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THE FORGOTTEN MINORITY: THE PHYSICALLY DISABLED AND IMPROVING THEIR PHYSICAL ENVIRONMENT

I do not choose to be a common man. It is my right to be uncommon—if I can. I seek opportunity—not security. I do not wish to be a kept citizen, humbled and dulled by having the state look after me. I want to take the calculated risk; to dream and to build, to fail and to succeed. I refuse to barter incentive for a dole. I prefer the challenges of life to the guaranteed existence; the thrill of fulfillment to the stale calm of Utopia. I will not trade freedom for beneficence nor my dignity for a handout. I will never cower before any master nor bend to any threat. It is my heritage to stand erect, proud and unafraid; to think and act for myself, enjoy the benefit of my creations and to face the world boldly and say, this I have done. For our disabled millions, for you and me, all this is what it means to be an American.¹

I. INTRODUCTION

The plight of the Negro in his search for liberty, justice and freedom in the United States has given rise to constitutional amendments, extensive legislation, involved litigation and, recently, mass personal involvement, e.g. the "civil rights movement." This concern for the Negro has been directed toward promoting the acknowledgement, in law and in fact, of his right to equality. Efforts in behalf of Negroes have increasingly tended to include recognition of the entitlement of members of other minority groups to that same right. For example, the civil rights movement has evolved into the human rights movement, and its goals now include more than only the attainment of solutions for the problems of Negroes; the scope of its endeavors has been widened to embrace promotion of the right of every human being to equality.²

Some of the law regarding civil rights, though specifically conceived to protect the Negro,³ has been codified in general terms. As if in anticipation of the recent broadening of purpose of the whole civil rights idea, early references to the persons sought to be protected were made with such all-inclusive phrases as "any person"⁴ and "any citizen."⁵ Recent civil rights legislation, however, has more carefully categorized the citizens it seeks to protect, usually confining those individuals to only racial, religious and ethnic minorities.⁶ By implica-

¹ Sullivan, Henry Viscardi and the Mislabeled Disabled, SIGN National Catholic Magazine 27 (Oct., 1967). This excerpt is a "Credo" of the disabled.
² The term "equality" is used generally but cautiously here. While its definition in connection with contemporary political activities often includes the currently popular concepts of "peace," "love" and a "healthful environment," as well as the classical precepts of "liberty," "justice" and "freedom," such specificity is not intended at this point. It will be more fully explored as pertains to this article infra.
⁴ U.S. Const. amend. XIV, § 1.
⁶ E.g., "All persons shall be entitled to be free . . . from discrimination or segregation
tion, therefore, other minority groups have been specifically excluded from this later legislation.

Though it be readily admitted that every individual citizen of the United States has been recognized as entitled to the same rights and privileges under law as any other, e.g. to equality, legal recognition and actual procurement of all of those rights and privileges is really an entirely different circumstance since the legislation necessary to secure this recognition for any person or group is either exclusionary or nonexistent. Such gaps between the ideal and the real still exist in our country. This article is intended to point out one of those gaps, and to suggest the means by which that particular gap can be closed. The minority group referred to is the physically disabled (otherwise often referred to in the law as the "handicapped"), and the gap is the disparity between the physical environment as we have erected it about ourselves and the environment as it should be constructed to permit the physically disabled to live and work in equality with their fellow men.

II.

"Equality" is an illusive and often complex concept. It is most clearly understood when defined in context lest its meaning become too general. It relates directly to its specific contemporary environment. As times change, so does man, his life, his life style, his work, his wants and his needs; and, along with these changes come changes in "equality."


8 The reader will note in the ensuing discussion the use of the word "handicapped" will be avoided, even though it is commonly used by laymen, lawyers and legislators in referring to the physically disabled. The reasons for this distinction and a definition of both words will be presented infra.


