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UNIVERSITY OF OKLAHOMA

GRADUATE COLLEGE

IMPLEMENTATION OF THE AMERICANS WITH DISABILITIES ACT IN SMALL AND MEDIUM-SIZED MUNICIPALITIES

A Dissertation

SUBMITTED TO THE GRADUATE FACULTY

In partial fulfillment of the requirements for the

degree of

Doctor of Philosophy

By

LARRY JACK SLAYTON
Norman, Oklahoma
2000

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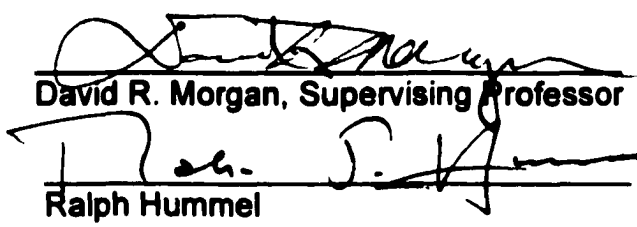
IMPLEMENTATION OF THE AMERICANS WITH DISABILITIES ACT IN SMALL AND MEDIUM-SIZED MUNICIPALITIES

A Dissertation APPROVED FOR THE DEPARTMENT OF POLITICAL SCIENCE

BY



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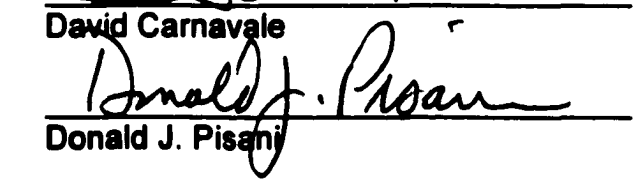

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ABSTRACT

IMPLEMENTATION OF THE AMERICANS WITH DISABILITIES ACT IN SMALL AND MEDIUM-SIZED CITIES

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The University of Oklahoma, 2000

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This research traces the history of intergovernmental relations and federal mandates from the time of the founding of the United States until today. The study begins with a historical overview of national public policy mandates in general and unfunded mandates in particular. It analyzes the forces and conditions that influence the implementation of unfunded national policy mandates taking as its main focus the implementation of the *Americans with Disabilities Act of 1990* (ADA) among small and medium-sized municipalities nationwide. The Act requires that public and private employers having more than twenty-five employees revamp their facilities and employment rules to provide for increased facility access and employment opportunities for the disabled. The research takes the approach that the ADA implementation efforts of small and medium-sized cities are conditioned upon the internal and external envi-

ronment of city government. Thus, the influences on ADA implementation efforts are theorized to be economic, social, and political.

Implementation of the ADA has been a slow and tedious process due to the complexity of the Act and court cases arising from the Act. This study focuses on cities between 10,000 and 100,000 in population and attempts to show that non-compliance is more pervasive than is commonly believed. The data set for the research consists of a random sample mail survey of seventy-five small and medium-sized municipalities from each of the four regions of the United States. The number of individual observations for this research is 135 respondents. These observations form the dependent variable for the research.

The theoretical perspective taken in this research combines the incremental and the boundedly rational approach to decision-making. It suggests that the level of compliance is based on the fact that municipal decision-makers do not take a rational approach to implementation but, instead, take an integrated boundedly rational/incremental approach to implementation. This approach agues that organizations, when faced with a complex, confusing, or potentially conflictual decision, will seek to simplify the decision-making process. Further, when simplifying the decision-making process, organizations will rely upon a few key variables to influence and guide their decision-making. Additionally, the study argues that the variables that influence an organization's decisions may be found in the internal and external environment of these organizations.

Utilizing existing literature, a model of influences upon implementation is developed and tested, and its parameters estimated using regression analysis. The research results show that municipal officials remain confused and lack knowledge of the requirements of the ADA. Results from the questionnaire suggest that municipalities are implementing the ADA, albeit incrementally. The qualitative findings also show that many municipal officials are behaving in a boundedly rational fashion concerning ADA implementation. The research demonstrates that national public policy implementation is not necessarily a linear, top-down process, nor do municipal officials behave in a rational, comprehensive fashion. Further, the research findings provide support for the view that it is indeed the local environment that most affects municipal compliance with policy mandates.

In the area of intergovernmental relations this research suggests that many existing theoretical approaches to the study of federalism may be outdated, and also highlights the declining usefulness of political culture as a predictor of public policy innovation. In summary, many questions remain unanswered concerning municipal implementation of the *Americans with Disabilities Act*. If the results of this research are indicative of mandate implementation in general, then the federal government is not successfully meeting its public policy goals by relying on the willingness of municipalities to comply with the requirements of unfunded mandates.

CHAPTER 1

INTRODUCTION

This research analyzes the forces and conditions that influence the implementation of unfunded national policy mandates among small and medium-sized cities nationwide.[1] Specifically, the research focuses on *The Americans with Disabilities Act of 1990* (ADA).

This undertaking should appeal to a cross section of scholars and practitioners for several reasons. Public policy implementation scholars will find that this project responds to the dearth of existing empirical and comparative research in the field. Additionally, it responds to the lack of predictive and explanatory theory in implementation research (Goggin et al. 1990, 10). Further, it challenges the perspective that implementation is a linear top-down process. The study also looks at a heretofore much neglected area of implementation research: the implementation behavior of small and medium-sized cities.

Because the research tests the utility of a number of theoretical constructs, practitioners at various levels of government may find it relevant. Urban scholars, sociologists and local officials may find the environmental influences analyzed in the research to be of some interest. In sum, this research should appeal to a broad spectrum of scholars and practitioners since an implementation study of this size, scope, and nature has previously not been

undertaken. In particular the research considers the issues of federal—local mandates. More specifically, the question of unfunded mandates is addressed.

Mandates are one of the principal tools a higher level of government uses to influence the behavior of a lower level of government. Some may quibble with the superior/subordinate aspect of the foregoing statement noting, for instance, that in United States federalism the states and localities are themselves not without influence (Massey and Straussman 1985, 299). However, the truth remains that mandates, by definition, influence the behavior of states and localities.[2] Mandates may take three different basic forms; they may be funded, partially funded or remain unfunded by the federal government. It is through funding, or lack of funding by which a higher government may influence the behavior of a lower government.

In the United States the federal government maintains an extensive system of grants to state and local governments. In fact, in 1998 federal aid to states and localities was 269 billion dollars. In order to continue to receive federal aid, the states and localities are mandated to comply with not only the specific conditions of the grant, but often with other non-grant specific conditions. For instance, in order to receive federal highway funding, states are mandated to maintain a minimum drinking age of twenty-one (Gray, Jacob, Albritton 1990, 61).

It is inherent in the grant-in-aid system that along with federal funding comes federal regulation (Wright 1982, 128-129). To be sure, the

states and localities may choose not to participate in the grant-in-aid system. However, choosing not to do so may be tantamount to political suicide on the part of state and local officials—if for no other reason than that the loss of federal funding means higher state and local taxes to maintain the same level of services. It should be noted that the federal monies received often take the place of expenditures that would have to be made anyway in order to provide appropriate services. By accepting federal funds, states and localities may utilize the equivalent dollars in other policy areas.

Either way, state and local officials seldom turn down federal monies in favor of autonomy. Instead, they often seek to minimize federal regulatory efforts. For example, state and local officials may bargain with federal officials in order to delay compliance. In the alternative they may rally effected interest groups to forestall any potential federally imposed sanctions. They may also seek redress from Congress or turn to the courts for assistance citing constitutional or other grounds for intervention.

In general, states and localities seem to understand that mandates and regulations stemming from grants-in-aid are a condition of doing business with the federal government. Conversely, unfunded mandates and especially unfunded, direct order mandates, are highly unpopular among state and local officials (MacManus 1991, 59-76; Hanson 1990, 47). Derthrick (1986, 36) has probably summed up the unfunded mandate issue best when she noted that Congress often treats the states "as if they were administrative agents of the

national government, while expecting state officials and electorates to bear whatever costs ensue."

The objection to unfunded mandates on the part of state and local officials is three-fold. First, there is the loss of political power to the national government (Fabricius 1992, 17-18). Second, these mandates bring unreimbursed costs (Dearborn, 1994) and third, since the Reagan presidency, Congress has increasingly relied on unfunded mandates as a method of implementing national policies (McDowell 1994, 17). In fact, it may be as Hawkins (1988, 74) has said, "No activity of state and local governments is now beyond the scope of Congressional regulation, and indeed takeover—not criminal justice, not corporation chartering, not taxing authority, not banking and insurance regulation, not even political sub-division." Despite various recent Supreme Court decisions and federal laws granting the states and localities some relief, the foregoing issues have important ramifications for both U.S. federalism and intergovernmental relations.

This study begins with a historical overview of national public policy mandates in general and unfunded mandates in particular. The period covered is from the time of the founding of the United States until the present. Although not commonly recognized, federal mandates in some form or another have existed since the founding. In fact, it is arguable that the major impetus for creating a new nation from the existing confederation was the lack of federal preemptive power over the states.[3] By tracing the legal and political history of

federal mandates, Chapter Two sets the stage for what follows and gives the reader insight into existing issues surrounding mandate implementation.

In Chapter Three, "The Americans with Disabilities Act", the issue of intergovernmental relations and the implementation of unfunded mandates is considered. Chapter Three also addresses existing theoretical approaches to implementation and the implementation environment of small and medium-sized municipalities.

Chapter Four presents an "environmental influences" theory of implementation behavior of small and medium-sized cities. In Chapter Five, the theoretical perspective is operationalized, measured and tested. Chapter Five also assesses the validity of the model developed in the preceding chapter. A summary of findings and conclusions are then presented in Chapter Six.

In sum, this research takes the approach that the ADA implementation efforts of small and medium-sized cities are conditioned upon the internal and external environment of city government (Lazin 1973; 264-271; Ringquist 1993, 322-323; Mueller 1984, 167). Thus, the influences upon ADA implementation efforts by small and medium-sized cities are theorized to be economic, political and societal. Each of these theoretical perspectives of implementation behavior is operationalized and is a component of the model developed and tested in the research.

Intergovernmental Relations and Policy Implementation

Existing studies of policy implementation have been criticized for ne-

glecting local implementation variables. Likewise, critics complain that existing implementation studies often assume that a national policy takes a top-down path to implementation. The assumption is that after the "federals" have enacted a policy, the localities will merely implement it (Goggin et al. 1990, 11-15).

In the alternative, the implementation role of localities is assumed to be limited to bargaining over policy content and/or implementation timetables (Ingram 1977, 501; Mueller 1984, 167; Ripley and Franklin 1986, 219). The result of these assumptions may be an incomplete view of national-to-local public policy implementation. This may be especially true for the implementation of national-to-local unfunded mandates. In such cases, local officials often must attempt to reconcile local goals and interests with national goals and interests (MacManus 1991).

The reconciliation of local interests and goals with a mandate intended to serve national interests and goals may, for a number of reasons, be problematic:

1. the local community may not understand or even care that local governments often must face a choice between accommodating a national or a local interest or goal;
2. the local community and/or its elected officials may not understand the U.S. federal system or the ramifications of non-compliance with an unfunded mandate;

3. local citizens and their elected representatives may not comprehend that the implementation of an unfunded mandate often requires an increase in local taxes or in the alternative, a reduction in local services;
4. the local citizenry, for the most part, cannot stop the implementation of an unpopular mandate at the national level of government but can at the local level;
5. local citizens and/or their elected officials may often object on social, political, or economic grounds to the imposition of a policy by a higher government authority;
6. local citizens and their elected officials may often be confused about what is, or is not, required by the complicated regulations contained in a mandate or may simply lack the resources necessary to implement a mandate.

The foregoing propositions indicate that the local implementation of an unfunded mandate may depend as much on the local environment as it does on national government intent.

Municipal Environment: Common Influences

The municipal operating environment is in general much different from that of the national government. This is true for many reasons. Among these reasons are different functions at the different levels of government. For instance, street-level public safety functions of local police and fire depart-

ments have no national counterparts. Similarly, waste treatment, potable water production, and street maintenance are solely local functions. Also, zoning and building code enforcement activities as well as animal control functions have few corresponding activities at the national level. The environment is also different because municipal officials typically have a larger degree of direct interaction with the citizenry, and there is often a significant expectation on the part of the general public that city officials conform to community mores and customs. Not only does the municipal operating environment differ from that of other levels of government, the operating environment also differs among municipalities.

Small and Medium- Sized Municipalities

Preoccupied with the glamour and prestige of research in large cities, implementation scholars have long neglected the study of smaller municipal governments. Where such studies exist, they are often problematic. For example, most take a "one size fits all" view of public organizations. However, the one size approach neglects the different environment in which smaller cities operate. This neglect may lead to an incomplete view of these governments' implementation behavior.

Counted among these environmental differences are fewer resources and a closer relationship between legislative politics and administration. Also, smaller city governments often possess less professional staff expertise than found in larger governments. A greater sense of community also may exist in

smaller localities. As a result, local social and political culture may often play a larger role in implementation behavior. In sum, not only is the environment of municipal government different from national government, environmental differences exist between large and small or medium-sized municipalities.

The Americans with Disabilities Act of 1990

The *Americans with Disabilities Act* is an unfunded national public policy mandate, and compliance with ADA requirements was mandated to take place before July 26, 1992. The Act requires that public and private employers having more than twenty-five employees revamp their facilities and employment rules to provide for increased facility access and employment opportunities for the disabled.

The ADA thus may be broken down into two general components, employment practices and physical plant renovation. The ADA requires that employers make "reasonable accommodation" in their employment practices for disabled workers and job applicants (Title 1 ADA, 1990). Thus, employers are faced with such issues as job restructuring, the acquisition of special equipment and the modification of entry level and promotional examination employment procedures. As long as disabled workers or job applicants can perform the "essential functions" of a position, with or without reasonable accommodation, employers are prohibited from discriminating against them on the basis of their disabilities (Title 1 ADA, 1990). The ADA mandates compliance unless such compliance creates an "undue hardship" on the organization

(Hollwitz, Goodman, and Bolte 1995).

The second component of the ADA requires that existing facilities be modified to be accessible to the disabled. New construction must also be accessible to disabled persons.[4] Upon first perusal, the implementation of the ADA does not appear to be difficult or especially onerous. However, a closer look reveals that it may present a problem to many municipalities. For example, what exactly is "reasonable" accommodation, what is an "essential job function" and what constitutes an "undue" hardship? The ADA leaves these terms undefined. Likewise, what is access to public facilities, how much access is required, and under what circumstances is it not required?

ADA implementation is also expensive. If one considers the cost of providing special equipment to assist disabled workers, the cost of changing job descriptions and modifying testing procedures and the cost of modifying physical plants, the burden on some cities may be prohibitive.

Additionally, because the ADA contains vague and complicated language, smaller cities may simply lack the expertise to implement the Act's requirements. In the alternative, because the ADA has been, and is, the object of much legal controversy, smaller cities may not be able to negotiate the path to implementation as established by the courts.

Political culture may also play a role in ADA implementation. The prevailing culture may oppose mandates in general, unfunded mandates in particular or implementation of any new policies whatsoever. Likewise, the culture

of the local bureaucracy may impede the implementation of new policies or give the ADA low priority. Of course the opposite may also be true. Some small or medium-sized cities may face few problems with ADA implementation and, in fact, may whole-heartedly embrace it.

The ADA was selected as the policy mandate for study in this project for four reasons. First, it is relatively new and thus a fair test of timely municipal implementation efforts (Bishop and Jones 1993, 128). Second, it is the subject of much controversy among local governments (Percy 1993, 103). Third, little, if any, scholarly research exists regarding ADA compliance efforts among small and medium-sized cities nationwide.[5] Fourth, the ADA fits well with the theory building, model-testing nature of this research.

Research Design

The data for the research were taken from several different sources. These sources include U.S. Bureau of Census *Statistical Abstracts*, Equal Employment Opportunity Commission enforcement records, International City/County Management Association *Municipal Year Books* and survey research conducted by the author. The data set consists of a random sample survey of seventy-five small and medium-sized municipalities from each of the four regions of the United States. The number of individual observations for this research is 135 respondents. These observations form the dependent variable for the research.

It is important to note that because the ADA is a relatively new mandate,

it would be expected that few municipalities are, as of yet, in full compliance. Thus, what is measured in this research is compliance effort (Ripley and Franklin 1986, 11). The dependent variable for this research is called **Compliance**. It is coded as the percentage of ADA compliance reached by each city surveyed. The percentage of total ADA compliance effort of each city is calculated from the percent of ADA implementation reached in the following ADA requirement areas:

1. modification of existing and new facilities;
2. modification of personnel policies and employment practices;
3. reasonable accommodation policies for existing and prospective employees;
4. modification of general benefits and employee benefit plans to eliminate discriminatory practices in health insurance and sick leave.

Each of the above is counted as being 25 percent of total ADA compliance, Multivariate regression is the analysis technique of choice.

In summary, this research considers the forces and conditions that influence the implementation of the ADA among small and medium-sized cities across the United States. It argues that the influences on ADA implementation stem from the internal and external environment of city governments. The study is theory building and model testing in nature and provides a gauge of

ADA implementation efforts among small and medium-sized cities in the United States.

CHAPTER 2

INTERGOVERNMENTAL RELATIONS AND FEDERAL MANDATES: LAW AND POLITICS

This chapter considers the history of intergovernmental relations (IGR) and federal mandates. Its purpose is to provide background and insight into the complexity of IGR and mandate implementation. By reviewing the history of IGR and mandates, it is possible to discern causes of the current problems surrounding the implementation of mandates.

The Advisory Commission on Intergovernmental Relations (1984, 8) has noted the existence of four types of federal regulatory programs. Of course, not all federal programs are mandates.

1. Partial preemptions are predicated on the enumerated powers of the national government contained in the Constitution. These requirements preclude state and local governments from adopting weaker standards than those of the national government in a given policy area;
2. Crosscutting requirements are directed toward federal programs for which states and localities receive federal funds. They are intended to achieve uniform administration among program participants. Examples of these include regulations requiring that prevailing wage

rates be paid to workers on construction projects involving federal funds or regulations that ban discrimination in hiring;

3. Crossover sanctions threaten a reduction in aid for one federal program if the state or locality fails to meet the requirements of another federal program. An example would be the potential loss of a portion of highway funds if states failed to raise the drinking age to twenty-one;
4. Direct order mandates are intended to force states and localities to comply with federal policy by providing for civil and/or criminal sanctions for non-compliance.

Direct order mandates differ from other types of federal requirements in several ways. Partial preemptions are constitutional in nature and have a long political and legal history dating to the founding of the United States. Crosscutting and crossover requirements are conditioned upon participation in federal programs. Perhaps more important, crosscutting and crossover requirements or techniques are based upon the acceptance of federal assistance by state and local governments.

In contrast, direct order mandates most often arrive at the level of local government without funding. They also have a relatively short history and are applicable to local governments regardless of participation in other federal programs. It is direct order mandates that the states and localities most object to and most resist (Conlan et al., 1995, 26; Hanson 1990, 61).

While it is true that the implementation of public policy increasingly has become the purview of the courts (Anton 1989, 199), it may be equally true that this is as Congress intended. For example, although the Equal Employment Opportunity Commission (EEOC) is charged by the ADA with the Act's enforcement, the remedies available to the Commission are limited to litigation. Thus, the bureaucratic discretion variable in policy implementation has been replaced by judicial activism. It would therefore seem reasonable that any account of the history of mandates should take a legalistic approach.

The Court, Federalism, Politics and Policy Mandates: Law and Order

The history of IGR and mandates is the history of the evolution of the United States federalist system of government.[6] In turn, the evolution of federalism is closely related to the history of the Supreme Court's interpretation of the constitutional powers of the states versus those of the national government. In truth, federalism is much what the Court has determined it to be at any given point in history (Ducat and Chase 1983 , 361-364). Murphy and Pritchett (1986, 43) make this clear when they write "Bluntly put, the people who settle the critical conflicts within a society are the people who in fact, if not in name, govern that society."

Over the years the Court has utilized a number of legal theories concerning constitutional interpretation (Murphy and Pritchett 1986, 479-491). The neutralist theory is predicated on objective impartiality, or the Constitution says what it says, no more and no less. Under this theory, interpreting the Consti-

tution is conditioned upon a proper reading of the document itself. A corollary to this perspective is that the Court seeks to impartially and objectively divine the intentions of the Constitution's framers.

