meeting, or at least I have been informed, some kind of a meeting of an interdepartmental group that deals with issues that relate to the disabled." As hearsay, Cooper thought Robertson had described some of the complaints and "Reynolds suggested that since these questions involve 504 it would certainly be a good idea perhaps and it is consistent with routing practice to seek the Department of Justice's views on the question." No one was certain when the meeting took place;

¹³³ *Nomination of Ronald Ellis Robertson: Hearing before the Senate Committee on Finance*, 99th Cong., October 9, 1985. During his brief confirmation hearing on October 9, 1985, attendees Senators David Durenberger and Pete Wilson did not ask any questions about the Office of Civil Rights, Section 504 or AIDs.

¹³⁴ *Oversight of the Office for Civil Rights at the Department of Health and Human Services: Hearings before a House subcommittee of the Committee on Government Operations*.

¹³⁵ *Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations for 1987: Hearings Before a House Subcommittee of the Committee on Appropriations*, 99th Cong., April 18, 1986, 1404.

Cooper guessed the first week of March.”¹³⁶ The obfuscation suggests Robertson’s request of Cooper was not standard practice.

While Cooper wrote his opinion, Stewart Oneglia, Chief of the Coordination & Review Section in the DOJ Civil Rights Division, sent Reynolds a report on AIDS and the Rehabilitation Act. Under the direction of President Carter to enforce Title VI of the Civil Rights Act of 1964, the DOJ Civil Rights Division had created the office of Coordination and Review in 1979 to oversee Title VI and Title IX of the Education Amendment of 1972. Oneglia had led the division since its inception. Reynolds added oversight of Section 504 to the Division’s responsibilities in 1983.¹³⁷ Although Oneglia oversaw the enforcement of Section 504, the DOJ Office of Legal Counsel provided legal advice and opinion for the executive branch and the Department as a whole. In the organizational hierarchy, Cooper’s position as an Assistant Attorney General outranked Oneglia’s position as the chief of an organizational unit within the Civil Rights Division. Additionally, Cooper had served as Deputy Assistant Attorney General for Civil Rights under Reynolds from 1982 until his promotion to Assistant Attorney General of the Office of Legal Counsel in 1985 and shared Reynolds’ conservative political views. Oneglia’s earlier disagreement with Reynolds about adding an “undue burden” clause to 504 regulations may have predisposed him to set aside her opinion.

Oneglia’s report concluded that people with AIDS were handicapped individuals under the Act. People with ARC or who were seropositive could be considered as perceived to have or

¹³⁶ *Oversight of the Office for Civil Rights at the Department of Health and Human Services: Hearings before a House subcommittee of the Committee on Government Operations*, 286-89; Jeff Levi, "To: Jim, Patsy, Abby," August 4, 1986, Box 120, Folder 17, NGLTF records, Cornell. Two days before the hearing, Jeff Levi sent a note to Jim, Patsy and Abby with questions on 504 to ask Cooper and Dotson. One can assume Abby referred to Abby Rubinfeld. Lambda's executive director, Tom Stoddard, testified at the hearing. Since the questions are meant to be asked at the hearing, it is likely that Jim and Patsy are Weiss staff members Jim Gotlieb and Patsy Flemings who were present at the hearing.

¹³⁷ Hanes Walton Jr., *When the Marching Stopped: The Politics of Civil Rights Regulatory Agencies* (Albany, NY: State University of New York Press, 1988), 117-19.

regarded as handicapped based on the specific circumstances. She concluded, “Nevertheless, because the disease is not spread by casual contact, most PWA’s, ARC-affected or seropositive individuals would not be rendered unqualified solely by reason of any potential for transmission of the disease.”¹³⁸ Ongelia’s opinion reached the *New York Times* prior to the release of Cooper’s opinion. Although reporter Robert Pear recognized that Cooper would release the “official response,” the conclusion was presented as the final opinion since “senior officials said there was little disagreement within the department.” Pear described the position as “the thinking of career civil servants and some political appointees at the Justice Department, including lawyers with the most expertise in laws affecting the disabled.” He also mentioned the involvement of Solicitor General Charles Fried, alluding to the upcoming *Nassau v. Arline* case before the Supreme Court regarding contagious disease.¹³⁹ The day after the *Times* published the article, Reynolds denied that the agency had reached a conclusion.¹⁴⁰

Legal Times analyst Jill Abramson spoke to multiple unnamed sources in both the HHS and DOJ. Several of her sources mentioned that George Lyon, acting associate attorney general for HHS civil rights, had written an earlier opinion that argued Section 504 should cover with AIDS and those regarded as having AIDS. Robertson’s request occurred after Lyon had offered his opinion. Although Robertson’s request was hand delivered and addressed to Cooper, public affairs spokesperson John Wilson told Abramson that “Reynolds asked lawyers in different sections of the civil rights division on the AIDS division, staking out different points of view.” Ongelia’s opinion could have been in response to Reynolds’ request. Based on the responses from her sources, Abramson concluded, “It [is] clear that there is considerable opposition to the Justice

¹³⁸ Stewart Ongelia. "Coverage of Acquired Immune Deficiency Syndrome (AIDS) Under the Rehabilitation Act of 1973." 1-22, April 1, 1986.

¹³⁹ Robert Pear, "AIDS Victims Gain in Fight On Rights," *New York Times*, June 8, 1986, 1.

¹⁴⁰ "US Ruling Planned on AIDS Victims' Rights," *Los Angeles Times*, June 9, 1986.

Department's AIDS policy, as well as to its chief architects: Cooper and William Bradford Reynolds." According to one department lawyer, "Let's just say it didn't do much for morale."¹⁴¹

Charles Cooper released the official opinion of the Office of Legal Counsel on June 20, 1986. It concluded that people experiencing the disabling effects of AIDS or related conditions were covered under Section 504; however, people who encountered discrimination based on fear of contagion were not covered. The report stated, "We have concluded that an individual's (real or perceived) ability to transmit the disease to others is not a handicap within the meaning of the statute and, therefore, that discrimination on this basis does not fall within section 504."¹⁴² Under questioning by Ted Weiss at the August hearing, Cooper agreed with a statement in Oneglia's report that a person regarded as having AIDS qualified as handicapped under the statute; however, he explained that since an "immune carrier" did not qualify as disabled, discrimination against an "immune carrier" was not covered.¹⁴³ As Mayo Lee had earlier predicted, Cooper's report questioned the state of medical knowledge. For example, in a section discussing the validity of AIDS fear, the report noted, "The mechanisms of transmission are still not fully understood."¹⁴⁴

3.3.4 Reaction to Cooper Memo

Initially, the *Washington Post* supported the Justice Department's opinion. An editorial piece referred to the memo as "thoughtful" and "a good faith analysis" and affirmed Cooper's position on the state of medical knowledge. The author noted, "There are no certainties with AIDS, only probabilities" and "Researchers are still not certain how the disease is transmitted in such

¹⁴¹ Jill Abramson, "Reagan Agenda Pushed to the Max," *Legal Times* IX, no. 10 (1986): 1, 14-16.

¹⁴² Charles Cooper. "Memorandum for Ronald Robertson, Re: Application of Section 504 of the Rehabilitation Act to Persons with AIDS, AIDS-Related Complex, or Infection with the AIDS Virus." 1-49. hathitrust.org, June 20, 1986.

¹⁴³ *Oversight of the Office for Civil Rights at the Department of Health and Human Services: Hearings before a House subcommittee of the Committee on Government Operations.*

¹⁴⁴ Cooper, "Memorandum for Ronald Robertson," 36, also 9, 13, 38.

places as Africa and Haiti.”¹⁴⁵ Cooper’s report did reference recent findings that had caused some public alarm such as the identification of the virus in tears and the ability of the virus to survive outside the body; however, his concerns about transmission contradicted the assurances of medical experts. During the August hearings, Barney Frank (D-MA) pointed out statements in the report that disagreed with the Centers for Disease Control and the Public Health Service’s conclusions. After an accusatory exchange, Frank alleged, “The fact that, having searched for ways to impeach them [CDC and PHS], you can only come up with two doctors, both of whom disagreed with you, leads me to believe that there aren’t a lot of doctors out there or experts in this area who disagree.”¹⁴⁶ As questioning continued with Weiss, Cooper acknowledged that the group working on the opinion had not consulted the Public Health Service or outside medical groups but had received literature and engaged in conversations with the HHS General Counsel’s Office in the preparation of their report.¹⁴⁷ At the hearing, Cooper made it clear that the memo was a legal opinion rather than a medical opinion in both his lack of knowledge and direct statements. Within a couple weeks, the *Washington Post* reconsidered their position, noting, “That memorandum has been met with a great deal of sharp rebuttal.”¹⁴⁸

Washington based gay and lesbian rights activists reacted swiftly to the release of the Cooper memo. On June 24, the NGLTF issued a press release denouncing Cooper’s inaccurate representation of the risk of casual contact. Jeff Levi, executive director of NGLTF, concluded, “The Justice Department seems so frightened of extending protections because they might indirectly protect gays, that it ignored both the letter and spirit of the law.” Levi expressed

¹⁴⁵ "Justice and AIDS," *Washington Post*, June 25, 1986.

¹⁴⁶ *Oversight of the Office for Civil Rights at the Department of Health and Human Services: Hearings before a House subcommittee of the Committee on Government Operations*, 297.

¹⁴⁷ *Ibid.*, 309-11, 17.

¹⁴⁸ "AIDS and Discrimination," *Washington Post*, July 13, 1986.

particular concern for the potential misuse of antibody testing in employment decisions.¹⁴⁹ In response to the first *Washington Post* opinion piece, Levi wrote a lengthy letter to the editor condemning the facts and intention of Cooper's report.¹⁵⁰ A NGLTF summer newsletter article revealed their extended commitment to protecting the rights of people with AIDS: "NGLTF is working with civil rights, disability rights, and AIDS organizations to fight for the reversal of the opinion."¹⁵¹ The press release, letter and NGLTF's summer newsletter all referred to Oneglia's report as validation for using Section 504 to protect people with AIDS.

The Human Rights Campaign Fund summer newsletter also included an article opposing the Cooper memo. Jim Fukumoto, a legislative fellow from HHS who worked with Representative Mervyn Dymally, had sent HRCF executive director Vic Basille a copy of Cooper's report along with a letter Fukumoto had sent to his attorney Jane Dolkart urging the need to challenge the ruling in court.¹⁵² In the newsletter, Basille described the daunting political outlook: "The executive branch seems intent on promoting discrimination against people with AIDS or at risk of AIDS while the judicial branch seems totally unconcerned with protecting the rights of gays or lesbians even within their homes." He explained that HRCF was "working on Capitol Hill to pressure the Justice Department to review the ruling."¹⁵³ In 1986, the Human Rights Campaign Fund was

¹⁴⁹ Jeff Levi, "NGLTF Blasts Justice Department Ruling on AIDS Discrimination," June 24, 1986, Box 120, Folder 17, NGLTF records, Cornell.

¹⁵⁰ "Letters to the Editor: Fanning Irrational Fears About AIDS," *Washington Post*, June 30, 1986. Stephen Smith, chair of the Metropolitan Washington Committee on AIDS Issues, also sent a letter to the Washington Post; Stephen Smith, "To Washington Post Editor," June 26, 1986, Box 120, Folder 17, NGLTF records, Cornell; Metropolitan Washington Committee on AIDS Issues.

¹⁵¹ "Levi Blasts Justice Dept. AIDS Ruling," in *Task Force Report*, Summer 1986, Box 341, Folder 9, GMHC records, NYPL.

¹⁵² Jim Fukumoto, "To Jim [Basille]; To Jane [Dolkart]," June 24, 1986, Box 41, Folder 39, HRCF records, Cornell; Johnson, *Whistleblowing: When it Works--and Why*, 64. Dymally submitted a lengthy statement to the August House Oversight hearing critiquing the failures in the OCR including their lack of action in AIDS cases.

¹⁵³ "People with AIDS Can Be Fired Because of Disease, Justice Rules," in *The Campaign Fund Report*, Summer 1986, Box 323, Folder 6, GMHC records, NYPL. Basille comment about the Judicial Branch was referring to the June 30, 1986, *Bowers v. Hardwick* decision.

among the top twenty largest independent political action committees.¹⁵⁴ During the 1986 election cycle they had distributed \$267,541 to 105 candidates and federal committees.¹⁵⁵ Originally founded to fund candidates supportive of gay and lesbian rights legislation, they formally expanded their mission in 1985 with the creation of the AIDS Campaign Trust. HRCF hoped the Trust would “help offset the alarming increase in anti-gay rhetoric being espoused by conservative and right-wing candidates in the 1986 elections.” The first recipients to receive contributions from the Trust included Henry Waxman, Ted Weiss, Alan Cranston and Lowell Weicker.¹⁵⁶ As a campaign contributor, HRCF had additional leverage they could assert on Capitol Hill.

Medical experts responding to Cooper’s memo disagreed with his medical conclusions and his opinion about contagious diseases. In an unusual move, Robert Windom, MD, HHS Assistant Secretary for Health, and James Mason, MD, Director of the Centers for Disease Control, rebutted the medical assumptions in the DOJ memo. Windom referred to the Public Health Service guidelines and “assured that the AIDS virus is not transmitted by casual contact whether in the workplace or schools.” Mason presented information from research studies that demonstrated no evidence of casual transmission. He stated, “The evidence is overwhelming that there is no danger of this virus being transmitted through such common exposures as handshaking, sharing meals, sneezing, coughing, or through other casual school and workplace contact.”¹⁵⁷ Windom took the additional step of responding to the *Washington Post’s* initial opinion piece with a letter to the editor that offered reassurances that the AIDS virus was not spread through casual contact.¹⁵⁸

¹⁵⁴ "Human Rights Campaign Fund: An Introduction," circa 1986, Box 6, Folder 13, HRCF records, Cornell.

¹⁵⁵ Human Rights Campaign Fund, "Federal Contributions Updated: November 4, 1986," 1986, Box 6, Folder 13, HRCF records, Cornell.

¹⁵⁶ "'Act on AIDS' Gives New Focus To Campaign Fund Efforts," in *The Campaign Fund Report*, Fall 1985, Box 341, Folder 8, GMHC records, NYPL.

¹⁵⁷ Chuck Kline, "HHS News," June 24, 1986, Box 120, Folder 17, NGLTF records, Cornell.

¹⁵⁸ Ibid.; Robert E. Windom, "'Justice and AIDS': HHS Comments: Letters to Editor," *Washington Post*, July 4, 1986.

In 1986, the American Medical Association (AMA) discussed AIDS discrimination at their June annual meeting and passed a resolution opposing legislation that would lead to discrimination against AIDS patients in December.¹⁵⁹ The Association disagreed with the Justice Department's interpretation of contagious disease and wrote an amicus brief that disagreed with the Justice Department's position on the extent of Section 504 coverage in the Supreme Court *Nassau County v. Arline* case to be argued December 1986. The *Arline* case consider whether a teacher with a history of tuberculosis, a contagious disease, qualified for protection under Section 504. Referring to the DOJ's argument, the AMA's brief stated "This proposed framework does violence to the fundamental Congressional purpose of Section 504 of protecting handicapped individuals from decisions based on fear, prejudice or stereotype."¹⁶⁰ In their decision, the Supreme Court adopted the AMA's four-step process on determining if a person with a contagious disease was otherwise-qualified which relied on "the reasonable medical judgements of public health officials,"¹⁶¹

The Supreme Court also sided with state attorney generals from California, Michigan, Minnesota, New York and Wisconsin who opposed the Justice Department's position partially based on the deterrence it created for individuals to report their condition due to fear of losing employment.¹⁶² Additionally, Lambda filed an amicus brief with the National Gay Rights Advocates and the Employment Law Center. The Disability Rights Education and Defense Fund worked with Lambda to coordinate briefs from other organizations with Lambda sponsoring

¹⁵⁹ *American Medical Association Proceedings of the House of Delegates, 40th Interim Meeting*, (Chicago: AMA, 1987).

¹⁶⁰ *Oversight of the Office for Civil Rights at the Department of Health and Human Services: Hearings before a House subcommittee of the Committee on Government Operations*, 186; Joseph E. Broadus, "'Arline': The Application of the Rehabilitation Act of 1973 to Communicable Diseases," *Labor Law Journal* 39, no. 5 (1988): 278.

¹⁶¹ "School Bd. of Nassau County v. Arline No. 85-1227." <https://caselaw.findlaw.com/us-supreme-court/480/273.html>, March 3, 1987. The AMA supported Nassau County but disagreed on the specific point.

¹⁶² *Ibid.*, fn 15; Cornell W. Clayton, "Law, Politics and the New Federalism: State Attorneys General as National Policymakers," *The Review of Politics* 56, no. 3 (1994): 535.

conference calls.¹⁶³ Although activists considered the Court's March 1987 *Arline* decision a victory for the rights of people with AIDS, a footnote in the Court's opinion left uncertainty about how the ruling might be applied to AIDS cases.¹⁶⁴ The Civil Rights Restoration Act of 1987 would address the ambiguity with an amendment to Section 504 that protected people with contagious diseases who did not present a risk to others.

The broader civil rights movement's rejection of the Department of Justice stance on Section 504 and AIDS demonstrates the growing support for people with AIDS. The Consortium for Citizens with Developmental Disabilities (CCDD) and the Leadership Conference on Civil Rights wrote Attorney General Edwin Meese to request the Office of Legal Counsel opinion be withdrawn and replaced with "a response . . . that reflects the scholarly traditions of the Department of Justice." Although the letter included a statement disputing Cooper's "implicit assumption that AIDS is easily communicated," most of the content considered the history of discrimination people with disabilities had experienced and the purpose of Section 504 in overcoming "irrational fears." The signees protested, "The DOJ memo engages in specious reasoning that is reminiscent of the racism that was overt earlier in our country's history, when employers refused to hire Black applicants for fear that they would infect the workforce with unknown and horrible diseases."¹⁶⁵ The efforts to secure regulations for Section 504 in the 1970s and recent battle to protect the regulations from the Task Force on Regulatory Relief had strengthened the unity of the disability rights movement. The struggles had drawn together groups that had previously seen themselves as

¹⁶³ Abby Rubenfeld, "Monthly Report for October 1986," October 14, 1986, Box 120, Folder 16, NGLTF records, Cornell. Sponsoring calls included paying the fees; "Docket Update." New York, NY: LLDEF, Fall 1986.

¹⁶⁴ "School Bd. of Nassau County v. Arline No. 85-1227," fn 7. "This case does not present, and we therefore do not reach, the questions whether a carrier of a contagious disease such as AIDS could be considered to have a physical impairment, or whether such a person could be considered, solely on the basis of contagiousness, a handicapped person as defined by the Act."

¹⁶⁵ Consortium for Citizens with Developmental Disabilities, "To Attorney General Meese," August 11, 1986, Box 16, Folder 12, LCCR, LOC. The CCDD changed their name to Consortium of Citizens with Disabilities in the late 1980s. The letter was signed by CCDD members and the LCCR.

having distinct needs into a one group with a shared identity. The solidarity they built was extended to people with AIDS.

The Leadership Conference's August newsletter covered the Cooper opinion and the reaction against it including that of the medical community and civil rights community. NGLTF had joined the Leadership Conference in 1982. The CCDD/LCCR letter sent to Meese did not explicitly mention the discrimination gay men and others perceived to have AIDS encountered; however, a statement in the LCCR newsletter from Representative Waxman alerted readers to the subtext of Cooper's memo. Waxman was reported as saying "The only justification he could see for the memo was DOJ's desire to respond punitively toward homosexuals."¹⁶⁶ Ted Weiss had made a similar statement when the memo was released. His accusation, "Legal opinion based on fear rather than sound evidence should be seen for what it is, a homophobic political statement under the guise of reasoned advice."¹⁶⁷ The Leadership Conference's member organizations did not unanimously support gay rights but they recognized discrimination.

The American Federation of State, County and Municipal Employees (AFSCME) had developed AIDS educational material for AIDS in the workplace and worked with the CDC on their AIDS in the workplace guidelines. They also condemned the Justice Department opinion. AFSCME president Gerald McEntee warned, "Not only are AIDS victims going to suffer, but anyone who is healthy but has been exposed to the virus will also be vulnerable to the prejudices of employers."¹⁶⁸ Stated or unstated, those opposed to the Justice Department's memo understood the likely negative impact it would have on gay men and others perceived to have AIDS.

¹⁶⁶ "Justice Department Decision on AIDS Blasted," in *Civil Rights Monitor*, August 1986, Box 41, Folder 40, HRCF records, Cornell.

¹⁶⁷ Ted Weiss, "Weiss Charges Justice Department's Opinion on AIDS Discrimination is Political Misstatement, Contradicts Medical Evidence," June 24, 1986, Box 41, Folder 39, HRCF records, Cornell.

¹⁶⁸ Ann Mayers, "AFSCME Condemns Justice Department Ruling on AIDS Victims' Rights," June 26, 1986, Box 120, Folder 17, NGLTF records, Cornell.

In New York, the State Division on Human Rights and the City Commission of Human Rights repudiated the Department of Justice opinion. State Commissioner Douglas White responded with a statement informing employers in New York that the opinion did not limit the State's laws against disability discrimination.¹⁶⁹ The City Commission released a statement noting the memo "is not binding on the Commission's enforcement of those provisions of the City's Human Rights Law which prohibit AIDS related discrimination."¹⁷⁰ On July 15, the city held a press conference. Commissioner Marcella Maxwell reiterated the Commission's intent to continue to confront AIDS discrimination.¹⁷¹ Stephen Joseph, MD, Commissioner of Health, stated, "The U.S. Department of Justice, by permitting discrimination based on unjustified fear, is undermining AIDS health education efforts, and is inadvertently fostering the irrational fears of the public at large." He warned the opinion could lead to an increase in the number of individuals infected with the AIDS virus.¹⁷²

The City Corporation Counsel prepared a thirty-five report on the DOJ memo that considered legal precedent including the appellate decision in *Nassau County v. Arline* as evidence. The authors concluded, "DOJ's arguments are indefensible in light of judicial interpretation of §504 of the Rehabilitation Act, the legislative history of the statute and the administrative regulations which implement it."¹⁷³ Frederick A.O. Schwarz, Jr., Corporation Counsel, concurred noting, "Unless authoritatively discredited and disavowed, [the memo] will have the effect of

¹⁶⁹ Douglas H. White, "New York Employers May Not Fire Workers Because of Fear of AIDS," in *New York State Division of Human Rights Press Information*, 1986, Box 326, Folder 5, GMHC records, NYPL.

¹⁷⁰ NYC Commission on Human Rights, "AIDS Discrimination Unit at the NYC Commission on Human Rights," July 1, 1986, Box 326, Folder 4, GMHC records, NYPL.

¹⁷¹ Marcella Maxwell, "Press Conference on AIDS Discrimination," July 15, 1986, Box 326, Folder 4, GMHC records, NYPL.

¹⁷² Stephen Joseph, "Statement by Stephen C. Joseph, M.D., M.P.H. Commissioner of Health New York City " July 15, 1986, Box 326, Folder 3, GMHC records, NYPL.

¹⁷³ Steven Goulden and Abby Notterman, "To: Frederick A. O. Schwarz, Jr. Re: Examination of U.S. Department of Justice memorandum on AIDS-Related Discrimination," July 25, 1986, Box 326, Folder 4, GMHC records, NYPL.

injuring public health.”¹⁷⁴ After receiving the report, Mayor Edward Koch released a statement in opposition to “the U.S. Justice Department’s cruel and restrictive interpretation of federal law with respect to AIDS-related discrimination.” Koch reassured the community, “The federal government has dropped the torch of leadership on this vital issue. New York City will not let it fall.”¹⁷⁵ For people like Mr. Doe, the torch had already fallen.

3.3.5 Doe v. Charlotte

After the nurse who had been fired by Charlotte Memorial Hospital died, Lambda continued to pursue the case under the direction of his parents. In April, Secretary of HHS Otis Bowen replied to Senator Cranston’s February request for information with summaries of the six AIDS-related complaints the Department had received. The first case listed was Lambda’s client. Bowen reported the investigation had been completed and was under review.¹⁷⁶ In June, Lambda notified Joan Burton, the Acting Regional Manager of Region IV OCR, that the client’s parents had reached a settlement with worker’s compensation and as part of the settlement were required to withdraw their complaint. Six hundred ninety-five days had transpired. Lambda’s legal director Rubinfeld admonished Burton to continue pursuing the complaint, describing the Department’s delays as “incredible” and “inexcusable.”¹⁷⁷

When Tom Stoddard, Lambda’s executive director, spoke at the House Oversight hearings on August 6, 1986, he testified, “We have still not heard from them, and we do not know what

¹⁷⁴ Frederick A.O. Schwarz Jr., "To Edward I. Koch, Marcella Maxwell, Stephen C. Joseph Re: AIDS Related Discrimination," 1986, Box 326, Folder 4, GMHC records, NYPL.

¹⁷⁵ Office of the Mayor, "Statement by Mayor Edward I. Koch," July 25, 1986, Box 326, Folder 4, GMHC records, NYPL.

¹⁷⁶ Otis Bowen, MD, "To Senator Cranston," April 8, 1986, Box 120, Folder 17, NGLTF records, Cornell.

¹⁷⁷ Abby Rubinfeld, "To Joan Burton, Acting Regional Manager," in *Oversight of the Office for Civil Rights at the Department of Health and Human Services: Hearings before a House subcommittee of the Committee on Government Operations*, June 4, 1986, hathitrust.org.

findings the Office for Civil Rights ultimately made.”¹⁷⁸ Under questioning, later in the day, Director of OCR Dotson provided insight as to what had transpired after the draft finding had been completed in the fall of 1985 and then turned over to the general counsel for the Office of Civil Rights. She also revealed a final decision had been reached in the *Charlotte* case. When pressed to explain when the decision had been made, Dotson explained it was final when it was put in the mail which had occurred the day before, August 5, 1986.¹⁷⁹ Stoddard interjected, “I am sure his survivors will be fascinated by your conclusions.” The political motivation for issuing a report the day before the Oversight hearing seems obvious.

The following week, the *New York Times* reported, “U.S. Files First AIDS Discrimination Charge,” referring to the Charlotte hospital case. Journalist Robert Pear suggested, “The Government’s action is significant because it sets a precedent demonstrating that people with acquired immune deficiency syndrome may be able to protect their rights despite a restrictive interpretation of the relevant law by the Justice Department.” Lambda’s executive director Tom Stoddard simply stated “[It was] a hollow victory.”¹⁸⁰ At the hearing, Weiss requested a copy of the material the regional office had sent to the Department of Justice, upon their request, according to Dotson’s April testimony. The draft material submitted disclosed that the regional office had initially concluded that the client was a handicapped person but not a qualified handicapped person. A letter prepared for John Boddie, the client’s attorney, argued that during the period the nurse was well enough to work, the cause of what had been determined to be a viral infection was unknown and therefore the hospital was unable to establish patient safety. Regardless, the hospital claimed that no nursing positions existed that did not require patient care and since patient care

¹⁷⁸ *Oversight of the Office for Civil Rights at the Department of Health and Human Services: Hearings before a House subcommittee of the Committee on Government Operations*, 189.

¹⁷⁹ *Ibid.*, 248-49.

¹⁸⁰ Robert Pear, “U.S. Files First AIDS Discrimination Charge,” *New York Times*, August 9, 1986, 1, 12.

was an essential function of the client's job, the hospital was not required to provide such a job. After the client was subsequently diagnosed with AIDS in August 1984, the letter claimed the physical impairment he experienced had left him unable to perform the essential job requirements. The findings and recommendation relied heavily on the client's extensive medical records in the determination of his status as handicapped but unqualified.¹⁸¹ Neither the draft statement of findings and recommendations nor the draft letter to Boddie mentioned that the client had attempted reemployment after his AIDS diagnosis and that in June 1985, the Chief of the Clinical Immunology for the CDC had stated, he "could possibly continue to work."¹⁸²

The final decision, sent the day before the oversight hearing, held the hospital in noncompliance with Section 504 of the Rehabilitation Act as required by their receipt of federal financial assistance from Medicare and Medicaid. The Office of Civil Rights found the hospital's initial decision to place the nurse on medical leave did not violate Section 504; however, the hospital's refusal to reconsider the man's employment after several physicians who examined him stated he could be safely reemployed indicated a violation. In keeping with Cooper's memo, the final decision noted, "the hospital could not have been motivated by the transmissible nature of complainant's condition. . . . Instead, the denial was motivated by the fact of the complainant's particular condition, i.e., AIDS."¹⁸³ The hospital had thirty days to decide whether to make a correction, negotiate or submit a plan of action. Any policy developed would apply retroactively and include back pay and benefits. Lambda declared the OCR decision a victory; however, the case continued when the hospital requested reconsideration.¹⁸⁴ In the fall of 1987, Lambda

¹⁸¹ Bellamy, "DRAFT: Findings," 269-81; Joan Burton, "To John Boddie," in *Oversight of the Office for Civil Rights at the Department of Health and Human Services: Hearings before a subcommittee of the Committee on Government Operations*, August 6 and 7, 1986, hathitrust.org.

¹⁸² Chretien, "To Charlotte Memorial Hospital Administrator," 261.

¹⁸³ *Ibid.*, 266.

¹⁸⁴ Rubinfeld, "Monthly Report for October 1986," 3; "Docket Update: Victories." New York, NY: LLDEF, Fall 1986.

reported that the hospital and the Office of Civil Rights had negotiated a compliance agreement to “redress discrimination problems.”¹⁸⁵

3.3.6 Section Conclusion

In comparison to the other documented cases of discrimination against people with AIDS, the nurse’s employment termination was not especially egregious. He was a gay man with symptoms of AIDS who lost his job. Like others, he had the courage to file a complaint. Considering he lived in a state where only 25 AIDS cases had been reported to the CDC by the end of 1984, one might assume he was an activist or had connections with national, state or local gay rights organizations as he knew to contact Lambda coordinating attorney John Boddie in Raleigh, North Carolina more than 150 miles away.¹⁸⁶ He knew to file for Social Security, perhaps because of his professional background or on the advice of his attorney. Lambda conceded he was unable to work after his August 1984 AIDS diagnosis, yet, he persevered in seeking reemployment. He died without justice.

While the Office of Civil Rights considered the nurse’s complaint, Lambda worked with other gay rights organizations and legislative staff to apply political pressure in an attempt to force the Office of Civil Rights to develop and publish a policy on Section 504 and AIDS. Hal Freeman’s resignation further pushed OCR to make a decision. Legislators requested explanations. The implications of Charles Cooper’s legal opinion countenancing discrimination due to fear of contagion were grave for people with AIDS or those perceived to have AIDS. Yet, the August House Oversight hearings gave voice to opponents and justice to Mr. Doe. The Supreme Court’s *Nassau County v. Arline* decision rejected the DOJ opinion that fear of contagion excused

¹⁸⁵ "Docket Update." New York, NY: LLDEF, Fall 1987.

¹⁸⁶ "Acquired Immunodeficiency Syndrome (AIDS) Weekly Surveillance Report-United States." <https://www.cdc.gov>, December 31, 1984.

discrimination. The investigation of the *Doe v. Charlotte* case provides a case study of the federal civil rights climate for people with AIDS in the critical period of the mid 1980s when fear of AIDS mobilized communities against school children in Queens, New York, Howard County, Indiana and Arcadia, Florida and support for mandatory testing and even quarantine circulated in the public and political spheres.

Four years after Cooper released his opinion, President George H.W. Bush signed the Americans with Disabilities Act. Before it reached his desk, Congress rejected an amendment that would have allowed fear of AIDS as a justification for employment termination. The legal savvy, strong networks and political will necessary to defeat the ADA amendment began with compassion for people such as the nurse in Charlotte, North Carolina, who lost his job due AIDS discrimination. The case itself acted as a goad pushing for federal recognition of AIDS as a disability and exposing the machinations responsible for delays.

3.4 Chapter Conclusion

Douglas Baynton examines how the characterization of minority groups as physically or mentally deficient excused unequal treatment and restriction of civil rights. For example, people who held slaves claimed freedom would exacerbate the “inherent physical and mental weakness” of black slaves to the extent they would succumb to illnesses or insanity. Similarly, opponents of women’s suffrage claimed women were too frail and emotional for intellectual and political activity. Immigration laws restricted the admission of individuals with perceived disabilities as well as established quotas based on racialized national hierarchies based in part on perceived aptitudes. In their battle for civil rights, African Americans, women and immigrants grounded their demands for civil rights on their fitness in contrast to the “insane” or “handicapped” who were unfit for citizenship. Baynton concludes, “This common strategy for attaining equal rights,

which seeks to distance one's own group from imputations of disability and therefore tacitly accepts the idea that disability is a legitimate reason for inequality, is perhaps one of the factors responsible for making discrimination against people with disabilities so persistent and the struggle for disability rights so difficult."¹⁸⁷

In the late 1960s and early 1970s, gay and lesbian activists had attempted to follow the same path to civil rights as they fought against the label of "mentally disordered" imposed by the medical community. Activist Frank Kameny addressed the consequences of the "sickness" label as he fought against restrictive federal hiring practices. "The individual is brainwashed into a sense of his own inferiority; just as other minorities are. When we are told 'You are sick' and 'You are mentally ill,' that finishes the destruction."¹⁸⁸ After the American Psychiatric Association voted to remove "homosexuality" from the list of mental disorders in the Diagnostic and Statistical Manual of Mental Disorders, Kameny sent a letter to supporters proclaiming, "VICTORY !!!! We have been 'cured'!" Kameny predicted, "Its [the APA vote] implications, and its consequences for good are enormous, as the near future is bound to show."¹⁸⁹ As the National Gay Task Force celebrated the decision, they did not question why it was acceptable to discriminate against people with mental illness.