10 An excellent illustration of the necessity to consider equality as a function of its attendant circumstances is the majority opinion rendered by Mr. Chief Justice Warren in Brown v. Board of Education of Topeka, 347 U.S. 483 (1954): "We must consider public education in the light of its full development and its present place in American life throughout the Nation." Id. at 492-93. Continuing, he stated that with respect to equality "[I]n the field of public education the doctrine of 'separate but equal' [first announced in Plessy v. Ferguson, 163 U.S. 577 (1896), and which persisted for 58 years thereafter] has no place." Id. at 495. The Supreme Court did not specifically overrule Plessy v. Ferguson in Brown, theorizing that the circumstances surrounding equality in public education had so changed that the "separate but equal" doctrine had simply become obsolete and that modern standards must be applied. See id. at 495.
Most aspects of life in America have changed appreciably since the Constitution and most of its amendments were enacted and particularly since the notion of man's equality under our law was first conceived. Technology has so rapidly changed the face of our land that little visible evidence remains of prior centuries. Medical technology has advanced to the extent that many persons who once were considered helpless due to physical disability can now ambulate within limits (but not without difficulty), work productively in many fields, and even strive for the independence and self-confidence that are an esteemed and integral part of the lives of those without physical limitations.

In the case of civil rights, since the Civil War federal legislation has attempted to identify and eliminate the problem areas that have prevented Negroes from gaining the full benefit of their citizenship. With each successive statute, the Congress has extended its definition of equality to exclude forms of discrimination arising from then current events and situations. In the case of the physically disabled, Congress has not yet demonstrated such a responsive awareness. It has begun to do so in several very important areas, but much remains to be done before the physically disabled can be considered to have achieved true equality.

That Congress has recognized the physically disabled is, in itself, significant. Three important steps forward have been taken, steps that hopefully will lead to others. The initial step was the provision of vocational rehabilitation

11 Any attempt to fix a time at which the concept of equality was clearly and unequivocally enunciated in our law is really unnecessary if it be conceded that equality under law is in essence an inherent, natural, fundamental right of all men.

12 "Due to medical and rehabilitation advances, the number of . . . disabled people (out) in the population is steadily increasing and fewer of them are housebound." HEW Rehabilitation Services Administration, Report of the National Commission on Architectural Barriers to the Rehabilitation of the Handicapped, at 1 (Dec., 1967). "These people live among us. They have hopes, talents, ambitions like the rest of us." Id. at 4.


14 It is unfortunate that Congress often seems to act on a he-who-cries-the-loudest-gets-the-milk basis; for however important some of the festering sores of our society and their accompanying vocalization may be, there are other areas in which the loud cries are uttered for only selfish reasons and the soft sobbing of the truly needy is overpowered and goes unheard.

15 "Some inroads have been made in revamping educational, recreational, religious and business establishments to allow disabled citizens full opportunity to participate. Yet it is recognized that so much more must be done in these areas." T. A. Stein, Environmental Barriers to Persons with Physical Disabilities, V Therapeutic Recreation Journal 11, 12 (1st Qtr., 1971) (Dr. Stein was a member of the HEW National Commission on Architectural Barriers to the Rehabilitation of the Handicapped). The "inroads" referred to by Dr. Stein have even included legislative action regarding architectural barriers. An analysis of the effectiveness of existing federal and state legislation in this area will be found infra. For the moment, however, Dr. Stein's observation that "so much more must be done" is sufficient to indicate the value of these measures.
facilities for physically disabled persons. The other two statutory steps consist of the facilitation and promotion of employment and educational opportunities for the physically disabled. The significance of this legislation lies in the acknowledgement thereby that with appropriate and adequate rehabilitation, education, training and placement, the physically disabled can indeed earn the respect of and contribute to society. In so doing, they may start to eradicate the widespread misconception that they are capable only of being a burden upon our society.

Without commenting upon the actual effectiveness of the Vocational Rehabilitation Act of 1920 regarding employment opportunities for the physically disabled, any law which specifies that certain federal officials merely “co-operate in developing, and in recommending to appropriate State agencies, policies and procedures which will facilitate the placement in employment” of physically disabled persons is at best little more than superficial. Similarly, while the Education of the Handicapped Act of 1970 exemplifies the type of comprehensive, progressive and meaningful legislation that is needed to assure the right of the physically disabled to equality, its provisions for educational opportunities at the college level are conspicuously absent.

Regardless of the effectiveness of existing legislation, the physically disabled would not be able to attain a much greater measure of the equality to which they are entitled. They would not, even with further advances in the medical technology that has made many of them ambulatory, be able to move freely

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16 The LaFollette-Barden Act, 20 U.S.C. §§ 31-42, 31 (1964) (otherwise known as the Vocational Rehabilitation Act of 1920) granted funds to the states for the initiation, extension and improvement of their respective vocational rehabilitation facilities and programs. The act includes provision for medical treatment and care efforts in behalf of the physically disabled, which of course must precede any others. (In the respect that the term “vocational rehabilitation” is commonly used in referring to the act, such reference could be misleading because it does not specifically indicate that any medical services are provided for by it.)