A second legal theory is judicial restraint. Under this theory, the Court reaches decisions by balancing the interests of litigants with a presumption of the correctness of majority rule. A contrarian perspective is that of judicial activism. In this theory, the Court sees majority rule as tyrannical and equates majority rule to the deprivation of the rights of minorities. Thus, it is the duty and responsibility of the Court to level the playing field. Another theory of Constitutional interpretation is for the Court to treat the document itself as a living, growing, and evolving contract. Thus, the Constitution should be interpreted in keeping with social, economic and political changes in American society.

Of course, none of the theories of interpretation are pure constructs of legal reasoning, and historically much overlap occurs in the theoretical thinking of the Court. Yet, the foregoing serves to highlight several important points: historically, there has been diversity in the Court's interpretation of the Constitution, and the Court 's definition of federalism may depend on its theoretical approach. Thus, not only is federalism what the Court determines it to be at a particular time, but also what it determines it to be may change over time. Therefore, the Court's view of the constitutionality of mandates is subject to change over time (Rohde and Spaeth 1976, 38-39; Friedman 1985, 21-22).

The legal doctrines of the Court are roughly equivalent to the generally

accepted historical evolution of United States federalism: dual, cooperative, centralized and new federalism. In dual federalism (circa 1789-1937), the national government was supreme within its grant of power and the states within their grant of power. Conversely, cooperative federalism (circa 1938-1961), while acknowledging the separate grants of power between state and national government, suggests there are a number of concurrent powers. Centralized federalism (circa 1962-1969) marked the creation of policy at the national level and its imposition on the states. New federalism (circa 1970-present) is notable for a return of policymaking power to the states. Each of these forms of federalism may be related to the Court's theoretical perspective of mandates. However, it must be noted that the Court itself, while setting the precedents utilized by political and legal historians to describe the evolution of federalism, has often deviated from the precedent it has set.[7]

In *Chisholm* v. *Georgia* (1793) the Court said, "The United States are sovereign as to all the powers of government actually surrendered, each state in the union is sovereign as to all the powers reserved." It would seem, then, that the issue of state versus national policymaking power would have been well settled: each was sovereign within its own sphere (dual federalism). The Supreme Court decided its first major federalism case in *McCulloch* v. *Maryland* (1819).[8] At issue was the power of the federal government to establish and operate a national bank and the power of the state of Maryland to tax the bank. In *McCulloch*, Chief Justice John Marshall stated that Congress not only

had the power to establish and operate a national bank, but also that the states had no power to regulate or tax that bank. Had Marshall ended with that ruling, his opinion may have caused little controversy. However, Marshall's opinion went far beyond the issue at hand. As Marshall wrote, "If any proposition could command the universal assent of mankind, we might expect it would be this—that the government of the Union, though limited in its powers, is supreme within its sphere of action" (3).

As Marshall further stated in *McCulloch*, "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adopted to that end, which are not prohibited but consistent with the letter and spirit of the Constitution are constitutional" (7-8).

On its face, Marshall's statement appears reasonable, not sweeping or incongruent with states' rights.[9] After all, any government not supreme within the parameters of the powers granted unto it is no government at all. Likewise, a government that cannot take those actions necessary to enact and implement policies stemming from its grant of power, has no power.

However, the question before the Court was not the supremacy of the national government in its "sphere of action" but rather what that sphere of action was. In other words, what was the constitutional power of the national government to establish and operate a national bank vis-a-vis the power of the states to regulate it? While this statement may appear to be a question of semantics, one must consider Marshall's penchant for taking a reasonable ar-

gument to the extreme of reasonableness.

Taken as a whole, in *McCulloch* Marshall turned the Tenth Amendment on end. In his own unique style and fashion, Marshall greatly expanded the policymaking power of the national government. First, he declared the national government to have limited power, but supreme power within its constitutional grant of power. Second, he stated that unless specifically prohibited by the Constitution from doing so, the policymaking power of the national government was virtually unlimited. Accordingly, the national government need only to relate a policy or the desired end result of a policy to one or more of its enumerated powers[10] and the policy would be constitutional.[11] Henceforth, the constitutional policymaking power of the national government did not have to be specifically stated in the Constitution itself. Instead, it could stem from its enumerated powers, be related to these powers, implied by these powers, or necessary to carry out these powers (Ducat and Chase 1983, 129). Thus, what was perhaps the first major federal mandate was upheld and the parameters established for intergovernmental relations.

In establishing a national bank backed by the full faith and credit of the nation, Congress had in actuality created a centralized banking system. Although states could still charter banks, authorize them to issue notes, and regulate them, the sheer size of the new national bank meant that it would now mandate interest rates and the value of money in the United States. Similarly, the value of gold and silver would now be determined by what the national

bank would pay for it and not by the state banks. With the help of the Court, Congress had mandated a national monetary policy.

This expansion of federal policymaking power was upheld in *Gibbons* v. *Ogden* (1824). In *Gibbons* the Court, again with the opinion written by Marshall, upheld the right of the national government to enact policies regulating and controlling interstate and more notably, intrastate, commerce. In *Gibbons* Marshall states,

> It is the power to regulate, that is, to proscribe the rule by which commerce is governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the Constitution (4).

Again, if Marshall had limited himself to upholding an enumerated power of Congress, *Gibbons* might be little more than a footnote in legal history. However, Marshall also granted that "Commerce among the states cannot stop at the external boundary line of each state, but may be introduced into the interior" (3). Thus Marshall extended the policymaking power of the national government to intrastate commerce arising from interstate commerce.

Although the Marshall Court went on to decide other important federalism cases, they need not be discussed here. It is sufficient to note that, as evidenced by the two cases discussed, the policymaking power of the national government was expanded and its preemptive power established during the Marshall Court.

The Court, Federalism, Politics and Policy Mandates: Law and Disorder

To one extent or another, the Justices of the Supreme Court are political creatures (Rohde and Spaeth 1976, 19). The biographies of past justices demonstrate that most possessed a large amount of political experience.[12] It is also evident, however, that through constitutional interpretation, the Court sets the ground rules for U.S. politics (Hanson 1990, 47). Thus, while the existing political climate may affect the Court's decision making, its decisions also affect the existing political climate.

For example, in 1809, in response to the decisions of the Marshall Court, the states of Connecticut, Massachusetts and Pennsylvania enacted legislation affirming the rights of the states to void national policies and challenging the power of the federal courts to adjudicate federal/state disputes.[13] Additionally, during the War of 1812 the anti-war New England states either refused to allow state militia to serve outside their borders, or disallowed federal control of their militia. In fact, in 1814, several New England states held a constitutional convention to pursue additional constitutional safeguards for state sovereignty against federal encroachment. At the convention, talk of secession was rampant. It is ironic, given what occurred almost half a century later, that it was the southern states that in this case stood up for the existing Constitution and Union.

It is indisputable that the direct cause of the War Between the States was the imminent threat of southern secession growing out of the issue of slavery.

However, the underlying causes may be traced to the Court's doctrine of dual federalism and economic freedom.[14] For example, in *Strader* v. *Graham* (1850), the Taney Court declared that slaves were "property" as well as persons and that policymaking power regarding the issue of slavery rested "exclusively with the states."

In *Prigg* v. *Pennsylvania* (1842), the Court invalidated laws in northern states protecting runaway slaves from being returned to their owners. These cases were decided on dual federalism and economic freedom grounds. Perhaps with tongue in cheek, some northern "free states" simply refused to comply with *Strader* and *Prigg* on the grounds of state sovereignty. It is, of course, possible to argue that in *Strader* and *Prigg* the Taney Court relied on legal precedent. However, the Court's record regarding Marshall's other opinions repudiate this argument.[15] As early as 1787 the southern states had threatened to go their own way if slavery were banned. Likewise, in the 1820's the southern states had promised to secede from the Union over the issue of slavery. By the time of the Court's decisions in *Strader* and *Prigg*, slavery had become the nation's main political issue. In upholding slavery on economic freedom and dual federalism grounds, the Court politically forestalled the secession of the southern slave states.

The problem was that the Court's decisions served to heighten political conflict between North and South over slavery. In an effort to enforce the Court's decisions in *Strader* and *Prigg*, the southern-controlled Congress en-

acted the Fugitive Slave Act of 1850. The Act placed responsibility for returning run-away slaves with the United States Marshall Service. The free states responded by enacting "personal liberty codes" which had the net effect of nullifying the Slave Act.

Perhaps nowhere is there better evidence of the recursive relationship between Supreme Court decision-making and politics than *Dred Scott* v. *Sanford* (1857). At a time when Congress had abdicated its responsibility regarding slavery by declaring it to be a popular sovereignty issue, and while "Bleeding Kansas" was in the midst of an undeclared civil war, the Supreme Court chose to play politics.[16] At bar in *Scott* was the legal status of a black slave who had resided with his owner for some time in a territory and state in which slavery was forbidden. At stake in *Scott* were the presidency of James Buchanan and the preservation of the Union. Scott claimed "freedman" status under both state law and national law – the "Missouri Compromise." In *Scott*, Chief Justice Taney ruled that Scott was not a citizen of any state or of the nation because he was a slave and a Negro. Thus, he had no standing to claim his freedom.

Taney also invalidated the Missouri Compromise on the grounds of dual federalism. The way was now open for the spread of slavery into all federal territories, and the delicate balance of power between free and slave states was sacrificed to political expediency. To make matters worse, the Court had notified President Buchanan in advance of its decision, thus opening itself and

President Buchanan to charges of conspiracy by abolitionists.

As Kelly and Harbison (1948, 390-391) have said regarding the Court's decision in *Scott*, "The Dred Scott case was on the whole a sorry episode in Supreme Court history. Both majority and minority opinions betrayed a clear attempt to interfere in a political controversy, to extend aid and comfort to one side or the other in the slavery controversy."

The Court's decision in *Scott* became the focal point for the election of 1860. Of course, Abraham Lincoln was elected President, albeit by a minority of popular votes, and the South seceded from the Union. It is ironic that the deadliest war in United States history came about, in part, as a result of the Supreme Court's invalidation of one federal mandate and its validation of another. It is equally ironic that, having greatly contributed to the War Between the States by its steadfast adherence to the twin doctrines of dual federalism and economic freedom, in the post war years the Court continued to cling to these doctrines. The post war era eventually brought with it the presumption on the part of the Court that it was a super legislature, guarding the economic rights of Americans (Ducat and Chase 1983, 604).

The Fourteenth Amendment to the Constitution provides in part, "Nor shall any State deprive any person of life, liberty or property without due process of law." Although the amendment was clearly intended to protect the rights of former slaves, the Court utilized it to a different end. The meaning of the word "liberty" in the Due Process Clause of the Fourteenth Amendment is

subject to judicial interpretation.[17] The Court thus interpreted it to mean economic liberty, which is to say the right of individuals and corporations to be free from governmental regulation in their economic endeavors. This so-called "substantive economic due process" theory approach of constitutional interpretation was used by the Court, along with the notions of dual federalism and impairment of contract, to hamstring both state and national policy mandates.[18]

In fact, it may have been as Ducat and Chase (1983, 604) have said,

> Taken together, then, the doctrine of dual federalism and substantive due process contributed a lethal sequence of knockout punches which killed off almost all social legislation . . . Government economic support of business continued unabated, it was only government *regulation* of business enterprise which the Supreme Court forbade.

Thus, not only were federal to state mandates generally held to be unconstitutional, but national and state mandated regulation of private enterprise was also, for the most part, prohibited.[19]

The first two cracks in the economic due process and dual federalism doctrines of the Court began to appear in the ringing dissents of Justice Holmes[20] in *Lochner* v. *New York* (1905) and the acceptance by the Court of the so called, "Brandeis brief" in *Muller* v. *Oregon* (1908).[21] A third crack in the Court's doctrine was perhaps the selective incorporation of the Bill of Rights into the Fourteenth Amendment and the application of portions of the Bill to the states. It is not commonly understood to be so, but prior to the Court's decision in *Gitlow* v. *New York* (1925) the Bill of Rights did not apply to the

states. Thus, where the national government was constitutionally prohibited from infringing upon such individual rights as religious freedom, freedom of speech, etc. the states were not so prohibited (*Barron* v. *Baltimore* 1833).

The states and their political subdivisions could search and seize at will, did not have to worry about self-incrimination, speedy trials, free speech, freedom of religion or any other provision of the Bill of Rights. In the absence of state constitutional provisions to the contrary, state citizens had few rights. Where the Court did uphold individual rights, it was as stated previously, in the area of economic rights (Cushman 1982, 140-141).

In *Gitlow* the Court determined that the word liberty in the Fourteenth Amendment was shorthand for the extension of the Bill of Rights to the citizens of the states.[22] As Justice Sanford said in *Gitlow*, "For present purposes we may and do assume that freedom of speech and of the press – which are protected by the first Amendment from abridgement by Congress – are among the fundamental personal rights and 'liberties' protected by the due process clause of the Fourteenth Amendment from impairment by the states" (2).

It is beyond the scope of the topic in this research to fully recount the Court's long and arduous journey to selective incorporation of the Bill of Rights. It is sufficient to note that in the years since *Gitlow* the Court has utilized the Due Process clause to make the majority of the Bill of Rights applicable to the states and their political subdivisions. A by-product was to set the stage for the demise of dual federalism.[23]

The discussion in this chapter so far would indicate that after the Marshall Court, mandates seldom met with the Court's approval. It also suggests that a recursive relationship exists between the Court's legal interpretation of federalism and federalism's political history in the United States. The "Federalist Party/Marshall Court" centralized and expanded federal policymaking power. Conversely, the "Democratic/Taney Court", although supportive of some federal policymaking powers, the area of commerce being notable, tended toward decentralization and restriction of federal power.

The Court, Federalism, Politics and Policy Mandates: Law and Reorder

To some it must have appeared that Marx's apocalyptic prediction of the fall of capitalism had come true. The market crash of 1929 set off a cycle wherein as more workers became unemployed, competition for jobs increased. Conversely, as competition among workers increased, wages fell. Hunger and homelessness ensued.[24]

By 1933 some thirteen million U.S. workers were unemployed. In response, President Roosevelt launched the First New Deal. The Supreme Court moved to strike down many of its first actions or key provisions affecting trade and commerce. In 1935 the Court declared the National Industrial Recovery Administration unconstitutional on dual federalism and separation of power grounds (*Schechter* v. *U.S.* 1935). Likewise, in early 1936 the Court, again citing dual federalism, struck down the Agricultural Adjustment Act (*U.S.*

v. *Butler* 1936).

Undaunted, Roosevelt launched not only the Second New Deal but also a proposal to pack the Court with justices favorable to his policies.[25] In what has subsequently become known as the "switch in time that saved nine," the Court began to approve of what it had declared unconstitutional a short time before. Thus, in *NLRB* v. *Jones* and *Laughlin Steel* (1937) the Court upheld the power of Congress to regulate industrial production. In *Wickard* v. *Filburn* (1942) the Court approved of agricultural production quotas and in *U.S.* v. *Darby* (1941) approved federal wage and hour laws. The era of cooperative federalism had begun. [26]

In fact, it may be as Key (1966, 31) has said,

> The federal government underwent a radical transformation after 1932. It had been a remote authority with a limited range of activity. . . Within a brief time, it became an institution that affected intimately the lives and fortunes of most, if not all, citizens.

While Key's observation may lead one to conclude that the national government had become dominant in all policy areas, it is probably more as Friedman (1985, 659) has argued," The decline of state and local government has been relative and not absolute." Friedman's view comports with that of Grodzin's (1966, 65) who called the change one from "layer cake" to "marble cake" federalism. No longer were the functions and responsibilities of state and national government separate, but inextricably intertwined. As much as anything, cooperative federalism was founded upon the flow of federal funding to the

states and localities. During the Great Depression states and localities were on the verge of bankruptcy. They simply could not perform their traditional function as social welfare providers. The New Deal funneled federal monies for social welfare through the states and localities. It also provided federal funding for state and local public works projects, Thus, the states and localities became increasingly dependent upon federal dollars (Friedman 1985, 659-660).

The growth in federal funds received by state and local governments during cooperative federalism was explosive. From 1933 to 1939, federal grants to states and localities increased fifteen-fold (Conlan, Beam, and Walker 1983, 263). It was but a small step from federal funding for depression relief to federal funding for a vast array of different programs. The 1940's and 1950"s brought with them federal funding for public education, highway construction, urban development, mass transit, and school lunches among other things.

Fiscal federalism – the financial assistance provided by a higher level of government to a lower level of government – is one factor in government centralization (Wright 1982, 117-118). Although some may dispute this, it is axiomatic that upon accepting the terms of a grant from a higher level of government, a lower level of government gives up at least some independence.[27]

However, it was perhaps the civil rights issue that portended the nation's turn from cooperative to centralized federalism. It was in 1954 that the Warren

Court paved the way for centralized federalism and created judicial and social mandates.[28] In *Brown* v. *Board of Education* (1954) the Court found public school segregation to be unconstitutional and ordered desegregation of local school districts.[29] In *Brown* the Warren Court overturned the precedent set in *Plessy* v. *Ferguson* (1896), in which it was ruled that segregation by race in public facilities was constitutional if provided for by state law.[30] Thus, the Court invigorated the Civil Rights movement and at the same time opened the door for other social mandates.

Aside from isolated use of federal troops or marshals to enforce the Court's decision in *Brown*, the Eisenhower administration showed little interest in social mandates.[31] The election of 1960 was pivotal regarding social mandates in particular and federal mandates in general. The question was whether to maintain the status quo with Nixon or to pursue change with Kennedy. The electorate chose Kennedy and change.

After the assassination of Kennedy in 1963, it fell to President Johnson to bring about changes in American society. Johnson's "Great Society" initiative was predicated on advancing the economic and political rights of groups of citizens who had previously been precluded from pursuing the American dream. The Civil Rights Act of 1964 proscribed discrimination on the basis of "race, color creed, religion, sex or national origin." The Voting Rights Act of 1965 banned literacy tests and other such state election laws designed to disenfranchise minorities.[32]

A series of cases followed which continued to enhance national power. In *Heart of Atlanta Motel* v. *United States* (1964) the Court upheld the Civil Rights Act. Likewise, in *South Carolina* v. *Katzenbach* (1966) the Court upheld the Voting Rights Act.[33] In Baker v. *Carr* (1962) the Court struck down Tennessee's reapportionment plan.[34] Likewise, in *Alexander* v. *Holmes County Board of Education* (1969) the Court ordered every school district in America to "terminate dual school systems at once." In *Loving* v. *Virginia* (1967) the Court invalidated state laws prohibiting interracial marriage. What the Court had done in a matter of a few years was to overturn several hundred years of legal precedent spanning both the dual and cooperative eras of federalism.

Taken as a whole it is safe to surmise that cooperative federalism could not bear up under the weight of federal mandates and financial assistance to states and localities or withstand the Court's activist approach to civil rights/liberties.

Centralized Federalism: One Law – One Order

Centralized federalism may be noted as a period during which the national government, if not supreme in all policy areas, behaved as if it were. For example, from 1960 to 1967 the national government enacted 335 new grant programs. Perhaps of equal importance is the fact that these new programs were for the most part categorical grants.[35] Along with these new programs came a plethora of new federal bureaucratic agencies and federal

regulations. Most, if not all, contained crosscutting or crossover sanctions for noncompliance. Some were preemptive or partial preemptive in nature.[36] For example, the Water Quality Act of 1965 allowed the national government to take responsibility for abating water pollution if the states failed to meet mandated water quality standards. During the period of centralized federalism, Congress enacted some nineteen preemptive laws in the policy areas of health and safety alone (Zimmerman 1991, 63-67).

By 1970 in the policy area of employment and training there existed seventeen different federal programs administered by thirteen federal agencies. Each program had its own separate rules, guidelines, clients, and service delivery system. The terms and conditions of categorical grants were, at least from a local perspective, often less than ideal requiring that new local bureaucracies be constructed to administer them. These new bureaucracies were often independent or quasi-independent of local government control. Thus, local housing authorities, community action agencies, and other similar programs had their own boards or commissions establishing policies separate and often different from those of the local government

For the most part the Court, having helped bring about the era of centralized federalism, supported the centralization of power in the national government. Thus, in *Maryland* v. *Wirtz* (1968) the Court sanctioned the application of the Fair Labor Standards Act to local government employees engaged in work activities that were "non-traditional." In fact, the era of centralized fed-

eralism, at least at the level of the Court, may have been as Alexander Bickel has said (1981, 32),

> It has been a time of populism to the left and populism to the right, strongly encouraged by the Supreme Court. There was a powerful strain of populism in the rhetoric by which the Court supported its one-man, one-vote doctrine, and after promulgating it, the Court strove mightily to strike down all barriers, not only the poll tax, but duration of residence, all manner of special qualification . . .