The AIDS crisis created a rupture on the path to civil rights with an alternate route that pushed the gay and lesbian community to advocate for their right to be disabled. To receive the right to federal entitlements, they worked with the Social Security Administration to recognize AIDS as a presumptive disability. To obtain protection from discrimination, they had to acknowledge their status as disabled, not only individually but as a group perceived to be disabled

¹⁸⁷ Douglas C. Baynton, "Disability and the Justification of Inequality in American History," in *The Disability Studies Reader*, ed. Lennard J. Davis (New York, NY: Taylor & Francis, 2013), 30.

¹⁸⁸ "A Discussion: Are Homosexuals Sick?."

¹⁸⁹ Kameny, "VICTORY !!!! We have been 'cured' !."

by its association with a stigmatized disease. In New York City, the AIDS crisis challenged the marginalization and exclusion of sexual minorities by bringing attention to the discrimination sexual minorities experienced and contributing to the City council's decision to add sexual orientation to the Human Rights Code. At the national level, Lambda's test case, *Doe v. Charlotte*, exposed the chasm advocates for gay rights still needed to cross. Opponents of gay rights would refuse civil rights protection to a vulnerable group with an incapacitating disease for fear it might be used as a stepping stone to gay rights. The *Charlotte* case presented activists an opportunity to share a common cause with other civil rights organizations and strengthened their political connections. Activists would continue the fight for the right to be disabled during the campaign for the Civil Rights Restoration Act and the Americans with Disabilities Act with carefully crafted legislation that disallowed fear and protected people with contagious diseases.

CHAPTER 4. THE ROOM WHERE IT HAPPENS

After the 1980 election, civil rights advocates feared President Ronald Reagan and the newly elected Senate Republican majority would weaken the enforcement of civil rights laws. During the first years of the Reagan administration, the Leadership Conference on Civil Rights (LCCR) demonstrated their clout with the successful passage of the Voting Rights Act Amendments. When the 1984 Supreme Court decision on *Grove City College v. Bell* restricted the purview of the Civil Rights Act of 1964, the Educational Amendments of 1972, the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975, the Conference responded with confidence. The four-year legislative campaign for the Civil Rights Restoration Act (CRRA) that ensued brought attention to the shared nature of discrimination based on race, gender, age and ability.

The National Gay Task Force and the Gay Rights National Lobby joined the Conference in 1982 before the full extent of the AIDS crisis was recognized. They hoped to associate gay and lesbian rights within the mainstream of civil rights. The CRRA campaign coincided with a period of AIDS hysteria. In 1983 and 1984, scientists identified the virus responsible for AIDS. As the public realized that people could transmit the virus before they physically manifested symptoms of AIDS, fear grew. Lack of effective treatment and confusion over transmission vectors contributed to fears. During the 1985-1986 school year, public demonstrations against the school attendance of children with AIDS made national headlines. In 1987, Congress debated mandatory testing. As Congress considered the Civil Rights Restoration Act in 1987 and 1988, some members attempted to exclude people with AIDS from the protection of Section 504 of the Rehabilitation Act. The lengthy CRRA conflict would shape networks between gay and lesbian rights organizations and other civil rights organization within the Conference.

This chapter offers essential political context to the Americans with Disabilities Act, linking the gay and lesbian rights and the disability rights movements to the broader civil rights movement of the 1980s. Additionally, it provides a focused history of the Leadership Conference on Civil Rights that reveals the expansion of their civil rights mission. Memoirs of LCCR leaders afford a limited glimpse of the early history of the Conference but conclude in the late 1970s and early 1980s as the founders retired.¹ Historians have not turned their gaze to the transition the Conference experienced in the 1980s visible in their efforts to overturn Supreme Court decisions that limited the application of civil rights laws with legislative remedies. Their successful campaign for the Voting Rights Act Amendments of 1982 overturned the *City of Mobile v. Bolden* (1980) decision and rejuvenated the languid organization. The longer crusade to overturn *Grove City College v. Bell* (1984) intersected with the *School Board of Nassau County v. Arline* (1987) decision that acknowledged people with contagious disease were covered by federal law protecting people with disabilities. Activists defeated attempts to use the Civil Rights Restoration Act to exclude people with AIDS from Section 504 protection, setting a precedent for a similar attempt to exclude people with AIDS from the Americans with Disabilities Act (1990).

4.1 The Leadership Conference on Civil Rights in Transition

On March 22, 1979, U.S. Senator Dave Durenberger's newly hired chief legislative counsel, Ralph Neas, lay in a Minneapolis hospital fighting to stay alive while the effects of Guillain-Barré syndrome left him paralyzed and in constant pain. On that day, Neas had blood clots in his lungs and felt his strength to continue was gone. In an unpublished memoir, Neas

¹ Denton L. Watson, *Lion in the Lobby: Clarence Mitchell, Jr.'s Struggle for the Passage of Civil Rights Laws*, 1st ed. (New York: Morrow, 1990); Marvin Harold Caplan, *Farther Along: A Civil Rights Memoir* (Baton Rouge: Louisiana State University Press, 1999); Michael E. Parrish, *Citizen Rauh: An American Liberal's Life in Law and Politics* (Ann Arbor: University of Michigan Press, 2010); Benjamin L. Hooks and Jerry Guess, *The March for Civil Rights: The Benjamin Hooks Story* (Chicago: American Bar Association, 2003).

recounts in hourly detail the physical agony of respirator suctioning, repositioning and treatments and the psychological struggle against pain and the fear of dying. As the day ends, Neas reflects, "It has been a living hell but the only thing out of the ordinary or unexpected is, I suppose, my survival."² As the symptoms of Guillain-Barré abated, Neas regained use of his muscles. In July, he left the hospital. The Senate welcomed him back to work in October.³

Neas had a strong commitment to protecting civil rights prior to his life-threatening illness. He had worked for U.S. Senator Edward Brooke as chief legislative counsel and was the senior Senate staff leader on civil rights issues.⁴ He also served as the principal Senate liaison to the Department of Justice, the Department of Health, Education and Welfare and civil rights organizations. Thirty-four-year-old Neas, a white, male, Catholic, Republican, had watched the 1960s civil rights protests on television rather than engaging as a participant. However, he credited his passion for law and politics to those moments of awareness and an intense desire to act against "the pervasiveness of discrimination—how fate or government action or private action can deprive individuals of equality of opportunity, deprive individuals of the right to achieve their full potential."⁵ The months spent in the hospital shaped his civil rights efforts going forward. In interviews, he noted, "My long bout with Guillain-Barré Syndrome without question broadened

² Ralph Neas, "Chapter 3 of Proposed Book," in *Invincible Summer*, Unprocessed collection 20917, Box 4, Leadership Conference on Civil Rights records (LCCR), Manuscript Diction, Library of Congress (LOC); "Professional Life Vocation and Commitment," in *Work and Faith in Society: Catholic Perspectives*, October 23-25, 1983, University of Notre Dame: National Conference of Catholic Bishops.

³ John Ward, "Durenberger Aide to Leave St. Mary's After Four-Month Bout with Disease," July 6, 1979, Unprocessed collection 20917, Box 4, LCCR, LOC: St. Mary's Hospital; Daniel Moynihan, "Ralph Neas, A Brave Young Man," in *Congressional Record--Senate*, October 29, 1979, Unprocessed collection 20917, Box 3, LCCR, LOC.

⁴ Senator Brooke (R-MA) was the first African-American Senator elected by popular vote. He held the position from 1967-1979.

⁵ Neas, "Professional Life Vocation and Commitment," 17.

my understanding of such issues [civil rights] and reinforced my commitment.” Not surprisingly, he affirmed, “I regard that experience as one of the central learning lessons of my life.”⁶

The Leadership Conference on Civil Rights (LCCR) hired Ralph Neas as their first full-time executive director at the end of March, 1981. Founded in 1950 by A. Philip Randolph, Roy Wilkins and Arnold Aronson, the Conference claimed to have coordinated “all the national campaigns for major civil rights legislation.”⁷ In the early 1980s, the Conference experienced a period of leadership transition as influential LCCR leaders who had fought the early civil rights battles died or retired. Founder A. Philip Randolph had died in 1979. Roy Wilkins passed away in September of 1981. Arnold Aronson, who had served as LCCR’s secretary for 32 years, retired in 1982. Clarence Mitchell, LCCR chair, retired at the age of seventy shortly after Neas’ selection. Mitchell had been a lobbyist for the NAACP and for the Conference from 1950 to 1978 and continued to serve as honorary chair until his death in 1984. Benjamin Hooks, the executive director of the NAACP, replaced Mitchell as chair. Long-time member and executive committee chair Bayard Rustin remained active in the Conference until his death in 1987.⁸ Neas succeeded Marvin Caplan who had served as LCCR’s part-time director since 1963.⁹ Although the search

⁶ Richard Haass, "Interview with Ralph Neas," July 1993, Unprocessed collection 20917, Box 3, LCCR, LOC; Lena Williams, "Leadership Conference on Civil Rights: An Administrator of Many Hats and Colors," *New York Times*, August 17, 1987, 12.

⁷ "The Leadership Conference on Civil Rights: What It Is and Does," circa 1968, Box 4, Folder 9, LCCR, LOC. The founding moment of the Conference was the merging of the National Council for a Permanent FEPC led by A. Philip Randolph and the National Emergency Civil Rights Mobilization led by Roy Wilkins and Arnold Aronson; Caplan, *Farther Along: A Civil Rights Memoir*, 181-96. Caplan's memoir offers insights on the early years. He notes, "LCCR was essentially committed to a narrow purpose: to reform procedures in the House and Senate that blocked the enactment of effective civil rights legislation." [filibuster] p.186 When Neas accepted the position, the Conference had grown from the original 30 coalition members to 150 members. Five years later, approximately 35 additional members had joined.

⁸ Natalie Shear, "LCCR Names Ralph Graham Neas as Executive director," March 31, 1981, Unprocessed collection 20917, Box 4, LCCR, LOC; "A Brief History of the Leadership Conference on Civil Rights," circa 1986, Unprocessed collection 20912, Box 4, LCCR, LOC; "A Proposal To Monitor Federal Civil Rights Enforcement," 1982, Box 17, Folder 8, LCCR, LOC; Eric Pace, "Clarence M. Mitchell Is Dead; NAACP Lobbyist till '78," *New York Times*, March 29, 1984; Natalie Shear, "Hooks Elected to Head Civil Rights Coalition," February 22, 1982, Box 20, Folder 4, LCCR, LOC.

⁹ "Minutes of the Executive Committee, May 15, 1980," 1980, Box 15, Folder 12, LCCR, LOC; Arnold Aronson, "Re: A New Director for the Leadership Conference," August 7, 1980, Box 16, Folder 11, LCCR, LOC. Caplan resigned

committee for Caplan's replacement had hoped to hire a minority applicant and some had originally opposed Neas' hire, the members unanimously agreed Neas was the best candidate.¹⁰

Neas joined an organization in crisis mode. Just weeks before the Conference offered him the position, the LCCR had held an emergency meeting to discuss their organizational dysfunction, financial shortages and lack of clear political strategy.¹¹ The invitation to the meeting warned, "the very existence of the Leadership Conference is in doubt."¹² William Taylor, director of the Center for National Policy Review, prepared a 21 page report for the participants to consider. Although the Conference continued to attract new coalition members, Taylor questioned the depth of the members' commitment. He wrote, "The appeal of the Conference is not hard to discern. Organizations hope that by joining and participating they will gain wider public support for their issues."¹³ He noted that members were willing to use the Conference name to endorse issues with the expectation of reciprocal support and no intention of putting forth further work to support the issue.¹⁴ At the meeting, participants discussed adding a policy development committee and establishing long term legislative priorities. Jane O'Grady, legislative chairperson, presented suggestions on increasing organizational involvement through better communication of executive

in 5/1980 to become Legislative Director of the Industrial Union Department of the AFL-CIO. He had worked as an AFL-CIO lobbyist since the early 1960s. Caplan and Aronson took on a civil rights monitoring project for the Conference in their retirement.

¹⁰ Neas, "Professional Life Vocation and Commitment."; "Report of the Search Committee to the Executive Committee," March 30, 1981, Unprocessed collection 20917, Box 4, LCCR, LOC. Mitchell had encouraged Neas to apply in 1980. The search committee extended the search and actively recruited minority applicants without success. When none accepted the invitation, they agreed on Neas. Senator Edward Brooke, Neas' former employer, was a member of the LCCR executive committee as head of the National Low Income Housing Coalition.

¹¹ Planning for the meeting began in August 1980 and was originally scheduled as a retreat for December 1980. After the election, the retreat became an emergency meeting. It was rescheduled for March due to the need to engage with Fair Housing legislation.

¹² Clarence Mitchell, "For Immediate and Urgent Attention," November 18, 1980, Box 15, Folder 2, LCCR, LOC.

¹³ William Taylor, "Background Memorandum for LCCR Retreat," 1980, Box 15, Folder 2, LCCR, LOC.

¹⁴ The Conference decision-making process operated on a consensus principle. If the executive committee or national board reached consensus, the Conference would issue a statement or take action. Organizations determined on an individual basis whether or not to list their organization as a supporter.

committee decisions and coordination of specific requests for grassroots support as needed.¹⁵ These suggestions would soon be tested in the legislative campaign for the Voting Rights Act Amendments.

Joe Rauh, LCCR counsel, lead the meeting discussion on the budget crisis. At the end of 1980, the LCCR had \$15,786 in outstanding bills and \$3,704 in cash. The Conference relied on organizational membership fees, annual meeting profit and donations to cover expenses. The AFL-CIO and NAACP paid the salaries for the director, executive assistant and a secretary. Rauh estimated funding would need to double to pay a decent salary for a full-time director and a secretary, staff additions members felt were necessary to confront the growing strength of conservatism. At the time, organizations paid a minimum of \$150 in annual dues with some of the larger organizations paying significantly more. LCCR doubled the minimum to \$300 at the next annual meeting and asked organizations, that were able, to substantially increase their contribution.¹⁶ Additionally, the LCCR decided to activate their unfunded non-profit organization, the Leadership Conference Education Fund, and began to solicit supplementary grants.¹⁷

The public account of the emergency meeting did not mention the organizational and financial crisis. Instead, spokespersons brought attention to the political challenges confronting the Conference. In conversation with the *New York Times*, Benjamin Hooks explained, "There hasn't been a pro-civil rights mood in the country in the last three to four years. But now it's reached the dimension of an anti-civil rights mood in Congress. It's not couched in the old segregationist

¹⁵ "Summary of the March 4 Emergency Meeting," March 1981, Box 15, Folder 4, LCCR, LOC; "Minutes: Emergency Meeting March 4, 1981," 1981, Box 15, Folder 4, LCCR, LOC.

¹⁶ "Summary of the March 4 Emergency Meeting."; "Minutes: Emergency Meeting March 4, 1981." At the meeting, organizations pledged an additional \$20,000 in one-time donations and agreed to increase regular contributions; "Leadership Conference on Civil Rights Budget," 1981, Box 15, Folder 4, LCCR, LOC; Leadership Conference on Civil Rights, "Statement of Purpose and Bylaws (Underlined portions adopted February 21, 1982)," February 21, 1982, Box 20, Folder 9, LCCR, LOC.

¹⁷ Taylor, "Background Memorandum for LCCR Retreat," 20-21.

language but it's there and it's dangerous. They want to roll us back." The article highlighted two areas of concern—the Voting Rights Act and conservative attempts to limit the jurisdiction of the Supreme Court. In the private meeting, Taylor had worried that the Conference was not politically effective due to lack of grassroots contact with legislators. In public, Iris Mitgang, head of the National Women's Political Caucus, expressed confidence in the strength of LCCR's networks. "They [the right wing] have been able, on short notice, to inundate Congress with negative information, antagonistic mail to get what they want achieved. We're going to activate the people who are our constituents and make ourselves heard on the issues that concern us." The serious tone of the meeting appeared to have energized and motivated organizational leaders to greater efforts.¹⁸

Ralph Neas accepted the position of executive director prepared for action. A week after he was hired in March 1981, Neas announced that House bill (H.R. 3112) and Senate bill (S. 895) regarding the Voting Rights Act provisions would "be the number one legislative priority of the Leadership Conference on Civil Rights."¹⁹ The proposed legislation included amendments that extended the period of federal oversight for states and counties with a history of discriminatory voting practices, extended the requirement to provide bilingual material in some areas and allowed people who were disabled to use an assistant if needed. Neas appealed for bipartisan support to continue the civil rights progress the original Act had generated.

4.1.1 *City of Mobile v. Bolden* and the Voting Rights Act

A recent Supreme Court decision, *City of Mobile v. Bolden* (1980), contributed to the sense of urgency. In the case on at-large voting systems, the Court held that, "Only if there is purposeful discrimination can there be a violation of the Equal Protection Clause." The opinion further noted,

¹⁸ Bernard Weinraub, "Liberal Groups Are Joining Forces To Defend Their Goals and Gains," *New York Times*, March 9, 1981, B6.

¹⁹ Natalie Shear, "Voting Rights Act Extension is Top LCCR Priority," April 7, 1981, Box 20, Folder 4, LCCR, LOC.

“And this principle applies to claims of racial discrimination affecting voting just as it does to other claims of racial discrimination.” In dissent Justices Marshall and Brennan argued “proof of discriminatory impact is sufficient in these cases.” In a separate dissent, Justice White maintained, “Both the District Court and the Court of Appeals properly found that an invidious discriminatory purpose could be inferred from the totality of facts in this case.”²⁰ In addition to extending deadlines, the House and Senate bills included an amendment to Section 2 of the Voting Rights Act that would clarify the standard of proof needed to determine discrimination.

Within a month of the April 1980 *Mobile v. Bolden* decision, the Conference began to discuss their response. Thomas Atkins, NAACP general counsel, presented information about the implications of the case on the Voting Rights Act at a LCCR executive committee meeting in May 1980. Atkins and Joe Rauh supported changes to the Voting Rights Act that would allow the court to consider “objective standards” of proof. LCCR responded by forming a committee to consider legislative remedies.²¹ In the fall, LCCR held meetings with legislative strategists, voting rights litigators, Congressional representative and coalition member organizations to discuss key provisions, strategy and leadership for the introduction of the Voting Rights Act extension. Fear of “a second post-Reconstruction period in which the Radical Right would attempt to gut or severely weaken the civil rights legislation enacted over the past twenty-five years” motivated the activists. Coalition organizations agreed that each would list the bills as their number one priority. While the “Radical Right” was seen as the chief opposition, the LCCR still employed their historic strategy of building bipartisan support. A special LCCR Steering Committee formed for “day to day strategy, drafting, grassroots lobbying, and coordinating with House, Senate, and

²⁰ "City of Mobile v. Bolden, 446 U.S. 55," April 22, 1980.

²¹ "Minutes of the Executive Committee May 15, 1980: Impact of Supreme Court ruling in Mobile Alabama Case," 1980, Box 15, Folder 12, LCCR, LOC.

Administrations officials” during the campaign. When the bills were introduced in April 1981, LCCR had been working on the Voting Rights Act extension for almost a year.²²

Debates over amending Section 2 of the Voting Rights Act embroiled proponents of the bill in a struggle with conservatives over the standard of proof— “intent” vs. “result.” Many discriminatory areas had established voter policies years ago leaving contemporary intent of discrimination difficult to prove. Civil rights activists endorsed the results standard and argued that the bill would restore the precedent established by earlier court decisions which recognized at-large voting policies could result in discrimination. On the other side, the Administration maintained that the Department of Justice should only step in when voting policies intentionally discriminated against voters. Attorney General William French Smith warned, “The [effects/results] test could gradually lead to a system of proportional representation based on race or minority language –essentially a quota system for electoral politics.”²³

Despite the dire state of affairs discussed in the March 1981 emergency meeting, the Leadership Conference mustered an intense lobby and grass roots campaign in favor of extending and amending the Voting Rights Act. Neas chaired the Steering Committee of representatives from twenty-five organizations and legislative staff that met every week to discuss strategy. LCCR representatives attended Congressional staff meetings and met with key legislators as decisions were made.²⁴ When the bill reached the House floor, lobbyists met with representatives whose

²² "Outline of Proposed Article: The Untold Story Behind the Passage of the 1982 Extensions of the Voting Rights Act," September 1982, Box 8, Folder 3, LCCR, LOC.

²³ William French Smith, "The Voting Rights Act," *New York Times*, March 27, 1982, 23; Raymond Wolters, *Right Turn: William Bradford Reynolds, The Reagan Administration, and Black Civil Rights* (New Brunswick: Transaction Publishers, 1996). Wolters offers a point of view that supports William Bradford Reynolds and is critical of the LCCR.

²⁴ Thomas M. Boyd and Stephen J. Markman, "The 1982 Amendments to the Voting Rights Act: A Legislative History," *Washington and Lee Law Review* 40, no. 4 (1983): 1358, 71.

voting record indicated poor support for civil rights.²⁵ Lobbyists also travelled across the country for television interviews and spoke to media representatives to inform the public.²⁶ Conference leaders and the coalition's organizational leaders testified at both the House and Senate hearings. Member organizations marshalled their grass roots networks across the country. For example, in Iowa, the League of Women Voters organized a media committee to write editorials, distribute material to media outlets and hold press conferences; secured the donation of a phone bank which allowed them to generate mass calls to the representatives; and used a church network to reach religious leaders. An article in the *New Republic* claimed, "Hundreds of thousands of people took part in a minutely planned grass-roots campaign that spanned fifty states and 435 Congressional districts."²⁷ The *Black Enterprise* noted an unnamed conservative Representative who received 4,000 letters of support for the House bill and as a result supported the bill. The vigorous grassroots response likely emboldened the Conference in 1984 when they would again attempt to legislatively overturn a Supreme Court decision.

Although silent during the House's consideration of changes to Section 2 that would overturn the *Mobile v. Bolden* decision, the Reagan Administration came out in strong opposition to the House adoption of a "results" standard of proof during the Senate's proceedings. After a contentious hearings process, the Senate Judiciary committee was split. Senator Robert Dole (R-KS) offered a compromise that precluded proportional representation as the sole standard in determination of discrimination and broke the impasse. Before the bill reached the floor, Senators Jesse Helms (R-NC), John East (R-NC), Jeremiah Denton (R-AL) and Harry Byrd, Jr. (I-VA)

²⁵ "The Voting Rights Act: Anatomy of A Victory," *Black Enterprise*, March 1982. They specifically targeted those in opposition who had a 15% or more minority population.

²⁶ "Voting Rights Act Extended, Strengthened," in *Congressional Quarterly Almanac, 97th Congress 2nd Session 1982*, ed. Eugene Patterson (Washington DC: Congressional Quarterly Inc., 1983), 373.

²⁷ Barton Gellman, "The New Old Movement," *The New Republic*, September 6, 1982, 12. Senator Edward Kennedy (D-MA) read the article into the Congressional Record on September 20, 1982.

filibustered to prevent its introduction. Under political pressure from their peers and following a cloture vote, Helms ended the filibuster and the Senate voted to consider the bill. The Senate passed the bill on June 18, 1982 with an 85-8 vote. The House accepted the compromise and President Reagan signed the bill on June 29, 1982.²⁸ In celebration, Ralph Neas sent LCCR members a “**VICTORY**” memorandum praising “the efforts of the many organizations in the Leadership Conference, that mobilized their members and conducted a grassroots support campaign that equaled in effectiveness the campaigns of the 60s.”²⁹

4.1.2 LCCR and the Department of Justice

In a bold move near the end of the Senate hearings, the LCCR distributed *Without Justice*, a seventy-five-page report highly critical of the Justice Department’s enforcement of civil rights laws during the Reagan administration’s first year. A section of the report on voting criticized the Administration’s long silence during the House’s consideration of the Voting Rights Act extension; accused the Attorney General of untoward pressure against President Reagan’s willingness to sign a bill based on the House version; and listed a series of court cases where the Department of Justice had failed to speak on behalf of protecting voters’ rights, including the *Mobile v. Bolden* case. Other sections denounced the Department’s educational efforts, particularly their attempts to gain tax exemption for discriminatory private schools and failure to enforce court decisions regarding desegregation; reproached the Department for undermining the courts; condemned the reversal of equal employment opportunity policies; and revealed instances where the Department was amenable to political pressure. Foreshadowing the Justice Department’s

²⁸ Boyd and Markman, "The 1982 Amendments to the Voting Rights Act: A Legislative History."; "Voting Rights Act Extended, Strengthened." The compromise stated, "Nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." p. 376; Steven V. Roberts, "Filibuster Ends on Voting Rights," *New York Times*, June 18, 1982, D17.

²⁹ Ralph Neas, "VICTORY," June 29, 1982, Unprocessed collection 20912, Box 3, LCCR, LOC.

position shift in the 1984 *Grove City v. Bell* case, the report mentioned several instances of mid-case Justice Department position switches that “acted against the claims of minorities to equal educational opportunity.”³⁰ The report was especially critical of Assistant Attorney General William Bradford Reynolds who had yet to testify at the Senate hearings on the Voting Rights Act.³¹ At the press conference announcing the release of the report, Benjamin Hooks warned, “The excesses revealed should be of concern not just to black people, Hispanic and Asian Americans, women, handicapped people and others who have been victimized by discrimination, but to all Americans who cherish the Constitution and the system of ordered liberty it has created.”³² He hoped “the report will stimulate opposition to the Reagan administration’s civil rights policies.”³³

In response, the Department of Justice offered a fifty-five-page rejoinder that accused the LCCR of “put[ting] together an emotionally charged, highly inflammatory polemic, intemperately accusing federal law enforcement officials.” The introduction continued, “The Report’s hyperbole ventures far beyond the responsible disagreement with the Administration’s interpretations of law and determinations of policy.” After questioning the facts presented in *Without Justice*, the Department provided a quantitative summary of the work they had completed in the past year. As they answered each section of the LCCR report, the Department argued they were seeking more effective remedies than the failed solutions supported by the Conference. The Department invited the Conference to meet for a “candid, dispassionate exchange of views.” Ralph Neas accepted the

³⁰ Tax Exemptions for Discriminatory Private schools pp. 15-20; Texas and education of children of undocumented aliens p. 20; Washington State and desegregation p. 21-22; Chicago and consent decree pp. 22-5; Gier v. University of Tennessee as applied to Louisiana, Mississippi and North Carolina cases pp. 26-29.

³¹ William Taylor et al., “Without Justice: A Report on the Conduct of the Justice Department in Civil Rights in 1981-1982,” February 1982, Box 48, Folder 4, LCCR, LOC.

³² William Taylor and Natalie Shear, “LCCR Charges Justice Department with Abdicating Its Responsibilities,” February 1982, Box 48, Folder 2, LCCR, LOC.

³³ Robert Taylor, “Minority Groups Accuse Justice Agency of Selectively Ignoring Civil Rights Laws,” *Wall Street Journal*, February 24, 1982. William Taylor, the head author of the report, collaborated with eleven other lawyers from civil rights organizations, including Arlene Mayerson of the Disability Rights Education and Defense Fund who played a major role in the passage of the ADA.

invitation while William Taylor released a statement as a LCCR representative that derided the Department's response as "alternately shrill and self-laudatory." Taylor proposed a public debate with "responsible officials at the Department" and the Conference prepared an eight-page dispute of the Justice Department's facts and arguments.³⁴ It is not clear if the meeting or debate took place; however, the effort the Justice Department put forth in producing their response to the LCCR report suggests they were concerned about the Conference's political clout.³⁵

Without Justice received significant press attention. The minutes of a LCCR executive committee meeting indicated that CBS had plans to produce a program about the Department of Justice as a result and that the House Judiciary Subcommittee on Civil and Constitutional Rights had held hearings which used *Without Justice* as a text.³⁶ In addition to the successful passage of the Voting Rights Act extensions and amendments, the LCCR counted the defeats of the "Bob Jones Bill" and of the Helms-East "courtstripping bill," and the rejection of attempts to abolish the Legal Services Corporation as the year's successes.³⁷ In the fall, Ralph Neas predicted, "The New Right has reached its zenith . . . In their strongest period, they did not enact any of their agenda. . . . We've got to be vigilant. . . . But, if we stopped them in the 97th Congress, we ought to

³⁴ Department of Justice. "The Civil Rights Policy of the Department of Justice: A Response to the Report of the Leadership Conference on Civil Rights." 1-55. Washington, DC, April 1982; Wm. Bradford Reynolds, "To Benjamin Hooks," April 2, 1982, Box 7, Folder 3, LCCR, LOC; *ibid.*; William Taylor, "Statement of the Leadership Conference on Civil Rights Regarding the Department of Justice's Response to the LCCR Report 'Without Justice'," 1982, Box 48, Folder 2, LCCR, LOC; "LCCR Reply to Justice Department 55-Page Document," 1982, Unprocessed collection 20912, Box 3, LCCR, LOC.

³⁵ Assistant AG Reynolds and Neas did participate in a heated exchange on the editorial pages of the *Des Moines Register*. "Grassley Holds the Key," *Des Moines Register*, March 18, 1982; Wm. Bradford Reynolds, "'No Weakening of Voting Rights Act,'" *ibid.*, March 24; Ralph Neas, "Justice Dept. Official's View of Voting Rights Act Challenged," *ibid.*, March 25.

³⁶ Leadership Conference on Civil Rights, "Compliance and Enforcement Committee," in *Minutes of the Executive Committee Meeting July 29, 1982*, 1982, Box 15, Folder 9, LCCR, LOC.

³⁷ "LCCR's Major Campaigns (1981-1985)," 1985, Box 4, Folder 9, LCCR, LOC.

be able to stop them in any Congress.”³⁸ The lengthy campaign to overturn the Supreme Court *Grove City v. Bell* decision with legislation would challenge Neas’ assumption.

Despite a shaky start to the 1980s, the Leadership Conference successfully weathered the changing of the guard. Benjamin Hooks, NAACP executive director since 1977 and member since the 1940s, bridged the leadership transition from the founders to the next generation of activists such as Neas who had not been directly involved in the civil rights movement of the 1960s.³⁹ Hooks wrote the Leadership Conference statement on the enactment of the Voting Rights Act Amendments. His announcement recognized the broader transition taking place. Writing on factors that contributed to the campaigns success, he observed, “It [the effort] encompassed not only the historic Black-Labor-Religious coalition, but also the civil rights groups that have emerged with great force and impact since the passage of the original Voting Rights Act: Hispanics, Women, Native Americans, Disabled Person, and Senior Citizens.” He concluded, “Working side by side, they constituted a united and powerful front throughout the entire extension effort.”⁴⁰

4.2 LCCR Coalition Expansion

The prominent role the Disability Rights Education and Defense Fund (DREDF) played in the Leadership Conference during the Americans with Disabilities Act campaign has obscured LCCR’s earlier involvement with disability rights issues. DREDF lobbyist and LCCR executive committee member Patrisha Wright recalled, “The LCCR, historically, had never worked with the disability community. Disability, up until the Civil Rights Restoration Act, was never viewed as a

³⁸ Bill Keller and Nadine Cohodas, "Liberal Lobby Strengthened: Tactical Errors, Disunity Blunt New Right Social Legislation," *Congressional Quarterly*, October 16, 1982, 2675.

³⁹ Hooks and Guess, *The March for Civil Rights: The Benjamin Hooks Story*, 49, 128.

⁴⁰ Benjamin Hooks, "Statement of the Leadership Conference on Civil Rights on the Enactment of H.R. 3112, the Voting Rights Act Extension," June 29, 1982, Box 7, Folder 6, LCCR, LOC.

civil rights issue.”⁴¹ However, in the late 1970s, the Leadership Conference on Civil Rights (LCCR) accepted organizations representing the rights of people with disabilities as members; supported efforts to secure accessible public transportation; and advocated for a bill that attempted to add people with disabilities to the employment provisions of the Civil Rights Act of 1964. In 1982, prior to DREDF’s admission, the Conference began work on the Voting Accessibility for the Elderly and Handicapped Act with the American Coalition of Citizens with Disabilities.⁴² This section examines LCCR’s early involvement in disability rights concerns in comparison to their limited involvement with gay and lesbian rights issues during the 1980s. The Conference accepted the Gay Rights National Lobby and the National Gay Task Force as members at their July 1982 executive committee meeting; however, LCCR did not support gay and lesbian rights legislation in the 1980s. Although silent on gay and lesbian rights, the Conference would support the rights of people with AIDS as those disabled under the Civil Rights Restoration Act (CRRA).

4.2.1 LCCR and Disability Rights

The Conference accepted the membership applications of the American Council of the Blind (ACB) in April 1976 and the American Coalition of Citizens with Disabilities (ACCD) in November of 1976.⁴³ Marvin Caplan recalled, “The application of the American Council of the Blind tied us up for weeks before we finally concluded we could not, in conscience, turn it down.”⁴⁴ Former district court judge Reese Robrahn joined the LCCR executive committee in 1977 as the

⁴¹ Fred Pelka, *What We Have Done: An Oral History of the Disability Rights Movement* (Amherst: University of Massachusetts Press, 2012), 419.