19 Supra n.15 at 11.

20 29 U.S.C. § 38. It should, however, be noted that the rehabilitation efforts under this act have been in fact very successful in treating and providing special facilities for the disabled. Supra n.12 at 4.


22 Executive Order No. 11480 is but a small improvement on the statute; it establishes a committee that “shall facilitate the development of maximum employment opportunities for the physically handicapped, mentally retarded, and mentally restored” by supplying information to and promoting cooperation among appropriate groups, and conducting “a program of public education.” 34 Fed. Reg. at 14274.


24 See generally id. The act provides for a diversity of financial assistance, research, experimentation, training and other special programs regarding almost the whole spectrum of activities pertinent to the education of the physically disabled.
about the country. They would not, with proper education and training, be allowed to perform the wide variety of useful functions in business, industry and government for which they would qualify. They would not, with proper placement, have more than token opportunities to “engage in remunerative employment to the extent of their capabilities, thereby increasing not only their social and economic well-being but also the productive capacity of the Nation.” Herein lies the real problem: “The greatest single obstacle to employment (and college educations and just plain mobility) for the handicapped is the physical design of the buildings they must use.”

Thus, as times have changed, it has become possible for the physically disabled to leave the homes, hospitals and special institutions that formerly confined them. Where once equality for them may have meant only that they be protected, cared for, and allowed to live in seclusion and with as little pain or discomfort as possible, now the physically disabled are going out into a society that cannot adequately accommodate them and their desires to live as normally as only the limitations of their individual circumstances permit. The physically disabled, due to medical and rehabilitory successes, now require a new and different kind of equality in their potentially expanded world. Despite whatever new degree of equality might be possible for the physically disabled in the fields of rehabilitation, education, and employment under existing legislation, attainment of the right of the physically disabled to real equality, when considered in the context of the physical environment in which they must actually pursue higher education and wider employment, is as far from reality as a man in a wheelchair is from getting to the top of a flight of stairs.

III.

To better understand the very real problems faced by the physically disabled in their struggle to be equal—to lead “normal” lives, it would be helpful

26 Supra n.12 at 3. “It is of little use to find employment for an individual confined to a wheelchair if he cannot get up to, or through the door of, the building, or if he cannot get a drink of water or go to the toilet after he is inside the building.” S. Rep. No. 538, 90th Cong., 2d Sess., 1968 U.S.C.C. & A.N., 3214, 3215 (1968).
27 The writer renders no opinion here as to whether the circumstances described were sufficient to provide equality to the physically disabled in the not too far distant past when such practices were commonplace.
28 See, supra n.1.
29 A most poignant illustration of this distance was rendered in 1957 when Hugo Deffner of Oklahoma City was named “Handicapped American of the Year.” He was to formally receive the award in Washington, D.C., at a federal building. His only problem was that, due to the fact that the only entrances to the building were guarded by stairs, he could not enter the building in his wheelchair without assistance. He had to be helplessly carried up the stairs to receive his award. Supra n.12 at 1.
30 “Normal” in this context, and as hereinafter used, means “in substantial equality with the physically able, limited only with respect to specific individual circumstances.” It is admitted that the disabled can seldom be truly normal, and that special arrange-
to first define the membership of that group and then describe the specific problems that must be solved in order to achieve equality.

One out of ten persons in this country has some disability which prevents him from using buildings and facilities designed only for the physically fit; furthermore, this figure does not even include countless Americans who become temporarily disabled.\textsuperscript{31} The physically disabled include persons with birth defects, amputees, paraplegics, quadriplegics, hemiplegics, those with heart diseases and other cardiac problems, the blind, the deaf, arthritics and those with other crippling impairments. Each of these specific disabilities has its own peculiar characteristics, associated resulting handicaps, and corrective requirements. For purposes of this article, however, the discussion will be confined to those disabilities which are most adversely affected by the physical environment; for example, persons confined to wheelchairs who cannot negotiate stairs unassisted.