The outcome of the Court's assault on state voters' qualification laws is chronicled by Hanson and Crew, Jr. (1973) who conclude that the Court's one-man, one-vote ruling in *Baker v. Carr* had a strong impact upon state policy-making.

The challenge to centralized federalism came about for three reasons. Along with a change in the composition of the Supreme Court came a change in the Court's ideology; the categorical grant system was so unwieldy and irrational that it became more and more controversial; and, a conservative Republican president was elected. In 1969 Chief Justice Earl Warren, staunch advocate of judicial activism and proponent of national government supremacy, left the Court. His replacement as Chief Justice was Warren Burger who was more conservative than Warren and less keen than Warren concerning the expansion of federal power (Murphy and Pritchett 1986, 40). As important as the appointment of Burger was to the path and direction of federalism, it was the categorical grant system that fueled the debate over federalism's future. The categorical grant system became the target of government reformers

at the local, state, and federal levels of government. The generally accepted method of grant reform was to substitute block grant funding for existing and new programs. President Nixon not only supported grant reform but, in addition, was pledged to government reform in general. It is ironic that, claims of decentralization and rationalization of intergovernmental relations to the contrary, during the Nixon/Ford administrations more regulation of state and local government occurred than during centralized federalism. As depicted in Table 1 the number of intergovernmental regulations enacted during the Nixon/Ford years was far greater than during the Kennedy/Johnson years.

TABLE 1

Original Enactment of Major Intergovernmental Regulations, by Date and Administration

	Pre-Johnson 1931-1963	Johnson 1963-68	Nixon/Ford 1969-76	Carter 1977-80
Number enacted	2	8	21	5
% of all IGR regulations enacted	6	22	58	14
Predominant regulatory objectives	Labor Rights	Civil Rights, Consumer Rights	Environment, Health & Safety, Civil Rights	Energy Conservation, Environment

Source: Conlon (1988, 86).

The Burger Court, while more restrainist than the Warren Court, did not shy away from upholding the Warren Court's decisions or the extension of na-

tional power into policy areas by upholding lower court decisions. For example, in *Wyatt* v. *Stickney* (1972) the federal district court took actual control of the state of Alabama's mental hospital.[37] In that case the district court appointed a master to improve and operate the hospital and ordered the state to pay the costs. The right of mental patients to constitutional protection was upheld by the Supreme Court in *O' Conner* v. *Donaldson* (1975). Similarly, two judges in Boston placed themselves in charge of city jails, schools, public housing and the sewer system and for several years made all the operating decisions concerning these city agencies and functions (Murphy and Pritchett 1986, 41). [38]

The actions of the courts coupled with the proliferation of administrative subsystems and benefit coalitions made many state and local elected officials believe that they had lost control of their own governments (Anton 1989, 30-36). Although responsible to the electorate for policy outcomes, these officials in reality had little or no say in policy implementation. The election of 1976 swept former Georgia Governor Jimmy Carter into the White House. A moderate Democrat, Carter shared with former Presidents Nixon and Ford the idea that federal programs had become unwieldy.[39]

Preoccupied with a poor economy, an energy crisis, Middle East conflict, and the hostage crisis in Iran, the Carter administration accomplished little in the way of intergovernmental change. During the Carter years only five new intergovernmental regulations were enacted, and these were in the areas of

energy and the environment (Table 1). Instead of new programs the Carter presidency seemed content to maintain and expand existing ones. Thus, except for increased funding and a change in grant funding allocation formulas, the Carter years are relatively unremarkable from the standpoint of intergovernmental relations. (See Table 1.) What the Carter administration did achieve was to help spread the belief among Americans that their government was out of control. As Carter said, "The gap between our citizens and our government has never been so wide" (quoted in *American Government* 1994, 217). In turn the gap between the public and the national government set the stage for massive change in federalism and intergovernmental relations.

The election of 1980 was important to the path and direction of U.S. federalism. Deregulation and devolution became the watch-words of the Reagan administration. Reagan had promised to return the United States to its former military preeminence but to do so was extremely expensive. At the same time the cost of federal entitlement programs was experiencing tremendous growth.

Additionally, Reagan had promised the American people that he would present them with a significant tax cut. All of the foregoing, coupled with the increases in federal aid to the state and localities during the Johnson, Nixon, Ford, and Carter administrations, made it readily apparent that something had to give. New federalism was about to take a new direction, and fiscal federalism has never been the same.

As stated earlier, for the most part federal aid to states and localities had

been predicated on the notion that the national government was to provide the lion's share of funding (Stanfield 1992, 256). At most, state and local governments were required to match federal funds and were able to claim in-kind services as part of that match. Under Reagan's devolution plan responsibility for administering various programs would be returned to the states. Thus, the power centralization effect of federal grants would in theory be negated.

What actually occurred, however, was that programs were handed to the states and localities with less federal funding (Conlan, Riggle and Schwartz 1995, 25-26). For example, where previously the national government had paid half the cost of the salaries of Community Development Block Grant (CDBG) employees, states and cities were now responsible for the entirety of this expense.[40] In addition, such grants as General Revenue Sharing were scaled back and eventually terminated. Of course, the states and localities were still responsible for meeting the requirements of federal regulatory programs such as the Clean Water Act, only henceforth they would have to do so with less federal help. (See Figure 1.) Federal funding for such things as water supply resources also began to dry up.[41] The national government would no longer construct a flood control lake, build recreational facilities, and sell surplus water to the states and localities. Instead, such projects now required a "local sponsor."[42]

Figure 1 tracks the rise and decline of federal aid to states and local governments. As easily discerned, federal aid peaked during the Carter ad-

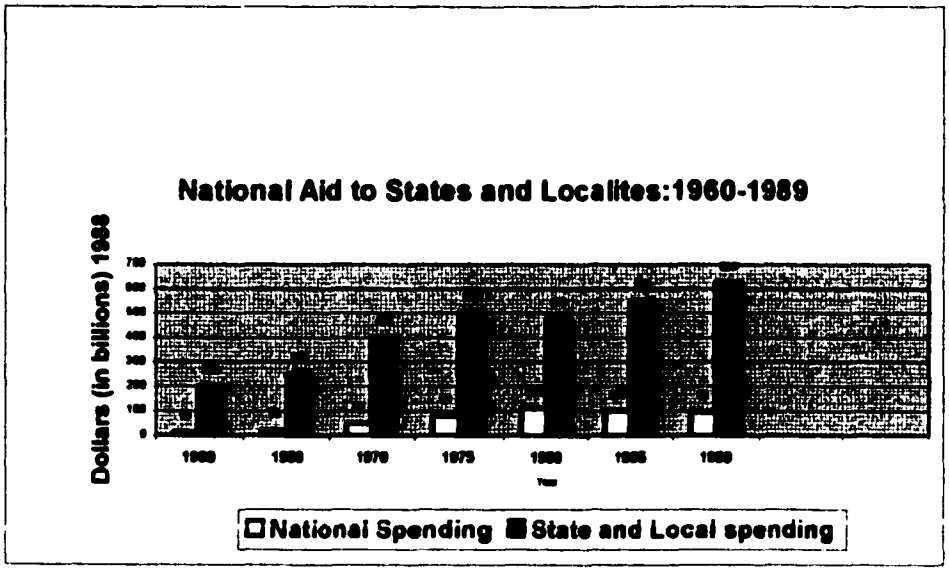

Figure 1. National aid to states and localities and national sending compared to state and local spending. Adapted from Johnson et al. (1994. 86)

ministration and rapidly declined thereafter.[43] It was as perhaps Reagan himself said, " . . . history will record that I not only talked about the need to get the federal government off the backs of the states but that I did, in fact, fight the use of federal grant-aid-dollars — and sought to return power and responsibility to the states, where they belong."[44] Yet, the fact remains that the effect of Reagan's devolution plan upon state and local governments has been higher local expenditures for social services, employee layoffs, and program elimination (Hansen 1983, 433; Cole, Taebel and Hissong 1990, 345-360). New federalism itself brought with it a number of new mandates in the areas of age discrimination, asbestos removal, and clean water, all passed in 1986 as well as clean air and civil rights mandates passed in 1990. In fact, thenumber of new mandates enacted from 1980 to 1990 was greater than in any previous decade (ACIR 1993, 56).

It may seems strange to some that the Reagan/Bush years continued the trend of new mandates. However, as Schlesinger (1991, 56) has noted,

> The party in power always feels that the Constitution is perfectly safe in its keeping, while the minority party is convinced that the welfare of the people demands that the majority should be restrained to a very narrow exercise of governmental authority. Hence, the "ins" have always tended to be strong nationalists, and the "outs" strict advocates of states rights.

One legacy of new federalism to the nation has been a staggering national debt—some 17 percent of the federal budget goes to pay only the interest on this debt. To be sure, this debt was not created solely by the federal grant system. However, it is certain that federal aid to the states and localities has contributed to it.

Although the federal government is currently experiencing a budget surplus and is forecasted to do so for the foreseeable future, it is unlikely that there will be a return to the heyday of centralized federalism and federal grants-in-aid. This holds true for a number of reasons; first, the mood of Congress and the public has shifted to a more restrictive perspective of the role of the federal government in our political system. Likewise, in recent years the Supreme Court has taken a decidedly conservative view of state versus federal rights. Despite current and projected budget surpluses, Congress has failed to deal with the looming Social Security funding crisis or to provide any viable mechanism for repayment of the existing national debt.

Another legacy is that of a less national view of federalism among federal judges.[45] President Reagan and President Bush were in a position to appoint an unprecedented number of judges to the federal bench. It goes without say-

ing that one litmus test for the appointment of these judges was conservatism and judicial restraint. For example, from the presidency of Johnson until Clinton's first term, all new Supreme Court justices were Republican nominees.[46] Likewise, during their terms Reagan and Bush appointed 60 percent of all current federal district judges and 584 federal judges in total. As O'Brien (1988, 62) said, "Reagan's Justice Department put in place the most rigorous and decidedly ideological screening process ever." Evidence of Reagan's and Bush's affect on federalism may be found in the fact that 77 percent of the time their judicial appointees have ruled in favor of states attempting to restrict abortion rights (Alumbaugh and Rowland 1990, 153-162).

The direction of the Supreme Court began to take a predictable twist in 1986. Upon the retirement of Chief Justice Burger, Reagan appointed conservative justice William Rehnquist to Chief Justice and political conservative Antonio Scalia to Rehnquist's old seat. Given Reagan's additional appointment of O'Conner and Kennedy to the Court, conservative justices now comprised a majority on the Court. This majority was increased by President Bush with the appointment of Justices Thomas and Souter.

As a result of these appointments the Court adopted a conservative activist ideology. Thus, in *Keeny v. Tasmago-Reyes* (1992) the Court placed responsibility for guaranteeing defendants' rights in state criminal cases on state courts.[47] In fact, after the Supreme Court had upheld the death sentence of a California man, Ninth Circuit Court Judge Stephen Reinhard said of the Su-

preme Court, "It is clear that the constitutional rights of individuals are no longer of paramount importance to the Court" (Quoted in "Judge Criticizes High Court" 1992). If anything, federalism in the United States may be viewed in terms of a great pendulum swinging back and forth between states' rights and national supremacy. The federal courts swing on the axis of presidential appointments while the presidency and Congress swing on the fulcrum of public opinion (Pagano and Bowman 1995, 2; Conlan 1993, 4). The pendulum was about to swing again.

In 1992 the electorate chose former Arkansas governor Bill Clinton as president. Upon taking office Clinton found 115 judicial vacancies.[48] Further, because of the retirement of various judges, Clinton will have the opportunity to appoint well over half of all federal judges by the time he leaves office. In part because of Clinton's promise to appoint more minorities to the federal bench and in part because of Clinton's liberal/moderate politics, it may be anticipated that the federal courts will take a more national view of federalism in the future.[49] The Clinton administration has a mixed record concerning mandates and IGR. For example, new mandates in the areas of gun control, school safety, and violence have been enacted. Further, as noted below, federal agencies have adopted new rules and regulations for existing mandates.

Meanwhile, state and local governments have received some measure of mandate relief. In 1995 Congress passed the Unfunded Mandates Reform Act. (PL 104-4). The Act provides for a cost-benefit analysis for new man-

dates. It should be noted that the Act does not apply to existing mandates or ongoing rulemaking by federal agencies nor does the Act preclude future mandates (Pagnano and Bowman 1995; Conlan, Riggle and Schwartz 1995, 38).[50] Thus, a proposed ADA rule will require state and local recreational facilities to be accessible to the disabled (Federal Register July 9, 1999). Likewise, the U.S. Department of Labor has recently reduced the amount of leave an employee may be charged for partial absences under the Family and Medical Leave Act (Wage and Hour Opinion Letter; FMLA – 89. July 3, 1997). In the meantime, the Environmental Protection Agency (EPA) continues to tighten air and water quality standards while the courts continue to define and redefine what federalism means (*National Public Employers Labor Relations Newsletter* November, 1999). For Instance, in 1997 the Supreme Court invalidated the portion of the Brady Handgun Violence Prevention Act of 1993 that required state and local governments to conduct background checks for handgun purchases (*Printz* v. *U.S.* 1997). The Court did so entirely on tenth amendment, dual federalism grounds. Likewise, in *U.S.* v. *Lopez* (1995) the Court struck down the Gun-Free School Zones Act of 1990 as having carried the commerce clause too far.

Although recent decisions of the Supreme Court have limited the power of Congress to mandate to states and localities, it remains to be seen what the future will hold.[51] All things considered, Conlan et al. (1995, 38) may be correct, "Despite signs of fundamental change, obituaries for the era of regu-

latory federalism may be premature." In future months the Court will consider the right of state and local employees to sue in federal court under the Age Discrimination and Employment Act (*Kimel* v. *Florida Board of Regents*). The Court will also consider whether state governments have sovereign immunity from the Federal False Claims Act (*Vermont Agency of Natural Resources* v. *United States*) and whether Congress has the right to prohibit states from selling motor vehicle licensing information (*Reno* v. *Condon*).

The final effect of the Clinton years on U.S. federalism and intergovernmental relations remains to be seen; however several trends are apparent. The federal judiciary may be more liberal in the future. The most probable implication for intergovernmental relations is a tendency toward national over states' rights. Likewise, while the states and localities have gained some measure of mandate relief during the Clinton administration, the fact remains that the underlying issues that gave rise to federal mandates have not been addressed. Although the federal budget deficit has been addressed, the national debt remains largely untouched. The issues of Social Security and Medicare funding are still unresolved, and health care for many Americans remains illusive. Unless the national government manages to get its financial house in order, it appears that mandates are here to stay.

Conclusion

In this chapter the history of federalism, intergovernmental relations, and federal mandates has been detailed. Highlights include the Marshall Court's

outward support for dual federalism while rendering decisions more in line with cooperative federalism; the Taney Court's obeisance to precedents set by the Marshall Court and its own advocacy of dual federalism; the long retreat of the Supreme Court from dual federalism: and, the continued march of states' rights toward cooperative federalism and national supremacy. Other highlights include the rise and fall of centralized federalism that set the stage for new federalism, the ascendancy of new federalism and the attendant shift from liberal activism to conservative activism on the part of the Court, the increasing number of mandates enacted by the national government, especially social mandates, and the potential for a return to a more centralized system of federalism in the future.

Whatever the future may hold, it appears from the discussion here that mandates are not going to be eliminated anytime soon. The same conditions that gave rise to previous mandates still exist. Notwithstanding the much touted current balanced federal budget, the massive national debt persists. Thus, Congress can ill afford the new policies and programs that citizens will undoubtedly demand in the future. Caught between the national need for a balanced budget and citizen demands, Congress will have little choice except to pass on the cost of new programs to the states and localities.

Finally, the chapter has underscored the complexity of the issues of intergovernmental relations and mandates. Few, if any, state or local officials would disagree with the stated purpose of most mandates. Equal opportunity,

civil rights, clean water, clean air, and other policy issues concern state and local governments as much as they do the national government. The question is, "at what cost and at whose expense?" will these issues be addressed.

CHAPTER 3

INTERGOVERNMENTAL RELATIONS AND THE IMPLEMENTATION OF MANDATES: THE AMERICANS WITH DISABILITIES ACT OF 1990

In this chapter the issues of intergovernmental relations, policy implementation, federal mandates, the municipal environment, and the ADA are addressed. Before proceeding, however, it is important to briefly explore the nature of the relationships between intergovernmental relations, policy mandates and implementation.

The previous chapter demonstrates that there exists in the United States system of federalism an essential and perhaps irreconcilable tension. Stemming from the division of authority between state and national government that is provided for by the Constitution, this tension has historically manifested itself in political, legal, and upon occasion, armed conflict. If, as Nice (1987, 2) and others have suggested, the study of intergovernmental relations is the study of the interaction between the various levels of government in our federal system, it follows that the study of state and local implementation of national policy is the study of intergovernmental relations. To be sure, not all intergovernmental relations involve policy implementation, but by definition, all implementation of national policy by state or local governments involves intergovernmental relations.

The previous chapter also demonstrates that the issue of the implementation of national policy mandates has been problematic since the early days of the United States federalist system. The adoption of a policy mandate is a political act that sends a political message to other levels of government. It is nothing more, or less, than an attempt to force other governments to alter their existing behavior. As such, the most bitter internal conflicts in United States history have come about over the implementation of policy mandates. In short, federalism creates intergovernmental relations which lead to policy mandates. In turn, policy mandates produce implementation which leads to conflict. Thus, much may be learned about the implementation of policy mandates from the study of intergovernmental relations and vice-versa.

Many general approaches to the study of intergovernmental relations (IGR) exist. These include Wright's lines of authority model (1982, 40) and the competitive model (Dye 1990, 189-191) as well as the functional perspective model (Nice 1987, 10-12) and the pyramid-center-periphery model (Elazar 1991, 71). Others include Schattschneider's scope of conflict model (1960, 2-11) and the fiscal federalism model (Musgrave 1969). In recent years public choice models of IGR with their multi-disciplinary approach of economic and political analysis have gained attention (Anton 1989, 27). In addition are the aforementioned dual, cooperative, centralized, and new federalism models. According to Grodzins (1960, 365-366), contemporary federalism is depicted as a " . . . rainbow or marble cake . . . characterized by an inseparable min-

gling of different colored ingredients, the colors appearing in vertical and diagonal strains and unexpected whorls. As colors are mixed in a marble cake, so functions are mixed in the American federal system."

Yet, Grodzins' and other general models of IGR suffer from one or more problems. They are either prescriptive, descriptive, normative, or suffer from a lack of specificity. For the most part they are little more than representations of the various historical stages of the evolution of federalism. Thus, while each has some explanatory power, most lack predictive capacity. For example, while fiscal approaches readily lend themselves to operationalization, they fail to account for the realities of politics (Anton 1989; 20-24). Conversely, although conflict approaches account for political reality, they do not consider fiscal reality. Public choice theory rectifies the above omissions but is flawed itself in that it ignores the complexity of IGR. Similarly, functional, competitive, and other such theories explain the complexity of IGR but are not specific enough to be useful as a predictive tool. Although by no means exhaustive, the foregoing serves to highlight two important issues: first, no single unifying approach to the study of IGR exists and, second, existing approaches often lack predictive and/or explanatory capacity.

The sub-field of implementation has also been criticized as exhibiting a lack of predictive and explanatory theory (Elmore 1978, 601-616) and for a dearth of empirical and comparative research (Linder and Peters 1987, 459-475). Sabatier (1986 21-48), among others, has noted the existence of two

overarching approaches to the study of implementation: top down and bottom up. The top down model views implementation as a linear process. In this model the implementation path of a given policy is treated much as a vehicle traveling a highway. Once enacted, a policy may be delayed, it may encounter detours, bumps and turns, or it may run into roadblocks, but somehow in the end, the policy should reach its final destination: implementation. The view of implementation as a top down process has been criticized as neglecting state and local variables (Hjern and Hull 1982: 105-115).