⁴² Reese Robrahn, Karen Peltz Strauss, and Laura Macklin, "To: Ralph Neas Re: Enclosed Information on Proposed Voting Accessibility Legislation," March 5, 1982, Unprocessed collection 20912, Box 3, LCCR, LOC.

⁴³ Leadership Conference on Civil Rights, "Minutes of the Executive Committee Meeting," April 23, 1976, Box 15, Folder 8, LCCR, LOC; "Minutes of Executive Committee Meeting," November 8, 1976, Box 15, Folder 8, LCCR, LOC. The executive committee determined membership by consensus providing established members an opportunity to communicate any disapproval before the committee made a decision.

⁴⁴ Caplan, *Farther Along: A Civil Rights Memoir*, 234.

representative of the ACCD and with connections to the ACB. As second president and director of governmental relations for ACB, Robrahn had contributed to the Council's national expansion and played a key role in building a consensus among disability rights organizations as they confronted the Department of Health, Education and Welfare (HEW) when it delayed the release of Section 504 regulations in the mid-1970s. Chris Gray, Robrahn's intern at the time, remembered, "Reese would often write key sentences or paragraphs and circulate them throughout the community of disabled advocates to ensure not only consistency, but focus and accuracy as to what comments were being filed throughout our entire community." Robrahn also participated in the occupation of HEW headquarters that was credited with convincing HEW Secretary Joseph Califano to finally release the 504 regulations. Shortly after the occupation, Robrahn accepted a position with the American Coalition of Citizens with Disabilities.⁴⁵ As a new member of the LCCR executive committee, Robrahn introduced the Conference to the essential concerns of the disability rights movement.

At one of his first meetings as a member of the LCCR executive committee, Robrahn shared information about ACCD's efforts to monitor Section 504 enforcement. On May 20, 1977, the executive committee met at Secretary Califano's office. Judy Lichtman, Women's Equality Action League representative, and Robrahn identified problems in the Justice Department's litigation efforts in Title IX and Section 504 respectively. During the following year, Lichtman and Robrahn continued to monitor the situation and provided updates.⁴⁶ In follow-up, Lichtman reported an absence of Title IX cases and argued that the absence was indicative of a lack of knowledge and concern on the part of the Justice Department and the HEW Office of Civil Rights.

⁴⁵ Chris Gray and Michael Byington, "In Memoriam: Reese Robrahn, ACB's Second President 1921-2006," *Braille Forum* 45, no. 2 (2006).

⁴⁶ "Minutes of the Meeting with HEW Secretary Joseph Califano," May 20, 1977, Box 15, Folder 8, LCCR, LOC.

Robrahn noted similar failures in the enforcement of Section 504. The executive committee asked Lichtman and Robrahn to draft letters to the Justice Department and the HEW that would pinpoint the problems and encourage the Departments to use the withholding of federal funds to motivate compliance.⁴⁷ Sending letters of concern allowed the Conference to communicate the significance of an issue without expending much political capital. In this situation, the letters additionally conveyed that LCCR held disability rights as equal in importance to women's rights.

4.2.1.1 Transportation

Lack of accessible public transportation limited the social and employment opportunities of people with disabilities. At the July 1978 executive committee meeting, Robrahn brought the lengthy Transbus dispute to the Conference's attention. In response to the Urban Mass Transportation Assistance Act of 1970 which required "special efforts" to provide the elderly and handicapped access to public transportation, the Urban Mass Transportation Administration (UMTA) had financed the Transbus project to develop an accessible bus. In January 1975, UMTA announced Transbus specifications would become the nationwide policy for future busses purchased with federal financial assistance; however, manufacturers did not have confidence in the viability of the Transbus system and pursued their own designs. When UMTA issued final regulations regarding transportation for the elderly and handicapped in April 1976, their position on Transbus had weakened. The regulations stated, "Although the wheelchair accessibility option requirement is settled, the issue of whether UMTA should mandate a low floor bus [Transbus design] is not settled."⁴⁸ After hearings in May, UMTA abandoned the Transbus mandate in favor

⁴⁷ "Minutes of the Executive Committee Meeting Held on May 16, 1978," 1978, Box 15, Folder 8, LCCR, LOC.

⁴⁸ Department of Transportation, "Transportation For Elderly and Handicapped Persons," *Federal Register* 41, no. 85 (1976): 18236.

of broader bus design specifications.⁴⁹ Both the ACB and ACCD joined the Transbus Group coalition, led by the Disabled in Action (DIA), in filing a lawsuit to force the implementation of Transbus design.⁵⁰ Six months after ACCD joined LCCR, President Carter's newly installed Secretary of Transportation, Brock Adams, reinstated the mandate that required all future public busses to meet Transbus design specifications.

Robrahn introduced the Transbus issue to the LCCR executive committee in 1978 when it appeared that a delaying amendment in the House threatened the Transbus implementation schedule that Secretary Adams had established. Robrahn asked the Conference for support in order to counter what he described as General Motors's "lobbying campaign" against Transbus. At the meeting, guest speakers from the Amalgamated Transit Union and the United Auto Workers expressed their full support for equal access to transportation but also revealed problems involving operator workload and safety that their members had raised as a result of "GM's propaganda." Other meeting attendees supported a separate on-call transportation system for people with disabilities. Robrahn and James Raggio, an attorney for the Transbus Group, responded with language suggestive of the black civil rights movement. Robrahn defended Transbus by explaining "handicapped people object to separate but equal treatment."⁵¹ The Conference executive committee unanimously voted to support Transbus and issued a statement in support of Secretary Adams' mandate that "Urge[d] Congress to support the Secretary and delete the Amendment so that there will be no further delays in building Transbus."⁵² A statement of support carried more

⁴⁹ Robert A. Katzmann, *Institutional Disability: The Saga of Transportation Policy for the Disabled* (Washington, DC: Brookings Institution, 1986), 73-74, 132-38.

⁵⁰ Disabled in Action (DIA) of Pennsylvania led the Transbus Group. The Public Interest Law Center of Philadelphia represented the group. In June 1977 and July 1979 DIA of the Metropolitan New York Area corresponded with LCCR about membership. I did not find records indicating whether they had applied or had been granted/denied membership.(Box 75, Folder 10, LCCR, LOC). The LCCR only accepted national organizations.

⁵¹ "Minutes of the Executive Committee Meeting July 14, 1978," 1978, Box 15, Folder 8, LCCR, LOC.

⁵² "LCCR Statement on Transbus," July 14, 1978, Box 15, Folder 8, LCCR, LOC.

weight than a letter of concern and communicated the Conference's position to member organizations and the press.

At the following executive meeting in September 1978, Reese reported signs of progress with General Motors. After a summer of lobbying by Transbus advocates, the president of General Motors, Elliot Estes, had agreed to discontinue the corporation's lobbying efforts against Transbus. A meeting with Estes, Secretary Adams and the House Public Works Committee Chair Harold Johnson resulted in an agreement to move to delete the delaying amendment if the bill reached the floor.⁵³ The sense of victory evaporated in May 1979, when all four companies that had previously stated interest in Transbus manufacturing, including General Motors, failed to submit a bid. The LCCR executive committee joined the ACCD and "voted to also call on Justice to conduct an investigation into GM's and Grumman's failure to bid on Transbus."⁵⁴

In 1980 with Transbus prospects sidelined, the LCCR continued to address the transportation needs of people with disabilities.⁵⁵ On May 15, 1980, Robrahn updated the Conference on a new threat—the Cleveland Amendment to the Surface Transportation Act of 1980 (H.R. 6417). The amendment under consideration by the House Subcommittee on Surface Transportation offered a local option that would allow cities to provide separate transit services for people with disabilities rather than requiring all transportation to be accessible. Proponents argued the local option would decrease costs and increase transportation choices. Robrahn warned, "A weakening of Section 504 in this instance will open the way for other recipients of federal

⁵³ "Minutes of the Executive Committee Meeting September 8, 1978," 1978, Box 15, Folder 8, LCCR, LOC.

⁵⁴ "Minutes of the Executive Committee Meeting May 10, 1979," 1979, Box 15, Folder 9, LCCR, LOC. The records I examined did not indicate if an investigation took place. Rep. Mario Biaggi (D-NY) also called for an investigation. Feaver, Douglas. "Transbus for Handicapped Stalled by Lack of Bidders." *Washington Post*, May 3, 1979.

⁵⁵ "Minutes of the Executive Committee, May 15, 1980."; Arnold Aronson, "Fair Housing and Other Matters," August 11, 1980, Box 18, Folder 10, LCCR, LOC; "Minutes of the Executive Committee Meeting September 18, 1980," 1980, Box 15, Folder 9, LCCR, LOC; Arnold Aronson, "The Unfinished Business of the 96th Congress," October 10, 1980, Box 18, Folder 10, LCCR, LOC.

financial assistance to try to get exemptions from 504 for their programs and activities.”⁵⁶ In response, the LCCR executive committee voted to oppose the Cleveland Amendment and followed the decision with letters to James Howard (D-NJ), chair of the Subcommittee on Surface Transportation, and other House leaders. Additionally, LCCR member organizations received a fact sheet and were asked to communicate their opposition to Congress.⁵⁷ The timing was unfortunate. The full Committee on Public Works and Transportation had approved H.R. 6417 with the Cleveland amendment a week before the LCCR executive committee meeting.

Representative Howard’s reply to LCCR’s letter exposed a key challenge disability rights advocates faced—the cost of accessibility. Howard concluded, “This [increased choices], coupled with the astronomical cost of retrofitting existing public transportation systems, dictated the adoption of this amendment.”⁵⁸ The ACCD, the Paralyzed Veterans of America and other groups supporting the rights of people with disabilities vigorously lobbied against the amendment. When the full bill was introduced to Congress on December 2, 1980, Howard noted, “After the committee reported the legislation, many, many Members of this body voiced their concerns to me and to the distinguished chairman of the full committee about the Cleveland amendment and the controversy which a very articulate and aggressive group of handicapped persons generated.”⁵⁹ The House rejected the Cleveland amendment by a close vote and then passed a compromise offered a few days later by voice vote. Brookings Institution fellow Robert A. Katzmann argued that at the time, “The political sensitivities of legislators concerned about being perceived as antidisabled was obviously acute.”⁶⁰ The House passed the bill with the compromise but a threatened filibuster in

⁵⁶ “Minutes of the Executive Committee, May 15, 1980,” 4.

⁵⁷ Ibid.; James Howard, “To Clarence Mitchell,” July 28, 1980, Box 16, Folder 11, LCCR, LOC; John Anderson, “To Clarence Mitchell,” July 24, 1980, Box 16, Folder 11, LCCR, LOC.

⁵⁸ Howard, “To Clarence Mitchell.”

⁵⁹ “126 Part 24 Congressional Record (Bound Edition).” H31437-2878. govinfo.gov, December 2 -December 5, 1980.

⁶⁰ Katzmann, *Institutional Disability*, 69.

the Senate kept the bill from reaching the floor.⁶¹ Although LCCR records reveal the Leadership Conference had responded to the Transbus conflict over a two-year period, accounts of the Transbus conflict do not mention the role of the Leadership Conference. Records do not indicate whether or not the Conference's early objection to the Cleveland amendment spurred Conference members to further political action; however, the reaction of the House demonstrates that Representative heard the voices of disability advocates and considered their political clout. Ten years later, the debate over local option and cost would continue during the Americans with Disabilities Act campaign.

4.2.1.2 Employment Rights

When the American Coalition of Citizens with Disabilities (ACCD) applied for membership to the Leadership Conference in 1976, their director Frank Bowe wrote that the Coalition's civil rights efforts were "largely in the area of securing inclusion of disabled individuals in the protection offered by the Civil Rights Act of 1964."⁶² On February 22, 1979, Senator Harrison Williams (D-NJ), chair of the Senate Committee on Labor and Human Resources, introduced the Equal Employment Opportunity for the Handicapped Act of 1979 (S. 446) to amend Title VII of the 1964 Civil Rights Act by adding people with disabilities as a protected class.⁶³ Robrahn had assisted Williams with writing the bill and recruiting additional sponsors and support.⁶⁴ As introduced, S. 446 defined "handicapped" with the same language found in Section 504 of the Rehabilitation Act. The proposed bill simply inserted "handicapping

⁶¹ "Mass Transit Authorization," in *Congressional Quarterly Almanac 96th Congress, 2nd Session, 1980*, ed. Eugene Patterson (Washington, DC: Congressional Quarterly, Inc., 1981), 261. Richard Lugar (R-IN) led the bill's opponents who argued that the overall bill was unnecessary because allocations had already been authorized and that the new administration should be involved.

⁶² Frank G. Bowe, "To Marvin Caplan," September 17, 1976, Box 16, Folder 10, LCCR, LOC.

⁶³ Williams Harrison, "S. 446-Equal Employment Opportunity for Handicapped Individuals Act of 1979," 1979, congress.gov: Library of Congress.

⁶⁴ American Council of the Blind, "Important Action on Legislation," February 1979, Box 31, Folder 4, LCCR, LOC.

condition” alongside “race, color, religion, sex or national origin” in the text of Title VII.⁶⁵ In March 1979, Robrahn asked the Conference to support the newly introduced Title VII amendment. In response, the Leadership Conference devoted considerable attention to the campaign for S. 446, continuing their education about the unique civil rights issues of people with disabilities.⁶⁶

After a discussion over the worrisome potential of attempts to attach anti-civil rights riders to the Civil Rights Act, the Conference agreed to send a delegation to meet with Senate leaders Howard Baker (R-TN) and Robert Byrd (D-WV) to explain the Conference’s support for the bill and emphasize their opposition to any attempt to weaken Title VII.⁶⁷ In June, a panel led by LCCR chair Clarence Mitchell testified at the Senate committee hearing on the bill. Mitchell noted, “The practice we follow in the Leadership Conference, which is now 149 organizations, is for the chairman to appear merely to indicate that we support the objectives of those who are going to present the substantive testimony.” The panel members represented the American Council of the Blind, the Affiliated Leadership League of and for the Blind of America, and the American Coalition of Citizens with Disabilities. Additionally, the AFL-CIO, a LCCR member, submitted a written statement of support.⁶⁸ Panel members highlighted the need for people with disabilities to be included under same umbrella of protection offered to other groups that encountered discrimination. Durwood McDaniel from the ACB argued, “We stand with them [the LCCR] in

⁶⁵ S. 466: *Hearings Before the Senate Committee on Labor and Human Resources*, 96th Cong., June 20 and 21, 1979, 3-6.(Text of bill.)

⁶⁶ Congressional Representatives submitted several bills to add the handicapped to the Civil Rights Act of 1964. All were assigned to the House Committee on Education and Labor chaired by Carl Perkins (D-NY). None were reported out of the committee. HR 3345 introduced 3/29/1979 had 85 cosponsors. It was identical to HR 373 which had been introduced on 1/15/1979. HR 609 was also introduced 1/15/1979. HR 1326 was introduced 1/24/1979. HR 5510 introduced 10/9/1979 was the companion to S 446. HR 5510 had 22 cosponsors. Rep Paul Simon introduced HR 7423-Equal Employment Opportunity for the Handicapped Act of 1980 on 5/21/1980 with 9 cosponsors. With the exception of HR 7423, the House bills permitted discrimination related to seniority, merit or qualification. HR 1326 did not require employers to provide "unusual or special services." Information gathered from congress.gov.

⁶⁷ "Minutes of the Executive Committee Meeting March 8, 1979," 1979, Box 15, Folder 9, LCCR, LOC. The bill was introduced by Harrison Williams (D-NJ). The records I reviewed do not indicate whether or not this particular meeting occurred.

⁶⁸ S. 466: *Hearings Before the Senate Committee on Labor and Human Resources*, 38, 250.

the belief that the best interest of all minorities including the handicapped is best served by utilizing mechanisms of the EEOC [Equal Employment Opportunity Commission] through these amendments to Title VII, to deal similarly with the discrimination cases of all people, whatever the basis of that discrimination may be.” Robrahn’s statement similarly asserted, “Separate and special laws and administering and enforcing agencies on civil rights of handicapped citizens serve no purpose whatsoever. Indeed, separate and special laws and mechanisms only serve to reinforce the stereotype that handicapped people are different and thereby acquire a different standing before the law and the courts.”⁶⁹ In addition to the social benefit of recognizing people with disabilities as a minority like any other, S. 446 covered employment in the private sector in contrast to the Rehabilitation Act which only protected individuals employed by recipients of federal funds.

During the two-day hearing, the majority of testimony came from representatives of organizations supporting people with disabilities and government agencies with little testimony from the business community. The Chamber of Commerce of the United States opposed the bill due to concerns about the EEOC’s capability and capacity to administer the additional case load, the broad definition of disability, and the lack of clear guidelines on what accommodations employers would be required to provide.⁷⁰ Representatives of the National Association of Manufacturers also expressed concern about enforcement procedures; yet, the organization supported “the concept of including individuals with a handicap condition under Title VII of the Civil Rights Act of 1964 as contained in S.466.”⁷¹ In a written statement, Hubert Beatty, executive director of the Associated General Contractors of America recognized “the need for S. 446” but

⁶⁹ Ibid., 40, 46.

⁷⁰ *Equal Employment Opportunity for the Handicapped Act of 1979: Hearings before the Senate Committee on Labor and Human Resources*, 96th Cong., June 20 and 21, 1979, 271-73.

⁷¹ *S. 466: Hearings Before the Senate Committee on Labor and Human Resources*, 181.

felt the bill required language clarifying employee qualifications and job preferences.⁷² These organizations had experience with the Rehabilitation Act of 1973 regulations and indicated they had already addressed the needs of people with disabilities in their employment. It does not appear that the bill generated strong business opposition.⁷³

After the hearings, the LCCR sent mail-grams to Senate Committee members stating, “The Leadership Conference on Civil Rights Strongly Supports S.446 and we oppose any attempt to separate the handicapped from any other protected class in Title VII. We urge you, when the Senate Labor Committee considers this bill to resist any attempt to treat the handicapped differently from any other group suffering discrimination.”⁷⁴ In a July meeting to discuss the bill with Frank White, Associate Director of the White House Domestic Policy Staff, disability rights advocates and Joe Rauh, LCCR counsel, stressed the imperative of including people with disabilities under Title VII, “rather than deal with the handicapped in a separate section which would treat them as second class citizens.”⁷⁵ The meeting attendees endorsed the EEOC as the proper enforcement agency. After the meeting, Stuart Eizenstat, Assistant to the President for Domestic Affairs and Policy, sent a letter to committee chair Williams indicating the Administration’s “strong support for including the handicapped under the coverage of Title VII of the Civil rights Act of 1964.” The administration also backed the EEOC’s enforcement role and the requirement for employers to make reasonable accommodations. The letter concluded with affirmation, “The Administration attaches great importance to the adoption by the Congress of a bill embodying the two concepts

⁷² Ibid., 220-22.

⁷³ "Handicapped Job Bias," in *Congressional Quarterly Almanac: 96th Congress, First Session, 1979*, ed. Eugene Patterson (Washington, DC: Congressional Quarterly, Inc., 1980), 512. The almanac confirms, "The bill had drawn little opposition from business."

⁷⁴ "Memorandum: The Following Mail-gram was Sent," July 27, 1979, Box 31, Folder 4, LCCR, LOC.

⁷⁵ "Minutes of the Executive Committee Meeting, September 13, 1979," 1979, Box 15, Folder 9, LCCR, LOC.

that I have mentioned.”⁷⁶ With nine of the fourteen committee members sponsoring the bill, including chair Williams, and the endorsement of the administration, the Committee approved the bill. It was reported to the Senate on September 13, 1979, the same day President Carter issued a proclamation to designate a National Employ the Handicapped Week.⁷⁷

While S. 446 seemed to move quickly through the Committee process, unresolved issues impeded its progress to the floor. The reasonable accommodation language was a point of contention among disability rights groups and other interested parties. In discussion at the June hearing, Frank Bowe, ACCD director, acknowledged the need for reasonable accommodations but discouraged the Committee from “writing a civil code” to require them. Instead, he urged the Committee to establish clear Congressional intent in their report. He advised, “You must go on to make a statement that you use discrimination to encompass not mere overt actions of discrimination, but some reasonable affirmative steps, and you can say reasonable affirmative steps.”⁷⁸ Sy DuBrow, Legal Director for the National Center for Law and the Deaf, disagreed. He shared the example of the need for telecommunication devices to enable employees who are deaf to work at jobs that required phone communication. DuBrow stressed, “We feel the bill should include the comprehensive HEW definition of a reasonable accommodation that would include such adaptations.”⁷⁹ The Justice Department advised that without a provision for reasonable

⁷⁶ Stuart E. Eizenstat, “To Senator Williams,” July 31, 1979, Box 31, Folder 4, LCCR, LOC. Peter Rosentein, Former Head, Implementation Unit, White House Conference on the Handicapped recalled this letter arrived at the last minute and suggested it did not indicate concerted support. “Senator Harrison Williams on the night before insisted that some kind of statement be made for the administration, and a letter from Stuart Eizenstat was delivered to him the night before.” “Civil Rights Issues of Handicapped Americans: Public Policy Implications.” Washington, DC: United States Commission on Civil Rights, May 13-14, 1980, 348.

⁷⁷ Jimmy Carter. “Proclamation 4685 of September 13, 1979, National Employ the Handicapped Week.” <https://www.gpo.gov/fdsys/pkg/STATUTE-93/pdf/STATUTE-93-Pg1539.pdf>1979. The first full week of October had been set for recognition in 1945.

⁷⁸ S. 466: *Hearings Before the Senate Committee on Labor and Human Resources*, 13. Bowe reiterated the point in a letter to committee member Senator Javits after Eizenstat's letter was released. 31.4 LCCR, LOC, August 8, 1979.

⁷⁹ *Ibid.*, 80.

accommodation, “the bill’s efficacy could be undermined by judicial decisions that no accommodation was necessary.”⁸⁰ Although the Committee report, as supported by Frank Bowe and the LCCR, included a reasonable accommodation provision, the final bill did not.⁸¹

Senate bill S. 446 did not make it to Senate floor during 1979.⁸² In March 1980, Jane O’Grady, a member of LCCR’s legislative committee, reported, “S. 446 is bottled up in the Senate.”⁸³ With encouragement from the Leadership Conference, members of the House Committee on Education and Labor subcommittee on Employment Opportunities introduced a bill based on the Senate bill in May; however, the House bill did not leave the committee.⁸⁴ Comments from Leslie Milk, the executive director of Mainstream, Inc., indicate a significant cause for the lack of action. Milk had testified in support of S. 446 as an expansion of employment and judicial rights. In discussion of the bill’s demise at a meeting sponsored by the U.S. Commission on Civil Rights, Milk recalled “I think there was a fear in Congress among supporters of all rights under Title VII that, certainly, unless very clear understandings were made before that could be considered by the full Congress, that nongermane amendments would be introduced. . . . There was a feeling that certain Senators or Congressmen would just love to get their hands on Title VII.”⁸⁵ On September 3, the Senate indefinitely postponed the bill.⁸⁶

⁸⁰ Drew Days III, “Equal Employment Opportunity for the Handicapped,” in *Civil Rights Issues of Handicapped Americans: Public Policy Implications*, 1980: United States Commission on Civil Rights.

⁸¹ Harrison A. Williams. “S. Rept. No. 96-316: Equal Employment Opportunity for Handicapped Individuals Act of 1979.” 1-38. Washington, D.C.: Committee on Labor and Human Resources, September 13, 1979.

⁸² “Handicapped Job Bias.”

⁸³ “Minutes of the Executive Committee Meeting, March 13, 1980,” 1980, Box 15, Folder 9, LCCR, LOC.

⁸⁴ Paul Simon, “H.R. 7423 - Equal Employment Opportunity for the Handicapped Act of 1980,” congress.gov: Library of Congress. Supra note 27. Sponsors Paul Simon (D-IL), Ugustus Hawkins (D-CA), James Jefford (R-VT), Bill Clay (D-MO), Ted Weiss (D-NY), Baltasar Corrada (I-PR), and Thomas Petri (R-WI).

⁸⁵ “Civil Rights Issues of Handicapped Americans: Public Policy Implications.” Washington, DC: United States Commission on Civil Rights, May 13-14, 1980. In the Senate, amendments to a bill did not need to be germane to the bill. In comparison, House amendments needed to remain germane to the bill and section of the bill. ; Mary McNeil, ed. *How Congress Works* (Washington, DC: Congressional Quarterly, Inc., 1983), 51, 58.

⁸⁶ Harrison, “S. 446-Equal Employment Opportunity for Handicapped Individuals Act of 1979.”

Accounts of the disability rights movement history do not address the 1979 House and Senate's attempts to include the handicapped under the protection of the Civil Rights Act of 1964, most likely because the bills failed to reach the floor. However, the Leadership Conference's support of and participation in the S. 446 campaign is significant. The Conference had played a critical role in the enactment of the 1964 Act. Their support for amending Title VII publicly validated that people with disabilities deserved equal rights. Their participation in attempts to alleviate the transportation and employment barriers that people with disabilities encountered introduced Conference members to issues such as defining disability, reasonable accommodations, equal access, and enforcement procedures. Members also learned about Section 504 of the Rehabilitation Act which prepared them for the campaigns against the *Grove City College v. Bell* decision and for the Americans with Disabilities Act.

4.2.1.3 DREDF

In 1981, the newly formed Disability Rights Education & Defense Fund (DREDF), held a meeting in San Francisco to develop relationships with other civil rights organizations. Jonathon Young, who interviewed DREDF founders and Ralph Neas in 1993/4, noted the meeting was meant to educate civil rights organizations about the discrimination issues people with disabilities encountered and to provide an opportunity for DREDF leaders to develop relationships with the broader civil rights community. Fortuitously, Ralph Neas attended the meeting. During the conference, activists Patrisha Wright, Arlene Mayerson and Mary Lou Breslin meet with Neas to share their vision of the future which included a long-range goal to pass federal civil rights legislation to protect people with disabilities. After the meeting, DREDF realized they needed to establish an office in Washington, D.C., if they wanted to influence legislation. Young explained, "Although Wright and Mayerson forged a lasting relationship with Neas and the LCCR as a result

of the San Francisco conference, they did not think they could count on LCCR's support immediately. First they had to establish their own credibility and get involved in LCCR campaigns as much as any other group." Prior to their admission, DREDF director Robert Funk worked with Reese Robrahn in protest of the Department of Justice proposed changes to Section 504 regulations.⁸⁷ The Conference accepted the Disabilities Rights Education & Defense Fund (DREDF) as a member in August 1982.⁸⁸ Patrisha Wright represented DREDF and joined the LCCR executive committee in 1986. She performed a critical role in securing civil rights protection for people with AIDS under the Americans with Disabilities Act.⁸⁹

4.2.2 LCCR and Gay Rights

The Leadership Conference had accepted the membership of the American Council of the Blind and the American Coalition of Citizens with Disabilities after a few weeks of discussion. Shortly after the ACB and ACCD joined, the Conference placed a representative of disability rights on the executive committee and embraced disability rights issues. In contrast, the Conference initially rejected the membership application of the National Gay Task Force. After accepting the Task Force and the Gay Rights National Lobby (GRNL) in 1982, the Conference did not openly acknowledge organizations representing gay and lesbian rights in their promotional materials. This section considers the membership experience of the Task Force and the National Lobby and the limits of Conference support for gay and lesbian rights.

⁸⁷ Robert Funk and Reese Robrahn, "Dear Mr. President," February 10, 1982, Unprocessed collection 20912, Box 1, LCCR, LOC.

⁸⁸ Ralph Neas, "To Robert Funk," August 12, 1982, Box 8, Folder 1, LCCR, LOC.

⁸⁹ Young, "'Same Struggle. Different Difference': The Americans with Disabilities Act and the Disability Rights Movement, 1964-1990," 100,02, 03.

4.2.2.1 1977 Rejection

The National Gay Task Force submitted their first application to the Conference in January 1977. They received a rejection letter in April that stated, “The Committee was sympathetic to the problems confronting your constituents, however, there was no consensus in the Committee regarding membership of the National Gay Task Force in the Leadership Conference on Civil Rights.”⁹⁰ Marvin Caplan, the author of the letter, would later recall, “Two of the most powerful members of the executive committee, Clarence M. Mitchell, Jr., and Andrew Biemiller, legislative director of the AFL-CIO, flexed their muscles and said we could not let gays in.” As Caplan remembered, Mitchell had warned, “We’ll lose credibility on Capitol Hill. . . . We’ll become a laughingstock.”⁹¹ An internal letter adds some insight on the lack of consensus. The executive assistant writing to an assistant director of the NAACP explained, “It is a very touchy situation. . . . —both Clarence Mitchell and Andy Biemiller of AFL/CIO said they would resign if we admitted them. Others said the Gays had become a political force and had to be dealt with and it was a mistake not to admit them.” Her personal remarks further indicated some of the hurdles the gay and lesbian rights movement faced. “It is my opinion that to be Gay is an option and not a right. We have no choice being a minority or woman, but I can’t see putting them in this same category. If we start to add Gays as another protected class of people, I think we are in real trouble. Where will it end? Black Gays! Women Gays! Handicapped Gays!”⁹²

The letter writer’s opinion reflected the mixed public opinion of the time. The 1977 General Social Survey indicated 73% of the population felt sexual relations between two adults of the same sex was always wrong. A 1977 Gallup poll found 56% of the respondents thought homosexuality

⁹⁰ Marvin Caplan, “To Ms. Jean O’Leary and Mr. Bruce Voeller,” April 7, 1977, Box 81, Folder 4, LCCR, LOC.

⁹¹ Caplan, *Farther Along: A Civil Rights Memoir*, 234.

⁹² Yvonne Price, “To Mildred Bond Roxborough,” September 13, 1977, Box 81, Folder 4, LCCR, LOC.

was an acquired trait. The same percentage agreed that gays and lesbians should have “equal rights in terms of job opportunities.” The percentage that favored equal job opportunity varied markedly by region. In the south, 48% of the respondents supported employment rights while in the west 65% did. A similar discrepancy existed in responses to a question about the legality of homosexual relationships between consenting adults. In the south, 35% of the respondents agreed homosexual relations should be legal; in the west, 56% agreed.⁹³ The results from the two polls suggest that despite a majority that claimed moral objections to same sex relationships, in some areas the majority still supported gay and lesbian rights.

The Gay Rights National Lobby had recently formed when the NGTF applied for LCCR membership in 1977. At the first GRNL elected board of directors meeting in December 1976, board member Sidney Abbott offered a motion for the GRNL to pursue Conference membership. The board approved the motion “that the appropriate GRNL persons join the LCCR;” however, there is no record that an application was submitted.⁹⁴ In the first years, the leadership of GRNL and NGTF had significant overlap.⁹⁵ After the Leadership Conference rejected the Task Force’s application in 1977, members of GRNL’s board would have known not to apply. NGTF and GRNL

⁹³ Andrew R. Flores. "National Trends in Public Opinion on LGBT Rights in the United States." The Williams Institute 2014; "Homosexuality Today," July/August 1978, Box 7, Folder 23, Human Rights Campaign records (HRCF records), Division of Rare and Manuscripts Collections, Cornell University Library (Cornell): Public Opinion.

⁹⁴ William Kelley, "Notes on Meeting of Board of Directors of Gay Rights National Lobby, Inc., December 4-5, 1976," 1977, Box 92, Folder 11, Frank Kameny Papers, LOC.

⁹⁵ GRNL originated at a conference sponsored by David Goodstein, publisher of *The Advocate* on March 27, 1976 in Chicago, IL. Goodstein wanted to create an organization capable of raising the funds needed to “support an office in Washington, DC to lobby for federal civil rights for gay people.” Invitations were sent to “like-minded people.” Organizations such as the GAA and Dignity opposed Goodstein’s effort to direct the gay rights movement. Members of NGTF board of directors attended. NGTF then served as the election board for the first GRNL board of directors. Of the 30 original GRNL board members, 14 were either on the NGTF board or were NGTF contacts including Jean O’Leary, Bruce Voeller, Barbara Gittings, Frank Kameny, Virginia Appuzo and Martin Duberman. NGTF pledged 10% of their National Tea Dance fundraiser to GRNL and encouraged their members to join. From the beginning, the boundaries between work domains and overlapping leadership challenged the relationship between the two organizations. On several occasions, NGTF documents mention merger discussions. David Goodstein, "To Frank Kameny," January 22, 1976, Box 91, Folder 10, Frank Kameny Papers, LOC; Jean O’Leary and Bruce Voeller, "Co-Executive Directors' Report," 1976, Box 94, Folder 4, Frank Kameny Papers, LOC.

leadership recognized the value of LCCR membership but did not appear to understand the culture of the Conference. Steve Endean, a member of the NGTF board of directors (1976-1980) and executive director of GRNL (1978-1983), received feedback from Joseph Rauh, LCCR counsel, about NGTF's 1977 application failure before NGTF and GRNL applied in 1982. According to Endean, Rauh had explained, "The Task Force failed to understand there was a chance of being rejected." Rauh's further remarks indicate that prospective members typically engaged in pre-application networking to respond to any opposition before an application would be submitted. He identified the Catholic Conference and the AFL-CIO as the major opponents of NGTF's membership.⁹⁶

4.2.2.2 1982 Membership

A few years later, Task Force special assistant Tom Burrows read about the Conference's December 1980 annual meeting in the *New York Times*. Burrows wrote to the Conference requesting that NGTF be included in future activities and asked to be kept informed "so that when it is appropriate we can join your efforts."⁹⁷ Natalie Shear, LCCR Public Affairs director, responded politely but did not offer encouragement. She noted, "The meeting was strictly in-house, solely for the leaders of our constituent or organizations." Rather than suggest NGTF apply, she mentioned the Task Force's previous application failure: "The Executive Committee, which acts on applications, was unable to reach a consensus and therefore, unable to act favorably upon your request."⁹⁸ The Task Force co-executive directors Charles Brydon and Lucia Valeska then

⁹⁶ Steve Endean and Vicki Lynn Eaklor, *Bringing Lesbian and Gay Rights into the Mainstream: Twenty Years of Progress* (New York: Harrington Park Press, 2006), 66.