The Vocational Rehabilitation Act defined a "physically handicapped" individual as being any one "who is under a physical or mental disability which constitutes a substantial handicap to employment, but which is of such a nature that vocational rehabilitation services may reasonably be expected to render him fit to engage in a remunerative occupation."\textsuperscript{32} This language is significant in that its interpretation requires drawing a distinction between the words "disability"\textsuperscript{33} and "handicap."\textsuperscript{34}

In terms of the statute, therefore, when a person's disability becomes a handicap to him, that person is physically handicapped. The statute considers handicaps to be functions only of personal disabilities, as opposed to being the products of factors external to the affected individuals. This restriction on the meaning of "handicapped" betrays the very oversight that has allowed the design and construction of an environment from which consideration for the disabled has been completely absent. While rehabilitory and therapeutic techniques have minimized the handicaps associated with many kinds of physical disability, the handicaps imposed by the physical environment have for the most part con-

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\textsuperscript{32} 29 U.S.C. § 41(b).
\textsuperscript{33} "The condition of being disabled: deprivation or lack especially of physical, intellectual, or emotional capacity or fitness." Webster, Third New International Dictionary 642 (1964).
\textsuperscript{34} "A disadvantage that makes achievement unusually difficult; especially: a physical disability that limits the capacity to work." \textit{Id.} at 1027. This definition, which remarkably attuned to the thrust of the Act, is very confusing in that the vocational limitations are emphasized, almost to the exclusion of the other aspects of life in which normal persons find fulfillment, \textit{i.e.} education and recreation. \textit{See generally} Nugent, \textit{Let's Look Beyond}, III Recreation in Treatment Centers 33 (Sept., 1964).
tinued to proliferate. Until 1968, there was "no statutory requirement that public buildings constructed with federal funds be constructed in such a way that they are accessible to and usable by people who have physical impairments."

Countless buildings still have no ramps for wheelchairs, no readily accessible elevators, narrow or revolving doorways, too narrow aisles, inadequate toilet facilities, drinking fountains and light switches that are too high, fire alarm boxes that cannot be reached and countless other deficiencies. Just a few improvements such as hand rails, ground level entrance ramps, doors that open automatically, raised letters and numbers on doors and in elevators so that the blind can read them, danger signals equipped with light and sound so that the deaf can be warned, toilet stalls with grab rails and accessible telephone booths would make a whole new world available to the disabled. Public transportation is generally without facilities such as level station platforms to eliminate steps to trains, luggage carts that the handicapped can handle, turnstiles through which the disabled can pass, elevators to subway stations, lift platforms for buses, and interstate highway rest areas with adequate accommodations. These are but a few illustrations of the environmental barriers faced by the physically disabled in attempting to achieve normalcy.

The existence of these barriers is known to the general public, but because that significant number of people who cannot engage in normal activities are forced to remain out of the public eye and inconspicuous. Most normal people are substantially unaware of the real meaning of these problems to the physically disabled and are seemingly unconcerned. This lack of concern, in turn, be-

35 The writer recognizes that statutory terminology is not defined for general application outside the realm of the concomitant legislation. The point here is that an act ostensibly intended to attack one large problem did, in fact, only address part of it. This omission of external factors from a definition of "handicapped" prevailed until 1970, when the Congress defined "handicapped person" for purposes of the Mass Transportation Act of 1970 as "any individual who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, is unable without special facilities or special planning or design to utilize mass transportation facilities and services as effectively as persons who are not so affected." 49 U.S.C.A. § 1612(d) (1970) (emphasis added).


37 Supra n.12 at 5.

38 Id. at 3-4.

39 Id. at 7, 10.

40 A more complete and precise set of criteria for making our physical environment less prohibitive to the disabled is contained in United States of America Standards Institute, Specifications for making Buildings and Facilities Accessible to and Usable by the Physically Handicapped (1961).

41 "Because of obstacles we have put in their way, the handicapped today are a hidden population." Supra n.12 at 4.

42 "The majority of the people in the country are not particularly concerned about the problem of architectural barriers to the handicapped. Although seven out of ten persons interviewed in a nationwide public opinion survey were aware of the physical obstacles
comes another critical barrier. Nationwide public involvement and support would clearly indicate to lawmakers at all levels of government that their past expression of mere acknowledgement are now insufficient. New, stronger, more far-reaching action is necessary to begin to bring the physically disabled to normalcy—to the level of equality they longingly desire and rightfully deserve.

IV.

The preceding discussion was not intended to indicate that consideration for the physical environment with respect to the physically disabled has been altogether absent from the law, but rather that most of the legislation which does exist is illusory.