The bottom up approach concentrates on the local variables surrounding the implementation of a given policy. In this model the implementation of a policy is traced from the local level back to the federal level. The bottom up approach seeks to find implementation variables utilizing "network like analysis" (Hjern 1982, 301-308). This approach assumes implementation is much like an outdoor market where various actors confer, bargain, negotiate and finally reach an implementation deal. This approach has been criticized, however, for discounting federal implementation variables (Goggins et al. 1990, 12).

States presumably play a pivotal role in implementation by acting as policy gatekeepers between local and national government (Aron 1979, 451-471; Lester and Bowman 1989, 731-753). This approach may be likened unto water flowing through a conduit. The state gives a path and direction to the flow of implementation. Granted, the flow is constricted at times and at other

times the flow runs freely. States may at times divert the flow or even reverse it but in the end, implementation will occur. The state—centered approach to implementation has been criticized for narrowly focusing on state actors and variables and neglecting federal and local ones (Riggs 1980, 107-115; Hanson 1983).

Given the foregoing, it is small wonder that Elmore (1978, 278-279) has suggested that the study of implementation is in "disorder." The problem with implementation research may stem from a lack of understanding of the implementation process. The assumption has been that implementation is a linear process. Thus, when the national government adopts a policy, the states and localities will implement it. This, of course, is not to say that a policy's implementation path will not be influenced by state and local governments, nor does it say that states and localities will not bargain for better implementation terms. What it does say is that the implementation or non-implementation of a policy may be conditioned on the environment of the basic governmental unit charged with its implementation. If the environment is conducive to implementation, the policy will be implemented. If the environment is not conducive to implementation, the policy will not be implemented.

Archibald (1970; 86) best states the case for this perspective when he argues that,

> I am not merely saying that an alternative, when implemented, may not produce the consequences expected. Rather, I am saying that the policy alternative actually executed is quite likely to have undergone radical revisions at the hands of the operating levels. And since a

> policy is no better than its implementation, this suggests that analysts need to pay attention to the feasibility of a policy alternative at operating levels.

Archibald's view of implementation is supported by among others Quade (1975, 253) and Ripley and Franklin (1986, 219).

Downs (1967, 41) has argued that in order to understand the behavior of bureaucratic organizations, one must understand their internal and external environments. Ripley and Franklin (1986, 220) have said that ". . . no single authority appears to be in charge of the implementation of any major single policy. . ." The view of implementation as chaotic rather than routine is supported by the work of Pressman and Wildavsky (1973).

In light of the foregoing, it is reasonable to conclude that implementation of a policy is best studied from the level of the environment of the basic unit of government responsible for the implementation of that policy. After all, it matters little what path and direction a policy takes if that policy is not carried out. Thus, policy compliance is key to implementation. In short, any policy that is not complied with, in reality is no policy at all.

Factors Affecting Policy Implementation

Many factors have been suggested to affect policy implementation. Among these are bargaining (Ingram 1977; 501; Elmore 1978, 222), content and language (Murphy 1973, 194-195), funding (Weikart 1993 407-456; Kee and Shannon 1992, 321-329), incrementalism (Lindblom 1959; Mueller 1984, 162-168), co-option (Lazin 1973, 264-271) and environment (Wirt 1985, 83-

112). Tebben (1990, 113-122) argues that the courts play an important implementation role. Massey and Straussman (1985, 298) find that federal enforcement efforts are significant, and Peterson and Wong (1985, 321) note that bureaucracy and policy type are important to implementation. Sharkansky (1978, 39) and Stone, Whelan and Murin (1979, 316) as well as Kincaid (1982, 121) and Hanson (1990, 68) cite political and/or societal culture as variables. The form of government existing in a locality may also affect implementation (Rosenthal and Crain 1966, 273; Lineberry and Fowler 1967, 109; Judd 1988, 179).

Further, the existence or non-existence of benefit coalitions may affect the implementation of a policy (Moneypenny 1960, 15). Ringquist (1993, 336) has found that organized interest groups "exert significant influence over state air pollution policy." It should be noted that benefit coalitions often form around various issues and are not limited to economic issues. Thus, coalitions may form around juridical or even symbolic benefits (Anton 1989, 31-32). The capacities of the agency responsible for implementation may also impact implementation. For example, some agencies are more likely to implement a given policy than others because some agencies have an adaptive organizational culture while some organizations resist change (Ott 1989, 12-19).

Simon (1981, 190) has called the capacities of organizations to accept change "bounded rationality." In Simon's (1985, 294) view individuals and organizations engage in "behavior that is adaptive within the constraints im-

posed by both the external situation and by the capacities of the decision-maker." Thus, the internal environment of an organization may influence implementation.

Although non-comprehensive, the foregoing illustrates the diversity in the variables utilized in existing implementation research. Two facts may be gleaned from the diversity of previous research in the area of implementation. First, the variables that influence implementation are economic, societal or political in nature. Second, these variables may be found in the internal and external environments of implementing entities.

Several observations concerning the foregoing discussion of existing approaches to IGR and policy implementation are in order. First, existing approaches to IGR provide great insight into the influences on state and local policy implementation efforts. For example, the scope of conflict approach suggests that where implementation is thwarted at the state or local level, interest groups or individuals may take the issue of implementation to a different level of government such as the federal courts. Likewise, the fiscal federalism model underscores the importance of financial resources to implementation. Additionally, each approach helps explain why the implementation of unfunded mandates is particularly objectionable to state and local governments.

Perhaps of equal import is the insight to be gained from the shortcomings of existing approaches to IGR. One shortcoming is the lack of explanatory and predictive capacity inherent in many theories of IGR. Another is the frag-

mented status of IGR research. In the field there seems to be an over abundance of theory and a dearth of empirical study.

Perhaps what is missing in IGR research is that many scholars do not see the linkage between IGR and policy implementation. As noted above, the sub-field of implementation also suffers from fragmentation. As a relatively new area of study the sub-field has, for the most part, abandoned its IGR roots and gone down the well-traveled path of substituting theory for substance.

Goggins, et al. (1990, 15) recognized this when they first set forth an integrated and empirical approach to the study of implementation. Perhaps to underscore their perspective, they call their approach "the Communications Model of Intergovernmental Policy Implementation" (19). Thus, it may be surmised that to Goggins et al. IGR and implementation are, if not identical, so closely intertwined as to be inseparable. This supports the conclusion that the study of policy implementation complements and builds on IGR research. In truth, without the foundation of IGR theory, the study of implementation would be more akin to policy evaluation than anything else (Palumbo 1986, 598-605; Goggins et al. 1990, 9-22; Patton 1986, 14-22). In sum, IGR and implementation may be seen as the top and bottom of a ladder; one may ascend or descend, but one cannot utilize the ladders' full potential without doing both.

Municipal Governments: Are They Different?

Under "Dillon's Rule" municipalities are creatures of the state in which they exist. As political sub-divisions municipalities have no powers other than

those granted by a state. This one thing sets municipalities apart from state and national government whose powers are provided for by the Constitution. Another is that as the level of government at the bottom rung of the U.S. political system, municipalities, at least in theory, have little say in how that system operates.[52] Additionally, as noted earlier, most municipal functions have no state or federal counterparts. Wastewater treatment, potable water production, refuse disposal, planning and zoning, building inspection and animal control are all primarily municipal functions. Leaving aside for the moment the inherent differences between governments generally, smaller municipalities are unlike larger municipalities in a number of ways.

In smaller municipalities, civil service systems and unionism are not as prevalent as they are in larger governments. Similarly, bureaucrats in large governments whose jobs are eliminated often have lateral transfer rights. This is often not the case in smaller municipalities and, where it does exist, these benefits are usually contained in city council policy statements which are subject to rapid change by legislative fiat.

Also, the level of employee skill and expertise frequently differs in small municipalities compared to employees in larger city governments. In many smaller municipalities the city attorney, city engineer, and even the human resources manager may be only a part-time employee who serves in a consulting capacity. Even when employees are full time, they may have limited government experience.

Likewise, in smaller municipalities elected officials may have little prior governmental experience and, for the most part, serve only part-time with little monetary compensation for their efforts. Additionally, in smaller municipalities elected officials are members of a relatively small sociological unit.[53] As such, they must face their constituents on an almost daily basis and account for their political decisions. If a municipal official alienates the local community, he or she may be censored or shunned by the community. Thus, neighbors, friends, and even business associates may constantly confront the elected official. Such alienation may last for many years, even long after the official has left office. In extreme cases physical violence or threats of violence may occur.[54]

As Bernard (1962, 84) says,

> The people in a community may be viewed as cards in a deck. In one deal they line up against one another. Reshuffled for another deal, they line up together against another hand. Many conflicts thus tend to neutralize one another. Where people line up against each other on one issue only and have no issue to reshuffle them the cleavage may become very deep. Indeed, if each of the parties to a conflict had racial, economic, religious, cultural, and class interests in common, and if each had no interests in common with the opposing side, conflict might well assume the proportions of civil war.

Smaller municipalities also operate with fewer total resources than larger governments whether these resources are financial or human. Because most existing resources are already dedicated to basic services (and whatever other services the citizens have chosen), it is often difficult if not impossible for smaller municipalities to respond quickly to requests for mandates for new programs. It is important to note that it is the local level of government, not the state or national, that is responsible for providing basic services to the local

public. These basic services do not include the somewhat abstract "quality of life" programs such as fair housing, equal opportunity, or equal access, but the basic services upon which life itself depends.[55] The preoccupation of officials in smaller municipalities with concrete outputs also sets these municipalities apart from larger governments. It is therefore difficult, if not impossible, to convince municipal officials that implementation of something such as the ADA takes precedence over the replacement of a broken sewer line flooding sewage in the homes of fifty citizens. In larger governments an official charged with pollution abatement policy may have never even seen a sewage treatment plant in operation.

It is also important to understand that municipalities do not operate on a for profit basis. The price they may charge for their goods is not set by the market place. Rather, municipalities must raise prices in an environment of political and economic constraints. While it is true for the most part that municipalities have a monopoly on the goods and services they deliver to the public, it is equally true that the public determines the product mix and their cost. In addition, the municipal product mix is diverse ranging from the "necessities of life" products to "quality of life" products. As any municipal practitioner can readily attest to, the cost of producing a product often has little relationship to the price the public pays for that product. Golf courses and swimming pools provide a good example of this. The use of these facilities is not predicated on the cost of operating them, but instead, on what the people who use them are

willing to pay.[56]

Thus, the resources needed to implement a new program such as a federal mandate generally come from either an increase in taxes or fees, or a reduction in other programs (Agger, Goldrich, Swanson 1964, 17-32). This problem is exacerbated by the fact that municipal finance must conform to state laws which seldom grant local governments much flexibility regarding taxation and spending (Harrigan 1994, 47-48).

As noted in Chapter One of this study, the reconciliation of local and national interests is problematic to local officials.[57] Faced with a choice between local community conflict and conflict with another level of government, many local officials opt for the latter if for no other reason than that the penalties or sanctions for mandate non-compliance fall upon the community as a whole and not solely on the local officials.

The idea that public officials seek to avoid risk is so widely accepted as to not bear recounting. Either way municipal officials are caught between local interests, state laws and federal mandates. It is only the extremely naïve or new local official who elects to cater to national interests rather than pander to local ones. This may be especially true in regard to social mandates because these often do not provide concrete benefits to the public.

The ADA: History, Background, and Requirements

For the majority of United States' history, disabled Americans have been treated as second class citizens. Generally considered to be unable or un-

worthy to participate equally in American society, public policy relegated disabled citizens to an existence predicated on charity or social welfare.

Physically challenged citizens and those suffering from even minor mental disorders were frequently placed in segregated schools or institutions where, for the post part, they received training to perform low paying jobs. In the alternative, disabled citizens, shunned by the general population, were kept at home by their families and thus often received little or no education or job training.

To be sure, disabled veterans were granted government pensions and, later, preferences in government employment. However, the majority of the disabled were forced to rely on the largesse of family, friends, and government or non-profit agencies to survive. Disabled Americans were also segregated by the design and construction of both private and public facilities. Infrastructure in the United States was built and maintained based on the needs of the average citizen. Thus, physically challenged citizens found it difficult if not impossible to conduct personal business, visit public and private buildings or travel very far from home.

On the heels of the civil rights movement of the 1960's, the first disability related civil rights act was passed in 1973. *The Rehabilitation Act of 1973* (RA) is noteworthy for several reasons: for the first time federal legislation recognized that discrimination against the disabled is a civil rights issue and the Act acknowledged that disabled Americans were discriminated against in employ-

ment, education, and access to public facilities.

Like *The Architectural Barriers Act of 1968* before it, the RA was flawed; it only pertained to the federal government, entities receiving federal funding and federal contractors. The first comprehensive piece of disability related legislation enacted by the federal government was the *Education for All Handicapped Act of 1975* (EAHA). The EAHA provided for equality in public education for disabled persons nationwide. Thus, while some disabled Americans had received national protection from discrimination, many still had not. This situation continued until the passage of the *Americans with Disabilities Act of 1990* (ADA).[58]

It was in 1986 that the National Council on the Handicapped (1986, 18) proposed that "Congress should enact a comprehensive law requiring equal opportunity for individuals with disabilities, with broad coverage. . ." The Council's report to the president and Congress was, in part, predicated upon polling results obtained by Louis Harris and Associates. Polls taken by Harris showed that disabled Americans were poorer, less educated, and enjoyed a lower quality of life than other Americans. Additionally, the Harris polls found that 8.2 million disabled Americans wanted to work but were unable to obtain gainful employment. Likewise, the polls indicated that the disabled in America were discriminated against in health care and education and that public buildings and public transportation were, for the most part, inaccessible to the disabled. The Council's report became the ADA bill introduced in Congress in

1988. The ADA became law on July 26, 1990 with a mandated implementation date of July 26, 1992.

From the onset the ADA has been the subject of much controversy and confusion. For example, in early 1991 Creasman and Butler asked if the ADA would disable employers rather than empower disabled workers. Likewise, Mayerson stated (1991, 7) that the ADA would ". . . transform the landscape of American society . . . " Percy (1993, 103) has noted the adverse impact of the ADA on municipal governments in particular. He cited the ADA's inclusion by the U.S. Conference of Mayors on its list of the ten most costly non-environmental federal mandates. Likewise, Holwitz, Goodman and Bolte (1995, 149) believe that the vague definitional language contained in the ADA is intentional. They conclude that this vague language " . . . makes it difficult to implement the ADA's employment provisions in a systematic manner."

Without doubt the ADA is a vague and complex national public policy mandate. ADA requirements are contained in five separate titles. Title I provides for a general ban on discrimination in employment. Title II prohibits discrimination in public services. Title III considers the issue of accommodations in the private sector. Title IV concerns telecommunication. Title V contains a number of miscellaneous provisions including a prohibition against retaliation or coercion involving those who claim rights under the ADA.

More specifically, the Act provides for the same enforcement, penalties and processes as Title VII of the Civil Rights Act of 1964.[50] Title I Section C-3

of the ADA defines a "qualified disabled person" as one "who, with or without a reasonable accommodation, can perform the essential functions of the employment position the person holds or desires." Section C-4 of Title I defines "disability" as "an individual with a disability who has a physical or mental impairment that substantially limits one or more major life activities; or has a record of such impairment, or is regarded as having such an impairment." Impairment is defined by Title I of the ADA to be

> Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organ; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
>
> Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
>
> Also included are orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, infection with the Human Immunodeficiency Virus, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, drug addiction, and alcoholism.

Under the ADA virtually anything that interferes with a major life activity is covered:

> A 'substantial limitation' of a major life activity means that an individual's activities, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, and participating in community activities, are restricted as to the conditions, manner or duration which they can be performed as compared to most other people.[60]

The ADA prohibits discrimination against disabled individuals in the following employment areas: job application procedures, hiring, promotions, dis-

charge, compensation, job training, and other terms, conditions, and privileges of employment. Title II of the ADA provides that state and local governments may not discriminate against disabled persons in the delivery of public services including "the benefits of the services, programs or activities of a public entity," or in the access and use of public transportation. State and local governments must also construct new and/or renovate existing public facilities so as to make them comport with the *Architectural Barriers Act* of 1968.

To properly assess the ADA, one should understand that public employers are mandated to meet its requirements regarding employment unless doing so would work an "undue hardship" on the organization. The ADA defines undue hardship as an accommodation requiring a "significant difficulty or expense." A reasonable accommodation according to the ADA is: making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and, job restructuring, part-time or modified work schedule, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations.

In light of the foregoing it may be surmised that the ADA brings with it a number of problems inherent in most federal mandates. McDowell (1994, 17) identifies the problems encountered by state and local governments with the implementation of federal mandates as follows:

* Excess costs due to complex and rigidly specified implementation mechanisms;
* Inadequate consideration of costs and benefits;
* Distortion of state and local budgets and policy priorities;
* Erosion of state and local initiative and innovation;
* Inefficiencies due to the application of single, uniform solutions to geographically diverse problems;
* Inadequate consideration of varying state and local financial and personnel resources;
* Attenuated accountability to citizens, due to the separation of responsibilities for policy direction and public finance; and
* A double standard, whereby the federal government exempts itself from compliance, or complies only partially, with the regulations it imposes on state and local governments.

With the ADA these problems must also include vague and ambiguous language, complexity of the issues, and financial assistance which is generally lacking on the part of the federal government.

Although the problems surrounding ADA implementation are formidable, they are not insurmountable. Municipal employers faced with the task of ADA implementation may take several different steps to reduce the burden on the organization. For instance, they may employ ADA specialists to facilitate its implementation. Likewise, employers may seek additional revenues for ADA

implementation or, in the alternative, reallocate existing financial resources. They may also pursue implementation help from Congress or other institutions and organizations. Conversely, the local community and the organization may support ADA implementation and thus need or require little ADA implementation assistance.

Intergovernmental Problems

The general problems with ADA implementation are worsened by the penchant of Congress for enacting mandates and leaving their interpretation to the federal bureaucracy. The federal bureaucracy responsible for overseeing ADA implementation, the Equal Employment Opportunity Commission (EEOC), does not provide specific on-site implementation assistance. Instead, the EEOC provides general guidelines for ADA implementation and investigates compliance on a case-by-case basis after receiving a complaint of an alleged violation.

The problem with the EEOC's lack of ADA implementation guidance is exacerbated by its ongoing ADA rule making. For instance, although the ADA has provided protection for the mentally impaired, the EEOC has only recently finalized rules for their accommodation in the work place. [61] Other implementation rules appear to be constantly in a state of flux.

The ongoing interpretation and reinterpretation of the ADA by the EEOC is a major problem for municipal employers. For example, an employer who relies on EEOC's interim rules to implement some aspect of the ADA may later

be sanctioned for following those rules. Even a written opinion letter from the EEOC to an employer does not absolve that employer from guilt if later the EEOC changes its mind regarding its previous opinion.[62] Thus, employers might implement the EEOC's ADA interim rules only later to be found in non-compliance for doing so, or in the alternative, they may wait until the EEOC issues final rules and risk being sanctioned in the meantime. An employer may also implement those aspects of ADA rules finalized by the EEOC and postpone implementing the others.

The EEOC does little to further its credibility with employers in much of the rule making it does. In *EEOC* v. *Joslyn Manufacturing Co.* (1996), the agency sued an employer that sent a job applicant for a medical examination before reaching a determination as to his physical ability to perform the job for which he applied. The case was settled prior to trial because as EEOC attorney, John Hendrickson, said, "Before rejecting an applicant for medical reasons, an employer must individually evaluate his or her ability to do the job"[63] (*Fair Employment Practices* Sept. 5, 1996, 108). Thus, EEOC's interpretation of the ADA submits that employers should be able to ascertain the extent of a prospective employee's disability before the applicant has seen a professional health care specialist.

Likewise, Chris Kuczynski, Director of EEOC's ADA Policy Division, has stated in regard to psychiatric disability that an employer would be "overgeneralizing by assuming that anyone who did anything in the past is more likely

to do something in the future.[64] Thus, a person who has displayed past violent behavior must be evaluated for employment under the EEOC's "direct threat" guidelines which examine the following: duration of the risk of potential harm, its nature and severity, the likelihood that the harm will occur, and who is imminent to the harm. In other words, an employee who has a history of violent behavior because of mental problems cannot be terminated from employment without the employer determining how long the behavior will last, how severe the behavior will be, the likelihood of the behavior reoccurring and when it may or will occur.