⁹⁷ Tom Burrows, "To Natalie Shear, Leadership Conference Public Affairs Director," December 15, 1980, Box 81, Folder 4, LCCR, LOC. The NGTF board met on December 6. The minutes do not refer to LCCR.

⁹⁸ Natalie Shear, "To Tom Burrows, National Gay Task Force Special Assistant," January 6, 1981, Box 81, Folder 4, LCCR, LOC.

requested application material and explained their interest in reapplying.⁹⁹ Over the next year, the Task Force engaged in an indeterminate amount of networking. Mel Boozer, NGTF director of Civil Rights Advocacy, spoke to William Olwell, director of public affairs for the United Food & Commercial Workers International Union, in the spring of 1982. Olwell had already secured support from the AFL-CIO and the U.S. Conference of Catholic Bishops for GRNL's admission and did not feel he could "push for more than one."¹⁰⁰ A report from the NGTF Civil Rights Advocacy group indicated they had met with Donna Lenhoff of the Women's Legal Defense Fund, Benjamin Hooks of the NAACP and Monsignor Lally of the National Catholic Bishop's Conference.¹⁰¹ The Task Force submitted their application on July 28, 1982, one day before the Leadership Conference executive committee meeting which strongly suggests they had some communication about their application with the Conference prior to the executive committee meeting.¹⁰²

The Gay Rights National Lobby contacted the Leadership Conference about application material in February 1982.¹⁰³ In his memoir, Steve Endean recalled he had begun to network with women's organizations in the Leadership Conference circa 1980. He explained, "They all agreed to help as soon as we were ready, but it would take a couple of years rather than months to get all

⁹⁹ Charles Brydon and Lucia Valeska, "To Marvin Caplan," January 9, 1981, Box 81, Folder 4, LCCR, LOC. The January 9 letter from the co-executive directors may have been sent before the January 6 letter from Shear was received.

¹⁰⁰ William Olwell, "To Mel Boozer, NGTF," September 30, 1982, Box 98, Folder 4, Frank Kameny Papers, LOC. The conversation may have taken place in a meeting scheduled to discuss union protection against employment discrimination; "Report to the Board for meeting of February 26, 27, 28, 1982," February 18, 1982, Box 98, Folder 4, Frank Kameny Papers, LOC. In the report, Boozer noted, "The Washington office is renewing our application to U.S. Civil Rights Leadership Conference," presumably the LCCR (p. 6).

¹⁰¹ "Civil Rights Advocacy Supplementary Report to the Board," August 30, 1982, Box 24, Folder 4, NGLTF records, online.

¹⁰² Lucia Valeska, "Application for Membership in the Leadership Conference on Civil Rights," July 28, 1982, Box 81, Folder 4, LCCR, LOC. Valeska was sole executive director in 1982. In correspondence to other organizations, LCCR asked for applications to be submitted at least two weeks prior to meetings to allow for premeeting discussion.

¹⁰³ Natalie Shear, "To Susan Green, GRNL," February 9, 1982, Box 7, Folder 1, LCCR, LOC. Shear was responding to a phone call from Green the week before.

our ducks in a row.” From Endean’s point of view, Mel Boozer “stumbled into this delicately arranged situation and demanded that NGTF had to be admitted for membership as well.”¹⁰⁴ In the fall after both organizations had joined the LCCR, Boozer felt he had to defend himself from accusations that “I broke an agreement that would have delayed our entry in the LCCR in deference to GRNL.”¹⁰⁵ He shared a letter from William Orwell in his defense.¹⁰⁶ The tensions between the organizations likely did not reach the attention of the full LCCR executive committee and did not prevent their acceptance.

Despite the long-standing friction between the organizations, GRNL and NGTF agreed to cooperate in opposition to B. Sam Hart’s nomination to the U.S. Civil Rights Commission prior to their admission to the Leadership Conference. Hart’s supporters described him as a “representative of Moral Majority conservative blacks.”¹⁰⁷ Civil rights organizations quickly responded to Hart’s stance against affirmative action and the Equal Rights Amendment as well as his hostile attitude towards gay civil rights. Since the decision-making process of the Leadership Conference inhibited quick responses, individual LCCR members including the National Organization for Women, the Mexican-American Legal Defense Fund, and the NAACP Legal Defense Fund and other groups such as GRNL, NGTF and the Philadelphia Conference of Baptist ministers formed a coalition initiated by the League of United Latin American Citizens.¹⁰⁸

The National Gay Task Force circulated information about Hart’s record against gay and lesbian rights “to the non-gay media, to gay groups in Pennsylvania [Hart’s home state], and to

¹⁰⁴ Endean and Eaklor, *Bringing Lesbian and Gay Rights into the Mainstream*, 66, 68.

¹⁰⁵ Mel Boozer, "To National Gay Task Force Board Members," October 7, 1982, Box 98, Folder 4, Frank Kameny Papers, LOC.

¹⁰⁶ Orwell, "To Mel Boozer, NGTF."

¹⁰⁷ "Report to the Board for meeting of February 26, 27, 28, 1982," 6; "Hart Trouble," *TIME*, February 22, 1982, 23.

¹⁰⁸ "Broad Coalition Blocks Appointment of Anti-Gay Reagan Nominee," in *Task Force Report*, March/April 1982, Box 99, Folder 10, Frank Kameny Papers, LOC. Other members included the National Urban League, the National Women's Political Caucus and the Mexican-American Legal Defense Fund.

other gay rights groups” and claimed they had “successfully encouraged the *Washington Post* to editorialize against Hart’s nomination.”¹⁰⁹ Their March/April newsletter featured a picture of Mel Boozer speaking to Benjamin Hooks, executive director of the NAACP and president of LCCR, on the front page.¹¹⁰ Endean, who had been hired as GRNL’s executive director because of his lobbying experience in Minnesota state politics, mobilized gay and lesbian constituents in Pennsylvania and other states to contact their Senators.¹¹¹ The Leadership Conference also stood against Hart’s nomination, passing a resolution opposing Hart’s nomination and making plans to contact the Senate Committees about their concerns.¹¹² Hart, who was nominated for the position on February 10, 1982, asked to have his nomination rescinded on February 27, 1982.¹¹³

Both NGTF and GRNL anticipated that their efforts against Hart’s nomination would result in increased recognition and improve the likelihood of their acceptance as LCCR members. Mel Boozer explained, “There was some anxiety in certain quarters about having gay groups participate, but now that we have succeeded, a valuable precedent has been set.”¹¹⁴ Likewise, Susan Green commented, “GRNL’s Participation in this crucial effort has significance beyond this particular battle. We are considered a valuable ally by other civil rights organizations and this is an essential step in our struggle for equal justice.”¹¹⁵ Endean and Green sent a letter of appreciation to the organizations they had worked with that expressed their hope that “this is just the first of

¹⁰⁹ "NGTF Opposes Reagan Nominee to U.S. Civil Rights Commission: Cites Anti-Gay Record," February 17, 1982, Box 100, Folder 1, Frank Kameny Papers, LOC.

¹¹⁰ "Broad Coalition Blocks Appointment of Anti-Gay Reagan Nominee," 1, 4.

¹¹¹ Susan Green, "Hart Withdraws From Nomination to Civil Rights Commission; Credit Due in Part to GRNL's Coalition Efforts," March 1, 1982, Box 94, Folder 3, Frank Kameny Papers, LOC.

¹¹² "Report to the Board for meeting of February 26, 27, 28, 1982," 3. LCCR passed a resolution opposing Hart's nomination and made plans to contact the Senate Committees involved about their disapproval.

¹¹³ Steven Weisman, "President Drops Nominee for Post on a Rights Panel," *New York Times*, February 27, 1982, 10.

¹¹⁴ "Broad Coalition Blocks Appointment of Anti-Gay Reagan Nominee," 4.

¹¹⁵ Green, "Hart Withdraws From Nomination to Civil Rights Commission," 2.

many opportunities where our self-interest will bring our groups together again.”¹¹⁶ In addition to working with the temporary coalition against Hart’s nomination, GRNL participated in LCCR’s campaign for the Voting Rights Act Amendments. Endean noted that the National Lobby had activated their grass roots network of field associates and phone banks to encourage their members and the gay press to contact Congress in support of the extension. When the Leadership Conference met on July 29, 1982, to consider GRNL and NGTF membership, they had already begun to establish a working relationship with the organizations.

Even with the recent shared successes, Endean’s efforts to gain admittance to the Conference reveal the tenuous support for gay and lesbian rights. In the National Lobby’s application material, Endean acknowledged, “We are aware that gay issues are not the focus of the Leadership Conference.”¹¹⁷ He had made similar comments to convince the U.S. Catholic Conference to support GRNL membership. As he recalled, “Once we assured [Monsignor Francis] Lally we weren’t asking for endorsement of the ‘gay lifestyle,’ nor even immediate support for our legislation, Lally agreed that the Catholic Conference would withdraw its objections.”¹¹⁸ William Olwell, who Endean described as “the highest ranking openly gay union official in the country,” discussed GRNL’s membership with the AFL-CIO, a major financial contributor and political power in the LCCR. Their support was bestowed with conditions. GRNL agreed, “not to raise the issue of official Leadership Conference endorsement of the national gay civil rights bill within two to three years.”¹¹⁹

¹¹⁶ Steve Endean and Susan Green, "Letter to organizations that participated in the campaign to defeat Hart," 1982, Box 12, Folder 21, HRCF records, Cornell.

¹¹⁷ Steve Endean, "Application for Membership in the Leadership Conference on Civil Rights," March 4, 1982, Box 12, Folder 21, HRCF records, Cornell; "To Ralph Neas," April 2, 1982, Box 12, Folder 21, HRCF records, Cornell.

¹¹⁸ Endean and Eaklor, *Bringing Lesbian and Gay Rights into the Mainstream*, 67.

¹¹⁹ *Ibid.*, 68.

When GRNL published a press release in May about their membership application, Endean reinforced their position on keeping a gay and lesbian rights bill outside of Conference business. “He stressed that it [admittance] would not imply endorsement of homosexuality or gay rights per se.”¹²⁰ The concession was critical to receiving the support of the executive committee. In a 1990 interview, Ralph Neas explained that the LCCR executive committee agreed to accept “gay organizations as long as there was an understanding that we could not reach a consensus on some issues.” He continued, “Now, my guess is that from the perspective of the gay rights organizations, this was a compromise that they were willing to accept, because they wanted an opportunity to get into the coalition on a formal basis and use the coalition as many other interest groups have used the coalition over the last 40 years – to build bridges of understanding.”¹²¹ That Neas considered gay organizations an interest group rather than a civil rights group demonstrates how extensive the compromise actually was. In contrast, the Conference had promptly added a representative of ACCD to the executive committee and addressed the civil rights needs of people with disabilities within a few months of ACB and ACCD’s admittance.

Upon acceptance, the Task Force and the National Lobby distributed press releases. Comments by Task Force leadership conveyed what they hoped to achieve through their membership. Mel Boozer remarked, “Now NGTF has a closer working relationship with other civil rights groups, and an excellent opportunity to educate those groups on the importance of including ‘sexual orientation’ in the list of civil rights.” Lucia Valeska stated, “This membership serves a legitimizing function. The fact that we were accepted moves us closer to the goal of getting all civil rights groups to adopt policies specifically defending gay and lesbian rights as civil

¹²⁰ Susan Green, “Gay Rights National Lobby Seeks Membership in Civil Rights Coalition,” May 18, 1982, Box 12, Folder 21, HRCF records, Cornell.

¹²¹ Patty Daniels, Grant Dorfman, and Dan Pink, “THE YLPR Interview: Ralph G. Neas,” *Yale Law & Policy Review* 8, no. 2 (1990): 373.

rights.”¹²² The National Lobby’s press release stressed the “considerable behind the scenes education by GRNL on its civil rights mission” as crucial for overcoming the past rejection of the Task Force. In the release, Endean shared a larger vision of future goals than he had in his meetings with the Catholic Conference and the AFL-CIO. He asserted, “It was the Leadership Conference on Civil Rights that originally lobbied for enactment of the 1964 Civil Rights Act which we now hope to amend to include ‘sexual orientation’.” He also affirmed, “While some may have misgivings about the lifestyle, there is a growing understanding that fair employment and housing legislation for gay men and lesbians is consistent with the best civil rights traditions.”¹²³

4.2.2.3 Limited Partners

In their first years as members of the Conference, the Task Force and the Lobby participated in Conference campaigns. In 1983, the Task Force participated in the dispute over President Reagan’s attempts to take control of the independent Civil Rights Commission. The Civil Rights Commission’s reports and recommendations had informed civil rights legislation since its inception in 1957. Reagan had fired members he disagreed with due to their positions on busing and quotas and planned to replace them with members who shared his views. In July 1983, the Task Force’s executive director, Virginia Apuzzo testified at the Senate Committee on the Judiciary hearings in opposition to Reagan’s replacement nominees. Apuzzo opened her testimony with reference to the Task Force’s membership in the Leadership Conference and continued with a statement that asserted the importance of an independent Commission “for civil rights for all Americans.” The hearing gave Apuzzo an opportunity to affirm, “Gay and lesbian rights is a civil

¹²² Mel Boozer, "NGTF Joins Leadership Conference on Civil Rights," August 6, 1982, Box 100, Folder 1, Frank Kameny Papers, LOC.

¹²³ "Gay Rights Lobby Admitted to Civil Right Coalition," August 2, 1982, Box 94, Folder 3, Frank Kameny Papers, LOC.

rights issue,” in front of Senators Thurmond, Biden, Dole, Hatch, Specter, Metzenbaum, Deconcini and Kennedy.¹²⁴ In a staff update, Levi reported, “NGTF’s testimony in opposition to the president’s nominees afforded us an opportunity to work closely with the Leadership Conference on Civil Rights.” He hoped “to use this opening to assure we become a more active part of the organization’s ongoing activities.”¹²⁵ Apuzzo shared the experience in a report to the Task Force board of directors, concluding that “as we work in coalition, we build the kind of relationship that enable other civil rights organizations to see us as principled partners in coalitions.”¹²⁶

In March 1984, Jeff Levi testified before the Senate against Reagan’s nomination of Edwin Meese III for attorney general, expressing concern about Meese’s support for the use of religious exemption to justify racial discrimination in the *Bob Jones* case. Levi noted, “The very same arguments used by the Reagan administration are being used by Georgetown University in Washington, D.C. and the Salvation Army in New York city to seek exemption from local requirements that they not discriminate against gay men and lesbians if they wish to receive public funds.”¹²⁷ Afterwards, Levi conveyed his growing frustration with the Leadership Conference’s lack of recognition for gay and lesbian rights in an internal report.¹²⁸ A couple months later, Levi noted he had given “an update on the lesbian/gay community’s agenda” at the LCCR annual meeting. His response suggested mutual responsibility for the limited relationship with LCCR:

¹²⁴ *Presidential Nominations to the Civil Rights Commission: Hearings Before the Senate Committee on the Judiciary*, 98th Cong., July 13 and 26, 1983, 348-49; Watson, *Lion in the Lobby: Clarence Mitchell, Jr.'s Struggle for the Passage of Civil Rights Laws*, 737. Clarence Mitchell’s biographer noted, “Mitchell found the commission especially valuable because it served as an official voice, which neither the NAACP nor the Leadership Conference on Civil Rights could provide, in authenticating the existence of discrimination and other forms of racial abuse.”

¹²⁵ Levi, “Washington Office Staff Report,” 2.

¹²⁶ Virginia Apuzzo, “Executive Director’s Report to the Board,” 1984, Box 3, Folder 27, National Gay and Lesbian Task Force records, Cornell: microfilm.

¹²⁷ *Nomination of Edwin Meese III: Hearings before the Senate Committee on the Judiciary*, 98th Cong., March 1, 2, 5, 6, 1984, 421. Levi read Apuzzo’s remarks. He would testify again in 1985.

¹²⁸ Jeff Levi, “Levi Staff Report,” April 26, 1984, Box 3, Folder 27, NGLTF records, Cornell: microfilm.

“We want very much to increase our visibility in that organization—something hampered by my not having staff/time to participate regularly in their activities.”¹²⁹

The Conference’s support of gay and lesbian rights issues remained ill-defined during Task Force’s first years of membership. Letters from Kevin Berrill, NGLTF Anti-Violence Project director, to Ralph Neas in 1987 indicate that some of the frustration Jeff Levi expressed in 1984 still existed. On February 23, Berrill asked Neas to send letters from the Conference to the Institute of Mental Health and the National Institute of Justice regarding sponsorship of a conference on anti-gay violence. The letter closed with Berrill “hop[ing] that NGLTF and LCCR will be able to work together in the near future.” On June 25, Berrill again asked Neas to reach out to the Institutes about anti-gay violence. He indicated that he had called twice seeking a reply and asked again for a response. Berrill reminded Neas that the NGLTF was a member organization and that “we believe that anti-gay violence is a civil rights issue of critical importance to the national gay and lesbian community.”¹³⁰ It is not clear if Neas responded.

The Conference gave limited support to the 1987 Hate Crime Statistics Act, another issue important to sexual minorities. NGLTF did not include the Conference on a list of supporters they published in October 1987. In March 1988, a NGLTF staff report mentioned that NGLTF had requested the Conference’s endorsement for the Act; however, an update printed the following month did not mention if the Conference had responded.¹³¹ In May 1988, a Leadership Conference message to its board members included the Hate Crimes Bill on a list of priorities. The Hate Crime

¹²⁹ "Levi Staff Report," August 1984, Box 24, Folder 12, NGLTF records, online.

¹³⁰ Kevin Berrill, "To Ralph," February 23, 1987, Box 106, Folder 16, NGLTF, Cornell: microfilm; "NIMJ/NIJ Lobby Report," February 23, 1987, Box 106, Folder 16, NGLTF, Cornell: microfilm; "To Ralph Neas," June 25, 1987, Box 106, Folder 16, NGLTF, Cornell: microfilm. Records did not indicate if Neas responded. An 1988 to the NIJ from Senators referred to an exploratory review on bias violence the NIJ was conducting. NGLTF 3.33

¹³¹ "Hate Crime Statistics Bill Passes Subcommittee, Anti-Gay Amendment Defeated," October 15, 1987, Box 120, Folder 12, NGLTF, Cornell. The LCCR was involved in the Supreme Court nomination process during October; Peri Jude, "HR 3193-Hate Crime Statistics Act," May 2 1988, Box 3, Folder 33, NGLTF records, Cornell: microfilm.

Statistics Act passed the House 383-29 on May 18, 1988, but failed to reach the Senate floor during the 100th Congress. The following January, the Leadership Conference Executive Committee ranked the Act as a level 3 priority which meant the Conference endorsed the Hate Crimes Statistics Act but would just provide assistance as requested.¹³² Hooks and Neas did issue a statement on February 22, the day the Act was reintroduced in the Senate, that recognized, “All Americans are entitled to live free of the fear of intimidation because of the color of their skin, their religious beliefs, their sexual orientation or their ethnicity.”¹³³ During the same period, the Conference still did not mention that they represented gay and lesbian organizations in their introductory paragraphs.

Despite Steven Endean’s early optimism about adding sexual orientation to the Civil Rights Act of 1964, the Conference’s silence on gay and lesbian rights issues continued beyond the two- or three-years Endean had predicted. When Endean wrote his memoir in the early 1990s, he acknowledged, “At this writing, the Leadership Conference on Civil Rights has not yet taken a position on the National Gay and Lesbian Civil Rights Bill but is expected to endorse it shortly.”¹³⁴ In the meantime, NGTF and GRNL participated in the Conference’s effort to overturn a 1984 Supreme Court decision regarding Title IX of the Education Amendment of 1972. Although Title IX did not mention sexual orientation, in the recent failed battle for the Equal Rights Amendment opponents had claimed equal rights protection for women would disrupt traditional gender roles, force unisex bathrooms and permit lesbians and gays to marry and adopt children. During the four

¹³² "Leadership Conference on Civil Rights Executive Committee," January 18, 1989, Unprocessed collection 20912, Box 1, LCCR, LOC. Level 1: Affordable Housing, Voter Registration Reform, Racial Justice Act, opposing English-only Constitutional amendment. Level 2: ADA, FMLA, Legal Services Corp, Minimum Wage, Attorney Fees amendment.

¹³³ Benjamin Hooks and Ralph Neas, "Statement of the Leadership Conference on Civil Rights in support of the Hate Crimes Statistics Act," February 22, 1989, Box 41, Folder 1. LCCR, LOC.

¹³⁴ Endean and Eaklor, *Bringing Lesbian and Gay Rights into the Mainstream*, 68. Endean concludes, "In fairness, that probably has had as much to do with the necessary preoccupation of gay lobbyists with AIDS issues as any LCCR reluctance to support gay civil rights.

years of arcane debate over definitions of recipient, program and activities, and entity, the discourse would encompass religious freedom, abortion, gay rights and contagious disease. Although LCCR did not support the gay and lesbian rights legislation during the 1980s, in the final year of the legislative battle against the *Grove City College v. Bell* decision, the Task Force, DREDF and the Leadership Conference would resist attempts to carve out people with AIDS from the Civil Rights Restoration Act of 1987, protective legislation that would overturn the Supreme Court decision.

4.3 Grove City College v. Bell

On November 29, 1983, attorney David Lascell stood before the United States Supreme Court Justices on behalf of petitioner Grove City College. He described Grove City as a college “which seeks to avoid government entanglement, which seeks to remain independent, and which seeks to operate efficiently.”¹³⁵ At issue was whether or not the college’s acceptance of Basic Educational Opportunity Grant Funds (BEOG) and Guaranteed Student Loans (GSL) money placed them under the regulations of Title IX of the Higher Education Amendments of 1972 which barred discrimination on the basis of sex.¹³⁶ The Department of Education required recipients of federal funding to submit an Assurance of Compliance form. Grove City College refused to comply. After five requests, the Department held an administrative hearing in 1977 to terminate the grants and loans of students attending the college. The Administrative Law Judge agreed with the Department and prohibited further payments of grants and loans; however, when the college appealed in 1978, the District Court found the Assurance of Compliance form was invalid and

¹³⁵ "Grove City College, Individually, and on behalf of its students, et al., Petitioners, v. Terrell H. Bell, Secretary of Education, et al.," in *Official Transcript Proceedings Before the Supreme Court of the United States*, November 29, 1983, Washington, DC: Alderson Reporting.

¹³⁶ The money was distributed directly to the students for educational use. Grove City certified that the students were enrolled and received an indeterminant amount of the students' funds.

enjoined the termination of funds. In 1982, the United States Court of Appeals reversed the District Court order, finding that Grove City College was a recipient of federal financial assistance and validating the authority of the compliance and termination procedures. A year later, Lascell concluded the college's lengthy effort to avoid federal oversight with his argument before Chief Justice Warren Burger's court.¹³⁷

Part I of the Supreme Court's decision favored the Department of Education's claim for oversight. The ruling held Grove City College to be a recipient of federal funds and therefore under compulsion to meet the Assurance of Compliance requirement. Justice White, who authored the opinion of the Court, relied on Congressional intent, the pattern established by Title VI of the Civil Rights Act of 1964 and Title IX's regulatory language in determining that the BEOG and GSL funds distributed to the students constituted federal financial aid to Grove City College. All the Justices joined or concurred with the sections confirming the College's subjection to Title IX regulations.

Other sections of the court's decision revealed division. A concurrence statement authored by Justice Lewis Powell and joined by Chief Justice Burger and Justice Sandra Day O'Connor criticized the Department of Education's original decision to pursue the case, particularly since there had been no indication that the College had engaged in discriminatory practices. Powell began, "I join the Court's decision. I do so reluctantly and write briefly to record my view that the case is an unedifying example of overzealousness on the part of the Federal Government." His pointed language articulated the conservative view that regulations resulted in a loss of "the

¹³⁷ The District Court ruled on June 26, 1980. Leonard Garth. "Opinion of the Court." United States Court of Appeals, Third Circuit: scholar.google.com, August 12, 1982; "Brief for the Respondents," in *On writ of certiorari to the United States Court of Appeals for the Third Circuit*, October 1983, justice.gov: Supreme Court of the United States; "Grove City College, Individually, and on behalf of its students, et al., Petitioners, v. Terrell H. Bell, Secretary of Education, et al."; Byron White, "Opinion of the Court," in *Grove City College v. Bell No 82-792*, February 28, 1984.

freedoms that Americans always have cherished” and belittled the Department’s lack of “common sense and good judgement.” In his concluding remark, Powell revealed his sympathy for “this small independent college” that had experienced “six years of litigation with the full weight of the Federal Government opposing it.” Despite Powell’s sympathy for Grove City, he supported the decision.¹³⁸

Part III of the Supreme Court decision considered the institutional scope of Title IX. Since Title IX contained the same language as Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975, civil rights advocates followed the case with concern. All four Acts prohibited discrimination under “any program or activity receiving Federal financial assistance.” At the United States Court of Appeals case brought forward by the Department of Education, Grove City College had filed a cross-appeal that argued the specificity of “program or activity” could not “apply on a generalized, nonprogrammatic, or institutional basis.” Since the BEOG grants were not directed towards a specific program or activity, the College maintained they were not a recipient of the forms of aid referred to in Title IX and therefore not subject to regulation. Circuit Judge Garth on behalf of the Court disagreed with the College. He wrote, “Where the federal government furnishes indirect or non-earmarked aid to an institution, it is apparent to us that the institution itself must be the program.” Otherwise, institutions receiving funds from federal student financial aid, which was offered by the federal government with the intent of benefitting educational institutions, would not be subject to Title IX regulations. To the dismay of civil rights organizations, the Supreme Court rejected the Appeal Courts conclusion and held that Title IX regulations only applied to the specific program receiving funds, in this case Grove City College’s financial aid program.¹³⁹

¹³⁸ "Opinion of the Court."

¹³⁹ Garth, "Opinion of the Court."; White, "Opinion of the Court."

At both trials, the Part III decision generated judicial dissent. In the US Court of Appeals majority opinion, Circuit Judge Garth had noted the Supreme Court had yet to rule on the definition of program but continued to narrowly define the term. Circuit Judge Becker concurred in the judgment on federal oversight but not in the ruling on the definition of “program or activity.” Becker felt the decision should be confined to the issues of the Assurance of Compliance and termination of funds and argued that the majority opinion “effectively decides cases not before the panel but which are or will someday be before the court.” Supreme Court Justice Stevens made a similar statement in his concurrence. Referring to the Part III decision, Stevens argued, “In so stating, the Court decides an issue that is not in dispute.” Justice Brennan and Justice Marshall joined in dissent of the majority opinion arguing that the decision did not follow “prior interpretations of the civil rights statute” and was “directly contrary to congressional intent.” They concluded with a statement that encapsulated the fears of civil rights advocates. Referring to the narrowed Court interpretation of “program or activity,” Brennan wrote, “[It] severely weakens the antidiscrimination provisions included in Title IX.”¹⁴⁰

Ralph Neas, executive director of the Leadership Conference on Civil Rights, blamed the Court’s decision on the Reagan administration’s policy on civil rights. Justice Brennan suggested as much in his lengthy dissent:

The Court’s holding might be explained by its willingness to defer to the Government’s position as it has been represented to this Court. But until the Government filed its briefs in this case, it had consistently argued that Title IX coverage for the entire undergraduate institution operated by Grove City College was authorized by the statute.

Justice Powell offered a similar statement: “Only after Grove City had brought its case before this Court, did the Department retreat to its present position that Title IX applies only to Grove City’s

¹⁴⁰ Garth, “Opinion of the Court.”; White, “Opinion of the Court.”

financial aid office.”¹⁴¹ In 1982 and 1983, the LCCR had published two reports that denounced the Department of Justice’s enforcement of civil rights laws and their shifting stance during open cases before the court.¹⁴² They added the Department’s actions in this case to their litany of the Reagan Administration’s failures to protect American’s civil rights.

Prior to the Supreme Court decision, the House of Representatives had responded with concern about changes to Title IX enforcement after a memorandum from Assistant Attorney General Reynolds to Secretary of Education Terrel Bell circulated in March 1983. Reynolds argued that Congress had not intended Title VI, Title IX and Section 504 to cut-off federal funds from institutions because of discrimination in one program area. He concluded that future investigations conducted by the Justice Department would look at “discrete funded programs—rather than launching a broad-based inquiry of the institutions as a whole.”¹⁴³

In response to Reynolds’ memorandum and to earlier testimony by the Civil Rights Commission, Representative Claudine Schneider (R-RI) introduced a resolution to establish the “sense of the House of Representatives with respect to the need to maintain guidelines which ensure equal rights with regard to education opportunity.”¹⁴⁴ The House Committee on Education and Labor released a report in October affirming, “Title IX and its regulations should remain comprehensive, and not be lessened or narrowed by regulation or administrative interpretation.”¹⁴⁵

In dissent, John Erlenborn, (R-IL) who described his active involvement in Title IX’s passage,

¹⁴¹ "Opinion of the Court."

¹⁴² Taylor et al., "Without Justice: A Report on the Conduct of the Justice Department in Civil Rights in 1981-1982."; Arnold Aronson, Marvin Harold Caplan, and William Taylor, eds., *An Oath Betrayed: The Reagan Administration's Civil Rights Enforcement Record in Education* (1983).

¹⁴³ Wm. Bradford Reynolds, "Memorandum: Investigatory Responsibilities," March 15, 1983, Box 31, Folder 7, LCCR, LOC; "To T. H. Bell, Secretary of Education," March 15, 1983, Box 31, Folder 7, LCCR, LOC.

¹⁴⁴ Claudine Schneider, "H. Res. 190: A Resolution Expressing the Sense of the House of Representatives with Respect to the Need to Maintain Guidelines which Ensure Equal Rights with Regard to Education Opportunity," 1983, congress.gov: Library of Congress. Introduced 5/10/1983.

¹⁴⁵ Carl Perkins. "H.R. No. Rept. 98-418: Expressing the Sense of the House on Education Opportunity, ." 1-8. hathitrust.org: Committee on Education and Labor, October 19, 1983.

argued that Congress had not intended for the language of “program or activity” to include the full “institution.” Erlenborn stated his support for “fair and evenhanded treatment in our schools”; however, he opposed the resolution to avoid “compounding the egregious excesses that have led to unwarranted interventionism in the affairs of our schools by the Federal Government.”¹⁴⁶ On November 11, 1983, a couple weeks before the Supreme Court heard arguments on the *Grove City College Case*, the House agreed to Schneider’s resolution by a 414-8 margin. Nonetheless, the dispute over Congressional intent and the scope of application would not be legislatively resolved until Congress overrode President Reagan’s veto of the Civil Rights Restoration Act of 1987 on March 22, 1988. By which point, supporters and opponents of the CRRA viewed the Act as protective legislation for people with AIDS; and, the Moral Majority would go one step further, claiming the Restoration Act was a gay rights bill.

4.4 Conclusion

At the beginning of the 1980s, the Leadership Conference on Civil Rights was in the midst of a significant leadership transition and organizational crisis. During the first years of the Reagan administration, the Leadership Conference on Civil Rights renewed their stature as the principal voice for a coalition of civil rights organizations with their success in securing the Voting Rights Act Amendments. Under new leadership, the Conference expanded their membership including two gay and lesbian rights organizations. When the Supreme Court decision on *Grove City College v. Bell* restricted the purview of the Civil Rights Act of 1964, the Educational Amendments of 1972, the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975, the coalition responded with confidence. Nonetheless, the political campaign to override the decision with

¹⁴⁶ Ibid., 8.

clarifying legislation would mire in debate over new federalism, religious freedom and abortion, and in the last year contagious disease. The four-year legislative battle for the Civil Rights Restoration Act strengthened the bonds among various members of the Leadership Conference as they fought to provide equal protection against discrimination based on race, gender, ability and age. New coalition members, the Disability Rights Defense and Education Fund (DREDF), the National Gay Task Force (NGTF) and the Gay Rights National Lobby (GRNL), had opportunities to work on a common cause with the mainstream civil rights organizations. In the ensuing years, the Americans with Disabilities Act would face strong resistance and opponents would attempt to carve out people with AIDS from its protection. Yet, the battle against *Grove City v. Bell* set a precedent in support of people with disabilities and people with AIDS that did not falter.