Almost all state and many local governments have addressed themselves to the accessibility problems. "At present, 44 states have taken some kind of formal or legal action requiring that public buildings (and, in a few cases, private ones as well) be made accessible to all." The most recently available comprehensive survey of these measures, the Report on State and Local Efforts to Eliminate Architectural Barriers to the Handicapped, was conducted in 1967. It contains a statistical and critical analysis of the steps taken up to that time. Its findings may be summarized, in part, as follows:

1. Of the 43 states in which something had been done to eliminate physical barriers, 33 had done so by legislative enactment, five by resolution, three by executive order, and two by including the USA Standards Institute (USASI) specifications into their state building codes. Of the seven states in which nothing had been done, four had defeated proposed legislation and three had not acted at all.

2. Of the 33 states with architectural barriers legislation, only six adopted the USASI standards in toto, with the remainder specifying less stringent criteria.

3. Nine of these 33 states had not fixed definite responsibility for enforcement and administration of their statutes; 15 of them divided such responsibility among two or more state agencies or local governmental units; and nine assigned responsibility to only one agency.

that impede the mobility of handicapped persons, approximately 64 percent indicated that they had given the problem little or no thought." Supra n.9, ch. XI at 110.

43 Supra n.15 at 11.
44 Supra n.9.
45 The Report on State Efforts showed that 43 states had taken some action as of November, 1967. Id. ch. I at 11. Thus, according to Dr. Stein’s figures, supra n.43 and accompanying text, little change has occurred in the past four years.
46 Supra n.40.
47 Supra n.9 ch. I at 11.
48 Id.
49 Id. ch. II at 20, 35.
50 Id. ch. II at 21-22.
(4) 16 of the 33 statutes required review of building plans and specifications; eight required dissemination of information to prospective builders; and the remainder only encouraged recommended standards.51

(5) In 27 of these 33 states the legislation pertained to new state and local governmental buildings; in three it applied only to state owned buildings (with “encouragement” to local governments to follow suit); and in only three did the requirements include all new and old public building and some types of new privately owned public buildings.52

(6) Only 11 of the 33 statutes made compliance with their provisions mandatory, with the remainder having either escape clauses or no compelling provisions at all.53

(7) Generally, the overall effectiveness of most of the 33 statutes was rated as poor, with nine qualified exceptions.54

(8) “Local governments have made only limited progress toward the elimination of architectural barriers in buildings and facilities open to, and used by, the public. The great majority of the nation’s cities and counties have not undertaken any programs designed to eliminate architectural barriers to the handicapped.”55

(9) Local governments generally place reliance upon their respective state legislatures to correct problems of this nature because there is neither a “clear need” nor a “legal requirement” for action by them.56

(10) In conclusion, “municipal ordinances and state laws relative to the elimination of architectural barriers appear to be of only limited effectiveness. They generally apply only to new, publicly-owned buildings; tend to be permissive rather than mandatory because of the inclusion of ‘escape’ clauses; and frequently are ambiguous with respect to the responsibility for enforcement. In addition, where enforcement responsibility is clearly fixed, funds are often not provided for implementation.”57

By adopting regulatory legislation in mid-1968,58 the federal government

51 Id. ch. II at 24.
52 Id. ch. II at 18.
53 Id. ch. II at 27.
54 Id. ch. II at 28-31. “It seems apparent that the failure to designate definitive standards and enforcement responsibility has undermined the effectiveness of architectural barriers legislation in many states.” Id. ch. II at 31. “The successful implementation of state laws and regulations relative to architectural barriers depends upon a conviction of their value, the development of systematic enforcement procedures to ensure compliance, and financial and administrative support by State legislatures and officials.” Id. ch. II at 35.
55 Id. ch. III at 47-48.
56 Id. ch. III at 48.
57 Id. ch. III at 49. “Laws are effective . . . only when they are specific and strong. . . . There is no real reason why any one needs to know about or pay attention to these official actions.” Supra n.12 at 9.
finally recognized that “if people who are physically handicapped are to rehabilitate themselves and seek gainful employment it is vitally necessary that they have access to and are able to use public buildings in which they must work or visit in carrying on a normal life.” Unfortunately, the statute hardly reflects such inspiring language. It authorizes the promulgation of regulations prescribing standards for the design, construction and alteration of federally owned, leased or financed public buildings. However, it contains provisions for waiver or modification of the standards, allocates no funds for its implementation, and has no enforcement provisions. Thus, while the regulations provided for were issued, their effectiveness is at best questionable.