Municipal and other employers are legally liable under the concept of "negligent hiring" or "negligent retention" for the workplace related violent behavior of their employees if they are aware of similar past violent behavior on the employee's part. However, Kuczynski's response to this problem is perhaps typical of EEOC thinking. The fear of negligent hiring and negligent retention litigation is "not a defense under the ADA for the failure to hire someone when the decision not to hire is based upon someone's psychiatric disabilities". [65]

The problems stemming from the EEOC's ADA enforcement efforts may be understandable. The EEOC has a backlog of pending cases that, in the words of the former Director of the EEOC and current U. S. Representative, Eleanor Holmes Norton, "will bury the agency." Thus, the EEOC may simply be overloaded with complaints.

Between July 1992 and September 1999 the EEOC received 125,946 ADA complaints, ranking the ADA third among the EEOC's caseload, behind only race and sex bias cases.[66] The result has been $261.2 million in settlements by employers to workers covered by the ADA. The above figure does not include money collected through litigation sponsored by the EEOC.[67] Of course, not all ADA litigation is sponsored by the EEOC or initiated by the Justice Department. Disabled workers or job applicants who allege ADA violations may also opt to pursue legal relief on their own. Indeed, the ADA has been called by one long time local personnel officer who shall remain anonymous, the "Attorneys' Dollars Act."

Legal Problems

The problematic nature of ADA implementation is worsened by the U.S. legal system, where judicial interpretation of the ADA may vary from jurisdiction to jurisdiction and even from court to court in the same jurisdiction. Thus, a judicial interpretation of the ADA by the Ninth U.S. Circuit Court of Appeals may uphold a section of the ADA struck down by the 10th U.S. Circuit Court. Likewise, federal district judges within the jurisdiction of the circuit courts on the Ninth or Fifth or any other of the ten remaining circuit courts may have on record differing ADA legal opinions. Additionally, because the ADA provides that the states may enact and enforce their own disability laws, state courts may become involved in judicial determination of the rights of the disabled.

In general, the courts have heretofore interpreted the ADA broadly.

Thus, in *EEOC* v. *Community Coffee Co.* (1995) an employer's questioning of a job applicant concerning a facial disfigurement, even though the employer did not discriminate in hiring, was held to be a violation of the ADA. The ADA, unlike most federal laws, regulates the questions a potential employer may ask of a job applicant.[68] Likewise, in *EEOC* v. *United Welfare Fund* (1996) the EEOC reached a court-approved settlement in which an employee infected with AIDS was deemed to be disabled under the ADA and his estate was to receive actual and punitive damages totaling $15,200. The settlement also overturned the employer's insurance company's cap on HIV and AIDS related expenses.

The City of Denver, Colorado's City Charter was found to be in violation of the ADA in *U.S.* v. *Denver* (1996) and thus overturned. It is interesting to note that in this case, no discrimination was determined to have occurred. The simple fact that the City Charter prohibited transfers between uniformed and non-uniformed Civil Service positions was sufficient grounds to find the city in violation. As the court said, it was not necessary for the Department of Justice to show that any individual employees were "otherwise qualified individuals"; it needed only to establish that the policy exists.[69] These, among many other examples of ADA litigation, show that the courts are often active in broadly interpreting and enforcing the ADA. As Cozzette (1994, 106) states, "Hundreds of complaints will be adjudicated over the next several years and new rights will be defined that have a dramatic, lasting impact on public

administration in both operational as well as fiscal terms."

Cozzette's observation is supported by *Lucky Stores Inc.* v. *Holihan* (1997). In *Lucky* the Supreme Court let stand a lower court ruling that an employee could sue under the ADA even though the employee was *not* disabled. As the Ninth Circuit Court of Appeals said in *Lucky*, "Although the employee was not actually disabled within the meaning of Americans With Disabilities Act, there was genuine issue of material fact as to whether the employer 'regarded' him as disabled within the meaning of the ADA".

In other words, the mere perception on the part of an employer that an employee is disabled is sufficient for that employee to claim ADA protection and sue for damages under the ADA.[70] In more recent times the Court has ruled that disabled prisoners in state or local prisons have ADA protection (*Pennsylvania Department of Corrections* v. *Yeskey* 1998). Further, the Court held in *Brogdon* v. *Abbot* (1998) that AIDS is a covered disability under the ADA.

To be sure, the Court has lessened the burden of the ADA on some employers by finding that a disability must be evaluated in its mitigated state (*Sutton* v. *United Airlines* 1999). Thus, citizens whose disability is correctable through medication, prosthesis, etc. cannot claim ADA protection.[71] In *Sutton* the Court considered the issue of visual impairment and the ADA. The argument in this case concerned airline pilot applicants who did not meet vision requirements and who claimed entitlement to ADA protection. Reasonable ac-

commodation was sought on the part of the plaintiffs because their vision was correctable with glasses or contact lenses. The Court determined that the plaintiffs were not entitled to ADA protection for the somewhat paradoxical reason that because their vision was correctable, they were not disabled.[72]

In July 1999, however, the EEOC responded by issuing new instructions to its field officers concerning the investigation of correctable disabilities. The field officers were now required to consider whether the mitigating measure "fully or only partially controls the symptoms or the impairment, whether the mitigating measure controls the symptoms or limitations all of the time or only some of the time, and whether the mitigating measures tend to become less effective under certain conditions such as stress, fatigue, environmental change or illness."[73] The implications of the Court's *Sutton* decision for employers remains to be seen. Although many are heralding the decision as a victory for employers, the EEOC's response has not yet been factored into this perspective. For example, EEOC chairwoman Ida L. Castro has gone on record as viewing the Court's decision in *Sutton* and *Murphy* as victories for the organization.[74]

As she states,

> The decisions appear to significantly narrow the scope of those covered under the ADA, the Court affirmed EEOC's standard of an individualized approach to the assessment of coverage under the ADA. In other words, the determination of whether an individual can bring a claim under the ADA should be assessed on a case-by-case basis.

Further, Ms. Castro noted that the Court did not exclude any condition from ADA coverage nor did it preclude the determination that individuals who use mitigating devices are still disabled. She went on to outline EEOC's plan for responding to the Court's decisions. The plan includes educating, training, and outreach programs to ADA stakeholders including EEOC staff, businesses, private attorneys, civil rights groups, unions, and other employee groups. In sum, what Ms. Castro has said is that not only were the decisions in *Sutton* and *Murphy* EEOC victories but also that the EEOC intends to rally affected interest groups in support of the EEOC position. In the meantime the EEOC recently released its proposed accessibility guidelines for recreation facilities nationwide. These guidelines cover amusement rides, boating facilities, fishing piers/platforms, golf courses, sports facilities, swimming pools, wading pools, and spas.

A few highlights of the proposed guidelines include that 3 percent of marina boat slip moorings be wheelchair accessible and that guardrails around fishing piers and platforms be no higher than thirty-two inches. Also, golf course greens must be wheelchair accessible and swimming pools must have sloped entries, lift systems, transfer walls or moveable floors.[75] The guidelines at first do not appear to be particularly onerous until one considers that thousands of municipalities nationwide operate these and other facilities covered under the guidelines. If the guidelines are finalized as proposed, these municipalities will be required to make major modifications to their recreation facilities

at taxpayer expense. This holds true whether or not a disabled person ever uses or even desires to use a facility.[76]

Thus, while both employers and the EEOC are claiming victory in recent ADA court decisions, the final outcome remains much in doubt. Either way, it is obvious that the ADA continues to be problematic for many employers.

For example, in *Cleveland* v. *Policy Management Systems Co.* (1997) the Supreme Court held that people who file for disability payments such as Social Security disability benefits can sue their former employers for discrimination under the ADA. Thus, the specter of employers being forced to place disabled employees on indefinite leave arises.[77] Also, in *Wright* v. *Universal Maritime Services Corp.* (1997) the Court found that a worker who received permanent disability payments could claim ADA protection in regard to employment instead of arbitrating the issue as required by a collective bargaining agreement between the union and the employer. The implication of this case for employers is indeed ominous. An employer may be forced to employ or re-employ a disabled worker with reasonable accommodation where that worker has already been declared permanently disabled.

In many ways the problems with ADA implementation are reminiscent of the heyday of affirmative action implementation efforts. Like affirmative action implementation, ADA implementation efforts are marked by confusion, complexity, misinformation and differing interpretations of the Act's requirements.[78]

ADA implementation efforts also mirror the U.S. Department of Labor's (DOL) implementation of the Fair Labor Standards Act among public sector organizations during the late 1980's. The concept of DOL appeared to many practitioners to be, "we don't know what you're guilty of, but you must be guilty of something and we'll find out what."[79] It may well be as the National Public Employers Labor Relations Association has surmised, "We know through our experience with the *Fair Labor Standards Act* that the applicability of such general federal statutes to the public sector can give rise to various onerous or absurd results."[80]

This brief discussion of the ADA would indicate that the ADA produces a vague, complicated and confusing public policy. Further, it indicates that confusion over the ADA is compounded by ongoing rulemaking and interpretation of the Act by the EEOC and the courts.[81] ADA implementation may be an expensive proposition, both in terms of financial and/or intellectual resources. Nonetheless, municipalities must somehow and some way determine what to do about ADA implementation. The question then arises, how do municipalities respond to the need to implement the ADA and other unfunded mandates? For an answer to this question, we turn to the field of organizational behavior.

Decision-Making and Policy Implementation

As stated earlier municipalities are communities. However, they are also governmental organizations. While the extended community which envelopes

an organization plays a major role in shaping that organization's behavior, it is the organization itself that must decide what to do about a policy mandate. After all, even a so-called "non-decision" requires that the organization make a choice to avoid making a decision.

Organizations, like individuals, have been theorized to reach decisions in many different fashions. The rational model suggests that organizations behave as goal-seeking utility maximizers. Thus, organizations presumably choose from among many different competing alternative responses to a problem after weighing the cost and benefit of each response (Lewis 1978, 62; Lindblom 1959.) In this model, organizations and organizational members are viewed to behave much the same as a computer. Data concerning the problem and potential solutions are placed in the collective minds of decision-makers. After elimination of unpalatable and unworkable solutions, the one having the greatest benefit at the least cost is selected.

Adapted from "rational man" economic theory, the rational model often fails to account for organizational reality. For example, the model assumes that organizations are fully aware of problems and solutions. Further, it assumes that organizations have the time and other resources to conduct exhaustive investigation of problems and solutions. Similarly, the model assumes that organizations, upon arriving at a response, are capable of adopting that response (McKinney and Howard 1979, 232-233; Quattrone and Tversky 1988, 719-735). Additionally, as an analytical tool the model, like a computer, is limited by the

"garbage in – garbage out" phenomenon by which inputs only account for outputs.

In *Agenda, Alternatives, and Public Policies*, Kingdon (1984, 82) presents his findings concerning the rational model:

> If policy makers were operating according to a rational, comprehensive model, they would first define their goals rather clearly and set the levels of achievement of those goals that would satisfy them. Then they would canvass many (ideally all) alternatives that might achieve these goals. They would compare the alternatives systematically, assessing their costs and benefits, and then they would choose the alternatives that would achieve their goals at the least cost. For various reasons already developed by other writers, such a model does not very accurately describe reality. The ability of human beings to process information is more limited than such a comprehensive approach would prescribe. We are unable to canvass many alternatives, keep them simultaneously in our heads, and compare them systematically. We also do not usually clarify our goals, indeed, this is often counter productive because constructing a political coalition involves persuading people to agree on a specific proposal when they might not agree on a set of goals to be achieved. It could be that some individual actors in the process are fairly rational a fair amount of the time, but when many actors are involved and they drift in and out of the process, the kind of rationality that might characterize a unitary decision-making structure becomes elusive. The case studies in this research also don't have the flavor of a rational, comprehensive approach to problem solving.

Next, organizations may make choices incrementally, in many stages leading to an outcome (Lindblom 1959, 82). In the incremental model organizations do not make exhaustive calculations to respond to a problem. Instead, in this model organizations reach decisions in a piecemeal fashion. Beginning from a base of past experiences, organizations calculate solutions by successive limited comparison with other potential solutions. In other words, decisions are reached gradually in small steps toward a final outcome. Lindblom's successive

limited comparison model of organizational decision-making is a powerful lens through which to view policy implementation. Beginning with the basic fact that organizations are not always rational, the model arrives at the conclusion that organizations simplify decision-making. This is especially so when they are faced with a complicated or conflictual policy issue.

In the rational approach values play little or no role in policy formulation or analysis. Instead, policies are empirical and means-end based. Further, an exhaustive search for the best means to reach the end is conducted. Conversely, in Lindblom's approach, values and empirical analysis are not separable. The means-end search is not comprehensive but very limited, and important potential policies and outcomes are neglected. In Lindblom's approach reliance on theory is reduced, and trial and error are enhanced. Table 2 depicts Lindblom's model and compares it to the rational approach.

It is readily discernable from Table 2 that a wide theoretical gap exists between the rational comprehensive (strategic planning) and the successive limited comparison (incremental) approach to decision-making. The strategic approach for example, may be likened to a battle plan issued by a military high command. Thus, each battlefield movement of every individual unit is carefully ordered to achieve a strategic goal. The affect of terrain, weather and the comparative strengths and weaknesses of each opposing force on the goal is plotted and accounted for, the theory being that if each unit performs as expected, a strategic victory will ensue.

Table 2

Rational Theory versus Lindblom's Limited Comparison Model of Decision-Making

Rational Comprehensive (Root)	Successive Limited Comparison (Branch)
1a. Clarification of values or objectives distinct from and usually prerequisite to empirical analysis of alternative policies	1b. Selection of value goals and empirical analysis of the needed actions are not distinct from one another but are closely intertwined.
2a. Policy-formulation is therefore approached through means-end analysis: First the ends are isolated, then the means to achieve them are sought.	2b. Since means and ends are not distinct, means-end analysis is often inappropriate or limited.
3a. The test of a "good" policy is that it can be shown to be the most appropriate means to desired ends.	3b. The test of a "good" policy is typically that various analysts find themselves directly agreeing on a policy without their agreeing that it is the appropriate means to an agreed objective.
4a. Analysis is comprehensive; every important relevant factor is taken into account.	4b. Analysis is drastically limited: i) Important possible outcomes are neglected ii) Important alternative potential policies are neglected iii) Important affected values are neglected.
5a. Theory is often heavily relied upon.	5b. A succession of comparison greatly reduces or eliminates reliance on theory.

Source: Lindblom (1959, 82).

Conversely, the incremental approach in such a situation would suggest that command and control of individual battlefield units be left in the hands of the leaders of each unit. The goal, of course, is still victory, but the means to achieve the goal is tactical and not strategic. This is not to say that planning does not take place in the incremental approach. Rather, it is to say that by shifting responsibility to the tactical command level, means and ends analysis on a grand

scale is severely limited. In this approach the theory is that since it is virtually impossible to have perfect information on which to base a decision, decision-making must take place in stages leading to goal achievement.

The incremental model has been attacked as mindless and irrational (McKinney and Howard 1979, 232-233; Quattrone and Tversky 1988,719-735). It has further been attacked for making the assumption that organizations do not fully embrace a given policy (Baum 1981). However, as Wildavsky (1974, 216) argues, " . . . mindless or not, incrementalism and other such devices to simplify and speed decisions are inevitable responses to the extraordinary complexity of resource allocation in governments of any size."

The idea that individuals and organizations seek to simplify decision-making is supported by the work of Simon (1946, 1957, 1976, 1979, 1982, 1985). Simon believes that the ability of an individual or organization to process decisional information is limited. Thus, organizations, like humans, seek to simplify decision-making by relying upon a few key variables. Simon argues that these variables are contained in the internal and external environment of decision-makers. As he states (1959, 273), "A real life decision involves some goals or values, some facts about the environment and some inferences drawn from those values and facts."

Simon (1981, 190) has called such decision-making behavior "bounded rationality." Thus, humans engage in decision-making "behavior that is adaptive within the constraints imposed by the external situation and by the capacities of

the decision maker"(1985, 294). In Simon's view individuals and organizations cannot possibly grasp all of the complexities of the world around them. Therefore, they do not attempt to find the optimal solution to a problem. Instead, the search for a solution ends when one is found with which the decision-maker feels comfortable (1979, 3).

In *Administrative Behavior* (1957, 6) Simon makes his point when he argues,

> In an important sense, all decision is a matter of compromise. The alternative that is finally selected never permits a complete or perfect achievement of objectives, but is merely the best solution that is available under the circumstances. The environmental situation inevitably limits the alternatives that are available, and hence sets a maximum to the level of attainment of purposes that is possible.

In comparing the theoretical perspectives of incrementalism and bounded rationality many similarities may be found. First, each proposes that organizations attempt to simplify decision-making. Second, each is predicated upon the allocation of scarce resources, intellectual or otherwise. Third, each argues that organizations cannot grasp the complexities surrounding decisions and therefore do not always behave rationally. Fourth, each account for the values held by organizations and how they go about working these values into a decisional equation. Fifth, each emphasizes the environment surrounding an organization and its decision-making. Sixth, each theory submits that organizational decision-making is constrained by a number of inside and outside influences.

Thus, incremental and boundedly rational theories have the potential to be combined into a single theoretical perspective. Each theory fleshes out the other

and accounts for that portion of organizational decision-making not explained by the other. For example, incrementalism explains how organizations go about implementation but falls short of telling us exactly where the specific decisional variables they rely on may be found. Conversely, bounded rationality explains where specific variables may be found but not how these variables are translated into outcomes.

An integrated boundedly rational incremental approach to implementation also offers the advantage of being parsimonious. Organizations, according to the "integrated theory," key upon a few variables to influence and guide their decision-making. Each also fits with the evidence presented in this research and elsewhere concerning the behavior of small and medium-sized municipalities. This combined theoretical approach also comports with the known facts surrounding the ADA.

A boundedly rational or incremental approach to the study of public policy is not unique to this project. Variations of the two perspectives have often been used to explain organizational decision-making. For example, Mueller (1984) took an incremental approach to the study of public housing. Likewise, Ignagni (1991) has viewed Supreme Court decision-making from a boundedly rational/cybernetic perspective (also Slayton 1992). What is unique to this project is the use of bounded rationality to help identify the variables that influence the decisions organizations reach and the use of incrementalism to explain how organizations go about policy implementation.

Likewise, the approach taken in this study builds on existing IGR and implementation research. As noted earlier, a problem with research in each of these sub-fields has been the lack of a sound theoretical basis for the operationalization of the variables that influence policy outcomes. This is especially true in the area of national to local unfunded mandates. For example, where the scope of conflict model of IGR accounts for the escalation of conflict between levels of government over policy, it does not explain what happens when this conflict has been resolved. This means that the model is predicated on points of access for political remedies between levels of government but neglects decisional outcomes when these remedies have been exhausted.

Similarly, the fiscal federalism approach to IGR explains the linkages between federal funding for policies and state and local reactions to these policies. However, it fails to explore the full range of responses by these governments when funding is non-existent. The use of a boundedly rational/incremental approach in this study helps illuminate how municipalities respond once political remedies to objectionable policies are exhausted and federal funding for the implementation of these policies remains non-existent. It does so by accounting for the environmental influences on implementation outcomes at the local level.

If anything, the genius of Pressman's and Wildavsky's (1973) seminal study resides in its account of local influences on national policy implementation. In fact, its true genius is its explanation of how and why the outcome of a national policy often differs greatly from what the policy was intended to accom-

plish. Although this research can't be compared to the work of Pressman and Wildavsky, it too seeks to explain why and how national policies often undergo a transformation at the local level of government. What a boundedly rational approach to local implementation of national policy mandates does is provide a theoretical basis for why municipal organizations decide as they do. What incremental theory adds is how municipal organizations go about implementing an unfunded policy mandate.

In sum, the integrated approach taken in this study agues that organizations, when faced with a complex, confusing, or potentially conflictual decision, will seek to simplify the decision-making process. Further, when simplifying the decision-making process, organizations will rely upon a few key variables to influence and guide their decision-making. Additionally, the study argues that the variables that influence an organization's decisions may be found in the internal and external environment of these organizations.

While it is arguable that the theory is flawed because it cannot be observed in practical application and therefore must be assumed to reflect decisional outcomes, much the same can be said of other existing decisional models. For example, McMillan (1992, 8) notes that game theory observes rational choices but does not account for personal and idiosyncratic ones.[82] Perhaps Baum (1976, 51) put it best when he concluded, "In sum, the concept of rationality can be defined at various levels depending on the environmental constraints assumed to be operative. At all levels the focus is exclusively upon outcomes, which we have

assumed are the only things valued by voters."[83] It would therefore appear that a unified boundedly rational/incremental perspective of the ADA implementation behavior of small and medium-sized municipalities is appropriate for use in this study.