CHAPTER 5. THE POLITICS OF CONTAGIOUS DISEASE

Six years after the first legislative attempted to overturn the *Grove City College* decision, President George H.W. Bush signed the Americans with Disabilities Act (ADA). Historical accounts of the passage of the ADA briefly mention the Civil Rights Restoration Act (CRRA) as a step on the political path to success.¹ Members of the Disability Rights Education & Defense Fund (DREDF), however, remember the CRRA campaign as the key moment when disability rights entered the mainstream of civil rights. From a practical standpoint, DREDF lobbyist Pat Wright recalled the assistance Ralph Neas had given her by directly arranging meetings with members of Congress.² She described the political experience as “teaching them [Congress] the definition of what disability was [and] having them learn what 504 was.”³ DREDF’s legal expert, Arlene Mayerson, explained the shift in attitudes that their participation in the Restoration Act brought about. She categorized the position of disability rights in the Leadership Conference on Civil Rights (LCCR) prior to the *Grove City* campaign as “always included but more as a tag-along item.” Since the Restoration Act revealed “the same things affected us all equally,” Mayerson noted, disability rights activists “got included in a much more major way.”⁴ Ralph Neas viewed the Restoration Act along with the 1988 Fair Housing Amendments Act as laying a foundation and forging alliances. In a discussion with Pat Wright, he asserted, “I don’t think there would have been an ADA if there had not been these previous legislative successes, if there hadn’t

¹ Fleischer and Zames, *The Disability Rights Movement: From Charity to Confrontation*; Davis, *Enabling Acts*; Ruth Colker, “The ADA’s Journey Through Congress,” *Wake Forest Law Review* 39, no. 1 (2004).

² Pelka, *What We Have Done: An Oral History of the Disability Rights Movement*, 415.

³ “The Making of the ADA-Pat Wright,” in *Disability Rights Leadership Series*, 2000, youtube.com: DREDF with Access Video, University of San Francisco.

⁴ “The Making of the ADA - Arlene Mayerson, Part One and Part Two,” in *Disability Rights Leadership Series (1999-2000)*, 2000, youtube.com: DREDF with Access Video of University of San Francisco.

been previous examples of all elements of the civil rights community working together.”⁵ Although not obvious in the first years, the Restoration Act would also become a vehicle for confronting homophobia and AIDS-phobia.

Chai Feldblum, who wrote much of the Americans with Disabilities Act, developed an amendment to the Restoration Act that was the first piece of enacted federal legislation that provided civil rights protection to people with AIDS. The amendment codified the Supreme Court’s *Arline* decision by recognizing that people with contagious diseases who did not pose a direct threat to others were protected under Section 504, including people with HIV/AIDS. In 1990 when opponents of the ADA tried to carve out people with AIDS, the disability community stood firm against them. At a press conference and in a meeting at the White House, Wright asserted that ADA coalition would reject the bill if the AIDS carve-out was included.⁶ Feldblum observed, “bringing the coalition together—the disability and the AIDS community—I think that happened because there were gay people in the leadership of both organizations so they could help destigmatize AIDS for the other disabilities.”⁷ Feldblum spoke specifically about Curt Decker, Jean McGuire and Pat Wright who were leaders in organizations representing people with disabilities. Virginia Apuzzo, Jeff Levi, Steve Endean and others representing gay and lesbian rights organizations developed familiarity with disability rights issues as they addressed the discrimination people with AIDS experienced. Leadership Conference members DREDF, ACLU and NGLTF along with Human Rights Campaign Fund and AIDS Action Council worked together

⁵ "The Making of the ADA - Pat Wright, Ralph Neas and John Wodatch," in *Disability Rights Leadership Series (1999-2000)*, 2000, youtube.com: DREDF with Access Video, University of San Francisco.

⁶ Young, *Equality of Opportunity*, 139-40.

⁷ John-Manuel Andriote, "Chai Feldblum, interview transcript," 1996, Box 1, Folder 47, John-Manuel Andriote *Victory Deferred* Collection (Andriote Collection), Archives Center, Smithsonian National Museum of American History (Smithsonian).

to defeat an amendment to the Restoration Act that would have excluded people with contagious diseases.

This chapter follows the political progression of the Civil Rights Restoration Acts to uncover how a lawsuit over a small independent college's refusal to file a Title IX Assurance of Compliance form unified separate strands of the civil rights movement. The history of the Civil Rights Restoration Act has received little scholarly attention. At the time, the Restoration Act brought the goals of the civil rights movements in opposition to the Reagan administration's attempts to reduce regulations and allow states more control over civil rights issues and in conflict with the politicized evangelical movement's mission to overturn *Roe v. Wade* and to resist the expansion of civil rights based on gender and sexuality. In the final weeks of the long battle, the religious right marshalled constituents with claims that the Restoration Act was a gay rights bill and that churches "could be forced to hire a practicing active homosexual drug addict with AIDS."⁸ In this unrecognized and overlooked site of the culture wars, the civil rights community and Congress protected the rights of people with AIDS.

5.1 98th Congress: Civil Rights Act of 1984

When the Supreme Court released the *Grove City College* decision on February 28, 1984, those in disagreement with the Court quickly mobilized. The Leadership Conference released a statement the same day that asserted, "The Supreme Court has given the Reagan Administration its first victory in three years on civil rights issues" and warned, "Today's decision jeopardizes the effective enforcement of Title IX." The statement also referred to the House's November resolution in support of "the strongest possible enforcement of Title IX" to highlight the

⁸ Jerry Falwell and Jerry Nims, "Special Memorandum to Pastors: Gay Rights Legislation," March 7, 1988, Box 6, Folder 14, HRCF records, Cornell.

anticipated bipartisan Congressional resistance.⁹ Within six weeks, members of both chambers introduced the Civil Rights Act of 1984. On April 12, Representative Paul Simon (D-IL) introduced H.R. 5490 and Senator Kennedy introduced S. 2568 to replace the language “program or activity” with “recipient” in the Civil Rights Act of 1964, the Education Amendments of 1972 (Title IX), the Rehabilitation Act of 1973 (Section 504) and the Age Discrimination Act of 1975. Ralph Neas enthusiastically noted, “I’ve never received so many calls from members of Congress and our constituents about moving swiftly on an issue.”¹⁰ Sponsors expected success. Senator Bob Packwood (R-OR) predicted, “This bill will pass overwhelmingly and speedily with or without administration support.”¹¹ The Leadership Conference helped solicit sponsors for the bills prior to and after their introduction.¹² In the final tally, the House version of the bill had 179 cosponsors and the Senate version had sixty-two.¹³

5.1.1 House: CRA 1984

The Leadership Conference enthusiastically embraced the Civil Rights Act of 1984, praising the bipartisan backing for the bill and comparing the support to the “congressional consensus that propelled the 1982 extension of the Voting Rights Act to an overwhelming victory.”¹⁴ Within two weeks of the bills’ introduction, the Grove City legislation steering committee included forty Leadership Conference organizations ready to employ the lobbying techniques that had contributed to the passage of the Voting Rights Act Amendments. Ralph Neas

⁹ Leadership Conference on Civil Rights, “The Supreme Court,” February 28, 1984, Box 20, Folder 4, Leadership Conference on Civil Rights records (LCCR), Manuscript Division, Library of Congress (LOC).

¹⁰ Janet Hook, “Court Ruling Prompts members to Shore Up Anti-Bias Laws,” *Congressional Quarterly* (1984): 581.

¹¹ Nadine Cohadas, “Bills Introduced to Reverse Civil Rights Ruling,” *ibid.*

¹² Benjamin Hooks and Ralph Neas, “To Representative, 3/16,” March 16, 1984, Box 9, Folder 2, LCCR, LOC; “To Representative, 4/25,” April 25, 1984, Box 26, Folder 3, LCCR, LOC.

¹³ This tally is from congress.gov. LCCR documents mention 185 House cosponsors and 63 Senate cosponsors. Example: Hooks, Benjamin, and Ralph Neas. “Dear Representative.” Box 26, Folder 3, Leadership Conference on Civil Rights, LOC, June 21, 1984.

¹⁴ Ralph Neas, “Statement of the Leadership Conference on Civil Rights in Support of the Grove City Response Legislation,” April 12, 1984, Box 26, Folder 3, LCCR, LOC.

asked all member organizations to send thank you letters to current sponsors, to continue to solicit additional sponsors and to activate grass roots affiliates to target specific legislators.¹⁵ After sponsors were secured, Conference leaders Joseph Rauh and Benjamin Hooks testified at the House joint committee hearings in support of the Act as did representatives of other Conference member organizations.¹⁶ When the House Judiciary and the House Education and Labor committees approved the Civil Rights Act of 1984 on May 23, the Leadership Conference continued to apply pressure on legislators with a barrage of letters and educational material.¹⁷ A few days before the June 26 House vote, the Conference sent Representatives a list of over 200 organizations that supported the Act including DREDF, NGTF and GRNL.¹⁸ In their efforts to sway Congress, LCCR stressed that the bill would restore the original Congressional intent of the various Acts amended by the bill.

During the House hearings, the topic of abortion received limited attention. Bruce Hafen, representing the American Association of Presidents of Independent Colleges and Universities, testified that the bill's definition of recipient would force "religiously oriented institutions" that were not controlled by a religious organization "to be blind to the occurrence of abortion in

¹⁵ "Grove City Response Legislation," April 26, 1984, Box 26, Folder 3, LCCR, LOC; "House Targets," 1984, Box 26, Folder 3, LCCR, LOC.

¹⁶ Don Edwards and Carl Perkins. "H.R. Rept. No. 98-829 Part 1 and Part 2: Civil Rights Act of 1984 Report." hathitrust.org: House Committee on the Judiciary; House Committee on Education and Labor, June 7, 1984. Member organizations represented at the hearing included the American Civil Liberties Union, the National Organization for Women, the National Association for the Advancement of Colored People, the Disability Rights Education & Defense Fund, the Mexican American Legal Defense and Education Fund, the People for the American Way, the National Education Association, the Women's Equity Action League, the American Coalition of Citizens with Disabilities and the American Council of the Blind.

¹⁷ Benjamin Hooks and Ralph Neas, "To Representative, 6/2," June 2, 1984, Box 26, Folder 3, LCCR, LOC; Ralph Neas, "To Friend, 6/2," June 2, 1984, Box 26, Folder 3, LCCR, LOC; Leadership Conference on Civil Rights, "Civil Rights Act of 1984: Facts and Fictions," June 11, 1984, Box 26, Folder 3, LCCR, LOC; "Legislation to Restore the Vitality of Nondiscrimination Laws After the Grove City College Case," 1984, Box 26, Folder 3, LCCR, LOC.

¹⁸ Benjamin Hooks and Ralph Neas, "To Representative, 6/21," June 21, 1984, Box 26, Folder 3, LCCR, LOC; Leadership Conference on Civil Rights, "Organizations Supporting H.R. 5490/S. 2568," 1984, Box 26, Folder 3, LCCR, LOC.

decisions relating to school policies or student discipline.”¹⁹ From a different perspective, Ira Glass, executive director of the American Civil Liberties Union, raised concerns about those who would use amendments to address “abortion, busing, the intent standard of proof for civil rights violations, or what has been called the ‘Baby Doe’ question dealing with the rights of newborns.”²⁰ The Committees’ final report asserted neutrality on abortion and stated the bill was “not intended to result in any change of status quo as to the type or number of recipients affected by the regulations before the Supreme Court decision.”²¹ Although the hearings and report did not dwell on the abortion issue, the close vote (186-219) on an amendment offered by Mark Siljander (R-MI) that defined unborn children as persons presaged the issue’s future divisiveness. The Leadership Conference, which touted their representation of religious groups, did not directly address abortion in their letters or material.

While the bill seemed to be progressing rapidly through the legislative process, signs of dissension indicated possible delay. The Republican Study Committee warned that the speed was intended to prevent “even a cursory analysis of the proposal [that would] raise questions no one can answer without turning the debate into a major controversy.”²² Additionally, failed attempts to attach unrelated amendments to the bill such as Siljander’s unborn children amendment and one by William Dannemeyer to exclude “sexual preference or orientation” from the definition of sex discrimination revealed the Act’s supporters would need to overcome cultural opposition. Despite

¹⁹ Prior to Grove City, institutions that were religiously oriented but not controlled by a religious organization did not qualify for religious exemptions under Title IX. HR 5490 did not address the religious exemption provision.

²⁰ *Civil Rights Act of 1984: Joint Hearings Before the House Committee on Education and Labor and the Subcommittee on Civil and Constitutional Rights*, 98th Cong., May 9, 15-17, 21, 22, 1984, 124, 200, 183. During questioning, Martin Gerry, former director of the Office of Civil Rights, clarified that “Baby Doe” rights should not be confused with abortion issues. Gerry provided some of the material the LCCR shared with Representatives and Senators.

²¹ Edwards and Perkins, “H.R. Rept. No. 98-829 Part 1 and Part 2: Civil Rights Act of 1984 Report,” 36.

²² Carol Hornby, “The Civil Rights Act of 1984,” in *Republic Study Committee update*, May 21, 1984, Box 26, Folder 6, LCCR, LOC.

the negative undercurrent and opposition from 29 Republicans and the Reagan administration, the House approved H.R. 5490 with limited amendments by a vote of 375-32 on June 26, 1984.²³

5.1.2 Senate: CRA 1984

In the Democratic controlled House, H.R. 5490 was assigned to committees chaired by the bill's sponsors. In the Republican controlled Senate, S. 2568 was assigned to committees chaired by Senators who opposed the bill. Orrin Hatch (R-UT) chaired the Committee on Labor and Human Resources and the Subcommittee on the Constitution of the Committee on the Judiciary chaired by Strom Thurmond (R-SC) with bill sponsors Senators Robert Stafford (R-VT) and Lowell Weicker (R-CT) chairing subcommittees of the Committee on Labor and Human Resources under Hatch.²⁴ Concerns about the bill's impact on farm subsidy recipients brought it under the review of the Committee on Agriculture, Nutrition, and Forestry chaired by Jesse Helms (R-NC). The Senate committees held hearings in May and June but never reported the bill to Congress.

At the Senate hearings, several hearing witnesses disagreed with Title IX regulations prohibiting discrimination based on sex, particularly those regarding abortion. Others argued that an expansion of Title IX's religious exemption was necessary. At hearings chaired by Hatch, witnesses and Hatch himself advised that the bill could interfere with religious rights to oppose abortion. For example, Bruce Hafen again maintained that the bill would force schools to "be blind

²³ The House passed H. Amdt. 939 to include Congress as a recipient of federal financial assistance and H. Amdt. 942 to protect the status of historically black colleges. William Dannemeyer's amendment to exclude "sexual preference or orientation" from the definition of sex failed on a point of order. Siljander offered two amendments to protect unborn children. One failed on a point of order, the other by a vote of 186-219. congress.gov.

²⁴ *Civil Rights Act of 1984: Hearings before the Senate Subcommittee on the Constitution of the Committee on the Judiciary* 98th Cong., May 30, and June 5, 1984; *Civil Rights Act of 1984: Hearing before the Senate Committee on Labor and Human Resources*, 98th Cong., June 26, 1984; *Civil Rights Act of 1984: Hearings before the Senate Committee on Agriculture, Nutrition, and Forestry*, 98th Cong., June 12, 1984; *Civil Rights Act of 1984: Joint Hearings before the Senate Subcommittee on Education, Arts and Humanities and the Subcommittee on the Handicapped Of the Committee on Labor and Human Resources*, 98th Cong., May 24, 1984.

to the occurrence of abortion.”²⁵ In written testimony on behalf of the Moral Majority, Inc., Roy Jones raised the issue of colleges that had a “religious orientation” but were not “controlled by a religious organization.” He questioned what the implications would be for the “treatment of active homosexuals” and the “treatment of abortion.”²⁶ Jack Clayton, representative of the American Association of Christian Schools, raised alarm about sexual orientation and gender identity, claiming that the ERA’s language prohibiting discrimination on the basis of sex would “legalize homosexuality” and force churches to accept “perversion,” referring to a “transvestite.”²⁷ Although the *Grove City* decision did not apply to Title IX’s religious exemption clause, opponents understood bringing the Civil Rights Act of 1984 to the floor would open opportunities to amend Title IX in areas unrelated to the case.

Other opponents predicted the Civil Rights Act would bring additional organizations under compulsion of civil rights laws due to the unrestrained definition of “recipient”. Helms held an oversight hearing on the bill based on his view that “this bill breaks new ground and will significantly expand current laws that address Federal civil rights enforcement.” In his opening remarks, Helms asserted, “This legislation does have the potential to bring under the regulation of the civil rights laws a large portion of all—and I stress that word, “all”—private sector activity.” Specifically, Helms warned, “Farmers and ranchers may find themselves burdened with additional Federal rules and regulations.”²⁸ As July came to a close without any decisions from the Senate

²⁵ *Civil Rights Act of 1984: Hearings before the Senate Subcommittee on the Constitution of the Committee on the Judiciary* 43; *Civil Rights Act of 1984: Hearing before the Senate Committee on Labor and Human Resources*, 82, 132.

²⁶ *Civil Rights Act of 1984: Hearings before the Senate Subcommittee on the Constitution of the Committee on the Judiciary* 435; *Civil Rights Act of 1984: Hearing before the Senate Committee on Labor and Human Resources*, 265. See *supra* note 24.

²⁷ *Civil Rights Act of 1984: Hearings before the Senate Subcommittee on the Constitution of the Committee on the Judiciary* 348.

²⁸ *Civil Rights Act of 1984: Hearings before the Senate Committee on Agriculture, Nutrition, and Forestry*, 1-2.

committees, the House bill was placed directly on the Senate calendar providing Senate Majority Leader Howard Baker (R-TN) the option to call the bill to the floor.

In the first months of the political campaign, the Leadership Conference had distributed similar letters and material to members of the House and Senate. After the House approved the Act, the Conference intensified their Senate lobbying. They continued to solicit cosponsors and encouraged Senators to “oppose substantive amendments.”²⁹ Ralph Neas sent participating organizations a list of state directors and state interest group contacts to facilitate coordinated efforts.³⁰ He sent a shortened list in August.³¹ Two days after the House bill was placed on the Senate calendar, Neas sent a “Dear Friend” letter to supporters warning of the Radical Right’s “stall strategy,” “campaign of scare tactics” and the “expected Radical Right filibuster.” A week later, he sent a comparable letter to Senators.³² The communications stressed the impressive number of former administrative officials who supported the bill and encouraged recipients to act with reminders of the past success of the 1982 Voting Rights Act.

At the end of August, the Leadership Conference exploited the United States’ recent accomplishments at the Los Angeles Summer Olympics by the linking the success of America’s female athletes to the effectiveness of Title IX. A LCCR statement, highly critical of the Reagan administration, admonished the President, “Your opposition to the Civil Rights Act of 1984 poses

²⁹ Benjamin Hooks and Ralph Neas, “To Senator, 6/25,” June 25, 1984, Box 26, Folder 3, LCCR, LOC.

³⁰ Ralph Neas, “LCCR Coordinators C.R.A. Extension Legislation Lobbying Grassroots Assignments,” July 6, 1984, Box 9, Folder 3, LCCR, LOC. Coordinators represented organizations such as NAACP, MALDEF, AAUW and the ACLU. The state interest groups varied and typically included representative of women’s, racial, labor and civil rights concerns. Some representatives such as Sharon Rennart for disability and Faith Evans for church groups were listed as contacts under each state. Sharon Rennart represented the Epilepsy Foundation. She authored “AIDS/HIV and Confidentiality: Model Policy and Procedures” published in 1991 by the American Bar association (1991). Faith Evans was part of the National Welfare Rights Organization.

³¹ “LCCR Coordinators C.R.A. Extension Legislation Lobbying Grassroots Assignments,” August 15, 1984, Box 26, Folder 4, LCCR, LOC.

³² “To Friend, 7/25,” July 25, 1984, Box 26, Folder 4, LCCR, LOC; Benjamin Hooks and Ralph Neas, “To Senator, 8/2/1984,” August 2, 1984, Box 26, Folder 4, LCCR, LOC.

more of a threat to America's future Olympic efforts than any other possible factor, including political boycotts."³³ With just a few weeks left in the 98th Congress, the Leadership Conference encouraged organizations to attend a "Breakfast With Champions" with Senators Ted Kennedy and Bob Packwood in support of the Civil Rights Act of 1984. Olympians attending included 1984 gold medalists Cheryl Miller and Mary Lou Retton, and athletes who had excelled in the Olympic wheelchair demonstration races as well as other international events for athletes with disabilities.³⁴

In the final weeks of the 98th Congress, the Leadership Conference rallied their grassroots networks as they faced intensified opposition. Neas encouraged Presidents of LCCR organizations to send letters and make phone calls from national, state and local levels; hold press conferences; organize phone banks, and arrange visits to Senate offices in Washington and in their home state. He also notified member organizations that Senator Baker was the conference's "principal target."³⁵ Additionally, a letter exhorted members with alarming information about the opposition's efforts:

In addition, the Moral Majority, the Conservative Caucus, and the Christian Right have made the defeat of the Civil Rights Act of 1984 their top priority of this year. They have flooded Senate offices with tens of thousands of letters and phone calls. Every day the Christian Broadcasting Network attacks the Bill.³⁶

For example, a commentary written by Ted Panteleo, executive director of the Freedom Council, an organization founded by television evangelist Pat Robertson and funded by the Christian Broadcasting Network headed by Robertson, warned the Civil Rights Act of 1984

³³ Ralph Neas, "Statement of Ralph G. Neas, Executive Director, Leadership Conference on Civil Rights, Regarding the Reagan Administration's Opposition to the Civil Rights Act of 1984," August 23, 1984, Box 9, Folder 4, LCCR, LOC. The US had boycotted the 1980 USSR Olympics due to USSR invasion of Afghanistan. USSR boycotted the 1984 Los Angeles Olympics.

³⁴ Leadership Conference on Civil Rights and National Coalition for Women and Girls in Education, "Olympic, Disabled Athletes Rally for 'Civil Rights Act of 1984,'" September 5, 1984, Box 26, Folder 4, LCCR, LOC; "For the Champion in Each of Us: The Civil Rights Act of 1984," September 11, 1984, Box 26, Folder 4, LCCR, LOC.

³⁵ Ralph Neas, "To LCCR Organizations," August 22, 1984, Box 26, Folder 4, LCCR, LOC.

³⁶ "To LCCR Presidents, The Civil Rights Act of 1984," August 28, 1984, Box 26, Folder 4, LCCR, LOC.

“has ominous and sinister overtones.” Similar to Roy Jones’ testimony before the Senate hearing that claimed the bill would “further obliterate the constitutional distinction between the governmental and private spheres,” Panteleo asserted “Various elements of our government are moving to break loose from legal and constitutional restraints at an alarming rate.”³⁷ The specter of governmental impingement on religious liberty would motivate opposition during the entire four-year campaign.

Partisan disagreements challenged the Leadership Conference. On August 7, 1984, Senator Hatch attempted to undermine the Civil Rights Act of 1984 with the introduction of a substitute bill, S. 2910, the “Grove City Reversal Act.” In response, LCCR distributed a side-by-side comparison of S. 2568 and Hatch’s bill.³⁸ Co-sponsoring Senators received a letter summarizing the “harmful effects” of Hatch’s bill and alerting them, “In sum, the Hatch package is terrible legislation and should be vigorously opposed.”³⁹ As attempts to prod Majority Leader Baker to bring H.R. 5490 to the floor failed, the Conference increased their pressure. A letter to editors, writers and broadcasters placed the weight of the Civil Rights Act of 1984 on Baker’s shoulders. The press release opined, “If Senator Baker makes the commitment, the Civil Rights Act of 1984 will become law. If he does not, the legislation will die.”⁴⁰ A week later, Neas released a statement that declared, “Prompt action and strong leadership by Senator Baker would guarantee the enactment of the Civil Rights Act of 1984.”⁴¹ On the same day, sponsors Kennedy and Packwood

³⁷ *Civil Rights Act of 1984: Hearings before the Senate Subcommittee on the Constitution of the Committee on the Judiciary* 432; Ted Panteleo, “Washington Update,” *The Freedom Report*, July 1984.

³⁸ “Analysis of S. 2910: Hatch ‘Grove City Reversal Act,’” 1984, Box 26, Folder 4, LCCR, LOC. The Reversal Act only applied to Title IX. On the same day Hatch introduced, S. 2910, he submitted two amendments to that bill. He also submitted three amendments to H.R. 5490 on the Senate calendar. The amendments dealt with religious exemptions under Title IX for certain educational institutions.

³⁹ Benjamin Hooks and Ralph Neas, “To Senator, 9/3,” September 3, 1984, Box 26, Folder 4, LCCR, LOC.

⁴⁰ Ralph Neas, “To Editors, Writers, Broadcasters,” September 12, 1984, Box 26, Folder 4, LCCR, LOC.

⁴¹ “Statement of Ralph G. Neas, Executive Director, Leadership Conference on Civil Rights, Regarding the Civil Rights Act of 1984,” September 20, 1984.

threatened to offer H.R. 5490 as an amendment to another bill to force a floor vote. Senate Minority Leader Robert Byrd led the attempt that fell into a parliamentary quagmire. A last-minute effort by Robert Dole (R-KS) to reach a compromise failed. The Senate voted to table the bill on October 2, 1984.

5.1.3 CRA 1984 Failure

Several factors contributed to the bill's demise. In an overview of the 98th Congress written shortly after the bill had failed, Neas blamed Baker's refusal to bring the bill to the floor, a Radical Right filibuster and the pressure to adjourn; however, the defeat lay deeper than the parliamentary machinations.⁴² Despite the bipartisan support for the bill, conservative members of the Republican Party had built a case against the bill based on their conclusion that the Civil Rights Act of 1984 definition of "recipient" would expand federal oversight to state and local governments and include those who accepted money from people using their Social Security check, food stamps or other forms of indirect payment. William Dannemeyer, chair of the Republican Study Committee, released a report that concluded, "If it is passed as written the remaining distinctions between federal, state and local governments will be wiped out."⁴³ An analysis written for the Senate Republican Policy Committee focused on concerns about the impact on the private sector. The report cautioned against the bill's definition of "recipient" which included "private agency, institution, or organization which receives federal support, directly or indirectly."⁴⁴ Additionally, the American Farm Bureau Federation, the U.S. Chamber of

⁴² "Leadership Conference Issues Voting Record for 98th Congress," October 30, 1984, Box 26, Folder 4, LCCR, LOC.

⁴³ Hornby, "The Civil Rights Act of 1984," 11. The report did not mention religious institutions or abortion.

⁴⁴ Lincoln Olphant and Senate Republican Policy Committee, "What the Civil Rights Act of 1984 (S. 2568) May Mean for the Private Sector," June 14, 1984, Box 26, Folder 6, LCCR, LOC. The document included an overview of nine court decisions concerning Section 504 where a private sector defendant had prevailed against a person/s with disabilities. The report supported the courts' decisions but wondered, "Would they have prevailed under S. 2568?"

Commerce and the National Association of Manufacturers opposed or had serious reservations about the bill.⁴⁵

In a review of the legislative history of the Civil Rights Restoration Act of 1987, the *Congressional Quarterly Almanac* noted, "The issue of abortion never surfaced in 1984."⁴⁶ However, during House and Senate hearings, witnesses did express concerns about how the Act would impact the abortion policies of religiously-oriented educational institutions. Representative Siljander's amendment to define person to include unborn children had received significant support. After Hatch introduced S. 2910, the Grove City Reversal Act, he immediately offered an amendment to exempt religiously-oriented educational institutions from Title IX provisions that conflicted with their religious tenets. He offered similar amendments to H.R. 5490 and S. 2586.⁴⁷ Although the Senate amendments did not reach the floor, their presence indicates members had an awareness of the concerns religious groups had about the bill's impact on abortion policy. Religious organizations who opposed or had serious reservations about the Civil Rights Act included the U.S. Catholic Conference, the Baptist Joint Committee and Agudath Israel of America as well as the Association of Advanced Rabbinical and Talmudic Schools and the American Association of Christian Schools.⁴⁸ In the following years, the dispute over abortion grew in significance.

The report made one short statement about abortion noting, "Title IX regulations control such decisions as abortion coverage under school-provided health plans." The report was included in Senate hearings.

⁴⁵ Linda Chavez, "Memorandum to the Commissioners: Civil Rights Act of 1984," August 7, 1984, Box 26, Folder 6, LCCR, LOC.

⁴⁶ "'Grove City' Bill Enacted Over Reagan's Veto," in *Congressional Quarterly Almanac, 100th Congress 2nd Session 1988*, ed. Christine Lawrence (Washington, DC: Congressional Quarterly, Inc., 1989), 66.

⁴⁷ "130 Part 16 Congressional Record (Bound Edition)." S. 22549-659. govinfo.gov, August 7, 1984.

⁴⁸ Chavez, "Memorandum to the Commissioners," 2; Daniel F. Hoye, "To Senator Hatch," June 11, 1984, Box 27, Folder 7, LCCR, LOC. Msgr. Hoye of the US Catholic Conference sent Hatch a letter with "support for the civil rights intent of S. 2568." Although recognizing the bill was not intended to engage with abortion regulations, Hoye expressed the Conference's concern that bill's definitional change of recipient would expand the coverage.

Early predictions of swift success for the Civil Rights Act of 1984 rested on broad support for overturning the *Grove City College* decision. Supporters insisted the Act would do nothing more than restore the original intended purpose of Title VI, Title IX, Section 504 and the Age Discrimination Act. As the number of adverse outcomes to civil rights complaints increased, supporters' fervor grew. On the other side, opponents feared the bill would give the federal government expansive powers, infringe on religious freedom, impose financially burdensome regulations and result in costly lawsuits.⁴⁹ At the same time, bringing the civil rights acts to the floor might allow opponents to insert what they viewed as morally corrective amendments to Title IX abortion regulations and religious exemptions. By the time the Senate tabled the Civil Rights Act of 1984, stakeholders on both sides were politically invested in their positions.

5.2 99th Congress: Civil Rights Restoration Act of 1985, Civil Rights and Abortion

The 99th Congress convened on January 3, 1985 with a smaller Republican majority in the Senate and a smaller Democratic majority in the House. Robert Dole replaced Senate Majority Leader Howard Baker who had not run for reelection. Tip O'Neill retained his position as Speaker of the House. The Leadership Conference came prepared to continue the battle to overturn the *Grove City v. Bell* decision as did Senator Dole who had already announced a remedy bill. The day Congress convened, Neas released a statement rejecting Dole's remedy and characterizing it as "hastily drafted" and "terribly misguided substantively."⁵⁰ After the Inauguration, Dole introduced S. 242, the Civil Rights Amendments Act of 1985 and Representative Augustus

⁴⁹ Before the *Grove City* decision, only religiously controlled colleges could apply for a religious exemption from Title IX regulations. Colleges like Jerry Falwell's Liberty University that were religiously affiliated but not controlled by a religious institution did not qualify for an exemption. Attempts to use the Restoration Acts to exempt religiously affiliated colleges from Title IX went beyond the Acts' purpose of overturning *Grove City*.

⁵⁰ Ralph Neas, "Statement of the Leadership Conference on Civil Rights Regarding the Dole *Grove City* Bill," January 3, 1985, Box 9, Folder 5, LCCR, LOC.

Hawkins (D-CA) introduced H.R. 700, the Civil Rights Restoration Act of 1985. Senator Kennedy put forward S. 431, the companion bill to H.R. 700, on February 7, 1985. The Conference optimistically predicted the House would vote in April and expected the Senate to hold hearings in the spring and “take the measure up” in the summer.⁵¹

The Civil Rights Act of 1984 had attempted to overturn *Grove City* by redefining “recipient” of federal financial aid. As an alternative, the 1985 bills proposed new definitions for “program or activity.” Dole’s Amendments Act and Hawkins’ Restoration Act differed significantly in scope. Dole’s bill amended Title IX by defining educational institution as a “program or activity” while the other civil rights acts would continue to define “program or activity” as they had prior to *Grove City*. The Civil Rights Restoration Act of 1985 clarified “program or activity” as “all of the operations” of a list of entity types for all four of the civil rights acts under consideration. Neas predicted Dole would “join his Republican and Democratic colleagues in both Houses of Congress in passing the Civil Rights Act of 1985” once he “had an opportunity to understand the many serious problems associated with his bill.”⁵² Instead, the conflict over the bills’ potential effect on religious freedom and abortion stalled progress throughout the 99th Congress.

5.2.1 House: CRRA 1985-1986

The House referred the Civil Rights Restoration Act of 1985 to the same two committees that had considered the Civil Rights Act of 1984. The bill’s sponsor, Augustus Hawkins (D-CA), had replaced Carl D. Perkins (D-KY) as chair of the Committee on Education and Labor.⁵³ Peter Rodino and Don Edwards remained as chairs of the Committee on the Judiciary and the

⁵¹ "To LCCR Representatives," February 19, 1985, Box 27, Folder 5, LCCR, LOC.

⁵² "Regarding the Dole Grove City Bill."

⁵³ Perkins died on 8/3/1984.