More recently, another federal statute acknowledged the problem of environmental barriers to the physically disabled, but this time with more force. The Mass Transportation Act of 1970 contained both a declaration of national policy that the disabled “have the same right as other persons to utilize mass transportation facilities and services,” and provisions for limited funds to assist “States and local public bodies and agencies thereof in providing mass transportation services which are planned, designed and carried out so as to meet the special needs of elderly and handicapped persons.” The act also contained provisions for research, development and demonstration projects.

At last, Congress may have created the kind of legislation that can lead eventually to a physical environment in which the disabled can be effectively accommodated and allowed to live in equality with the physically able. But, in addition to being so new as to not have had time to take measurable effect, the Mass Transportation Act of 1970 touches upon just one small aspect of the total physical environment. This statute alone does not close the gap. It must

61 Id. at § 4151.
62 Id. at § 4156.
64 Recent conservations with Mrs. Kathaleen C. Arneson, of the HEW Rehabilitation Services Administration and a member of the HEW National Commission on Architectural Barriers, have indicated that the Senate Commission on Public Works expects a report on progress under the regulations, supra n.62, near the end of calendar 1971; and that she is of the opinion that it will be neither accurate nor encouraging. She has indicated that, without funds, even the compilation of data for such a report is nearly impossible; not to mention the bigger problem of paying for or even enforcing building construction or modification in accordance with the regulations, which have been made impossible thus far by lack of money.
66 Id. at § 1612(b) (1970).
67 Id. at § 1612(c) (1970).
68 Its potential effectiveness will depend entirely upon the willingness of state and local governments to implement the national policy voluntarily because the Act’s provisions are not mandatory.
69 It will serve no useful purpose to allow the physically disabled to reach buildings which they cannot enter or in which they cannot work or study. See supra n.26.
be a prototype leading to more comprehensive legislation that will close the gap quickly and completely.

V.

The National Commission on Architectural Barriers to Rehabilitation of the Handicapped made several recommendations "to speed the Nation toward" the elimination of those barriers: (1) federal legislation for application to new public buildings if any federal funds are used in their construction;70 (2) state legislation for public buildings constructed with state funds;71 (3) building code revisions for application to privately owned public buildings;72 (4) assignment of enforcement responsibilities and resources for implementation;73 and, (5) public information programs.74 From the foregoing discussion,75 the first and, in some instances, the second of these recommendations have since been adopted. Noticeably lacking, however, has been any action regarding the third, fourth and fifth points.76

Even with the legislative attention that has already been directed toward tearing down the barriers imposed by the environment on the physically disabled, a lack of power and money leaves the physically disabled confronted with a physical environment which becomes an even greater handicap even though each new medical and rehabilitory development that decreases their personal handicaps. Intentions, policies, and criteria are of little value if they are not supported by the force, funding and people necessary to implement them. Equality for the physically disabled is nothing more than a fine idea if it is not given the sustenance of public approval, legal effect, and actual practice.

Just as the thirteenth, fourteenth and fifteenth amendments contain provisions for the Congress to enforce the rights and privileges pronounced in appropriate legislation,77 so also must any legislation requiring the elimination of environmental barriers to the physically disabled be both realistic and enforceable. For, "even with an informed and concerned citizenry, . . . change cannot be achieved by voluntary efforts alone."78

Is equality for the physically disabled realistic? Is a physical environment

70 Supra n.12 at 12. "This, in turn, will stimulate demand that similar action be taken in the construction and renovation of buildings that do not receive Federal financial support." Id.
71 Id. at 13. State laws should include the USASI standards and strong enforcement provisions. Id.
72 Id. at 19. "Privately-owned public buildings" in this context means "any business or industrial building available for entry by the able bodied general public."
73 Id. at 13-14.
74 Id. at 16.
75 See, supra n.n.43-68 and accompanying text.
76 See id.
77 U.S. Const. amend. XIII, § 2; amend. XIV, § 5; amend. XV, § 2.
78 Supra n.12 at 9.
free of the barriers that handicap the physically disabled feasible? These questions must be answered with a resounding, unequivocal "yes!"