Conclusion

In summary, this chapter has addressed the setting for intergovernmental relations. General and specific theoretical approaches to intergovernmental relations and policy implementation have been considered. Further, the history of the ADA and its background have been detailed. Also, the internal and external environment of small municipalities has been described.

This chapter also demonstrated that intergovernmental relations is a complex and complicated issue. Within the field there exists little consensus as to the best research approach. This chapter finds that general theories of intergovernmental relations lack predictive and/or explanatory capacity. Specific approaches to the study of intergovernmental relations, while adequate predictive tools, are for the most part not generalizable. It seems reasonable that any study of intergovernmental relations must take an environmental approach. By doing so, the specific influences upon intergovernmental relations and more importantly to this research, policy implementation, may be discovered. As noted above, the study of implementation has also been shown to suffer from a lack of predictive and/or explanatory capacity. Perhaps this is because most research considers implementation to be a linear process, or

perhaps it is because most research is case specific. Either way it seems reasonable that implementation is best studied from the perspective of the basic entity responsible for implementation.

This chapter has also demonstrated that the implementation environment of small municipalities is much different from that of larger municipal governments. This chapter has also addressed the general and specific requirements of the ADA. The ADA is vague and complicated and the courts and the EEOC have done little except contribute to the confusion surrounding ADA implementation. Finally, several leading theoretical approaches to organizational decision-making have been discussed and two selected for use in the project.

CHAPTER 4

A THEORETICAL PERSPECTIVE OF ADA IMPLEMENTATION

As stated earlier, this project takes the perspective that the ADA implementation environment of smaller municipalities is both internal and external. It has been argued in this research that these municipalities behave in a boundedly rational/incremental fashion. The problem with this perspective is one of observation. Cue-fact theory provides a method for bridging the gap between the direct observation of the decision-making process and a decisional outcome. This framework, for example, has often been utilized to quantitatively explain and predict the decisions reached by the Courts (Kort 1973, 555-559; Ulmer 1984, 891-90; 1985, 461-478). In the cue-fact approach one or more variables are theorized to "key" the decisions that decision-makers reach. The gauge of the accuracy of what is assumed is the variables' explanatory and predictive power after measurement and testing. If the variable is powerful, it may be assumed that, all other things being equal, the variable did indeed cue or key the decision reached. If the variable is not powerful, then, as in any other approach, the variable is suspect.

Ignagni (1990) has successfully unified cue-fact theory with bounded rationality and cognitive-cybernetics concerning Supreme Court establishment clause decision-making. Slayton (1992) has utilized Ignagni's model to help

explain municipal *Fair Labor Standards Act* implementation. A cue-fact boundedly rational perspective submits that from among the many variables that may influence a decisional outcome, only a few key factors and facts are considered. These are keyed on by decision-makers to cue the decisions they reach. The factors and facts they rely on may be internal or external, and may be either environmental or stem from the issue itself. Thus, decision-makers may rely on such things as ideology, values or beliefs to cue their decisional behavior. In the alternative, they may rely on more concrete cues such as financial or human resources.

Cue-fact theory therefore accounts for how individuals and groups work amorphous and non-amorphous variables into a decisional equation. Thus, it provides theoretical support for the operationalization of bounded rationality and incrementalism. For example, it is widely accepted that state political culture plays a role in policy implementation. Yet, political culture is a rather amorphous concept because it may vary greatly within a single geographic area (Sharkansky 1978, 39). Thus, it is difficult to operationalize state political culture as a variable as it relates to a given decision in a given locality. Most scholars therefore resort to relying on state political culture as a stand-alone behavioral theory. Cue-fact theory provides a basis for integrating local political culture into a combined factual-environmental model of decisional behavior. In sum, cue-fact theory provides a firm theoretical basis for the operationalization of a bounded rationality and incremental perspective of ADA im-

plementation. Further, it is broad enough to allow for the inclusion of both factual and subjective variables in the model to be developed here. The model also complements the internal-external environment approach to implementation taken in this study.

While at first glance the theoretical approach taken in this research may appear complicated, its primary attribute is its simplicity. If municipal officials cannot possibly grasp the complexities of their ADA implementation decisions, they must rely on some mechanism other than rationality to determine a course of action.

A second-best decisional mechanism is bounded rationality (some facts, some inferences, some value judgments). If bounded rationality is accepted as the decisional mechanism local officials use, it becomes necessary to explain how these officials mentally account for the facts, inferences and values that guide their implementation behavior. Cue-fact theory bridges this gap by submitting that from among all the other potential variables that may influence local officials, some are more important than others. These important variables may be factual, such as knowledge that "the unions have always grieved this type of decision." These variables may be inferential such as, "its like the FLSA; it's an impossibility, but we will try." In the alternative, these variables may be intuitive or value laden such as "the citizens won't like it but it's the right thing to do."

In each of the above instances, the most likely outcome is an incremental

approach to implementation. What a boundedly rational, cue-fact, incremental theory of implementation proposes is that local officials behave as "cognitive misers." They do not even attempt to calculate the alternative solutions to a problem, nor do they seek to determine all the ramifications of their actions. Instead, they use a combination of known facts, a few inferences from those facts and previously stored values and intuitions to cue, and therefore determine their course of action.

For example, a firefighter factually knows when a building is on fire; the smoke and flames can be seen. The firefighter also knows the factual dynamics of the progress and course of the fires. He or she then responds to these facts in order to put out the fire. However, it is past experience, intuition, and value judgment that determines to what extent the firefighter will risk life and limb to extinguish the fire. Is there an adult trapped inside, or perhaps a dog or a child? In such an instance extensive calculation of risk is not possible. Instead, the firefighter considers facts as only one of several influences on a course of action. Other influences, such as the willingness or ability to do it; the fact that he/she had done it before; whether the firefighter has children or pets all enter the decisional matrix. Values, intuition, inference, experience and facts all unite to reach a judgment.

In sum, the ADA is a complicated, complex and vague policy mandate. As such, municipal organizations cannot possible grasp all of the ramifications and consequences of its implementation. If these organizations cannot calcu-

late the ramifications and consequences of ADA implementation, they must rely on something other than rationality to guide their decision-making. A second best decisional mechanism is bounded rationality. However, while boundedly rational theory explains how ADA decision-makers reach their decisions, it fails to provide a basis for operationalizing specific influences on these decisions.

Cue-fact theory fills this theoretical gap. Some variables cue a given implementation decision. In cue-fact theory decision-makers mentally scan their environment. They do not perform extensive mental calculations; instead, they rely on cues to trigger the decisions they reach. In short, cue-fact theory proposes that certain facts stand out in the minds of decision-makers; it is these facts that decision-makers rely on to reach a decision. Cue-fact theory is particularly useful in explaining municipal decision-making concerning unfunded mandates—especially unfunded social mandates such as the ADA. This is because it is these policies that have historically been the source of much local controversy. They also provide the least visible benefits to the community as a whole in the eyes of the citizens. Thus, unless they receive or have stored information to cue (trigger) the implementation of an unfunded social mandate, municipal decision-makers may opt to maintain the status quo rather than risk community conflict.

To recapitulate, a cue-fact approach merely provides a theoretical basis for operationalizing bounded rationality and, thus, the influences on the im-

plementation of unfunded mandates. As previously noted, the central problem with boundedly rational approaches to decision-making has always been identifying specific influences on decisions. All that cue-fact theory adds to this research is a theoretical justification for the primary theoretical framework set forth in the previous chapter.

A Typology of Municipal ADA Implementation Behavior

Internal Influences

Mueller (1984, 167) has stated that "one of the most important variables, arguably the most, influential in the intergovernmental setting is the local social/political environment." Mueller's statement is supported by among others, Stone, Whelan, and Murin (1979, 316). Likewise, Ringquist (1993, 324-326) notes the importance of political and socioeconomic variables to policy implementation when he states, "The first requirement in constructing an integrated theory of public policy is acknowledging that the political and economic characteristics of a state will influence state policies; wealth and economic development do matter."

This research follows the lead of Mueller and Ringquist. The political and socioeconomic variables that influence municipal policy implementation may stem from two general sources: the internal and the external environment. The internal environment of a municipality is an important indicator of that municipality's ability and willingness to adopt and implement public policies. For example, it is the internal environment of a municipality that determines resource

allocation and the path and direction of change in the local political and socio-economic system. Likewise, the external environment plays an important role in a municipality's overall ideological and social orientation and, in turn, its receptiveness to change in general. In the case of the former, the political system within a municipality may be an important influence on its behavior (Kincaid 1982, 181; Lineberry and Fowler 1967, 109; Meier, Stewart and England 1989, 646-647). In the case of the latter, state ideology may influence a municipality's decisions.

Generally, the type of political system a municipality exhibits may be classified as either reformed or unreformed. Reformed municipal governmental systems are characterized by the existence of civil service systems, council-manager forms of government, at-large council representation, and non-partisan elections. Conversely, unreformed government systems are partisan with ward elections, have an elected chief executive officer, and often provide weak or non-existent civil service protection for employees. While the terms reformed and unreformed bring with them connotations of good and bad, this is not necessarily the case. For instance, while the reformed city manager form is generally associated with professionalism and efficiency, the mayor-council form is associated with representation and pluralism (Lineberry and Sharkansky 1971, 127; Kessel 1969, 284-291).

It might seem then that the mayor-council form of government would automatically lead to more inclusionary public policies. However, elected offi-

cials are typically utility maximizers in regard to re-election. Therefore, they respond to the opinions and views of those constituents most likely to aid in their re-election efforts, opinions that may or may not coincide with inclusionary policy. Conversely, city managers, although engaging in the goal-seeking behavior of maintaining their current positions, must keep an eye on their long term future—a future which, more likely than not, lies some place other than in the municipality they currently serve. This may lead to a cold and impersonal style of management as well as less sensitivity to diverse community groups.

Leaving aside the issue of which is the better form of government, it is generally acknowledged that the city manager form leads to a greater degree of policy innovation and implementation (Svara 1990, 57; Bingham 1976; Lineberry and Sharkansky 1971, 165-173). Perhaps this is because city managers are career oriented and, for the most part, are professionally oriented and trained. They also tend to be career administrators with few emotional ties to the local community. Instead, they are "hired guns" brought in from the outside and as such realize that their tenure as administrators may be short lived. As one manager said concerning job security, "Your job is never as safe as it is on your first day there."[84] This being the case, city managers must develop and maintain a reputation of innovation and progressiveness in order to secure new employment. As Lineberry and Fowler (1967, 109) have argued, ". . . mayor-council and ward cities are less willing to commit their resources to public purposes than their reformed counterparts." Either way, it is reasonable

to conclude that the form of government existing in a municipality influences policy implementation.

A second internal influence on municipal implementation behavior may be available resources. Resource availability is a particularly important aspect of the implementation of unfunded mandates. As school superintendent Roger Shaw says regarding unfunded mandates in public education,

> When a mandate is issued by any governmental agency, the local schools are required to meet it, often using funds designated for other purposes. Thus, nearly every unfunded or under funded mandate takes money out of the classroom. When you consider that most schools budget about 85 percent of their funds for staff salaries and benefits, very little is left over to pay for these mandates, let alone the fixed costs.[85]

Shaw goes on to note that while personally he is in favor of accommodating students with special needs, "it isn't fair to other students who may have to do without to accommodate mandates." Two points may be taken from Shaw's statements; first, unfunded mandates are difficult to implement with existing budgetary resources and, second, budgets reflect the values of citizens and administrators.

Masotti and Bowen (1965, 39) support this perspective when they state, " . . . the community budget can be viewed as public policy spelled out in dollars and cents, and . . . budget decisions represent the allocation of certain kinds of values." Although municipal budgets are a reflection of community values, budgets alone do not necessarily present an accurate picture of a municipality's ability to implement policies. Municipal budgets often contain ear-

marked funds such as state or federal grants, public works projects, and similar items. Additionally, municipal budgets are often heavily weighted in favor of public safety expenditures.[86] It should also be understood that municipal budgets, like all governmental budgets, are subject to amendment and change and seldom present an accurate depiction of costs.[87]

Perhaps the most accurate and accessible gauge of the resources available to a municipality is the income level of its citizens (Hanushek 1975, 130-147; Svara 1990, 3; Ringquist 1993, 327-328). Of course, it is axiomatic that per capita income is not the sole measure of available resources. Per capita income as a measurement brings with it its own set of problems. For example, the existence of a relatively wealthy citizenry does not equate to a willingness to spend part of that wealth on new policies or programs. However, a higher per capita income is indicative of educational levels, white-collar employment, and a greater concern for quality of life issues. In turn, educational levels, employment status and concern with quality of life issues are generally associated with the willingness of citizens to support the implementation of new policies. It should also be remembered that what is actually being measured here is available resources and not overall expenditures. Thus, it seems logical that per capita income would be a greater influence on municipal ADA implementation than total expenditures.

A third internal influence on municipal ADA implementation may be the municipality's total population. Population has long been a mainstay in political

science research as an indicator of policy outcome. For example, Wolfinger and Field (1968, 176) utilize population size as an independent variable to analyze what form of government and the method and type of elections a city will have.

The population of a municipality may influence ADA implementation in many different ways. For instance, the greater the population, the greater the diversity within the community. Thus, larger cities should experience more scrutiny by the advocates for the disabled. Likewise, the greater the population, the laws of probability dictate that a greater number of disabled citizens will reside in the municipality. These disabled citizens may form a significant lobby for ADA implementation.[88]

While it is arguable that data concerning the number of disabled citizens residing in a municipality might provide a better measurement than population, such data may be unreliable. For example, although the U. S. Bureau of Census collects such data, it is based on a self-reporting system, and many people may feel stigmatized by reporting themselves as being disabled. Although the census bureau addresses this problem, they do so by using a mathematical probability model based on population.[89]

Population size also allows for the indirect measurement of minority population. Again, the larger the population the greater probability that the minority population will be larger (Wolfinger and Fields 1968, 177). This is important since, in general, ethnic minorities are more receptive to federal poli-

cies and programs than are whites.[90] Judd (1988, 244) discusses the importance of Hispanics in local politics when he says, "It would be a serious oversight to fail to recognize the social and political significance of Hispanics in American cities . . . " The view that minority population influences public policy is supported by Fessler and May (1975, 157-195) and Stedman (1972, 243) among others.

It is also arguable that census bureau records would provide a more accurate measure of minority population, but these data are also notoriously inaccurate.[91] Here also, the census bureau relies upon estimates based on population sampling. By using population size as a measurement, the usual co-variance issues inherent in demographic research are also avoided. Given the foregoing facts and in the name of parsimony, it seems reasonable that population size can be utilized in this study as a stand-in for the various influences noted above.

The next internal influence is the existence of labor unions within the municipal government work force. Stedman (1972, 74), among others, has noted the importance of the unionization of municipal employees to urban politics. The idea that employee unions affect the decisions reached by municipalities is supported by Sharp (1990, 43) and Stahl (1976, 342).

The existence of one or more unions within a municipal work force may influence ADA implementation in one or more ways. First, unions have a ministerial duty to represent their membership in disputes with management over

wages, benefits, and working conditions.[92] Thus, given the broad definition of disability contained in the ADA, at any given time a union could be expected to represent one or more disabled members. Representation of disabled members may take several different forms: contract language addressing disabled workers, grievance arbitration, and/or legal action. Second, unions may go to the media and cause adverse publicity for the municipality as a whole. Third, a union may request and support an EEOC investigation of city ADA policies and procedures. With these union considerations in mind, it may be that rather than piecemeal ADA implementation, municipal governments in which employees are represented by one or more unions may choose to implement the ADA across the board. It would therefore seem reasonable that the existence of employee unions within a municipality would influence ADA implementation.

The final internal influence on ADA implementation may be the location of a municipality. The location of a municipality may influence ADA implementation for several reasons. As Judd (1988, 179) notes regarding small suburban cities, "Politics in small suburbs tends to be simple and non-controversial, and this fact is the most important reason for the existence of suburbs; so the local population can gain control over the governmental policies which affect their lives." The perspective that suburban municipalities are different from other cities is supported by Murphy and Rehfuss (1976), and Danielson (1971, 191).

As Hawkins (1971, 29) submits, "Suburbs are the natural habitat of the upper middle class." Vidich and Bensman (1969, 69) note that suburbs dis-

play "low tax ideologies." Such a dichotomy between wealth and taxes may at first glance appear to be irreconcilable. After all, for municipal expenditures to occur wealth must exist and the citizenry must be convinced to give up part of that wealth in taxes. Yet, the wealth and tax dichotomy may be mitigated by a number of factors. By definition, suburbs are located in close proximity to larger cities. Thus, suburban elected and appointed officials as well as citizens have the benefit of access to a relatively high degree of technology and information diffusion. Councils of governments and metropolitan associations of mayors and managers, as well as informal networking, all serve to raise awareness of federal policies and programs and their requirements. Likewise, the proximity of suburban officials and citizens to numerous media outlets also serve to inform them of federal laws and requirements. Additionally, access to the technical expertise needed to implement new policies is more available in metropolitan areas than in rural areas.

For the most part, suburban municipalities exist to protect their residents from the strife, conflict, and dangers inherent in central city life. By living in the suburbs, residents attempt to avoid political confrontation (Backrach and Baratz 1962, 166; Lineberry and Sharkansky 1971, 34). The net effect may be that local bureaucracies are in actual control not only of policy implementation but also of policymaking. In such a situation the ADA is more likely to be implemented than otherwise.

Conversely, municipalities located in rural areas are often closed socie-

ties. Rural municipalities display an extreme degree of self-sufficiency and autonomy (Vidich and Bensman 1969, 27). Rural municipalities are also, for the most part, divorced from the information and technology diffusion that takes place in metropolitan areas. Cut off from the mainstream of current information and technology, these municipalities may not even be aware of the ADA or other federal laws or requirements. Even if aware, rural municipalities may resist change and intrusion by higher authority. It may therefore be concluded that the location of a municipality, whether suburban or rural, plays a role in ADA implementation.

External Influences

The external environment of a municipality may also influence ADA implementation. For example, the state in which a municipality is located may have enacted its own disability law. In the alternative, a state may have created a strong advocacy council for the rights of the disabled. Such things as prevailing state culture or ideology may also influence ADA implementation. Knowledge on the part of local officials, existing federal court decisions and interest group strength also may affect ADA implementation.

Elazar (1972, 100-101) has noted the existence of three separate and distinct state political cultures: individualistic, moralistic and traditionalistic. Individualistic cultures tend to view government as utilitarian, existing primarily to facilitate private transactions. Public officials, responding to individual preferences, tend to be less willing to initiate new programs unless they see a direct

political payoff. Conversely, in moralistic cultures citizens view government in terms of public interest, neutrality, civil service and ethical behavior. Traditionalistic cultures believe government exists to preserve the reigning social order and view it in terms of elitism, personalized service and patronage. The perspective that states have an over-

arching political culture is supported by the work of Sharkansky (1978, 38-45) and Dran, Albritton and Wyckoff (1991, 15-30). However, others, in particular Morgan and Watson (1991, 31-48), have found Elazar's typology to have declining utility. In addition, as stated earlier, because of variations in local culture, it is difficult to utilize political culture as a variable in a study of this type.

Perhaps a better approach would be to employ the overall ideological orientation of the citizens of the various states. Wright, Erickson, and McIver (1985, 469-489) have constructed a scale of state ideologies from the most conservative to the most liberal. This scale has often been used as an indicator of the receptiveness of a state's citizens to new policies and programs (Ringquist 1993, 328). The perspective that state ideology strongly influences public policy is supported by the work of Holbrook-Provow and Poe (1987, 399-414) and, in part, by the work of Morgan (1973, 209-223).

The overall ideological orientation of a state's citizens may influence municipal ADA implementation in a number of ways. First, ideological orientation sets the norm for the acceptance or rejection of new policies and programs. Second, it establishes the general proclivity of citizens to tax themselves to

pay for these policies and programs. Third, ideological orientation reflects the opinions of a state's citizens concerning what is or is not an intrusive federal policy. Thus, reasonably it would be expected that state ideology influences municipal ADA implementation.

A second external influence upon municipal ADA implementation may be the existence of a state disability law. Although the ADA is a federal law and provides for federal enforcement, the Act does not preclude the states from enacting similar non-conflicting statutes.[93] Likewise, states may adopt the ADA itself as a basis for enforcement of the rights of the disabled. In addition, the states are not preempted from adopting disability laws more stringent than the ADA.