Subcommittee on Civil and Constitutional Rights. The committees held nine days of joint hearings in Philadelphia, Atlanta, Chicago, Los Angeles, Santa Fe and Washington, D.C. during March and April. William Taylor spoke on behalf of the Leadership Conference and the Center for National Policy Review at two of the hearings. Representatives from LCCR organizations such as Ben Hooks for the NAACP and Arlene Mayerson for DREDF as well as others from the National Education Fund, the League of Women Voters, the Mexican American Legal Defense Fund and the American Federation of State, County & Municipal Employees spoke in support of the Civil Rights Restoration Act. Many shared poignant examples that demonstrated the need to correct the *Grove City* decision.⁵⁴

The Conference consensus system allowed it to represent the whole while permitting individual members to decide whether or not to support particular issues. In 1984, the U.S. Catholic Conference, a member of the Leadership Conference, had not testified at the House hearings but did submit a letter of concern to the Senate Judiciary Committee. The letter explained that the definition of recipient “could lead to unwarranted governmental intrusion into the internal affairs of religious organizations.” Although recognizing that the Restoration Act “is not directly concerned about dealing with this larger issue [abortion], general secretary Daniel Hoyer identified the Catholic Conference’s continued opposition to Title IX regulations that treated abortion as a temporary disability. During 1985, the Catholic Conference withdrew their support for the Restoration Act as written.

In February 1985, Hoyer released a report warning that the Restoration Act would subject organizations such as the Catholic Relief Service and the National Catholic Education Association

⁵⁴ *Civil Rights Restoration Act of 1985: Joint Hearings before the House Committee on Education and Labor, and the House Subcommittee on Civil and Constitutional Rights*, 99th Cong., March 4, 7, 11, 15, 22, 25, 27, 28; April 2, 1985. 1986.

to coverage. The analysis contended, “That all activities of a diocese could be considered as a single ‘entity’ . . . subject to the four statutes if any one of the activities (e.g., a parish school) received any federal financial assistance.” The potential burden of enforcement regulations and concern about federal and private cause of action suits alarmed the Catholic Conference. The issues of abortion and homosexual rights were listed as of special concern. Although the report recognized that the bills did not mention either and that the Catholic entities were exempt from compliance, it recommended an expanded religious tenet exemption amendment to prevent future regulatory changes and exempt non-educational entities such as hospitals potentially covered under the four Acts.⁵⁵

After discussing the report’s analysis at a March meeting, the Catholic bishops proposed amendments to the Civil Rights Restoration Act that would reflect the Catholic Church’s position on abortion and religious exemptions. In his testimony at the House hearings on behalf of the Catholic Conference, Rev. Bruce Hehir opposed regulations that treated abortion as a civil right, requested that the religious tenet provisions found in Title IX be extended to noneducational institutions and pressed Congress to treat the Church’s organization in the same fashion it treated subunits of state and county governments.⁵⁶

At the hearings, representatives of religious schools also urged Congress to provide expanded religious exemptions. Some such as Reece Yandle, executive director of South Carolina Association of Christian Schools, and Ralph Keen, on behalf of the Illinois Association of Christian Schools, feared the schools would be required to hire homosexuals and support abortion.

⁵⁵ Office of the General Counsel, “Analysis of Civil Rights Restoration Act of 1985 (H.R. 700) and Civil Rights Amendments Act of 1985 (S. 272),” February 26, 1986, Box 27, Folder 7, LCCR, LOC. The report was submitted as evidence at a House hearing. The report also predicted, “Compliance with the physical accessibility requirements for all activities, rather than those that receive federal assistance, would impose some financial burden on most, if not all, dioceses which receive federal financial assistant.”

⁵⁶ *Civil Rights Restoration Act of 1985: Joint Hearings before the House Committee on Education and Labor, and the House Subcommittee on Civil and Constitutional Rights*, 1074.

Others expressed concern that the bill would interfere with parental rights to provide their children a religious education; the potential that the tithes of federal employees would bring religious institutions under subsection or that organizations claiming tax-exempt status would fall under regulations. On occasion, Representative James Sensenbrenner (R-WS), a member of the Subcommittee on Civil and Constitutional Rights, asked witnesses in favor of religious exemptions to apply their testimony to the abortion issue. For instance, Dr. Paul Kienel, on behalf of the Association of Christian Schools International, asked that the religious exceptions allowed under Title IX be added to the other three Acts under consideration but did not mention abortion. Sensenbrenner prodded, “Is it your opinion that, if we don’t change the religious exemption, that a church-affiliated institution, which is not a church-controlled institution, would have to provide abortions in its student health care clinic?”⁵⁷ Sensenbrenner would offer an abortion amendment during committee mark-up.

In his response to criticism of the bill, Leadership Conference member William Taylor testified, “The real quarrel of some of the critics is not with the coverage of the law but with the substantive requirements of the laws themselves.” He continued, “This bill has nothing at all to do with . . . abortion.” As the hearings came to a close, Representative Charles Hayes (D-IL), a member of the Committee on Education and Labor, advised those present that the bill’s “passage is not going to be easy.” Although he noted, “The forces who oppose H.R. 700, who appeared before our committee, have been in the minority,” he concluded that their argument against government interference would resonate in Congress.⁵⁸ The Leadership Conference responded by urging the Restoration Act Coalition members to “flood the two committees with calls, mail, and visits during the next two weeks.” The key message they wanted members to convey, “Stop federal

⁵⁷ Ibid., 634.

⁵⁸ Ibid., 1293, 169.

funding of discrimination! . . . And oppose all weakening amendments.” The Conference’s call to action identified the opposition as the “Moral Majority, the Conservative Caucus, the religious far right, the Heritage Foundation, and all the other parts of the Hatch-Helms radical right coalition.”⁵⁹ Despite the sense of urgency in their communications, the Conference remained positive. Their timetable still predicted the full House could vote in April or early May; a letter mailed to Representatives from the LCCR conveyed confidence, and the Restoration Act coalition continued to grow.⁶⁰

On May 21 and May 22, the Committees met to mark-up the bill. Both committees agreed to a few clarifying changes to exempt ultimate beneficiaries such as Social Security recipients; to maintain pinpoint fund termination; and to delete an unspecified “any other entity” phrase. In the Committee on the Judiciary, Sensenbrenner’s abortion amendment did not prevail. Instead, the committee added a section titled, “Disclaimer with respect to abortion” which stated the amendments “are not intended to convey either the approval or disapproval of Congress concerning the validity or appropriateness of regulations issued . . . with regard to abortion.”⁶¹ A minority view offered by the Republican members of the subcommittee, indicated their intention to offer additional amendments when the bill was on the floor and forewarned civil rights organizations and the Democrats that a stronger abortion amendment and a religious exemption amendment were “essential if H.R. 700 is to see the light of day.”⁶²

⁵⁹ Ralph Neas, "To LCCR Representatives and other members of the Restoration Act Coalition," April 2, 1985, Box 27, Folder 5, LCCR, LOC.

⁶⁰ Ralph Neas and Benjamin Hooks, "To Congresswoman,," April 15, 1985, Box 27, Folder 5, LCCR, LOC. New coalition members included the Association of Retired Persons, the Association of Junior Leagues, the Congress of National Black Churches, the Girls Clubs of America, the National Black Caucus of State Legislators and the American Nurses Association.

⁶¹ Peter Rodino. "H.R. Rept. No. 99-963, Part I: Civil Rights Restoration Act of 1985 " 1-43. hathitrust.org: Committee on the Judiciary, October 3, 1986.

⁶² *Ibid.*, 20,30.

The House Committee on Education and Labor adopted an abortion amendment offered by Thomas Tauke (R-IA) that was identical to the failed amendment Sensenbrenner had offered. Added to Title IX, the language of the amendment framed the issue in terms of rights: “Nothing in this title shall be construed to grant or secure or deny any right relating to abortion or the funding thereof, or to require or prohibit any person, or public or private entity or organization to provide any benefit or service relating to abortion.” Supporters of Tauke’s amendment considered it to be abortion neutral; however, the written intent was “to nullify current regulations implementing Title IX, first promulgated in 1975 . . . which require that “termination of pregnancy”, or abortion, be treated the same as other temporary disabilities.”⁶³ The Education and Labor version of the Civil Rights Restoration Act of 1985 also expanded the eligibility for religious exemptions to include religiously affiliated schools.

The committee chairs worked to reach a compromise with the Catholic Conference. A September 20, 1985 meeting with Bishop James Malone, President of the Catholic Conference, left hope that committee attorneys and the Catholic Conference staff could “develop new ‘abortion neutral’ language to accommodate your [USCC] concerns so that we could move forward with this civil rights legislation.”⁶⁴ After a second meeting, the general secretary of the Catholic Conference, Daniel Hoyer, informed chair Hawkins, “There can be no compromise on the abortion-neutral amendment” and recommended the bill be brought to the Floor.⁶⁵ The chairs appealed to Bishop Malone to intervene.⁶⁶ On October 7, Hawkins and Edwards sent an update to their

⁶³ Augustus Hawkins. "H.R. Rept. No. 99-963, Part 2: Civil Rights Restoration Act of 1985." 1-23. hathitrust.org: Committee on Education and Labor, October 7, 1986.

⁶⁴ Don Edwards and Augustus Hawkins, "To the Most Reverend James W. Malone," September 30, 1985, Box 27, Folder 9, LCCR, LOC.

⁶⁵ Daniel F. Hoyer, "To the Most Honorable Augustus F. Hawkins," September 26, 1985, Box 27, Folder 9, LCCR, LOC.

⁶⁶ Edwards and Hawkins, "To the Most Reverend James W. Malone."

colleagues that remained hopeful; however, the groups remained in a stalemate.⁶⁷ The House Committees did not release reports in 1985.

The following February, the Leadership Conference issued an Action Alert. The Steering Committee activated a grass roots campaign that included an emergency request for funds to buy a full-page ad in the *Washington Post*. Neas implored supporters to “inundate the district and Washington offices with phone calls and letters.”⁶⁸ The Leadership Conference and extended coalition members maintained their position that the bill must be enacted without substantive amendments. Neas contended, “Amendments undermine the restoration principle of the bill, and if passed, could kill the legislation.”⁶⁹ In March, a rumor circulated that the bill would be brought to the floor under a closed rule which would prohibit amendments from the floor.⁷⁰ A few weeks later, the bill had still not reached the floor. A response from the Catholic Conference indicated opposition remained strong. In a memo to the bishops, Hoyer blamed the delay on the Leadership Conference’s tactics and informed the bishops, “We may shortly recommend a major effort by the USCC to persuade the House to take the civil rights bill from those who are preventing consideration of it and pass it with our amendments.”⁷¹ Although the discourse centered on abortion, the Catholic Church also insisted on a religious exemption clause which the Leadership Conference referred to as the “loophole amendment” and stood firm on their demand for increased institutional separability.

⁶⁷ "To Colleague," October 7, 1985, Box 27, Folder 9, LCCR, LOC.

⁶⁸ Ralph Neas, "Action Alert: Civil Rights Restoration Act," February 7, 1986, Box 27, Folder 3, LCCR, LOC; "Emergency Request," February 14, 1986, Box 9, Folder 7, LCCR, LOC.

⁶⁹ "Civil Rights Restoration Act Update," March 1, 1986, Box 27, Folder 5, LCCR, LOC.

⁷⁰ Richard Arney. "132 Part 3 Congressional Record (Bound Edition)." H3783-855. govinfo.gov, March 6, 1986. Arney (R-TX) was a member of the Committee on Education and Labor. He strongly opposed the bill. A Republican member of the Rules Committee was in the hospital.

⁷¹ William Ryan, "Catholic Leader Says Majority of House Supports Amendments to Civil Rights Bill," in *United States Catholic Conference News*, April 4, 1986, Box 29, Folder 1, LCCR, LOC. Hoyer's memo was published in the news statement. He was likely referring to a discharge petition.

Both House Committees had ordered the Civil Rights Restoration Act reported in May 1985; however, the chairs did not report the bill out until sixteen months later on October 3, 1986 and placed it the Union Calendar on October 7, 1986.⁷² Representative Sensenbrenner blamed the 16 month delay on “the fact that these two committee chairmen did not want the House to work its will on amendments which probably would have been adopted by a majority of the House.”⁷³ Representative Tauke also blamed the committee chairs and accused them of having “a hidden agenda to expand abortion mandates.”⁷⁴ On the other side, Hooks and Neas claimed opponents introduced substantive amendments to stall the bill, “knowing they cannot defeat the measure on its merits.” Although they described the bill’s failure as “the biggest disappointment of the 99th Congress,” Hooks and Neas remained optimistic and observed, “As a result of these hard fought battles, LCCR has become even more cohesive and effective.”⁷⁵ Neither side appeared willing to compromise. The 99th Congress adjourned on October 18, 1986 without considering the bill.

5.2.2 Senate: CRRA 1985-1986

In the Senate, both the Civil Rights Amendments Act of 1985 (S. 272) and the Civil Rights Restoration Act of 1985 (S. 431) were referred to the Committee on Labor and Human Resources. Chair Orrin Hatch and committee member Charles Grassley (R-IA) cosponsored S.272 while nine members of the committee supported S. 431 including sponsor Senator Kennedy. The Senate had referred the Civil Rights Act of 1984 to the Committee on the Judiciary and the Committee on

⁷² Rept 99-963 had two parts. Part I, the report of the Committee on the Judiciary was ordered to be printed October 3, 1986. The Civil Rights Restoration Act of 1985, amended Rept. 99-363 [sic] is listed in Congressional Record-Daily Digest under bills reported on 10/3/1986. Rept 99-963-Part 2 from the Committee on Education and Labor was ordered to be printed on October 7, 1986. It does not appear separately in the Congressional Record-Daily Digest.

⁷³ "132 Part 20 Congressional Record (Bound Edition)." H28211-9849. govinfo.gov, October 3 to October 8, 1986. 1986-10-03

⁷⁴ Ibid., 29847. 1986-10-08

⁷⁵ Benjamin Hooks and Ralph Neas, "Happy Holidays!," December 12, 1986, Box 106, Folder 16, National Gay and Lesbian Task Force records (NGLTF), Division of Rare and Manuscript Collections, Cornell University Library (Cornell): microfilm.

Agriculture as well as two subcommittees under Labor and Human Resources. In 1985, Hatch obstructed subcommittee chairs Robert Stafford and Lowell Weicker from holding additional hearings by withholding his permission.⁷⁶ Instead, he scheduled two hearings, one in July and one in September. At the first hearing, Hatch limited the discussion to religious liberty issues and at the second to the impact on private educational institutions.⁷⁷ Despite Stafford's and Weicker's commitment "to use any opportunity provided by Senate rules to bring the matter before the Senate for a vote," neither bill was reported out of the committee.⁷⁸ When the 99th Congress adjourned, the Civil Rights Restoration Act of 1985 died.

5.2.3 Organizational Efforts: CRRA 1985-1986

During the 1985-1986 campaign, the Leadership Conference continued to coordinate lobbying efforts. In 1985, they began with a drive to solicit bill sponsors. The Conference engaged in an additional "two week cosponsorship blitz" in the Senate after the House bill was introduced, securing the original 46 cosponsors for the Senate companion bill. From February 19 through March 15, they returned to recruiting House sponsors, increasing the number from sixty-one to two hundred eight. The Conference directed participating organizations to send letters to Representative and to "call 15 House members every day."⁷⁹ Also in February, the Conference distributed a grassroots packet to LCCR representatives to share with their state and local affiliates. The ten-page packet included educational material on the Civil Rights Restoration Act of 1985 and a critique of the "Administration-Dole" bill; sample letters and press releases; a two-page list of quotes from members of Congress and leaders from LCCR member organizations in support of

⁷⁶ Robert Stafford and Jr. Lowell Weicker, "To Mr. Chairman," June 14, 1985, Box 27, Folder 9, LCCR, LOC.

⁷⁷ *Proposed Grove City Legislation, Religious Liberty, and Private Education: Hearings Before the Senate Committee on Labor and Human Resources*, 99th Cong., July 17 and September 20, 1985.

⁷⁸ Stafford and Weicker, "To Mr. Chairman."

⁷⁹ Ralph Neas, "To LCCR Presidents and Representatives," February 15, 1985, Box 9, Folder 5, LCCR, LOC.

the Restoration Act; and, a list of action items that encouraged local coalition building.⁸⁰ As the campaign strode forward, the Conference sent updates and additional educational material to the participating organizations, the press and members of Congress.

Additionally, the Conference organized public events including a lobbying day and a “speak-out” rally to keep the campaign in the public eye.⁸¹ Neas frequently spoke to the press and also participated in an hour-long call-in program on C-SPAN to discuss the Civil Rights Restoration Act, affirmative action and concern about the Reagan administration’s attempt to “gut the Voting Rights Act extension.”⁸² The Leadership Conference Education Fund which served as a civil rights information clearinghouse for organizational members and other interested parties began to publish a bimonthly newsletter in August 1985. The first issue shared examples of discrimination cases occurring in educational environments and hospitals that had been negatively affected by the *Grove City* decision. Additional issues of the *Monitor* kept readers informed of legislative delays.⁸³ Despite the Conference’s continued efforts to maintain public interest and to involve grass roots networks, the public appeared indifferent. Neas had told C-SPAN viewers, “What too few people realize is that our civil rights laws are in jeopardy right now.”⁸⁴ Hugh Davis

⁸⁰ "To LCCR Representatives."

⁸¹ "Representatives of Over Thirty National Organizations Call for Passage of the Civil Rights Restoration Act," July 2, 1985, Box 27, Folder 5, LCCR, LOC. The press released mentioned, "A summer long series of rallies and protests . . . to be held across the country."

⁸² "Civil Rights Movement," August 30, 1985, <https://www.c-span.org/video/?49579-1/civil-rights-movement>: C-SPAN (Producer). The C-SPAN video library includes several videos that discuss AIDS 1985-1987 before they began to archive their content. Some include: ; C-SPAN, "AIDS: September 17," September 17, 1985, <https://www.c-span.org/video/?49634-1/aids>. Interview with reporter Mary Hager; "AIDS Awareness," November 4, 1985, <https://www.c-span.org/video/?49889-1/aids-awareness>. Nancy Roth interview; "AIDS Issues," 1987, <https://www.c-span.org/video/?151007-1/aids-issues>: Young Americans for Freedom. Panel with Gingrich and Sobran; "Gay Rights Movement," October 10, 1987, <https://www.c-span.org/video/?903-1/gay-rights-movement>: National Press Club. Presentation by Jeff Levi.

⁸³ "Do the Civil Rights Statutes Still Exist?," in *Civil Rights Monitor*, August 1985, Box 17, Folder 6, LCCR, LOC; "Leadership Conference Education Fund Annual Report 1986," January 1987, Unprocessed collection 20912, Box 4, LCCR, LOC. In 1986, the Monitor’s circulation neared 7,000 with subscriptions and complimentary issues sent to “civil rights organizations, libraries, the academic community, corporations, Congress, and the press.”

⁸⁴ "Civil Rights Movement."

Graham's 1998 analysis concurred. He argued, "Outside of Washington, the issue never seemed to catch on, never fired the public imagination."⁸⁵

The Leadership Conference led the Restoration Act Steering Committee, which included LCCR member organizations and other interested groups such as the Human Rights Campaign Fund. The Steering Committee retained the 1984 system of frequent subcommittee group meetings and weekly full-group meetings on Fridays. Ralph Neas and other organizational leaders in Washington coordinated lobbying strategies. The frequent meetings built unity between the extended coalition members. For example, in 1984, when Senator Dole originally approached Neas with what he viewed as a realistic compromise bill, Neas brought the information to the strategy meeting to discuss. On one hand, Dole's bill appeared to repeal the specific Title IX ruling of *Grove City* and therefore addressed the concerns of women's groups. On the other hand, it left racial minorities, people with disabilities and older individuals with uncertain protection. Pat Reuss, lobbyist for Women's Equity Action League, Alethea Simmons, lobbyist for the NAACP, and Patricia Wright, DREDF activist, recalled the coalition's decision to reject Dole's bill as a crucial moment of solidarity. As Reuss explained, "You can't have civil rights for some and not for all."⁸⁶ As the bill's delay lengthened, the solidarity helped the coalition persevere.

5.2.3.1 LCCR and USCC conflict

The discussion between the Leadership Conference and the Catholic Conference remained outside of the public debate. The Catholic Conference had been a strong supporter of civil rights and was a respected member of the Leadership Conference. Although the press noted, "The dispute has pitted civil rights groups against a traditional ally, the Catholic Church," the Leadership

⁸⁵ Hugh Davis Graham, "The Storm over Grove City College: Civil Rights Regulation, Higher Education, and the Reagan Administration," *History of Education Quarterly* 38, no. 4 (1998): 422.

⁸⁶ Lavinia Edmunds, "Simple Justice: Welding a Civil Rights Coalition," *Ms.*, October 1985, 113.

Conference avoided naming the Catholic Conference in their educational and lobbying material on the Civil Rights Restoration Act.⁸⁷ Directly confronting the Catholic Church on abortion would have been politically untenable. In the 99th Congress, the largest group of members who identified a religious affiliation were Roman Catholic.⁸⁸ On a national scale, 28% of the respondents to a 1985 Gallup poll identified as Catholic.⁸⁹ Ralph Neas belonged to the Catholic faith. The Catholic Church's strong religious stance against abortion influenced its members and public opinion. The Leadership Conference's opposition to all substantive amendments offered a path to avoid the abortion dispute.

A letter exchange between the organizations reveals the tension. On May 14, 1985, prior to the release of the House committee reports, Robert Lynch, Associate General Secretary of the USCC, wrote a letter of protest to Neas regarding a LCCR legislative mailing which Lynch felt implied that the USCC supported the Leadership Conference's objection to amendments regarding abortion and religious exemptions. In his closing statement, Lynch warned that for the working relationship to continue, the Leadership Conference needed to follow the LCCR by-laws on the listing of supporters and implied the USCC would sever the relationship if the problem continued.⁹⁰

Neas' pointed reply refuted Lynch's claims, noting that the Catholic Conference had not been included on the separate list of over 200 supporting organizations. In support of the Leadership Conference's actions and their desire to avoid alienating the Catholic Conference's membership, Neas mentioned "numerous meetings (several of which were attended by other

⁸⁷ LCCR did use a quote from the USCC 2/26/1985 memo in a "Information Regarding the Abortion Issue" document. The quote, without additional comment, noted none of the bills mentioned abortion and concluded with the statement, "Thus, neither bill would create any new abortion right." LCCR b-27,f-5, 1097.

⁸⁸ "Characteristics of the 99th Congress," in *Congressional Quarterly Almanac, 99th Congress 1st Session 1985*, ed. Andrew Barnes (Washington, DC: Congressional Quarterly, Inc., 1986), 3G.

⁸⁹ Gallup, "In Depth: Topics A to Z, Religion," 2018-10-12 <https://news.gallup.com>.

⁹⁰ Robert N. Lynch, "To Mr. Neas," May 14, 1985, Box 27, Folder 5, LCCR, LOC.

LCCR organizations) addressing concerns raised by the Catholic Conference.”⁹¹ Neas continued with accusations against the Catholic Conference and claimed some civil rights groups feared, “the Catholic Conference was trying to escape coverage of laws prohibiting the funding of discrimination.” Others believed, “the Radical Right was using the Catholic Conference to help stall the enactment of the Restoration Act.” Neas criticized the February 1985 report distributed by the USCC as “faulty legal analysis” and portrayed the bishops’ decision to support the abortion amendment as “surprising and shocking.” In a more personal and conciliatory note to Bishop Malone, Neas affirmed “our passionate conviction that the Church must continue to work closely with minorities and all others who seek to eliminate discrimination and expand equality of opportunity.” As he had in the reply to Lynch, Neas requested a meeting with Malone. ⁹² When the 99th Congress closed, the USCC and LCCR had not resolved their differences over the Civil Rights Restoration Act of 1985; however, the relationship remained intact.⁹³

5.2.3.2 Disability Rights and CRRA 1985-1986

Fred Pelka, author of *The ABC-CLIO Companion to the Disabilities Rights Movement* and *What We Have Done: An Oral History of the Disability Rights Movement*, described the Restoration Act of 1988 as one of first bills in which “The idea of disability rights was incorporated into the agenda of organizations representing the broad spectrum of civil rights constituencies, most notably the Leadership Conference on Civil Rights.”⁹⁴ However, the Leadership Conference had placed disability rights issues on their agenda since 1978. The American Coalition of Citizens

⁹¹ Ralph Neas, "To Father Lynch," May 17, 1985, Box 27, Folder 5, LCCR, LOC.

⁹² "To Bishop Malone," May 18, 1985, Box 27, Folder 5, LCCR, LOC.

⁹³ "USCCB Leaves Civil Rights Coalition after Kagan Endorsement Highlights Differences." catholicnewsagency.com: Catholic News Agency, May 10, 2010. The USCC left LCCR in 2010.

⁹⁴ Fred Pelka, *The ABC-CLIO Companion to the Disability Rights Movement* (Santa Barbara, CA: ABC-CLIO, 1997); *What We Have Done: An Oral History of the Disability Rights Movement*, 28-29. Pelka placed the Fair Housing Amendments Act of 1988 and the Americans with Disabilities Act in the same group. P. Wright and others made similar statements about LCCR's agenda.

with Disabilities which had introduced the Leadership Conference to disability rights during the Transbus and the Equal Employment Opportunity for the Handicapped Act of 1979 campaigns effectively dissolved in 1983 but maintained their membership in the Leadership Conference until 1985. The American Council of the Blind also remained a member. Leadership Conference members had some familiarity with disability rights prior to the *Grove City* decision.

The newly admitted Disability Rights and Education Fund (DREDF) participated in the Conference's grassroots education and D.C. lobbying efforts. In February 1985, DREDF released a packet of material for their grassroots organizations. The material contained some of the same information found in the LCCR February mailing with modifications that concentrated on issues pertinent to people with disabilities.⁹⁵ In May, DREDF mailed their members information on the need to oppose substantive amendments.⁹⁶ Additionally, they worked with NOW, the NAACP, the National Women's Law Center and the Association of Americans Colleges to prepare and distribute the report, "Injustice Under the Law," which contained evidence of the negative impact of the *Grove City* decision on each of the Acts the Restoration Act would amend.⁹⁷ A year later, DREDF published a lengthier report with additional examples.⁹⁸

Patrisha Wright, DREDF's representative on the Leadership Conference, joined the LCCR executive committee in 1986. She described the partnership that formed between her and Ralph Neas as a "lobbying duo" and credited his efforts as a tutor and facilitator during the Restoration

⁹⁵ "The Civil Rights Restoration Act of 1985," February 1985, Box 27, Folder 9, LCCR, LOC: Disability Rights Education and Defense Fund, Inc.

⁹⁶ "The Civil Rights Restoration Act No Substantive Amendments," May 3, 1985, Box 27, Folder 9, LCCR, LOC: Disability Rights Education and Defense Fund, Inc.

⁹⁷ "Injustice Under the Law: The Impact of the *Grove City College* Decision on Civil Rights in America," 1985, Box 27, Folder 9, LCCR, LOC: Project on Equal Education Rights of the NOW Legal Defense and Education Fund.

⁹⁸ Paul A. Di Donato, "The Impact of the *Grove City College* Decision on Section 504 of the Rehabilitation Act and Other Civil Rights Laws," February 1986, Box 28, Folder 5, LCCR, LOC: Disability Rights Education and Defense Fund, Inc.

Act efforts with assisting DREDF to establish a presence on Capitol Hill.⁹⁹ DREDF's legislative analyst Michael Landwehr also lobbied for the Civil Rights Restoration Act of 1985. The Steering Committee assigned Landwehr and Sharon Rennert of the Epilepsy Foundation to attend meetings with members of Congress as representatives of disability groups. Accounts of the Americans with Disabilities Act often give brief mention of the importance of the Civil Rights Restoration Act of 1987 as a coalition builder. DREDF played a more visible role in the Civil Rights Restoration Act of 1987. However, the skills and relationships they developed from 1984-1986, bolstered their future successes.

5.2.3.3 Gay and Lesbian Rights and CRRA 1985-1986

When the National Gay Task Force (NGTF) and the Gay Rights National Lobby (GRNL) joined the Leadership Conference in 1982, AIDS loomed on the horizon. During 1985-1986, the overwhelming extent of the AIDS crisis challenged established gay and lesbian rights organizations and the newly formed AIDS service organizations. As the number of deaths attributed to AIDS increased and researchers reported that people could transmit AIDS before they had any symptoms, public fears reached a peak. While the Senate Labor and Human Resources Committee met to discuss S. 272 and S. 431 in 1985, the cover of an issue of *Life* magazine proclaimed, "Now No One is Safe From AIDS," beloved movie star Rock Hudson announced that he had AIDS and the media covered community turmoil over the school attendance of children with AIDS. Hostility towards people with AIDS increased. *Time* magazine reported, "AIDS victims and people associated with them experience widespread discrimination, some of it heartless, some of it phobic."¹⁰⁰ *Newsweek* announced, "Ignorance and uncertainty fuel an

⁹⁹ Pelka, *What We Have Done: An Oral History of the Disability Rights Movement*, 418.

¹⁰⁰ Claudia Wallis, "AIDS: A Growing Threat," *TIME*, August 12, 1985, 45.

epidemic of fear that could be almost as destructive as the disease itself.”¹⁰¹ Service organizations valiantly tried to care for people with AIDS as they experienced harsh discrimination.

Efforts to improve Social Security responsiveness and work with New York City and State human rights agencies continued. In addition to trying to secure federal funds for research, treatment and public education, the Task Force, the National Lobby and others worked to protect the rights of people with AIDS. At an October 1985 AIDS Action Conference planning meeting, Jeff Levi of NGTF and Abby Rubenfeld of Lambda gave presentations that linked the political climate and service concerns. They also discussed major civil rights issues including misuse of the newly available blood test, military screening, employment protection, potential quarantine, insurance, reporting requirements, and school children with AIDS.¹⁰² Meanwhile, the multifaceted response the AIDS crisis stretched the capacity of the national organizations. In August 1984, NGTF executive director Virginia Apuzzo had reported, “This community is in a state of crisis—HTLV III, lethargy, anti-gay initiatives being taken.” Organizations struggled to maintain viability. NGTF’s Washington representative Jeff Levi commented that GRNL had not been “a vital presence [in Washington] for the last 14-16 months.”¹⁰³ By the fall of 1985, the Gay Rights National Lobby was bankrupt and both the National Gay Task Force and the Lambda Legal Defense and Education Fund faced financial difficulties.¹⁰⁴

In order to maximize resources, the National Lobby and the Task Force had agreed to divide the political domain with the Lobby taking responsibility for legislative issues and the Task Force responsibility for executive issues. They worked together on LCCR issues such as the Civil

¹⁰¹ Jerry Adler et al., "The AIDS Conflict," *Newsweek*, September 23, 1985, 18.

¹⁰² "AIDS Action '86 Conference Minutes," October 5, 1985, Box 20, Folder 1, Gay Men's Health Crisis records (GMHC records), Manuscripts and Archives Division, The New York Public Library (NYPL).

¹⁰³ "National Gay Task Force Executive Committee Meeting," August 25, 1984, Box 3, Folder 26, NGLTF records, Cornell: microfilm.

¹⁰⁴ "Minutes: Board of Director's Meeting," September 23, 1985, Box 1, Folder 4, GMHC records, NYPL: Gay Men's Health Crisis.

Rights Commission appointments and the nomination of Edwin Meese for the position of Attorney General. For example, Eric Rosenthal, GRNL's political expert, arranged for Jeff Levi from the NGTF to testify against Meese at the 1985 Congressional hearings.¹⁰⁵ In June, the Task Force and the National Lobby along with the Human Rights Campaign Fund (HRCF) mailed a joint letter to every House of Representative member urging them to vote for the Civil Rights Restoration Act.¹⁰⁶ Additionally, as part of the Lobby's legislative role, Rosenthal communicated with Neas about the results of phone calls he made to Senators about co-sponsoring the Restoration Act.¹⁰⁷ GRNL included "actively participat[ing] in the Leadership Conference on Civil Rights throughout the year" as an objective for fiscal year 1984.¹⁰⁸ Both organizations viewed coalition building with the Leadership Conference and other organizations as instrumental for the future success of a gay rights bill.

Still, NGTF and GRNL had a problematic relationship with the Leadership Conference. In 1984 and 1985, Levi had testified at the Meese confirmation hearings; nonetheless, the Leadership Conference had not included Levi on their panel or recognized gay and lesbian groups in their testimony either time. For example, Joseph Rauh spoke on behalf of the Leadership Conference in 1985. He introduced the Conference as "a coalition of 165 national organizations representing Blacks, Hispanics, Women, labor, disabled persons, Asian and Native Americans, senior citizens, religious and civic groups," failing to mention gay and lesbian groups. In contrast, Levi opened his testimony with an acknowledgement of the Task Force's "colleagues at the Leadership

¹⁰⁵ Eric Rosenthal, "To Ralph Neas, Re: Meese nomination and the Civil Rights Restoration Act of 1985," January 22, 1984 [sic], Box 6, Folder 20, HRCF records, Cornell. Rosenthal did not use an organizational title. Later, he is listed as HRCF's political director. HRCF's exec dir was unavailable.

¹⁰⁶ Vic Basile, Jeff Levi, and Nancy Roth, "To Representative," June 14, 1985, Box 6, Folder 14, HRCF records, Cornell.

¹⁰⁷ Rosenthal, "To Ralph Neas, Re: Meese nomination and the Civil Rights Restoration Act of 1985."