Equality can be attained by the physically disabled. Congress has indicated that it has begun to think so;79 and, even a few localities that have so demonstrated. For example, the State of Illinois has indirectly promoted the development of a whole community oriented to providing equality to the physically disabled at the University of Illinois and the adjoining cities of Champaign and Urbana.80

The University of Illinois, a state supported school, has long been one of the only institutions of higher learning in the country to make special provisions for the physically disabled.81 Since 1947,82 the University of Illinois has included the following in its efforts to eliminate environmental barriers: regular student dormitories are equipped to permit physically disabled students to live among able bodied students; specially equipped buses take disabled students to classes, recreation and shopping facilities, and elsewhere; ramps for wheelchairs were built leading into all University buildings; interior appointments in all buildings have been installed and fitted so as to accommodate the disabled in classrooms, halls, washrooms, auditoriums and the like.83 In addition, a comprehensive program has been established to provide the over 360 disabled students to attend the University84 with opportunities to participate in every phase of normal extracurricular activities, including a world famous modified athletic program.85

The program at the University of Illinois has had an effect upon the entire university community, including the twin cities in which it is located. As a result of the University's influence, both Champaign and Urbana have provided ramps in business districts, made most city-owned buildings accessible to the disabled, provided for the younger disabled in their elementary and high school, and successfully encouraged numerous private efforts by businesses, industries and churches to assist their own.86

The overall result of these programs has been to provide an environment in which "the physically disabled are right at home on campus or in the communities of Champaign and Urbana. They are not a 'sight to behold.' They

79 See 49 U.S.C.A. § 1612(a) (1970), wherein the words "handicapped persons have the same right as other persons" are used with respect to mass transportation. Id.
80 Supra n. 9, ch. V at 58-64.
81 Only five other such institutions are known to this writer. See id. ch. II at 34; State University of New York Construction Fund, Making Facilities Available to the Physically Handicapped (July, 1967). In all of these other five instances the programs are not nearly so well established or developed as at the University of Illinois.
82 Supra n.9, ch. II at 34.
83 Id. ch. V at 59-61.
84 Id. ch. V at 59.
85 Nugent, supra n.34 at 38. ("Tim" Nugent is the Director of the University of Illinois Division of Rehabilitation-Education Services and of its Rehabilitation Center, and the founder of the program at the University of Illinois.)
86 Supra n.9, ch. V at 61-64.
attract little attention and do just about what they please." In other words, the physically disabled in the whole community have gained sufficient recognition of and corrective action for their problems so that they have been allowed to become equal. They are now so normal that they may go their respective ways, responsible for their own destinies, noticed virtually only because of who they are and not because of their disabilities; and nothing could please them more.

The costs incurred by the University of Illinois and the Champaign-Urbana communities in their efforts to eliminate environmental barriers to the disabled are not available for use in this article. However, the conclusion regarding costs contained in the Report on State Efforts was that for most public buildings the incremental cost of providing barrier-free construction normally amounted to about one percent of the total original cost, exclusive of elevators should they be required. It can easily be seen that though not free, such construction is indeed inexpensive and therefore feasible from an economic standpoint.

Thus, it is realistic to conceive of and require a physical environment free from barriers to the physically disabled. To argue that such requirements are incapable of being met is to deny the example set by the University of Illinois community and others like it. Any attempt to avoid the expenditure of such small amounts of money in comparison with the potential reward of allowing the disabled to become worthwhile, productive, and self-reliant citizens in our society is totally unacceptable. This seems a small price to pay to reduce the cost of supporting the disabled who cannot work.

Once composed so as to specify realistic and adequate standards, how should such legislation be enforced? The answers to this question must consider enforcement at both the federal and state levels to achieve widespread, maximal results. In both instances, administrative enforcement would probably be the most effective means because it would allow for continuous surveillance by experts qualified to make determinations as to the adequacy of proposed plans, recommendations for improvements, and regulations to insure the efficiency with which public funds would be spent.