The existence of state disability laws may affect municipal ADA implementation in several ways. First, such laws may come replete with their own set of sanctions for non-compliance. Second, these laws may increase the scrutiny brought to bear on municipal ADA compliance. Third, the existence of a state disability law may increase awareness of the ADA among municipalities. Therefore the existence of a state disability law should influence municipal ADA implementation.

A third external influence that may affect municipal ADA implementation is the existence of an ADA appellate court decision in the jurisdiction in which the municipality is located. It is a unique feature of the United States judicial system that many courts have concurrent jurisdictions. At first glance it would

appear that this feature might preclude the use of court decisions as a variable in this study.[94] However, it is also a unique feature of the United States judicial system that federal appellate court decisions set precedent that is binding on lower courts unless overturned by the United States Supreme Court. The power of appellate courts over public policy in the United States is indisputable. Whereas trial courts must concern themselves with existing law, appellate courts are free to make new law. Glick and Vines (1973, 61) have noted that appellate court judges see themselves as interpreters of the law and not as administrators of the law. In short, appellate courts make law and trial courts enforce existing law. Thus, appellate courts are major actors in policy implementation.

There are twelve federal circuit courts of appeal in the United States. The ADA decisions of these courts may provide insight into municipal ADA implementation. In part, this is because different circuit courts may have different legal views of the ADA. Thus, where the Fifth federal Circuit Court of Appeals may have upheld a particular ADA requirement, the Sixth Circuit Court may have overturned the same requirement.

The differences between the ADA decisions of federal appellate courts are important since they provide a means to gauge the influence of these courts on municipal ADA implementation. More importantly, they help to illustrate a measure of the professionalism of the municipal bureaucracy. If anything, bureaucracies are risk adverse. It would therefore seem that if a munici-

pal bureaucracy is professionally oriented, then that bureaucracy would keep up with leading court decisions and react accordingly. Likewise, these decisions provide a measure of the professionalism of elected officials. If indeed the elected officials in a municipality are keeping up with current developments, they should know about the ADA legal environment. It would therefore seem reasonable that where municipal officials are knowledgeable about federal appellate court decisions in the jurisdiction in which their city is located, a higher degree of ADA implementation would be the result.

The last external influence upon municipal ADA implementation may be the existence of a strong state public interest lobby.[95] Ringquist (1993, 328-329) utilizes the existence and strength of the environmental lobby within a state to help explain state air pollution standards. Likewise, Sabatier (1987, 649-692) has noted that coalitions often form around policy issues.[96] Thus, it may be as Goggin et al. (1990, 103) have said, "The weaker the group, the more important it becomes for that group to join with like minded groups in an alliance." Thomas and Hrebenar (1990, 133) have remarked on the growth of state interest groups and, in particular, non-traditional interest groups. In fact, they note the existence of intermittently active advocacy groups for the physically and mentally handicapped in twenty to forty states. The perspective that interest groups influence public policy is further supported by Zeigler (1983, 99) and Morehouse (1981, 108-112).

However, interest group influence upon public policy is not equally dis-

tributed between the states nor do interest groups themselves have equal influence within a given state. For example, Thomas and Hrebenar (1990, 144-147) find that in only nine states do interest groups dominate public policy and, further, that the effectiveness of specific interest groups varies from state to state. Thus, it would seem that where municipalities are located in states where public interest lobbies are effective, those municipalities would be more likely to implement the ADA.

Figure 2 depicts the various internal and external influences on municipal ADA implementation as discussed above.

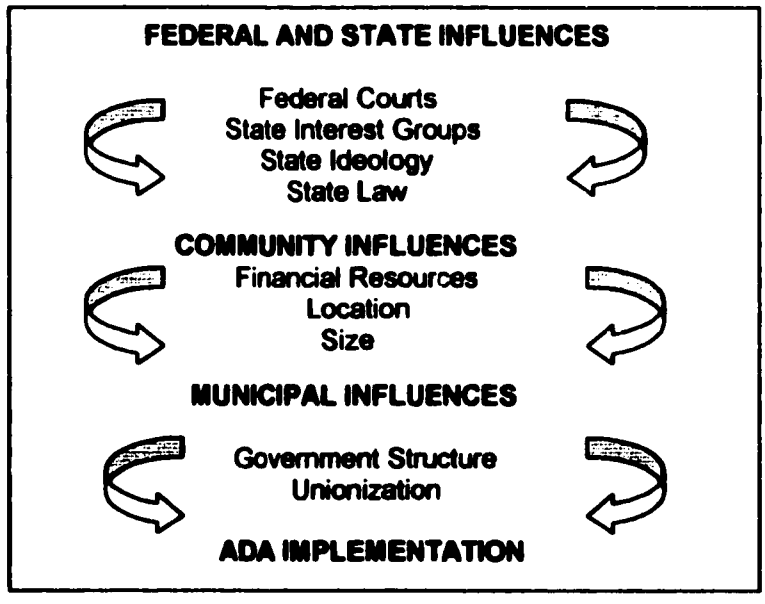

Figure 2. Factors Influencing ADA Implementation

Variables

From the foregoing discussion, it may be concluded that the existence of

a city manager form of government may favorably influence municipal ADA implementation. Likewise, it may be concluded that the larger the per capita income in a municipality, the greater the degree of that municipality's ADA implementation. A larger population, and the existence of employee unions may also increase a municipality's implementation rate – population because it represents a number of other influences on implementation such as greater numbers of minorities and disabled citizens. The existence of employee unions may influence municipal ADA implementation because of greater scrutiny brought to bear on municipal employment policies. Likewise, the existence of a strong public interest lobby may bring about greater scrutiny on municipal ADA implementation efforts.

The rate of municipal implementation may also be enhanced by the proximity of a municipality to a central city, and also if the state in which the municipality is located has a state law mandating rights for the disabled. Additionally, it may be that municipalities located in more liberal states will have a higher degree of ADA implementation. Next, where municipal officials are aware of a federal appellate court decision that has upheld the ADA, there may be higher rates of implementation.

Intervening Variables

Before proceeding further it is important to address several intervening variables in this research. It is obvious that before a municipality can comply with the ADA, it must know what is required. However, as previously noted,

the ADA is a confusing, complicated and vague policy. The ADA itself recognizes the foregoing when it requires that public employers conduct a written self-evaluation of their compliance status.[97] Likewise, the Act requires that public employers appoint a responsible employee or group to oversee its implementation.[98]

Although the ADA does not require that public employers permanently retain their self-evaluation or turn it into a plan of action, it does require that all deficiencies found as a result of the evaluation be corrected. It would seem reasonable, therefore, that after having gone to the time, trouble, and expense of conducting an evaluation, a municipality would retain it and utilize it as a guide to ADA implementation. In such a case it may be expected that a municipality would have a higher degree of ADA implementation than otherwise.

The existence of an employee or group specifically charged with ADA implementation may also affect municipal ADA implementation. For example, it would be expected that such an employee or group would serve to increase public and organizational awareness of ADA requirements. Also, this employee or group would logically act as a lobby for funding for ADA implementation. Lastly, an ADA specialist within municipal government would be expected to keep up with existing ADA related legal decisions and cases. If so, it is reasonable that these specialists would make their superiors aware of these decisions and cases and the municipality's legal liability.

The complication brought to this research by these additional considerations arises from several issues. First, strictly speaking, the existence of an ADA self-evaluation, coordinator, or plan may be counted as either an internal or external influence on ADA implementation. As stated above the ADA mandates that public employers conduct an ADA self-evaluation and appoint a person or entity to oversee its implementation. Thus, the impetus for these influences on the Act's implementation is external. However, the ADA does not mandate that public employers translate a self-evaluation into an implementation plan. This influence on ADA implementation is internal.

Likewise, the ADA mandates that public employers name someone or some group to be responsible for its implementation. This influence is external; however, if it occurs, the influence becomes internal. It is therefore a judgment call as to where these influences on ADA implementation should be accounted. Rather than overly complicate this study by attempting to justify one or the other, these influences have been placed in a separate category. The second issue to consider is that while accounted for in the survey instrument, the importance of these influences was discovered during the course of the research as is so often the case. When the research design for this project was developed, the author assumed that the vast majority of municipalities would have met the basic threshold requirements of the ADA. The survey questions relating to self-evaluation, implementation planning and ADA coordinator were expected to reveal that only a handful of municipalities were non-

compliant in these requirements. However, as the first group of completed surveys was received, it became apparent that many municipalities may not be in compliance with even the most basic ADA requirements. Thus, these influences on ADA implementation were added to the research as intervening variables. Therefore, although they were later statistically treated as internal variables, they are added here and discussed as intervening variables.

Hypotheses

Thus, it will be hypothesized that:

H^1 where a municipal political system has a city manager form of government, that municipality will also have a higher degree of ADA implementation.

H^2 the greater the per capita income of the residents of a municipality, the greater the degree of ADA implementation.

H^3 the larger the population of a municipality, the greater degree of ADA implementation.

H^4 where the employees of a municipal government are represented by one or more unions, that municipality will have a higher degree of ADA implementation.

H^5 suburban municipalities will have a higher degree of ADA implementation than will rural municipalities.

H^6 municipalities that have conducted an ADA self-evaluation will have a greater degree of ADA implementation.

H^7 municipalities that have an designated ADA coordinator or oversight committee will have a higher degree of ADA implementation.

H^8 municipalities that have an ADA implementation plan containing time frames for completion will have a higher degree of ADA implementation.

H^9 the more liberal the state in which a municipality is located, the greater the degree of ADA implementation.

H^{10} municipalities located in a state having a state disability law will have a greater degree of ADA implementation.

H^{11} a greater degree of ADA implementation will occur where municipal officials are aware of federal appellate court decisions regarding the ADA. .

H^{12} municipalities located in states having stronger public interest lobbies will also have a greater degree of ADA implementation.

Operationalization, Data Set and Methodology

In the previous section twelve hypotheses were offered concerning the effects of certain forces on municipal ADA implementation. These hypotheses must now be operationalized into independent variables for measurement and testing.

The dependent variable in this study is the degree of ADA compliance exhibited by a municipality. This variable is called **Compliance** and is measured by the percent of ADA implementation reached by a municipality in the following areas:

1. modification of existing and new facilities;

2. modification of personnel policies and employment practices;
3. reasonable accommodation policies for existing and prospective employees; and,
4. modification of employee benefit plans to eliminate discriminatory practices in health care and vacation and sick leave policies.

The foregoing approach allows for greater specificity and thus a better measure of ADA compliance. For example, each variable will be coded as the actual percentage of compliance reached in each of the foregoing ADA components by a municipality as reported by that municipality. Thus, each component comprises 25 percent of overall compliance. In any given municipality, it will be possible to determine not only the overall percentage of ADA compliance achieved but also the percentage of compliance in each required component of the ADA. If a municipality reports 100 percent compliance in the modification of its facilities, but only 50 percent in the other three components of the ADA, it has achieved an overall compliance percentage of 62.5. In other words, the municipality has achieved 100 percent of 25 percent in the facilities modification component but only 50 percent of 25 percent in each of the other three components.[99]

Internal Variables

Hypothesis one stated that where a municipality has a city manager form of government, there will be a greater degree of ADA implementation. The independent variable drawn from hypothesis one is called **Manager**. Manager

will be coded in a one/zero fashion; one where a municipality has a city manager form of government and zero otherwise.

Hypothesis two submitted that the greater the per capita income of the residents of a municipality, the greater the degree of ADA implementation. This variable is called **PerCapita** and will be coded as the actual per capita income of the municipality's residents as reported by the United States Bureau of the Census for 1990.

Hypothesis three stated that the greater the population of a municipality the greater the degree of ADA implementation. This variable is called **Population** and will be coded as the actual population of a municipality as reported by the census bureau for 1990.

The fourth hypothesis stated that the existence of one or more labor unions within a municipal government would lead to a greater degree of ADA implementation. This variable will be called **Union** and will be coded in a one/zero fashion; one where the employees of a municipality are represented by one or more labor unions and zero otherwise.

The fifth hypothesis was that suburban municipalities will display a greater degree of ADA implementation. The variable drawn from this hypothesis will be called **Suburb** and it too will be coded in a one/zero fashion; one where a municipality is a suburb of a larger city and zero otherwise.

According to hypothesis six, municipalities that have conducted an ADA self-evaluation will also have a greater degree of ADA implementation. This

variable is called **Self Evaluation** and will be coded in a one/zero fashion; one where a municipality has conducted a self-evaluation and zero otherwise.

Hypothesis seven stated that where a municipality has designated an employee as ADA coordinator, or has established an ADA oversight committee, ADA implementation will be greater. This variable is called **ADA Coordinator** and is also coded in a one/zero fashion; one where a municipality has appointed a coordinator or oversight committee and otherwise zero.

According to hypothesis eight, municipalities that have an ADA implementation plan with time frames for completion will also have a greater degree of ADA implementation. This variable is called **Time Frame** and will be coded in a one/zero fashion; one where a municipality has an ADA implementation plan with time frames for completion, and otherwise zero.

External Variables

The ninth hypothesis allowed that the greater the degree of liberal ideology within the state where a municipality is located, the greater the degree of ADA implementation. The variable taken from this hypothesis is called **Liberal**. Liberal will be coded following the liberal/conservative ranking of the state in which a municipality is located according to Wright, Erickson, and McIver (1985, 469-489). The approach taken will be to scale Wright et al.'s typology from one to five; where one is the most conservative and five the most liberal.[100]

According to the tenth hypothesis, the existence of a state disability

law will lead to a greater degree of municipal ADA implementation. The independent variable drawn from hypothesis seven is called **State Law**. It will be coded in a zero/one/two fashion; zero where the municipal official does not know if a state disability law exists, one where there is no state disability law, and two where the state in which a municipality is located has enacted legislation protecting the rights of the disabled.

The eleventh hypothesis stated that a greater degree of ADA implementation will occur where municipal officials are aware of federal appellate court decisions concerning the ADA. The variable for this hypothesis will be called **Court Decision.** It will also be coded in a zero/one/two fashion; zero where municipal officials do not know if an appellate court decision exists in their jurisdiction, one where no federal appellate court decision exists, and two where the municipal official reports that there is an applicable appellate court decision.

Hypothesis twelve provided that where a municipality is located in a state having a strong public interest lobby, the municipality will have a greater degree of ADA implementation. The variable synthesized for this hypothesis is called **Interest Group**. It will be coded in a one/zero fashion, one where a state has influential public interest lobbies active in the state and zero otherwise. The state typology will be based on the research of Thomas and Hrebenar (1990, 560-567).

Data Set

The data set for this research comes from a number of sources. A survey instrument was mailed to 300 small and medium-sized municipalities randomly selected from among each of the four regions of the United States. (See Appendix A for a copy of the survey instrument).[101] The total number of responses to the survey was 135. These cities form the sample population for the research. Randomization was accomplished by the use of a random number generator, and the regionalization of observations was done to ensure ideological and cultural diversity in the data set.

The surveys were sent to the chief executive officer of each city selected. The surveys were completed by these officials or under their direction by other staff members such as the human resource director, risk manager, or ADA coordinator. Where necessary, a second-request mailing occurred approximately three weeks after the first. The survey was conducted during early 2000. The survey instrument was constructed to elicit both quantitative and qualitative information from the respondents.

Additional data were obtained from International City/County Management Association *Municipal Yearbooks*, the census bureau's *Statistical Abstracts*, and reports and data from the National Public Employer's Labor Relations Association and the EEOC. Other data sources included United States Conference of Mayors reports, and data derived from Thomas and Hrebenar (1990) and Wright, Erickson and McIver (1985).

Methodology

Because the dependent variable for this research is continuous and because there are twelve independent variables, multiple regression is the analysis technique of choice. Although some may argue against the inclusion of dichotomous variables among the interval level independent variables, dichotomies will be treated as interval level data for this research (Dometrius 1992, 80).[102]

Speaking methodologically, there are several different ways to evaluate the success or failure of policy implementation. In the component evaluation approach, the focus is on the various operational components of the policy under consideration. This approach shifts the unit of analysis from the program to its parts which contributes to greater generalizability. The treatment specification approach identifies and measures a policy or program effect. In other words, is the policy or program having the desired impact on its intended target? Process evaluation seeks to determine an explanation for a policy's success or failure. Conversely, effort evaluation considers the "quantity and quality" of activity (Patton 1986, 138-142). It is axiomatic that the approach one uses depends on what one seeks to find. This research utilizes a combined component and effort approach to ADA implementation.[103]

CHAPTER 5

ANALYZING THE INFLUENCES SHAPING MUNICIPAL IMPLEMENTATION OF THE ADA

Before proceeding it is important to restate the research question for this study. Additionally, a brief recap of the theoretical perspective may be of aid to the reader. This research seeks to analyze the various forces and conditions that influence the implementation of unfunded policy mandates in small and medium-sized municipalities. It argues that the influences on implementation may be found in the internal and external environment of these cities. The research focuses on the *Americans with Disabilities Act of 1990.* The research takes the theoretical perspective that these municipalities engage in incremental/boundedly rational implementation behavior.

As noted in the previous chapter this research was intended to be both a qualitative and quantitative measurement of ADA implementation. Thus, the survey instrument used was designed to solicit a number of qualitative and quantitative answers from respondents. The qualitative and quantitative analysis that follows is synthesized from the survey instrument.

Qualitative Findings

Qualitatively the results indicate that a great deal of confusion still exists concerning the implementation of the ADA. For example, the ADA requires that employers modify existing benefits plans and health insurance coverage

for future and current employers.[104] Yet, the survey results demonstrate that many municipal employers are either unaware of this requirement or have not queried their insurance carrier to determine if the requirement has been met. In fact, more than a few municipalities that claimed 100 percent implementation of the ADA also reported that the benefit/insurance component did not apply to them. Some reported low compliance with the insurance requirement, punctuated with several question marks. One employer responded with the question, "Is this required under the ADA?"[105] Another respondent who claimed high compliance with the ADA insurance requirement also stated that they (the city) "did not know what is required."

Further, some respondents noted that employee benefit plans were "adjusted on a case by case basis as the need rises." One respondent cited the employment policies component of the ADA as a rationale for not revamping their benefit plan. Thus, because ADA's policy component limits the types of questions that an employer may ask a job applicant concerning disabilities. It may be assumed that this municipality is taking the "don't ask, don't tell, no problem" approach favored by the Clinton administration concerning gays in the military. However, the ADA is quite clear in this regard: you can't ask but you must ensure that your benefit plans do not discriminate against the disabled.

Likewise, the employment policies component of the ADA is confusing to many municipal employers. One respondent noted that "I thought we were

okay until [I answered] the previous question [on the survey]."[106] Others reported that they were in compliance because they determined the essential functions of a given job on a case-by-case basis as needed. However, the ADA requires the formal adoption of a written reasonable accommodation policy.[107]

Several respondents took the author to task for even suggesting that a component of the ADA requires employers to modify the types of questions they can ask of job applicants.[108] Several also indicated that no modification to personnel practices was needed since they already complied with the ADA, and they did not need a written policy since the ADA was a federal law. Others pointed out that they had an informal administrative policy concerning ADA-required personnel modifications.[109] One respondent may have eloquently summed up the feelings of many municipalities concerning this ADA component by responding "required [but] don't do."

Conversely, some municipalities seem to have few problems with the employment policies requirement of the ADA. For example, one respondent simply stated, "it was part of the hiring process." Another said that "Employment practices are fine; we are having difficulties funding changes that are fast enough for the public. We need an external complaint procedure." "Most, not all" was the response of one municipal official when answering the question, "Has your city checked the job descriptions for city positions to identify the essential functions of the jobs?" However, while perhaps providing a good faith

effort legal defense for non-compliance, "most" or even "close" does not protect a municipality from litigation. This is substantiated by the experience of another city. This responding city stated, "We have developed an internal system to evaluate specific jobs and their essential functions on a case by case basis. We have made reasonable accommodations. Lawsuits pending!" One municipality that may soon find itself in a similar situation poetically said, "as needed, policies and procedures are completed."

In the area of facilities and infrastructure modification, municipal employers seem much less confused.[110] Many municipalities indicated that a local commission or committee had been appointed to oversee the facility modifications required by the ADA. Several respondents pointed to some triggering event that gave impetus to facility modification compliance. One municipality stated that not much had been done until a quadriplegic mayor was elected. Another pointed to a police officer that was wheelchair bound because of a wound received in the line of duty. Several respondents noted that they had been sued over facility modification, thereby bringing this component of the ADA to the forefront of community and governmental action.