¹⁰⁸ "Meetings of the GRNL Board of Directors and the 48," March 28-April 2, 1984, Box 93, Folder 7, Frank Kameny Papers, LOC.

Conference on Civil Rights.”¹⁰⁹ After he testifying against Meese’s nomination in 1984, Levi recognized the experience had been “another coalition-building effort.” Yet, he continued, “We need to get some cooperation in the other direction now—and make sure that the staff of LCCR explicitly and implicitly adds our concerns to their agenda. So far we have been invisible.”¹¹⁰ While the AIDS crisis intensified, the Conference remained silent on mandatory testing and confidentiality and on the 1985 gay rights bill that NGTF and GRNL supported.

Furthermore, the Conference’s objectives did not align with NGTF and GRNL priorities. Rosenthal explained, “Some [of the Lobby’s goals] are central (e.g. AIDS, immigration) and some are more peripheral and are used for coalition-building purposes, as well as worked on for their implications for gay and lesbian civil rights (e.g. Meese, Civil Rights Restoration Act of 1985.)”¹¹¹ With the myriad of other issues needing immediate attention, the national gay and lesbian rights organizations supported and participated in the Conference’s efforts but did not extend their full attention to the Civil Rights Restoration Act of 1985.

Although not a member of the Conference, the Human Rights Campaign Fund actively worked on the Restoration Act.¹¹² In addition to the joint letter sent with NGTF and GRNL, the Campaign Fund wrote “several sets of letters to House Members . . . and asked our constituents to

¹⁰⁹ *Confirmation of Edwin Meese III: Hearings before the Senate Committee on the Judiciary*, 99th Cong., January 29, 30, and 31, 1985, 665. At the time, Levi was NGTF’s Washington Representative. Levi submitted Virginia Appuzo’s written testimony which also referred to the LCCR.

¹¹⁰ Levi, “Levi Staff Report,” 3.

¹¹¹ Eric Rosenthal, “To Civil Rights File,” January 22, 1985, Box 6, Folder 20, HRCF records, Cornell. The memo summarized a meeting between GRNL and a conservative gay political group that had expressed interest in working with GRNL.

¹¹² The newly formed Human Rights Campaign Fund (HRCF) had strong ties to the Gay Rights National Lobby. Steve Endean, the executive director of GRNL from 1978-1983 had instigated the organization of a political action committee to increase the political strength of the gay and lesbian rights movement. Endean took the role of treasurer for the HRCF. As he recalled, “The Campaign Fund unofficially was to work hand-in-glove with GRNL.” The two organizations merged in 1985. Similar to the National Lobby’s participation in the Voting Rights Act Extension of 1982 as a way to demonstrate their belonging in the larger civil rights community, the Human Rights Campaign Fund would use their efforts on the Civil Rights Restoration Act to support their Leadership Conference membership application.

write in support of the Bill.” HRCF also joined the Restoration Act Steering Committee.¹¹³ Eric Rosenthal, as a representative of the Campaign Fund, served on a subcommittee with Neas, Pat Reuss, Pat Wright and others.¹¹⁴ On July 2, 1985, HRCF executive director Vic Basile, participated in the Leadership Conference Speak-Out held on the 21st Anniversary of the Civil Rights Act of 1964. Basile mentioned “the millions whose civil rights have yet to be heard.” In an interview after the event, Basile encouraged gays and lesbians to contact their Congressional representatives. “We must reach out and join with other organizations,” he implored, “if we are ever to make this a fair and just society for everyone, gays and lesbians included.” In contrast to Rauh’s avoidance of naming gay and lesbian rights organizations, Basile described the Conference as “a highly respected coalition of labor, religious, disability, women’s, gay and lesbian and other organizations”¹¹⁵ Unlike the financially strapped Task Force and National Lobby, the Campaign Fund had money to share.¹¹⁶

In 1986, while the Civil Rights Restoration Act’s prospects seemed slim, Assistant Attorney General Charles Cooper sent a memo to Ronald Robertson, general counsel for the Department of Health and Human Services, that would help cement the bonds between disability rights organizations, gay and lesbian rights organizations and AIDS service organizations. Cooper concluded that Section 504 did not protect an individual who could transmit a disease, real or perceived. The ruling specifically applied to people with AIDS, ARC or HIV positive status. The

¹¹³ "Draft: Application for Membership in the Leadership Conference on Civil Rights," nd circa 1986, Box 12, Folder 21, HRCF records, Cornell.

¹¹⁴ Jeffrey Menzer, "Memorandum," April 22, 1985, Box 6, Folder 14, HRCF records, Cornell.

¹¹⁵ "Basile Speaks Out for Civil Rights Restoration Act," in *The Campaign Fund Report*, Fall 1985, Box 341, Folder 8, GMHC records, NYPL.

¹¹⁶ "1984 Election Round-Up," 1984, rmc.library.cornell.edu/HRC/exhibition/changingroles; Human Rights Campaign Fund, "Federal Contributions Updated: November 4, 1986." HRCF funded the Democratic Congressional, the Moderate Republican PAC and the NOW PAC. The Campaign Fund distributed approximately \$80,000 to 64 candidates during the 1984 election cycle. In 1986, the amount had more than tripled with \$267,541 distributed to 105 candidates and federal committees.

Leadership Conference responded with a letter to Attorney General Meese that sharply rebuked Cooper's position. In addition to the stalemate on abortion, the Leadership Conference on Civil Rights would need to respond to the civil rights of people with AIDS during their final effort to pass the Civil Rights Restoration Act.

5.3 100th Congress: Civil Rights Restoration Act 1987-1988, Civil Rights and Infectious Disease

When the 99th Congress adjourned, the legislation to overturn *Grove City* had reached an impasse over abortion amendments. Reports on the negative impact of the *Grove City* decision on civil rights enforcement drove the continued campaign while the Democrats Senate success in the 1986 election renewed enthusiasm. The Leadership Conference chose the Civil Rights Restoration Act and the Fair Housing Act Amendments as their top priorities in the 100th Congress.¹¹⁷ With Senator Joseph Biden (D-DE) replacing Strom Thurmond (R-SC) as the chair of the Judiciary Committee and Edward Kennedy (D-MA) replacing Orrin Hatch (R-UT) as the chair of the Labor and Human Resources Committee, Ralph Neas optimistically predicted, "We will have Ted Kennedy reporting the bill [CRRA] out of the committee with a 2-to-1 margin. And once it gets to the floor, the Senate Majority leader will ensure that it is taken up expeditiously and passed expeditiously."¹¹⁸ In the House, leadership of the Judiciary, and Education and Labor Committees remained in the hands of Democrats Peter Rodino (D-NJ) and Augustus Hawkins (D-CA). Despite the Congressional leadership in support of the Civil Rights Restoration Act of 1987, the bill would still need to overcome the fervent opposition of those who argued it expanded federal authority and tread on religious freedoms.

¹¹⁷ Ralph Neas, "To LCCR National Board Members," May 4, 1987, Unprocessed collection 20912, Box 4, LCCR, LOC.

¹¹⁸ Nadine Cohadas, "Friends in High Places: Lineup in 100th Bodes Well for Civil Rights Community," *CQ Weekly*, November 29, 1986.

Meanwhile, the AIDS crisis continued to escalate. In December 1986, the CDC reported 15,757 of the 28,098 people who met the criteria for AIDS had died. Empirical models predicted the cumulative AIDS case total would reach 270,000 by 1991.¹¹⁹ By December 1987, over 46,000 confirmed AIDS cases had been reported. The Public Health Service estimated between 1 and 1.5 people were infected with the HIV virus.¹²⁰ AIDS Action Council and the National Gay and Lesbian Task Force continued to lobby for research funding and appropriations for services and education. Public protests by members of the newly formed ACT UP organization revealed the rising anger people with AIDS felt towards the lack of government response and limited treatment options. The October 1987 March on Washington and AIDS Memorial Quilt exemplified the resilience and grief of those who had lost partners, family members and friends to AIDS.

5.3.1 Senate: CRRA 1987

Senator Kennedy introduced the Civil Rights Restoration Act of 1987 (S. 557) on February 19, 1987 with Senator Weicker and the support of 51 cosponsors. At a press announcement, Kennedy asserted, "Six unsatisfactory years have passed on civil rights [since Reagan entered the White House] but now the Senate is under new management, and we intend to try again."¹²¹ The Leadership Conference as well as other groups such as the Consortium for Citizens with Development Disabilities which included DREDF, the National Council of La Raza, the NAACP, the People for the American Way, the National Women's Law Center, the National Education Association and AFSCME prepared statements of support to release the same day.¹²² Opponents

¹¹⁹ "Current Trends: Acquired Immunodeficiency Syndrome--United States," *Morbidity and Mortality Weekly Report* 35, no. 49 (1986).

¹²⁰ "Human Immunodeficiency Virus Infection in the United States," *Morbidity and Mortality Weekly Report* 36, no. 46 (1987). The confirmed cases only included individuals who matched the CDC definition of AIDS. The definition did not match the profile of symptoms experienced by women. The estimated number of HIV infections was based on a PHS model that included people who were seropositive but asymptomatic.

¹²¹ Bernard Weinraub, "Two Rights Bills Get Top Priority in New Congress," *New York Times*, February 20, 1987.

¹²² All press releases found in Box 29, Folder 1, LCCR, LOC.

were also prepared. The National Right to Life Committee's press release proclaimed, "'Civil Rights Restoration Act' Doomed Again Unless Pro-Abortion 'Sex Discrimination' Rule Eliminated." Their legislative director Douglas Johnson proclaimed the bill "will not become law, because it would expose thousands of colleges and hospitals to sex discrimination lawsuits unless they provide abortion on demand."¹²³ The U.S. Catholic Conference and the National Association of Evangelicals also opposed the bill. Neither side seemed amenable to compromise.

The Senate Committee on Labor and Human Resources held two days of hearings on S.557 in March and April. Benjamin Hooks testified on behalf of the Leadership Conference in support of the Restoration Act as did spokespersons for the National Organization for Women, DREDF and the NAACP LDF. Hooks maintained the Conference's ardent stance against substantive amendments without taking a position on abortion rights. In a separate panel, individuals shared examples of how discrimination based on disability or sex had limited their employment and education. Some religious leaders presented written statements in support of the Restoration Act without amendments. In opposition, Chuck Fields, speaking on behalf of the American Farm Bureau Federation, echoed the concerns Senators Hatch and Gordon Humphrey (R-NH) had shared in their opening statements about the potential regulatory burden on farmers. Bishop Sullivan expressed the Catholic Conference's strong opinion that without an abortion amendment the Act would "deny some [people] opportunities for freedom of conscience and choice." In general, the rhetoric had not changed from the previous years.¹²⁴

A few weeks before the hearings on S. 557, the Supreme Court decision on *Nassau County v. Arline* held that qualified individuals with contagious diseases were protected under Section 503

¹²³ "Civil Rights Restoration Act Doomed," February 19, 1987, Box 29, Folder 1, LCCR, LOC: National Right to Life Committee, Inc.

¹²⁴ *Civil Rights Restoration Act of 1987: Hearings Before the Committee on Labor and Human Resources*, 100th Cong., March 19 and April 1, 1987, 15, 324, 499, 399-401.

and 504 of the Rehabilitation Act of 1973. Although the case considered a teacher with tuberculosis, activists understood the potential protection the decision could afford people with AIDS as did those who favored restrictive measures against people with AIDS. During the hearings, representatives of the National Association of Evangelicals and the United Families of America responded to the *Arline* decision by defending their rights to “freedom from public health measures” and “to live in [a] world that is safe as possible from disease.” William Bentley Ball, on behalf of the Association of Christian Schools International, applied the *Arline* decision to religious freedom, noting that S. 557 lacked a religious exemption for the Rehabilitation Act. Ball contended, “An ACSI school, solely on the basis of its religious beliefs, would be obligated to refuse to hire an individual affected with AIDS if it had reason to believe that the disease was acquired through homosexual or other sexual conduct deemed offensive to Christian morality.” Ball also expressed concern that refusal to hire a homosexual would be unlawful sex discrimination.¹²⁵ Although the *Arline* decision received minor attention at the hearings in comparison to abortion and a religious tenet exemption, the topic resonated with the circulating debates over mandatory AIDS testing and confidentiality in the political and public spheres.

Senator Humphrey also expressed interest in the *Arline* decision during the hearings. After Deputy Assistant Attorney General for Civil Rights Mark Disler presented the Administration’s position on the Restoration Act, Humphrey asked Disler to submit written responses to several questions including an inquiry on the Supreme Court’s *Arline* decision. Humphrey asked if the decision applied to AIDS and if so “doesn’t the *Arline* ruling become significant in terms of the effect of this bill?” In response, Disler warned that the entities covered by S. 557 would be forced

¹²⁵ Ibid., 582, 77, 232, 384, 535, 19. Former U.S. Rep Mark D. Siljander (R-MI) was president of United Families of America. Dr. Vera McIntyre, founder of United Families of America in Talahassee, FL confirmed the current Florida organization has no association with Siljander's group.

to “acquiesce in the demands of such an infectious person, even though there may be risks to other participants” to avoid “fight[ing] city hall.”¹²⁶ His answer demonstrated a lack of knowledge about the court’s definition of “otherwise qualified” and a paranoia about possible outcomes that would be repeated during the 1988 floor debates.

When the Senate committee met to consider the Civil Rights Restoration Act in May, Humphrey introduced an amendment that would reverse the *Arline* decision by excluding people with contagious diseases from the definition of handicapped in the Rehabilitation Act. The committee rejected the amendment 2-14 with Humphrey and Thurmond the two affirmative votes.¹²⁷ At the time, Humphrey’s amendment received limited attention. An article in the *CQ Weekly* published a few days after the Committee vote described all the rejected amendments except for Humphrey’s attempt to reverse *Arline*.¹²⁸ Although the committee did not support the amendment, opposition to protecting people with contagious diseases, specifically AIDS, had already formed. Earlier, Representative William Dannemeyer (R-CA) and Senator William Armstrong (R-CO) had introduced legislation to overturn the *Arline* decision with an amendment to exclude individuals with contagious diseases from Section 504 protection.¹²⁹

In 1986, the Leadership Conference had protested the Justice Department’s 1986 memorandum that permitted discrimination against people with AIDS under Section 504 if that discrimination was based on fear of contagion.¹³⁰ The March/April 1987 *Civil Rights Monitor*, a publication of the Leadership Conference Education Fund, reported on the *Arline* decision and

¹²⁶ Ibid.

¹²⁷ Edward Kennedy. "S. Rept. No. 100-64: The Civil Rights Restoration Act of 1987, Report Together with Minority Views." 1-38. Hathitrust.org: Committee on Labor and Human Resources, June 5, 1987.

¹²⁸ Nadine Cohadas, "Overturning Supreme Court: Bill to Revive Anti-Bias Laws OK'd by Senate Labor Panel," *CQ Quarterly*, May 23, 1987.

¹²⁹ Dannemeyer introduced H.R. 1396 on March 4, the day after the Court's decision. Armstrong introduced S. 673 on 4/24/1987 prior to Humphrey's amendment attempt.

¹³⁰ "Decision on AIDS Blasted."

noted Dannemeyer and William Armstrong's bills; however, the newsletter did not tie the legislation to the Restoration Act.¹³¹ While the Senate held hearings and met to mark-up the bill, the Conference continued to recruit bill co-sponsors. They distributed legislative alerts, grassroots packets and press releases that encouraged supporters to share their opposition to substantive amendments with members of Congress. In June, the Leadership Conference distributed a statement titled, "Efforts to Weaken Section 504 Must Be Defeated" in mailings to Senators, the press, House staff and Conference member organizations along with statements against Title IX abortion amendments and the expansion of religious exemption. While the Conference statement on Section 504 addressed the issue of contagious disease and risk of communicability as applied to otherwise qualified individuals, it did not mention AIDS.¹³²

The Senate Committee on Labor and Human Resources approved the Civil Rights Restoration Act on May 20, 1987 without an abortion amendment and reported the bill to the Senate on June 5, 1987. With the stalemate over abortion unresolved, the bill's success was uncertain. Both of Arkansas' Democratic Senators, Dale Bumpers and David Pryor, had joined as cosponsors on the day the bill was reported, leaving supporters two shy of the 60 needed to stop the filibuster that was assumed opponents would launch. Ralph Neas tallied 70 Senate supporters.¹³³ On July 15, Kennedy added Senate Majority Robert Byrd as a co-sponsorship.¹³⁴

The unexpected retirement of Supreme Court Justice Lewis Powell Jr. on June 27 and Reagan's prompt nomination of Robert Bork for the position disrupted plans for bringing the Civil

¹³¹ "Supreme Court Rebukes Justice Department Position on Section 504," in *Civil Rights Monitor*, March/April 1987, Unprocessed collection 20912, Box 4, LCCR, LOC. A separate article in the newsletter discussed "The Continuing Impact of Grove City." It included excerpts from Hooks' March 19 testimony and examples of negative impact.

¹³² "Civil Rights Restoration Act," June 1987, Box 28, Folder 2, LCCR, LOC: Leadership Conference on Civil Rights. The mailing was dated June 12, 1987; "Efforts to Weaken Section 504 Must Be Defeated," 1987, Box 28, Folder 2, LCCR, LOC.

¹³³ Cohadas, "Overturning Supreme Court."; Ralph Neas and Benjamin Hooks, "To Senator,," June 11, 1987, Box 28, Folder 2, LCCR, LOC.

¹³⁴ "133 Part 14 Congressional Record (Bound Edition)." S19902-20084. govinfo.gov, July 15, 1987.

Rights Restoration Act to the Senate floor.¹³⁵ Journalist Nadine Cohodas reported Kennedy was prepared to ask Byrd “for floor time when Reagan announced Bork’s nomination July 1.” The legislative director of the Women’s Equity Action League, Patricia Rueh recalled, “Right before Bork, we literally talked to about 20 swing votes who were favorably inclined to the bill.”¹³⁶ The Civil Rights Restoration Act of 1987 sat dormant while the Senate confirmation process for the nominations of Bork, Douglas Ginsberg and Anthony Kennedy occupied the Senate’s attention through the close of the first session.

The Human Rights Campaign Fund worked with the Leadership Conference and other civil rights organizations in opposition to Robert Bork’s nomination. According to a HRCF newsletter, “The Human Rights Campaign Fund has been one of the most active members of the coalition . . . sharing contacts, strategies, lists, expertise and other resources.”¹³⁷ The Leadership Conference approved their membership in 1988.¹³⁸ The NGTF had a differing perspective on the Bork nomination process. Media director Urvashi Vaid expressed frustration in her staff report to the board. She complained, “The Board should know that the Leadership Conference on Civil Rights has been less than happy to make gay people visible in this process. They figure if we’re very public about not wanting Bork, that’ll help the congressional bigots.”¹³⁹

¹³⁵ Stuart Taylor, Jr., “Powell Leaves High Court; Took Key Role On Abortion and Affirmative Action,” *New York Times*, June 27, 1987. Although Powell had voted with the majority on Grove City, he had cast key votes sustaining civil rights issues and the right to abortion. Neas described Powell as “a centrist on the Court” and remarked, “The general rule is that if Justice Powell is on our side, we win.” On the other side, Senator Humphrey anticipated, “We seem to be only one vote away from ending the dark night of the abortion holocaust.”

¹³⁶ Nadine Cohodas, “The Post-Bork Civil Rights Agenda: Sponsors Plan Early 1988 Push for Grove City, Housing Bills,” *CQ Weekly*, January 23, 1988.

¹³⁷ “Bork Nomination Solidifies Civil Rights Coalition,” *Momentum*, Fall 1987, 4.

¹³⁸ “Leadership Conference on Civil Rights Executive Committee Meeting,” September 15, 1988, Unprocessed collection 20912, Box 1, LCCR, LOC.

¹³⁹ Urvashi Vaid, “September Staff Report,” October 1, 1987, Box 24, Folder 24, NGLTF records, online. She concluded, “We’re all fed up with the LCCR.”

5.3.2 Senate: CRRA 1988

When Congress adjourned in December, Anthony Kennedy's confirmation appeared assured. The Leadership Conference prepared for the floor debate of the Civil Rights Restoration Act that they hoped would begin once the second session opened. In January, they circulated a longer statement on a potential contagious disease amendment that indicated activists "expected the amendment [offered in committee by Humphrey] will be offered again on the Senate floor when S. 557 is considered." The document presented arguments that could be used against the amendment.¹⁴⁰ Similar to the June 1987 statement, the January 1988 document did not explicitly mention AIDS. On the 20th, Senators received another mailing from the Conference warning them that "several amendments that will be offered on the Senate floor jeopardize the enactment of the Restoration Act."¹⁴¹ The list included the amendment excluding people with contagious diseases from Section 504.

On January 26, the Senate began debate on the Restoration Act. Senator Hatch presented an extended statement in opposition to the bill that decried the "burdens of increased federal jurisdiction" and "over expansiveness." As expected, Hatch spoke on the negative impact of S. 557 on religious organizations and the need for an abortion-neutral amendment. A significant portion of the day's allotted time was spent on *non-germane* amendments regarding the Federal Communications Commission. Two Senators briefly mentioned the contagious disease issue. John Chaffe (R-RI) supported the *Arline* decision because it protected rights "by cutting through the myths and misperceptions and requiring reasonable analysis and medical judgement." Howard

¹⁴⁰ "Coverage of Contagious Diseases: Potential Amendment to S. 577," 1988, Box 7, Folder 16, HRCF, Cornell; Box 120, Folder 40, NGLTF, Cornell; Box 28, Folder 2, LCCR, LOC.

¹⁴¹ Ralph Neas, "To LCCR Presidents and Representatives: Legislative Alert," January 21, 1988, Box 28, Folder 2, LCCR, LOC; Ralph Neas and Benjamin Hooks, "To Senator," January 20, 1988, Box 28, Folder 2, LCCR, LOC. The January 20 letter is a duplicate of the June 11/12 letter. The Legislative Alert did not list the packet contents but it seems likely the statement on contagious diseases was included.

Metzenbaum (D-OH) simply stated: “The Civil Rights Restoration Act is the most important civil rights bill of this decade. . . . It is not about contagious disease.”¹⁴²

On the second day of debate, Hatch continued to denounce the “expansive drafting” of the bill and the burden of “Paperwork, onsite compliance reviews, the need to accommodate persons with contagious diseases, expensive accessibility rules, affirmative action requirements, and much more.” Senators offered several amendments, none of which passed. The failed amendments included an attempt to limit the reach of the bill for religious organizations proposed by Hatch and withdrawn amendments on abortion proposed by Senators Danforth and Kennedy. Before adjourning for the day, the Senate reached a unanimous-consent agreement for the consideration of further amendments the following day which reserved time for a yet to be introduced amendment by Senator Humphrey regarding *Arline* with an expected second degree amendment by Senators Harkin and Weicker.¹⁴³

On January 28, the Senate reached an agreement on abortion and the coverage of contagious disease. On the floor, an amendment submitted by Weicker in collaboration with Metzenbaum and Packwood affirmed that the Restoration Act would not require those receiving federal funds to “perform or pay for an abortion.” Senator Danforth’s amendment to Title IX stated, “Nothing in this title shall be construed to require or prohibit” abortion services and contained a statement noting the section did not permit penalties against individuals seeking or who had received abortion services. Danforth’s “abortion-neutral” amendment had received the support of the National Right to Life Committee and the American Hospital Association prior to the opening of the second session.¹⁴⁴ Both amendments passed.

¹⁴² "134 Part 1-1 Congressional Record (Bound Edition)." S91-180. govinfo.gov, January 26, 1988.

¹⁴³ "134 Part 1-2 Congressional Record (Bound Edition)." S200-77. govinfo.gov, January 27, 1988.

¹⁴⁴ Cohadas, "The Post-Bork Civil Rights Agenda."

When it came time for Senator Humphrey to present his amendment on the *Arline* decision, he twice asked for additional time to finish preparing it. In the interim, S. 557 co-sponsors Spark Matsunaga (D-HI), Paul Simon (D-IL) and John Glenn (D-OH) spoke in favor the bill followed by a lengthy speech from Armstrong on the threat of AIDS and the need to overturn the *Arline* decision. As he yielded the floor, Armstrong gave qualified support for what Humphrey described as an amendment “that is better than the status quo but that it is not much better.” The Harkin-Humphrey compromise excluded individuals with contagious diseases or infections who posed a “direct threat to the health and safety of other individuals.” Individuals unable to “perform the duties of the job” were also excluded from coverage. Senator Pete Wilson (R-TX) made a short statement in support of the compromise which “does afford us legal protection for the handicapped person and legal protection as well as public health protection for the public.” Humphrey and Harkin engaged in a short colloquy that established the intent of the amendment followed the “direct threat” language of the 1978 amendment on coverage for “alcohol and drug abusers.” With no further discussion, the amendment was agreed on. The Senate passed the Civil Rights Restoration Act 75-14.¹⁴⁵

In the end, political exigencies won. In correspondence with Representatives after the Senate passed the Civil Rights Restoration Act, the Leadership Conference noted, “the Danforth Amendment . . . invalidates the Title IX regulation in so far as the regulation is construed to require the performance of or payment for abortions.” However, the letter concluded by urging the House “to pass this vital legislation and send it to President Reagan as soon as possible.”¹⁴⁶ The U.S.

¹⁴⁵“134 Part 1-3 Congressional Record (Bound Edition).” 328-442. govinfo.gov, January 28, 1988. Senator Daniel Inouye (D-HI) spoke after the colloquy. He argued that amendment would overturn the Arline decision and called for greater compassion for people with AIDS, drug users and homosexuals. P384 Since his presentation touched on several AIDS issues not related to the amendment, it appears some of his comments were directed at Armstrong’s earlier remarks.

¹⁴⁶ Ralph Neas and Benjamin Hooks, “To Representative, 2/16,” February 16, 1988, Box 28, Folder 2, LCCR, LOC.

Catholic Conference also distributed a letter to Representatives reaffirming their support for civil rights and hoping the Restoration Act “with the necessary improvements made in the Senate can also be quickly and overwhelmingly approved by the House of Representatives.”¹⁴⁷

Behind the scenes, AIDS Action Council, DREDF, HRCF, NGTF and the ACLU had shaped the contagious disease amendment to “more closely resemble a codification of *Arline* than a rejection of it.”¹⁴⁸ Chai Feldblum, law clerk for Supreme Court Justice Harry Blackmun during the *Arline* case, had taken the position of Director of Legal Research for AIDS Action Council in the fall of 1987.¹⁴⁹ In an interview with Lennard Davis, Feldblum recalled, “It was because of AIDS—the ravaging of the community that was happening at that point in 1987—that I decided I would work for an AIDS advocacy group.”¹⁵⁰ DREDF’s Pat Wright recruited Feldblum to work on the Civil Rights Restoration Act. Feldblum wrote the amendment and legislative history with Humphrey and Harkin.¹⁵¹ She described the use of “direct threat” language as a way to convince the opposition “that they think they won.” Since most people with AIDS did not meet the “direct threat” criteria, the amendment did not exclude people with AIDS from the protection of Section 504. Feldblum explained, “So it sounded bad, but we still won.”¹⁵²

5.3.3 House: CRRA 1987-88

The Democrats’ midterm election success had broadened tactical options. As Ralph Neas explained, “The civil rights community will not have to start every initiative in the Democratic-

¹⁴⁷ Rev. Msgr. Daniel Hoye, “To Representative 2/19,” February 19, 1988, Box 28, Folder 4, LCCR, LOC.

¹⁴⁸ Nan D. Hunter, “Amendment to Section 504: ACLUF Memorandum,” February 2, 1988, Box 41, Folder 1, GMHC records, NYPL.

¹⁴⁹ “Curriculum Vitae for Commissioner Chai Feldblum.” https://works.bepress.com/chai_feldblum/cv/download/2013.

¹⁵⁰ Davis, *Enabling Acts*, 80. Davis interviewed Feldblum in 2013 and 2014.

¹⁵¹ Ibid.; Andriote, “Chai Feldblum, interview transcript,” 2.

¹⁵² Davis, *Enabling Acts*, 80-81; Andriote, “Chai Feldblum, interview transcript,” 2.

controlled House, as has been the case since 1981.”¹⁵³ Political leaders decided the Senate would take the lead in 1987. Representative Tauke, who had introduced the abortion amendment that the Education and Labor Committee had approved in 1985, hoped Senate Democrats would be able to break the abortion impasse. As he recalled, House leaders had been reluctant to compromise in 1985-86 “because they feared the bill could be further watered down by the Republican Senate.”¹⁵⁴ However, journalist Nadine Cohadas noted, “The House has been more restrictive on abortion than the Senate.”¹⁵⁵ The House introduced the Civil Rights Restoration Act of 1987 (H.R. 1214) on February 24, 1987, a week after the Senate introduced S. 557. The bill was once again referred to the House Committee on Education and Labor and the House Committee on the Judiciary; however, neither committee held hearings. On the floor of the House, the only indication of the bill in 1987 was its introduction and the addition of sponsors in March, May, September and November.¹⁵⁶

On February 16, 1988, the House received a request for concurrence on S. 557 which included the abortion neutrality amendment and the contagious disease amendment. On March 1, the House Committee on Rules submitted their report with a resolution for consideration that included a substitute bill from Representative Robert Michel (R-IL) that would expand the religious exemption to include entities “closely identified with the tenets of a religious organization.”¹⁵⁷ The rules resolution proposed a modified closed rule that limited debate to one hour on the substitute bill with no additional amendments allowed.

¹⁵³ Cohadas, "Friends in High Places: Lineup in 100th Bodes Well for Civil Rights Community."

¹⁵⁴ Ibid. This and the Neas quote above appear to be paraphrases by Cohadas.

¹⁵⁵ Cohadas, "Overturning Supreme Court."

¹⁵⁶ "133 Congressional Record (Bound Edition)." govinfo.gov 1987.

¹⁵⁷ Joe Moakley. "H.R. Rept. No. 100-508: Providing for the Consideration of S. 557." 1-3. hathitrust.org: Committee on the Rules, March 1, 1988.

During the March 2 discussion on the rule, the opposition complained about the restrictions on debate and the exclusion of further amendments while supporters claimed, “This bill has been fully debated by both Houses and it was passed,” referring to the House’s 1984 vote.¹⁵⁸ Proponents of the bill used some of the time set aside to debate the rules resolution to discuss other issues such as accessibility for the handicapped and Title IX’s allowance for unisex housing.¹⁵⁹ Representative Tony Coelho (D-CA) spoke passionately on the need to restore Section 504, sharing that he had experienced discrimination as a person with a disability. He emphasized the “Irrational fears and prejudice [that] have prompted uniformed and unjustifiable responses in all aspects of life for people with AIDS” in his support for the contagious disease amendment.¹⁶⁰ The House voted 252-158 in favor of the modified closed rule.

During the first hour of debate, the House considered the bill as a whole. Several discussed the contagious disease amendment.¹⁶¹ Representatives Hawkins, Edwards and Jeffords dispassionately clarified the amendment in their descriptions of the Restoration Act’s strengths.¹⁶² As Edwards explained, “This amendment is necessary solely to allay the fears of some employers who have misinterpreted the *Arline* decision as requiring them to take unwarranted risks in hiring individuals with contagious diseases or infections.”¹⁶³ In opposition, Dannemeyer warned of the public health danger the contagious disease amendment would create. According to Dannemeyer, the neurologic impairment some people with AIDS experienced “poses serious safety questions about the ability of these persons to function in society.” He also claimed that opportunistic

¹⁵⁸ "134 Part 2 Congressional Record (Bound Edition)." H2912-99. govinfo.gov, March 2, 1988. Hawkins

¹⁵⁹ Ibid., 2920,23. Colloquys: Gordon-Hawkins, Derrick-Edwards

¹⁶⁰ Ibid., 2923-24.

¹⁶¹ I only considered spoken remarks. Garcia, Hayes, Miller, Weiss, Ownes and Waxman made forceful statements about the discrimination people with AIDS experienced in their extended remarks.

¹⁶² "134 Part 2 Congressional Record (Bound Edition)," 2931, 47, 35.

¹⁶³ Ibid., 2947.

infections associated with AIDS were “highly contagious and easily transferred to others.”¹⁶⁴ During the time set aside for discussion on the substitute bill with the expanded religious exemption, Representatives did not mention contagious disease or AIDS. The substitute bill failed with 146 in support and 266 opposed. Immediately after the vote on the substitute, the House voted 315 to 98 in support of Civil Rights Restoration Act of 1987.

5.3.4 Reagan Veto

During House consideration of S. 557, President Reagan indicated his intention of vetoing the bill. In response, the Leadership Conference requested that their membership contact Congressional supporters. Neas emphasized the urgent need for a swift response, suggesting members could send a Western Union mailgram with one of the preset messages.¹⁶⁵ At the same time, the Moral Majority organized an onslaught against the bill. The veto override debate brought increased attention to the contagious disease amendment and gay rights.

In her study of the religious right’s influence on gay and lesbian activism, Tina Fetner finds that the Moral Majority and other organizations used anti-gay messages to build their collective identity and mobilize supporters to make contributions and become involved in the political process.¹⁶⁶ The Moral Majority had used AIDS as a scare tactic as early as 1983 when they placed an image of a family with young children, all wearing surgical masks, on the front cover of their magazine surrounded by the title “AIDS: Homosexual Diseases Threaten American Families”¹⁶⁷ After the Senate Labor and Human Resources Committee had reported S. 557 in June 1987, the Moral Majority expressed their dismay about the impact of the *Arline* decision. On July 21, 1987,

¹⁶⁴ Ibid., 2943.