At the federal level, an Environmental Barrier Elimination Board should be

87 Nugent, supra n.34 at 39.
88 Id.
89 Supra n.9, ch. VIV at 126.
90 "In both human and dollar terms, this Nation will pay an ever-increasing price if it continues to create an environment in which only the able bodied can thrive." Supra n.12 at 4.
91 The writer does not wish to indulge in the specification of actual criteria herein. Suffice it to say that insofar as the USASI standards were adopted after careful study by the GSA in its regulations, and that since the writer feels that they are sufficiently specific and comprehensive to be effective if enforced, they are highly recommended for universal adoption. See n.40 and accompanying text and n.63, supra.
92 The "state levels" of government referred to herein include local governmental units by implication. It is assumed that effective state action must include control by each state of its smaller political components if an effective program is to be conducted.
93 Supra n.12 at 12, 14.
established to administer the federal regulations promulgated pursuant to the Act of August 12, 1968. The composition of such a board should include members from the Rehabilitation Services Administration to represent the interests of the physically disabled, the General Services Administration to participate in regard to the public buildings and the formulation of contracts to modify them, and a team of architects to ensure adequate and aesthetically acceptable designs and modifications. The Board should also be allotted sufficient funds to provide for its own activities and, more importantly, to augment allocations for new and remodeled federally-funded buildings, provide retroactive modifications for existing structures for which no other appropriations have been made, and make grants and loans to states and private parties to assist their barrier elimination programs.

The function of the federal Environmental Barrier Elimination Board might be as follows:

(1) Approve all plans for federal or federally-funded buildings to be constructed or remodelled. If such plans are insufficient to exclude all barriers to the physically disabled, the Board would have the power to reject the plans, make specific recommendations as to the changes necessary to meet minimum criteria, and allow construction to proceed subject to the adequacy of the plans. The Board should have discretionary power to augment the appropriation for any of these projects to include modifications it deems necessary, but which are in addition to minimum standards.

(2) Conduct a survey of all federal and federally-funded buildings that are not planned to be remodelled within the next 15 years (or some other appropriate period) to obtain precise information as to barriers imposed by each of them on their use by the disabled. The results of this survey would then be translated into a specific plan to bring each building within the prescribed standards. The Board would then allocate part of its appropriation to fund these necessary modifications.

(3) Provide assistance to states in the conduct of their respective programs to eliminate environmental barriers. This assistance would consist of making available the advice, counsel and expertise of the federal board to state officials in order to expedite their efforts. It would also include: (1) making financial assistance in the form of grants available to both states and private parties for particularly meritorious but typically poorly funded projects such as parks and churches; (2) matching funds for necessary and worthwhile institutions such as

95 The Secretary of Transportation has already been authorized federal funds to help states provide mass transportation facilities and services to meet the needs of the handicapped. 49 U.S.C.A. § 1612(b) (1970). It is interesting to note, however, that such grants and loans are not subject to any criteria relating to specific facilities and services for the disabled. Here is another area in which the suggested board could operate to ensure that funds made available to states for mass transportation for the disabled are effectively utilized.
schools and libraries, and for businesses and industries capable of serving and employing large numbers of disabled; and (3) loans for other types of public building remodelling.

Each state should appoint an Environmental Barrier Elimination Board to implement its environmental barrier legislation. These Boards would have essentially the same composition and functions as the federal Board. They, too, would require the appropriation of sufficient monies to effectively perform their mission.

One way to avoid potential disparities in the efforts put forth by each state and its Board might be the adoption by all states of a "Uniform Elimination of Environmental Barriers to the Physically Disabled Act," or its equivalent. Such legislation would include: (1) specification of the USASI standards\(^9\) applicable to buildings constructed with public funds and privately-owned public buildings alike; (2) allotment of a realistic fixed minimum percentage of annual state and local construction appropriations for general use in barrier elimination in old and new buildings, and for grants and loans to private parties; and (3) establishment of the Environmental Barrier Elimination Board with the power to approve or disapprove proposed construction plans, to specify allocation of state monies, and to advise owners, architects and contractors in the planning of future projects.\(^{97}\)

A uniform act to this effect would guarantee that all states require adherence to the same minimum standards.\(^{98}\) Most important of all, uniform legislation if adopted, funded and enforced would provide a uniform environment, free from handicapping barriers, and to the greatest extent possible, equality and normalcy for the physically disabled throughout our country.

Bruce E. Vodicka

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\(^{96}\) Supra n. 40.

\(^{97}\) A uniform law is suggested here, but not defined in specific terms due to insufficiency of time. The ideas suggested here for inclusion in such legislation, however, should provide the reader with a general idea of the items to which it might be directed.

\(^{98}\) No longer could any state hide behind the mask of an unenforceable or inefficiently administered token statute. It is hoped that a uniform law would foster a spirited competition among the states, encouraged by the federal government, to quickly adopt and implement the uniform legislation.