¹⁶⁵ Ralph Neas, "President Threatens to Veto the Civil Rights Restoration Act. Need for Immediate Contact with Key House and Senate Members.," March 7, 1988, Unprocessed collection 20912, Box 3, LCCR, LOC.

¹⁶⁶ Fetner, *How the Religious Right Shaped Lesbian and Gay Activism*, 60.

¹⁶⁷ "AIDS: Homosexual Diseases Threaten American Families." Lynchburg, VA, July 1983.

James Boulet, Jr., Moral Majority director of legislative affairs, sent Senators a letter warning that, “S. 557 will expand the reach of Arline into virtually every walk of American life.” According to Boulet, activists such as Ben Schatz of the National Gay Rights Advocates would pursue expensive lawsuits against municipalities and states, and public health services, doctors and hospitals would be unable to enforce necessary protective health measures.

In 1988, on the same day the Senate sent the bill to the House, the Moral Majority issued a report titled, “Additional Facts on the Civil Rights Perversion Act” that insisted, “The combination of the Rehabilitation Law and this new bill poses the serious threat that religious organizations would be forced to accommodate many activities and behaviors completely offensive to their basic religious doctrines.” The report concluded, “Without a strong religious exemption added to the Rehabilitation Act and an updating of the sex discrimination exemption, this bill in its current form is totally unacceptable and must be defeated.”¹⁶⁸ A NGLTF summary of the Moral Majority’s involvement contended, “The issue that was picked to strike fear into the hearts of elected officials was lesbian and gay civil rights.”¹⁶⁹ By shifting the message of the Restoration Act away from the uninspiring debate over religious control v. religious affiliation and to the threat of homosexuals, the Moral Majority mailings would generate a significant grassroots response.

After Congress sent the Civil Rights Restoration Act to the White House for the President’s signature, the Moral Majority sent an alarmist message to the church leaders in their network. The memorandum implored pastors to announce the threat of the “Civil Rights Sodom and Gomorrah

¹⁶⁸ “Additional Facts on the Civil Rights Perversion Act,” March 1, 1988, Unprocessed collection 20912, Box 2, LCCR, LOC: Moral Majority, Inc. Based on letterhead within the Report and content, this appears to be based on a 40 page memorandum from the Rutherford Institute dated 2/24/1988.

¹⁶⁹ National Gay and Lesbian Task Force, “House of Representatives Voting Record,” April 1, 1988, Box 3, Folder 33, NGLTF records, Cornell: microfilm.

Act” from the pulpit, in bulletins and newsletters. Recipients were informed, “THIS BILL IS THE GREATEST THREAT TO RELIGIOUS FREEDOM AND TRADITIONAL MORAL VALUES EVER PASSED.” Moral Majority leaders Falwell and Jerry Nims advised, “If this bill becomes law . . . it will protect active homosexuals, transvestites, alcoholics and drug addicts, among others, under the government’s anti-discrimination laws” and declared, “Failure to obey this perverted law could result in lawsuits costing millions of dollars begin brought against our churches by militant gays, feminist and others.”¹⁷⁰

On March 10, a group of leaders from the religious right, including the Moral Majority, asked Congress to clarify their intent on the scope of the religious exemption; the protection of homosexuality, alcoholics and drug addicts, and how the bill would impact the ability to use AIDS antibody tests. They assumed Reagan would veto the Civil Rights Restoration Act. Although the tone was not as inflammatory, the letter indicated dramatic results if Congress overrode a veto, proclaiming, “Without these clarifications, we are informed that there will be a massive number of lawsuits filed by the radical elements intent upon the destruction of traditional values.”¹⁷¹ Although the Moral Majority was in decline during 1988 and disbanded in 1989; people who identified as the religious right remained a strong voting bloc. Religious television networks, radio programs and the sophisticated organizations wielded political clout. Fetner concludes, “Never before had evangelical Christians had such a stronghold on electoral politics as in the late 1980s,

¹⁷⁰ Falwell and Nims, "Special Memorandum to Pastors." Falwell was founder and Chancellor of Liberty University, an educational institute that was not controlled by a religious organization. In 1984, Roy Jones, director of legislative affairs for the Moral Majority testified about the negative impact of CRA 1984 on Liberty University. During the debate to override the veto, a list of educational institutions that had applied for religious exemption was added to the House Congressional Record. The list which had been updated in March 1988 did not include Liberty University. Congressional Record, March 22, 1988 p.4772-73.

¹⁷¹ Jerry Nims et al., "To Senator," March 10, 1988, Unprocessed collection 20912, Box 2, LCCR, LOC. The signees represented the Moral Majority, Concerned Women for America, Coral Ridge Ministries, Eagle Forum, Focus on the Family, Free Congress Foundation, Liberty University, and the National Black Coalition for Traditional Values.

the era of the New Christian Right.”¹⁷² While the Senate and House had not mentioned gay rights during the floor debate on the Restoration Act, ignoring the letter would have been politically unwise.

On March 16, President Reagan returned the bill to the Senate with his replacement, the Civil Rights Protection Act of 1988. The same day, the Leadership Conference circulated an eight-page report rebutting the Moral Majority’s “disseminated materials replete with inaccuracies, disinformation, and distortions” to Congress along with a list of religious organizations that supported the Restoration Act and a letter from National Association of Independent Colleges and Universities.¹⁷³ The Q&A format addressed homosexuals, alcoholics and drug addicts, and persons with contagious diseases as well as coverage of religious organizations, the religious tenet exemption and abortion. The report noted that entities could “discriminat[e] against an individual solely on the basis of the fact that the individual is homosexual;” however, it also mentioned, “Homosexual groups recognize this lack of protection in seeking new legislation specifically prohibiting discrimination on the basis of a person’s sexual preference.”¹⁷⁴ While not an endorsement of the gay and lesbian civil rights acts that had been introduced in Congress since 1975, the LCCR report did recognize that discrimination existed and acknowledged the work of activists. Statements made during the House and Senate floor debate on the veto appeared to rely on the Conference report. In the House, Representative James Oberstar (D-MN) offered the full report for inclusion in the Congressional Record.¹⁷⁵ On the other side, Senator Hatch quoted a

¹⁷² Fetner, *How the Religious Right Shaped Lesbian and Gay Activism*, 59, 65.

¹⁷³ Benjamin Hooks and Ralph Neas, "To Senator 3/16," March 16, 1988, Box 28, Folder 2, LCCR, LOC; "Civil Rights Restoration Act Questions and Answers," March 1988, Box 19, Folder 2, LCCR, LOC: Leadership Conference on Civil Rights.

¹⁷⁴ Nims et al., "To Senator."; "Civil Rights Restoration Act Questions and Answers," 1.

¹⁷⁵ "134 Part 4-2 Congressional Record (Bound Edition)." H4752-91. govinfo.gov, March 22, 1988.

portion of the report on religious organizations, referring to it as “totally misleading and a deliberate attempt to fool Senators.”¹⁷⁶

On March 17, Hatch introduced Reagan’s alternate bill, the Civil Rights Protection Act. After a disagreement about scheduling a vote in response to the President’s veto, Hatch controlled the Senate floor while Kennedy worked on a unanimous consent agreement for debate. The contagious disease provision in the President’s bill was identical to the amendment in the Civil Rights Restoration Act. Nonetheless, Senators expressed continued opposition to the Restoration Act’s protection of people with AIDS on the basis of the perceived expense of accommodations, the potential for costly lawsuits and moral objections. Helms expressed the strongest moral opposition. He argued that a District Court decision that found a “transvestite is a handicapped person,” though vacated on a technicality, portended future court action that would prohibit the federally funded Head Start program “from refusing to hire a transvestite.”¹⁷⁷ Helms also warned that the *Arline* decision would interfere with moral or theological influenced employment decisions. While receiving attention from each speaker, concern about AIDS was enfolded in the larger discourse of the Restoration Act’s expansion of government regulation and religious freedom and was not the primary topic of discussion.

When Kennedy took the floor, he disputed the Moral Majority’s March 10 letter as did Senator Harkin. In response to the Moral Majority’s claim that Congress intended to include “homosexuality as a protected classification under the present law,” Kennedy avowed, “That is absolutely, flagrantly untrue.” Kennedy also rejected the Moral Majority’s claim that the Restoration Act would grant extended protection to people with alcohol and drug addictions.

¹⁷⁶ "134 Part 3 Congressional Record (Bound Edition)." S4223-76. govinfo.gov, March 17, 1988.

¹⁷⁷ Ibid., 4235. Senators Hatch, Helms, Humphrey, David Karnes (R-NE) and Steve Symms (R-ID) spoke against an override and in favor of the President’s bill.

Harkin described the letter as “filled with falsehoods, innuendoes, and gross distortions of the provisions of S. 557” and specifically countered the letter’s assertion on homosexuality: “This bill provides no civil rights protections for homosexuals. Period; no ifs, ands, or buts.” While Kennedy did not mention AIDS, Harkin explained the contagious disease provision and followed with commendation for the U.S. Catholic Conference’s statement, “Discrimination directed against persons with AIDS is unjust and immoral,” also found in the Leadership Conference report. The March 17 floor discussion ended with unanimous consent to hold 90 minutes of debate on the veto on Tuesday, March 22, followed by a vote.¹⁷⁸

The few days delay allowed the Moral Majority and other organizations additional time to mobilize their grassroots supporters.¹⁷⁹ In both the House and Senate, contagious disease and homosexuality received attention on the floor that was absent during the debate on the Restoration Acts’ passage. Most of the Senators who spoke during the March 22 floor debate responded to the hundreds or thousands of phone calls, telegrams and letters that they had received from constituents who believed the bill would force churches to hire homosexual drug addicts with AIDS. Senator Hatch noted, “In fact, at one point 80,000 calls per hour came in to express concern about the Grove City bill.”¹⁸⁰ Speakers chastised the “campaign of misinformation and distortion” and the “mischievous and deceptive campaign” and decried the “outrageous untruths,” “scare tactics” and “hypothetical horror stories” that had been distributed.¹⁸¹ Most supporters felt it necessary to address their constituents’ claims that the Restoration Act would function as a gay rights bill. During the veto override debate, members asserted that the bill did not “grant

¹⁷⁸ Ibid., 4263, 72. Weicker-4261-64, Boschwitz-4271, Simon -4272-73, Metzenbaum 4273-74. Kennedy, who had co-sponsored legislation to amend the Civil Rights Act of 1964 to include sexual orientation as a protected class, supported civil rights for sexual minorities.

¹⁷⁹ "134 Part 4-1 Congressional Record (Bound Edition)." S4633-71. govinfo.gov, March 22, 1988. Senator Mitchell indicated the Free Congress Foundation, Florida Coral Ridge Ministries and others were involved.

¹⁸⁰ Ibid., 4661.

¹⁸¹ Ibid., 4639, 34, 44, 53.

homosexuals any special rights” or “give any additional rights to persons with AIDS.”¹⁸² Others noted the support of major religious organizations such as the Catholic Church, Baptists, Methodists and American Jewish Congress proved the Moral Majority’s claims were inaccurate.¹⁸³ Although many made broad statements against discrimination, no one mentioned the discrimination gay men and intravenous drug users experienced because of perceptions that they had AIDS, a qualifying handicap for protection under section 504. The Senate overrode the President’s veto 73-24. After engaging in a similar debate, the House concurred with a vote of 292-133 in favor of the override.

5.4 Chapter Conclusion

Although activists placed the significance of the Civil Rights Restoration Act in relationship to the success of the Americans with Disabilities Act, the immediate political significance for people with AIDS was not clear at the time. Jonathan Engel describes the late 1980s as a period of conservative backlash against AIDS. He explains, “Conservative legislators joined the backlash by introducing restrictive legislation to various state and federal bodies governing the manner in which AIDS patients should be identified, quarantined, prohibited from donating blood, marked for identification, and generally tagged as responsible for their own plight.”¹⁸⁴ The same Congress that passed the Restoration Act had also passed the “no promo homo” amendment offered by Jesse Helms 94-2 the prior October and eliminated a section on voluntary testing and confidentiality from an omnibus AIDS health bill passed in October 1988. In August, Reagan responded to the President’s Commission on the HIV Epidemic

¹⁸² Ibid., 4654, 67.

¹⁸³ Ibid., 4644.

¹⁸⁴ Jonathan Engel, *The Epidemic: A Global History of AIDS* (New York: Smithsonian Books/Collins, 2006), 73.

recommendation to issue an executive order to protect people with HIV/AIDS against discrimination with a weaker approach that order federal agencies to develop guidelines on workplace discrimination instead.¹⁸⁵ Support for the Restoration Act's contagious disease language did not indicate legislative or administrative support for all AIDS-related legislation.

Activists remained hopeful. Nan Hunter, director of ACLU AIDS and gay rights projects, described the success of the Restoration Act contagious disease amendment as "an enormous relief, especially after the horrible Senate vote on the Helms amendment on educational materials, to see the Senate stand firm on preserving elementary anti-discrimination principles."¹⁸⁶ A fall HRCF legislative update optimistically reported, "The Congress has, however reaffirmed federal protection for people with AIDS in the Civil Rights Restoration Act" and predicted the expected success of the Fair Housing Amendments Act and the Americans with Disabilities Act would further expand protection.¹⁸⁷ Congress did stand firm against attempts to add amendments to the Fair Housing Amendments Act that would have excluded people with AIDS. In October, the Justice Department affirmed the contagious disease protections offered by the Civil Rights Restoration Act and the Fair Housing Amendments Act. Although the statement did not call for the "broad private anti-discrimination protections" recommended by the Presidential Commission, AIDS Action Council executive director, Jean McGuire recognized, "It will provide an important clarification for the courts as they respond to the emerging litigation relating to AIDS and HIV infection."¹⁸⁸ The legal battle continued. When Congress debated the Americans with Disabilities

¹⁸⁵ Sandra Boodman, "Reagan Turns Aside AIDS Panel Report," *Washington Post* 1988; Julie Johnson, "Reagan, Spurning Tougher Moves, Orders Anti-Bias Rules on AIDS," *New York Times*, August 3, 1988, 1.

¹⁸⁶ Nan D. Hunter, "Press Release," February 2, 1988, Box 120, Folder 50, NGLTF records, Cornell: American Civil Liberties Union.

¹⁸⁷ Human Rights Campaign Fund, "Update: AIDS Legislation," 1988, Box 13, Folder 25, HRCF records, Cornell.

¹⁸⁸ AIDS Action Council, "Justice Department Issues Anti-Discrimination Opinion," October 6, 1988, Box 39, Folder 4, AIDS Action Council Records, Special Collections Research Center, Gelman Library, The George Washington University (GWU).

Act in 1990, an amendment to exclude people with AIDS almost derailed the years of effort. However, the optimism of 1988 was not without merit. The success of 1988 strengthened coalition bonds and impelled further action. Conversely, if the Restoration Act had limited the protection Section 504 offered people with AIDS, it is difficult to imagine Congress would have overturned the decision a few months later with the Fair Housing Amendments Act or would have staked the passage of the Americans with Disabilities Act on an issue that had already failed.

CONCLUSION: THE CHAPMAN AMENDMENT

After Representatives Tony Coelho (D-CA) and Hamilton Fish (R-NY) and Senators Tom Harkin (D-IA) and David Durenberger (R-MN) brought the Americans with Disabilities Act (ADA) to Congress on May 9, 1989, the Human Rights Campaign Fund (HRCF) announced, "New AIDS Anti-Discrimination Protections Introduced in Congress." The press release placed the ADA in the context of the Civil Rights Restoration Act and the Fair Housing Amendments Act, noting that with their passage, "The government added AIDS and HIV to the list of federally protected handicaps." HRCF communications director Robert Bray explained, "Last year Congress banned landlords from evicting PWAs [People with AIDS] from apartments, and prohibited federal employers and their contractors from firing PWAs from their jobs . . . Now we are working to pass legislation that protects PWAs and people with HIV in both the public and private sector." HRCF joined a coalition that included AIDS Action Council, the American Civil Liberties Union, the National Gay and Lesbian Task Force and "numerous 'mainstream' health and disability rights groups."¹ Executive director Tim McFeeley would later describe the ADA as "HRCF's number one legislative priority this cycle."²

Recent organizational changes within the national gay and lesbian rights movement had left the Campaign Fund in the strongest position to provide the voice of the movement during the ADA campaign. Jeff Levi's resignation from the National Gay and Lesbian Task Force (NGLTF) had created a void in the organization. New executive director Urvashi Vaid reported that she and

¹ Robert Bray and Carlton Lee, "New AIDS Anti-Discrimination Protections in Congress," May 12, 1989, Box 120, Folder 43, National Gay and Lesbian Task Force records (NGLTF), Division of Rare and Manuscript Collections, Cornell University Library (Cornell). The release included a sidebar, "A Triumvirate of Federal Anti-Discrimination Protection for People with AIDS and HIV" that included paragraphs on the CRRA, the FHAA and the ADA.

² Sheri Cohen Darbonne, "Human Rights Campaign Fund to Push for Local Organizing," *Montrose Voice*, November 10, 1989. The press release described it as "one of HRCF's top legislative priorities for the 101st Congress."

legislative director Peri Jude Radecic were “struggl[ing] to fill the huge gap left by Jeff’s departure.” Although NGLTF considered the ADA a priority, they pulled back from their leadership position in the National Organizations Responding to AIDS (NORA) in 1990 and did not have the staff to lobby for the ADA.³ In comparison, the Human Rights Campaign Fund had recently transitioned from a political action committee to a political group with lobbyists, a grass roots base and a political action committee. Tim McFeeley joined the HRCF as executive director in May 1989 and built on established plans to expand local involvement. McFeeley directed HRCF staff to attend community pride events and fundraisers across the country to increase grass roots support for federal issues and used these opportunities to disseminate information about the ADA.⁴ With 26 full-time employees and a \$3.5 million budget, the Campaign Fund had the resources to lobby and direct the grass roots efforts needed to sway votes.⁵ This brief overview of HRCF’s political strategy and actions regarding the Americans with Disabilities Act reveals the still unexplored involvement of the gay and lesbian rights movement.

After HRCF founder Steve Endean resigned in 1983, he developed the Fairness Fund which merged into HRCF in 1988. Endean promoted a mailgram system called “Speak Out” to activate grassroots support. Supporters authorized HRCF to bill their phone number for a defined number of mailgrams to Congress. HRCF’s computer system allowed them to send representatives and senators mailgrams from their own constituents.⁶ During the campaign, HRCF employed “tens of thousands of messages.” Some mailgrams targeted individuals with a large volume of messages. For instance, in an attempt to secure bill sponsorship from Senator Lloyd Bentsen (D-

³ Urvashi Vaid, “To NGLTF Board of Directors,” April 4, 1990, Box 24, Folder 53, NGLTF records, online. GMHC hired Levi as a consultant 8/1989.

⁴ Darbonne, “Human Rights Campaign Fund to Push for Local Organizing.”

⁵ Jim Marks, “Activism for the ‘90s: \$--The Root of All Politics, HRCF is Building Our Future,” *The Alternative* (1990).

⁶ Endean and Eaklor, *Bringing Lesbian and Gay Rights into the Mainstream*, 170. HRCF started using the name “Speak Out” in late 1989. Legislative updates refer to the messages as mailgrams until 11/1989.

TX), HRCF sent him over 600 mailgrams in late June/early July 1989. Bentsen cosponsored the bill on July 17, 1989.⁷ Some targeted small groups such as a March 1990 mailgram sent to members of committees to encourage them to avoid weakening amendments.⁸ The largest distributions occurred in the final months of the campaign. In May, HRCF sent more than 10,000 Speak Out messages to the House and Senate in an attempt to block an amendment offered by Jim Chapman (D-TX) to remove food handlers with HIV/AIDS from the ADA's protection.⁹ The next week, legislative director Steve Smith noted the timing had been particularly effective as the messages arrived the same day the Senate received a letter from the National Restaurant Association in support of the Chapman amendment. Additionally, HRCF worked with the Leadership Conference on Civil Rights to use mailgrams to "expedite the legislative process wherever possible."¹⁰ In his memoir, Endean explains he founded the Fairness Fund to "Generat[e] constituent mail to Congress." Although the program had initially met with skepticism, Endean notes by June 1990 they had almost 30,000 participants.¹¹ The system allowed HRCF to expediently deliver grassroots pressure during the ADA campaign.

Lennard Davis argues, "The ADA was a 'stealth' bill kept from the public and the media before its passage."¹² Still, activists needed the public's attention to the bill to educate and encourage supporters. The Human Rights Campaign Fund employed several techniques to influence Congress and motivate additional grassroots support. As part of their drive to increase

⁷ Carlton Lee, "Weekly Legislative Update to Tim McFeeley," July 14, 1989, Box 13, Folder 26, Human Rights Campaign records, (HRCF), Cornell; Cliff O'Neill, "The ADA: How it Finally Happened: Lobbyists Exult Over Victory on Bill," *Dallas Voice*, August 8, 1990. O'Neill reports Bentsen received a total of 3,000 mailgrams and Senator Warner (R-VA) received 1,000 in the campaign to win their sponsorship.

⁸ Steve Smith, "Background Memorandum," March 12, 1990, Box 13, Folder 28, HRCF records, Cornell.

⁹ Human Rights Campaign Fund, "Weekly Legislative Report," May 21, 1990, Box 13, Folder 29, HRCF records, Cornell.

¹⁰ Carlton Lee, "Legislative Update," July 21, 1989, Box 13, Folder 26, HRCF records, Cornell.

¹¹ Endean and Eaklor, *Bringing Lesbian and Gay Rights into the Mainstream*, 142, 73.

¹² Davis, *Enabling Acts*, 229.

the number of cosponsors, HRCF contacted the Hollywood Women's Political Committee and actress Morgan Fairchild to call eight Senators for support.¹³ In the final push, they pursued "carefully targeted media coverage."¹⁴ McFeeley and lobbyist Karen Friedman appeared on radio call-in shows across the country.¹⁵ The Hill & Knowlton public relations firm helped HRCF develop "Op-Ed" pieces for former Surgeon General C. Everett Koop to send to the *Washington Post*, New York's Cardinal O'Connor to send to the *New York Times*, and one from a business perspective to send to the *Wall Street Journal*.¹⁶ The legislative team also discussed a "celebrity" press conference or placing "credible spokespeople" on talk shows and succeeded in getting Health and Human Services Secretary Louis Sullivan on the "Today" show.¹⁷ Delivering paper lunch bags to Congressional offices with the message "BAG THE CHAPMAN AMENDMENT" on the outside and information about the amendment on the inside received attention. Coalition members assisted with the distribution. McFeeley explained, "[It] is a creative way of calling attention to the dangers that we face if Jesse Helms has his way."¹⁸

The Human Rights Campaign Force's weekly legislative reports reveal most of the political work consisted of traditional tactics including strategy meetings, working with legislative staff and mailings to motivate grassroots support. HRCF staff met regularly with the ADA lobbying coalition as a whole and with individual groups of the coalition such as the NORA and the

¹³ Carlton Lee and Steve Smith, "Legislative Progress Report and Activities for Weeks of July 3 and 10," June 30, 1989, Box 13, Folder 26, HRCF records, Cornell.

¹⁴ Steve Smith, "To Tim: Background Memorandum, Weekly Legislative Report 7/2," July 2, 1990, Box 13, Folder 29, HRCF records, Cornell.

¹⁵ "Disabilities Act Becomes Law," *The Edge*, August 16, 1990.

¹⁶ Steve Smith, "To Tim: Background Memorandum, Weekly Legislative Report 6/18," June 18, 1990, Box 13, Folder 29, HRCF records, Cornell; "To Tim: Background Memorandum, Weekly Legislative Report 6/25," June 25, 1990, Box 13, Folder 29, HRCF records, Cornell. NYT and WP had agreed to publish the respective letters. It does not appear they were able to get a business sponsor.

¹⁷ "To Tim: Background Memorandum, Weekly Legislative Report 7/2.," Human Rights Campaign Fund, "Weekly Legislative Report, Week of July 2, 1990," July 2, 1990, Box 13, Folder 29, HRCF records, Cornell.

¹⁸ Gregory King, "HRCF Calls For Passage of Americans with Disabilities Act, Urges Senate to Quickly Pass Conference Report, Immediate Phone Calls to the Senate Can Make the Difference," July 11, 1990, Box 7, Folder 4, HRCF records, Cornell.

Consortium of Citizens with Disabilities (CCD) as well as meeting with the Leadership Conference on Civil Rights which supported the ADA. Senator Kennedy's aide Michael Iskowitz and Tim Westmoreland, committee counsel under Representative Waxman, provided information and strategic advice. For instance, before the House Committee on Education and Labor met to mark-up the bill, Iskowitz strongly encouraged Steve Smith to stand firm against an amendment with a seemingly innocuous wording change from the Senate bill. While the CCD was willing to accept the replacement of "direct threat" with "significant risk" in regards to denied employment, Iskowitz counseled, "any change in this language will invite further tinkering when the bill returns to the Senate and we could end up with something different from "significant risk."¹⁹ The Education and Labor Committee rejected the amendment along party lines. HRCF staff also worked with legislative staff on non-AIDS related ADA issues such as transportation in order to ensure the success of the bill as a whole.²⁰ Additionally, HRCF planned lobbying days with the ADA coalition and coordinated visits to key Representatives and Senators.

When the House adopted Chapman's amendment on May 17, the HRCF was prepared with a more sophisticated strategy than the lunch bag stunt. In April, HRCF lobbyist Karen Friedman had learned from Judiciary Committee staffers that an amendment against "HIV-positive people in food-handling occupations where there is evidence of an adverse public reaction" might be offered. Friedman began the process of developing a case against a possible amendment and educating Committee members to oppose it.²¹ At the end of April, Friedman and Chai Feldblum met with the National Restaurant Association and discovered they were having difficulty finding

¹⁹ Steve Smith, "To Tim: Background to Legislative Report 10/27," October 27, 1989, Box 13, Folder 26, HRCF records, Cornell.

²⁰ Multiple meetings with Chair Dingell's administrative assistant Elanor Lewes and the committee staff Alan Roth.

²¹ Steve Smith, "To Tim: Background Memorandum, Weekly Legislative Report 4/16," April 16, 1990, Box 13, Folder 28, HRCF records, Cornell.

a sponsor.²² When a food handling amendment was offered by Charles Douglas (R-NH) in the House Judiciary Committee, representatives rejected it. After the amendment's defeat, HRCF still anticipated a food handlers bill might be offered from the floor and met with House Rules Committee members asking them to disallow HIV/AIDS amendments from the floor. Lobbyists also delivered an HRCF letter and made phone calls to "friendly" House offices.²³ Before the Rules Committee met, HRCF sent "thousands" of mailgrams asking House members to support the ADA and oppose hostile amendments.²⁴ However, the Rules Committee approved eight amendments, including Chapman's which passed by a 198-187 vote.

The next site of battle was at the conference where the House and Senate would align their versions of the ADA. HRCF focused on getting the conference to delete the amendment. Although optimistic, HRCF remained fearful that the House or Senate would instruct the conference to accept the amendment. While the conferees were selected, HRCF began a concentrated push to defeat Chapman with 10,000 Speak Out messages, Op-Ed pieces, 2,000 letters mailed to gay and lesbian owned businesses, press releases, radio interviews, and an 11,000-piece mailing to active donors, spending approximately \$25,000 in the last month.²⁵ HRCF lobbyists continued to meet with coalition partners and legislative staff to strategize.

HRCF legislative reports reveal that the lunch bag campaign and press conference during this period was not the moment of unity as Young and Davis portrayed it. In the early stages of planning the lunch bag event, lobbyist Karen Friedman updated Tim McFeeley, complaining "At

²² "To Tim: Background Memorandum, Weekly Legislative Report 4/30," April 30, 1990, Box 13, Folder 28, HRCF records, Cornell. The NRA specifically did not want Dannemeyer as a sponsor.

²³ "To Tim: Background Memorandum, Weekly Legislative Report 5/14," May 14, 1990, Box 13, Folder 29, HRCF records, Cornell.

²⁴ Human Rights Campaign Fund, "Weekly Legislative Report, Week of May 14, 1990," May 14, 1990, Box 13, Folder 29, HRCF records, Cornell.

²⁵ Smith, "To Tim: Background Memorandum, Weekly Legislative Report 7/2."; Gregory King, "HRCF Hails Passage of the Americans with Disabilities Act, Calls Legislation 'An Historic Landmark'," July 13, 1990, Box 7, Folder 4, HRCF records, Cornell.

this point, we've nixed the press conference concept since I can't get one iota of help from our so-called 'coalition partners.'" She also expressed frustration with the partners who appeared to have given up. "Our coalition partners think we'll lose," Friedman complained. "They always think we'll lose."²⁶ It is not clear when Pat Wright made the announcement that "the disability community would pull out its support of the ADA if the Chapman amendment was part of the bill." Young notes that Wright spoke at a press conference announcing the campaign.²⁷ The bags were distributed after the 4th of July break. Steve Smith's June 25 update to Tim McFeeley refers to "the impressive ultimatum by Pat Wright" in negative context, noting, "As you may have expected, . . . [it] appears to have lost any force it might have." Smith reported that Senator Harkin's staff said he "has no intention of killing the ADA if the Senate insists on the Chapman amendment." Chai Feldblum did not support the strategy; some disability rights advocates "have apparently told Senator Harkin that they want the bill with or without Chapman." Although Iskowitz claimed, "Senator Kennedy would be willing to kill the bill," Smith worried about dividing the coalition and losing the opportunity to pass a disabilities rights bill in the future "now that the business community is mobilized against it." Instead, Smith proposed two strategies to win: Getting Dole and Hatch on their side and continuing to gather votes against Helms. The HRCF called on their field offices to mobilize additional grassroots support.

Despite the ultimatum, the bill moved forward. In the final days, Senator Hatch, his staff member Nancy Taylor, Wright, Feldblum and Iskowitz wrote a compromise amendment in line with the "direct threat" language of the Civil Rights Restoration Act.²⁸ The language allowed food

²⁶ Karen Friedman, "To Tim [McFeeley]," 1990, Box 7, Folder 4, HRCF records, Cornell.

²⁷ Young, *Equality of Opportunity*, 169; Young, "'Same Struggle. Different Difference': The Americans with Disabilities Act and the Disability Rights Movement, 1964-1990," 401. Lennard Davis' account is based on Young. Both interviewed Wright but not anyone from HRCF.

²⁸ "'Same Struggle. Different Difference': The Americans with Disabilities Act and the Disability Rights Movement, 1964-1990."

providers to exclude people with diseases that the Secretary of Health and Human Services would identify as communicable through food handling. Since HIV/AIDS was not transmissible through food handling, employers could not discriminate against people with AIDS or who were HIV positive. The House adopted the conference report with the compromise 377-28 on July 12, 1990, the Senate 91-6 on July 13. In response, McFeeley praised the “tens of thousands of lesbian and gay Americans [who] got involved in this battle, contacted their members of Congress and helped to switch many votes.”²⁹ On June 26, 1990, President Bush signed the Americans with Disabilities Act at a large outdoor ceremony. Steve Smith and Karen Friedman were among those invited to attend. In celebration, the Human Rights Campaign Fund triumphantly announced, “President Bush Signs Landmark AIDS Bill.”³⁰

On July 27, 1989, one year before President Bush signed the Americans with Disabilities Act, the National Organizations Responding to AIDS held a press conference announcing the 100,000th case of AIDS. The press release listed the Americans with Disabilities Act as one of the “three major priorities for action.” Chai Feldblum and Steve Smith participated in the panel discussion.³¹ Just as opponents of the Civil Rights Restoration Act and the Fair Housing Amendments Act had claimed those Acts to be “homosexual rights bills” in their attempts to defeat the legislation, opponents of the ADA such as William Dannemeyer and Jesse Helms had claimed the ADA, too, was a gay rights bill. In a sense, the ADA was a gay rights bill. Since the early years of the crisis, gay and lesbian rights organizations and AIDS service organizations had turned to disability to ameliorate the financial and social impact of AIDS. Legal and political efforts had

²⁹ King, “HRCF Hails Passage of the Americans with Disabilities Act, Calls Legislation “An Historic Landmark”.”

³⁰ “President Bush Signs Landmark AIDS Bill.”

³¹ National Organizations Responding to AIDS, “National AIDS Coalition Marks 100,000th Reported AIDS Diagnosis,” July 27, 1990, Box 39, Folder 3, AIDS Action Foundation records, Special Collections Research Center, Gelman Library, The Goerge Washington University.

secured the place of people with AIDS under the umbrella of federal disability rights protection in the face of concerted efforts against them. The predominant narrative of the Americans with Disabilities Act rests on the efforts of the disability rights movement and subsumes the gay and lesbian rights movement voice within the coalition partnership. Excavating the organizational response to AIDS uncovers and exposes the deeper and greater involvement of the gay and lesbian rights movement. In recognition of their contribution, the gay and lesbian rights movement can claim the ADA as their own. Even more so, the AIDS crisis pushed the gay and lesbian rights movement to recognize and embrace their right to disability.

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