Several respondents reported that they had just been audited by the U.S. Department of Justice for compliance with this ADA component, and that results were pending. Another city reported that the municipality had contracted with a private vendor to assess facilities modification needs, appointed a board of citizens to oversee implementation, and was spending $450,000 per year

on modifications. Despite these efforts, facility modifications were still only 60 percent complete.

Further evidence of the costliness of this ADA component may be found in the response of one municipality that said, "We are currently spending $200-300,000 per year to bring public facilities into compliance. Recently, sidewalks and traffic control devices . . . have become an issue with significant $$ implications."

While much of the foregoing places ADA facility modification requirements in a negative light, some cities report little or no problems with this aspect of the ADA. For example, one municipality reported that "Satisfying the requirements of the ADA has helped others that may not be covered under the Act, primarily elderly citizens." Another said that, "Due to the number of elderly and disabled within our city, we have taken the ADA very seriously. We have spent a great deal of time and effort to see that this city is in compliance and even won a historic lawsuit against a bankruptcy court to force compliance. . ." Finally, is the respondent who elegantly stated his city's position: "Though we are quite tardy meeting the deadline for physical improvements, we have had little controversy, few challenges, and no lawsuits. . ."

Although many respondents seemed displeased with the effect of the ADA on their municipal operations, most mentioned that unfunded mandates in general are their primary concern. One respondent noted that, "Financially, this and the many other state and federal mandates are nearly impossible for

us to meet . . . " Another complained that "These unfunded mandates seem to be a trend as federal and state governments are restructuring other programs down to the community level." Conversely, some municipalities seem to have welcomed the ADA with open arms. Representing these cities is the respondent who proclaimed, "Overall, our experience with ADA implementation has been very positive. It has complimented our city-wide diversity efforts."

In general, the qualitative findings of this research present a mixed view of municipal ADA implementation. It appears that municipal employers are most confused over the ADA's benefit plan/insurance component and its pre-employment and post-employment personnel components. It also appears that these employers are much less confused concerning the ADA facilities modification and reasonable accommodation components than they are the other two.

Confirmation that many municipal officials have little knowledge and are confused about how to go about implementation of the ADA may be found in the fact that of the 135 respondents to the survey, 51 percent reported that they did not know whether there had been an appellate court decision upholding the ADA in their jurisdiction. Further, 18 percent did not even know if their state had enacted a disability law. Although in itself an important finding, of greater import is the fact that oftentimes different municipalities located in the same state and appellate jurisdiction contradicted each other when responding to these questions. Thus, in the same state and appellate court ju-

risdiction, different municipalities responded "yes," "no," or "don't know" to the same questions. If municipal officials are not relying on important factual information as this finding suggests, then they must be relying on something else to key their ADA decision-making. This would definitely indicate that some form of simplification of ADA decision-making behavior is being utilized.

The confusion among municipalities over the ADA's requirements appears to be mitigated by a number of influences. Familiarity and compliance with the ADA seems to be greatest among those municipalities that have met the ADA requirement of designating a responsible official or officials to oversee its implementation. Likewise, where municipalities reported that they had complied with the Act's requirement of conducting a self-evaluation of their ADA implementation status, greater familiarity and compliance seems to exist. It should be noted, however, that only a handful of these municipalities have turned their evaluation into a plan for timely ADA implementation.

The population size of municipalities also seems to mitigate confusion concerning the ADA. In general, the qualitative results support the view that cities having larger populations also demonstrate a larger degree of ADA familiarity and compliance. Perhaps this is due to the existence of greater resources available in larger cities including the potential greater availability of experienced staff people. Whatever the reason, the larger the city, the less the confusion over the ADA's requirements, and the higher the degree of compliance.

All in all, the qualitative findings in this research present a mixed view of municipal ADA implementation. Some have embraced the ADA wholeheartedly while others seem to be doing only what is necessary to avoid litigation or sanctions by the national government. To many municipal officials the ADA seems to be just another onerous federal mandate, and to others a long overdue stepping stone to inclusion and diversity.

While the qualitative findings of this research are not entirely pleasing, they do tend to support what has been theorized herein. Municipal decision-makers do seem to take an incremental approach to ADA implementation. The most visible component of the ADA, facility modification, ranks highest regarding both awareness and compliance. Conversely, the least visible component, benefit plan modification, ranks lowest. Pre-employment and post-employment personnel practices are sandwiched between the other two.

Likewise, the results provide some support that municipal officials engage in boundedly rational incremental decision-making. Overall, ADA awareness and compliance is greatest where a municipality has a specific official charged with its implementation. Similarly, the existence of a self-evaluation seems to positively affect ADA awareness and compliance effort by municipal officials.

Of those respondents who voluntarily reported their positions within a municipality, it appears that city managers are concerned with the facility modification component of the ADA. Building officials shared this concern.

Conversely, personnel officers seem to regard the employment policy component as the top priority.[111]

Thus, it appears at least from a qualitative standpoint that the utilization of cue-fact theory as a theoretical basis for operationalizing incrementalism and bounded rationality has been justified.

Of course, the foregoing discussion does not exhaust the potential explanations for municipal ADA implementation behavior. It does, however, reveal that many different, competing and conflicting influences on ADA implementation seem to be present among municipalities. In sum, it appears the ADA is indeed a confusing and complex public policy and that municipal officials have reacted accordingly. In fact, it may be as one respondent stated, "It is impossible to place your city in a position, with regards to ADA compliance, where you are not vulnerable to legal action if they are really interested in filing against you. The law is so comprehensive that you can never do enough."

Quantitative Findings

As previously noted ADA compliance is required in four basic areas. Municipalities must modify existing facilities and construct new facilities to be accessible to disabled persons. They must also implement a reasonable accommodation policy, modify insurance and other employee benefits, and adopt non-discriminatory employment policies. In this study each of these ADA components are counted as 25 percent of total ADA compliance. The calcula-

tions below are based on the self-reported compliance percentages of respondent municipalities.

The view that municipalities are confused about ADA requirements is supported by an analysis of the data taken from the survey. For example, respondent municipalities ranged from a high of 100 percent compliance effort to a low of 27.5 percent. While twelve municipalities reported full compliance, sixteen reported compliance levels at 50 percent or less. The mean for all municipalities in the area of compliance effort was 78.5 percent. Thus, the data also tend to support the view that small and medium-sized municipalities are taking an incremental approach to ADA implementation.

Concerning the four ADA components that comprise compliance effort, the data show that the fourth component, modification of employee benefit plans lags behind the other three components. Twenty-seven respondents (or 20 percent of the total) reported zero compliance in the area of insurance benefits modification. Conversely, fifty-nine others (or 43.7 percent of the total) reported full compliance in this area. Twelve municipalities reported a compliance rate of 1 percent to 50 percent in the area of benefit plan modification; the other respondents reported compliance levels at between 51 percent and 99 percent. Thus, the data support the qualitative findings that the benefit modification component of the ADA is troubling to many municipalities.

The data also indicate that the facilities modification component of the ADA may be problematic for some municipal employers. Only twenty-eight

municipalities (20.7 percent) reported full compliance while sixteen reported a compliance rate of 50 percent or less. Of the sixteen reporting less than 50 percent compliance, one municipality reported zero compliance in this area, one municipality reported that facility modification compliance was only at 5 percent. Two other municipalities reported compliance rates of 20 percent or less. These figures are somewhat surprising since the facilities component is undoubtedly the most visible of the four components and also since this component of the ADA was based on the *Architectural Barriers Act* which was in place twenty-two years before the ADA was enacted into law.

These figures are also counter-indicative of the qualitative findings in this research. The fact that only 20 percent of municipalities are in full compliance in this area may be due to the great expense of modifying existing infrastructures or due to some other reason. Yet the finding that after almost ten years, the most visible and widely known ADA requirement remains mostly unimplemented is puzzling. However, the finding does suggest incremental behavior on the part of many respondents.

The next component, employment policy modification, shows mixed implementation results according to survey respondents. Although fifty-four municipalities (40 percent) claim to have reached full compliance, the other respondents reported compliance levels at a low of 0 percent to a high of 99 percent. Only 12 cities reported a compliance rate of 50 percent or less. This finding is also puzzling since the policy modification component is, without

doubt, the least expensive and least complicated of the four requirements. It is also one of the ADA's most visible requirements. Supportive of incrementalism, the data in the policy modification area also suggest boundedly rational behavior on the part of the majority of respondents. It appears that many municipal officials cling to those policies that have previously been enacted.

According to the survey, municipalities are doing a relatively good job in meeting the reasonable accommodation policy component of the ADA. Of the respondent cities, eighty-six or 63.7 percent reported full compliance but twelve (8.9 percent) have taken no steps to implement this requirement. Although this is a relatively small number, it is also important because reasonable accommodation is also fairly easy to implement, and is not costly.

Table 3 synthesizes the information concerning compliance.

TABLE 3

COMPLIANCE BY NUMBER OF CITIES AND PERCENT OF TOTAL BY ADA COMPONENTS

	0%		1-25%		26-50%		51-75%		76-99%		100%	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Facilities	1	.7	4	3.0	11	8.1	20	14.8	71	52.6	28	20.7*
Policies	1	.7	4	3.0	7	5.2	17	12.6	52	38.5	54	40.0
Accommodations	12	8.9	2	1.5	11	8.1	21	15.6	3	2.2	86	63.7
Benefit Plans	27	20.0	5	3.7	7	5.2	6	4.4	31	3.0	59	43.7
Total Compliance	0	0.0	0	0.0	16	11.9	40	29.6	67	49.6	12	8.9

* numbers do not equal 100% due to rounding.

In summary, the analysis of the data obtained from the survey provides mixed support for what has been theorized herein. Widespread evidence in support of incrementalism has been found; however, there exists less support for bounded rationality. Evidence that municipalities are engaging in incrementalism concerning ADA implementation may be found in the disparity between the compliance rates among the four components of the ADA. Likewise, the gap between overall compliance rates is indicative of incremental behavior. Further, the qualitative data show that municipal organizations are taking a piecemeal approach to ADA implementation. The fact that less support has been found for bounded rationality is not overly troubling at this point. The qualitative findings provide some support for this theoretical approach. The only support provided by the quantitative findings, however, is that municipal organizations are selecting some components over others for implementation

Statistical Analysis of the Data

Before proceeding with the presentation of the statistical analysis of the model developed in this research, it is important to touch on several related issues. First, although the response rate for the survey is 45 percent, the sample population should be large enough to represent municipal ADA efforts nationwide. While it is axiomatic that the larger the sample, the more confidence one can have in the results of the model, it is also true that regression technique works well with a relatively small sample population. [112]

Second, it should be understood that this research is exploratory in na-

ture. A study of ADA implementation of this type, and at this level of analysis, has not previously been attempted. Thus, this undertaking should be considered as a first step toward explaining and predicting ADA implementation.

Third, it is important to understand that from the virtually countless variables that may affect ADA implementation, a mere handful have been selected for use in this study. This fact, in conjunction with the foregoing, should place the reader on notice that the model constructed herein represents an "educated, best-guess scenario" of ADA implementation.

Of course, this is not to say that only the variables included in the final model were investigated. It is to say that in regression analysis an inherent trade-off exists between the number of variables utilized in a model and parsimony. In short, the larger the number of variables vis-à-vis the number of the sample population, the better the model generally performs.[113] In part because of the exploratory nature of this study, and in part because of the relatively low sample population for the study, parsimony has been chosen to be of greater importance than model performance. Although the original model contained twelve independent variables, the final model consists of only seven.

Table 4 depicts the descriptive statistics for all variables contained in the original model. As the reader will note, the predictor variables Per Capita Income and Population were logged because the values for their measures

showed heteroscedasticity. The logarithmic transformation was base 10 (Renner 1988, 154-155; Fox 1991; Berry and Feldman 1976, 73-89).

Table 4
Descriptive Statistics: All Variables

	Mean	Std. Deviation	N
Compliance	78.53	19.63	135
Manager	.75	.44	135
Union	.75	.44	135
Self evaluation	.90	.30	135
ADA Coordinator	.58	.50	135
Interest Groups	.31	.46	135
Per Capitalog	4.14	.13	135
Populationlog	4.56	.27	135
Suburb	.41	.49	135
State Law	1.58	.79	135
Timeframe	.61	.51	135
Court Decision	.72	.83	135
Liberal	3.21	1.36	135

The correlation matrix for all hypothesized variables is shown in Table 5. As the Table depicts, the relationship between the dependent variable, Compliance, and Union is weak and not in the predicted direction. Likewise, the variables State Law and Liberal have a weak relationship with compliance as does Court Decision. Court Decision and Liberal are also not in the predicted direction. Of the remaining variables, ADA Coordinator, Timeframe, Population, and Self-evaluation show the strongest relationships to Compliance. The relationship between the dependent variable and Manager, Interest Groups, Per Capita Income, and Suburb, while not strong, are all in the predicted direction. Of these, Interest Groups shows the strongest relationship to Compliance and Per Capita income the weakest.

TABLE 5. Pearson Correlation: All Variables

	Comp	Manager	Union	SelfEval	ADA Coor	Int Gps	PerCap	Popu	Suburb	St Law	Time	Ct Dec	Libl
Comp	1.000	0.120	-0.058	0.270	0.473	0.217	0.109	0.376	0.143	0.048	0.299	-0.030	-0.053
Manager	0.120	1.000	-0.140	-0.074	0.126	-0.126	0.052	-0.033	-0.075	-0.030	0.022	-0.074	-0.037
Union	-0.058	-0.140	1.000	-0.074	0.057	0.058	0.227	0.142	0.064	0.101	0.056	-0.012	0.291
Self eval	0.270	-0.074	-0.074	1.000	0.229	-0.052	-0.120	0.091	0.066	-0.048	0.394	0.071	0.208
ADA Coor	0.473	0.126	0.057	0.229	1.000	0.089	-0.052	0.217	-0.054	0.056	0.227	-0.056	0.034
Int Gps	0.217	-0.126	0.058	-0.052	0.089	1.000	0.093	0.149	0.062	0.158	-0.016	0.055	-0.192
PerCap	0.109	0.052	0.227	-0.120	-0.052	0.093	1.000	0.084	0.502	-0.052	0.120	0.093	0.022
Popu	0.376	-0.033	0.142	0.091	0.217	0.149	0.084	1.000	0.179	-0.062	0.180	-0.052	-0.024
Suburb	0.143	-0.075	0.064	0.066	-0.054	0.062	0.502	0.179	1.000	0.004	0.078	0.100	0.019
St Law	0.048	-0.030	0.101	-0.048	0.056	0.158	-0.052	-0.062	0.004	1.000	0.030	0.183	0.181
Time	0.299	0.022	0.056	0.394	0.227	-0.016	0.120	0.180	0.078	0.030	1.000	0.001	0.321
Ct Dec	-0.030	-0.074	-0.012	0.071	-0.056	0.055	0.093	-0.052	0.100	0.183	0.001	1.000	0.044
Libl	-0.053	-0.037	0.291	0.208	0.034	-0.192	0.022	-0.024	0.019	0.181	0.321	0.044	1.000

TABLE 6

Implementation of The ADA: All Original Variables

Variables	Regression Coefficients Unstandardized	Standardized	T Ratio
(Constant)	-86.671		-1.482
Manager	4.101	0.091	1.245
Union	-5.384	-0.119	-1.565
Suburb	2.705	0.068	0.808
State Law	1.234	0.049	0.674
Self Evaluation	8.565	0.129	1.586
Timeframe	4.449	0.114	1.446
ADA Coordinator	13.759	0.347	4.589 ***
Court Decision	-0.856	-0.036	-0.498
Interest Groups	7.183	0.170	2.307 **
PerCapitalog	16.084	0.111	1.260
Populationlog	17.498	0.246	3.273 ***
Liberal	-1.108	-0.076	0.981

N = 135 R = .640 R^2 = .410 Adjusted R^2 = .352

Dependent = Compliance * p < .10 ** p< .05 *** p< .01

Table 6 is a regression analysis with the twelve variables contained in the original model. The original model had an R Square of .410 and an adjusted R Square of .352. The analysis showed that Court Decision, Liberal, Timeframe, State Law, and Suburb were insignificant. Thus, these variables were eliminated from the model.

Although the variables Manager, Union, Self-Evaluation and PerCapita were also found to be insignificant, they were nevertheless retained in the final model on theoretical grounds. For example, if, as many scholars argue, cities that have the city manager form of government are more innovative than

mayoral cities, that assumption should be tested in the analysis. Conversely, if city managers are more attuned to their long-term careers as other scholars have argued, evidence should be found that managers concentrate on the visible components of the ADA and neglect the less visible components. Likewise, if unions are indeed tracking the benefits of their members, this might be demonstrated in the analysis of the individual ADA components.

Table 7 depicts the results of the regression analysis for the selected model variables, Manager, Union, Self-Evaluation, ADA Coordinator, Interest Group, Per Capita Income, and Population with the dependent variable, Compliance. As may be readily discerned, the model did not suffer greatly from removal of insignificant variables. In fact, the Adjusted R Square is actually slightly better than in the original model. Thus the parsimonious approach to modeling taken in this study appears to be justified.

The results of the regression analysis show that of the seven independent variables, population and ADA Coordinator are the most significant predictors of ADA Compliance. Table 7 also shows that Self-Evaluation and Interest Groups are significant predictors of Compliance followed by Per Capita Income and Unions. It is interesting to note that although Union is significant at the .10 level, it has a negative relationship with Compliance. Thus, the perspective that the existence of unions in a municipality leads to greater compliance may be unjustified.

Table 7 also offers some evidence for the career-goal orientation ap-

TABLE 7

Implementation of the ADA: Model Variables

	Regression Coefficients		
	Unstandardized	Standardized	t Ratio
(Constant)	-100.894		-0.234
Manager	4.123	0.091	1.265
Union	-5.884	-0.131	-1.786 *
Self Evaluation	12.263	0.185	2.548 ***
ADA Coordinator	14.327	0.362	4.862 ***
Interest Groups	6.806	0.161	2.254 **
PerCapitalog	19.906	0.137	1.894 *
Populationlog	18.975	0.267	3.673 ***

N = 135 R = .624 R^2 = .390 Adjusted R^2 = .356

Dependent = Compliance * p < .10 ** p< .05 *** p< .01

proach to assessing the role of city managers in policy implementation. The existence of a city manager in a municipality does not seem to be a factor in overall ADA compliance.

In regard to the model as a whole, it performed reasonably well for a first attempt at explaining municipal ADA implementation. The R Square for the model is a moderate, but respectable, .390. Thus with 135 cases and only seven predictive variables, the model explains about 39 percent of municipal compliance effort. The Adjusted R Square of .356 shows that the model does not suffer greatly when the number of predictor variables is accounted for. However, although somewhat pleasing, the model as a whole fails to reach expectations. While two of the seven variables are significant at the .10 level,

one at .05, and three at the .01 level, the negative relationship between Unions and Compliance, and the insignificance of Manager is troublesome.

In an effort to refine what the depicted results actually mean, a regression analysis of each of the four separate components of the ADA was conducted. The results of the influence of these variables on facilities modification is depicted in Table 8.

Table 8

Implementation of the ADA: Facility Modification

	Regression Coefficients		
	Unstandardized	Standardized	t Ratio
(Constant)	-9.113		-0.550
Manager	2.444	0.186	2.160 **
Union	2.127	0.002	0.002
Self Evaluation	2.493	0.129	1.490
ADA Coordinator	1.645	0.142	1.608
Interest Groups	1.493	0.121	1.424
PerCapitalog	2.310	0.055	0.633
Populationlog	3.068	0.148	1.711 *
N = 135 R =.368	R^2 = .136	Adjusted R^2 = .088	

Dependent = Facility Modification * p < .10 ** p< .05 *** p< .01

The facilities modification model shows an R Square of .136, and an Adjusted R Square of .088. From Table 8 it can be deduced that the strongest influence on facility modification is the existence of a city manager form of government in a municipality, followed by population size. This finding is somewhat surprising since city managers did not fare well in the primary model. However, it does tend to support the view that city managers concentrate their

ADA implementation efforts on the ADA's most visible requirements. Perhaps this is because of the career-goal orientation held by many managers, or perhaps for some other reason. In any event, it is an interesting finding.

TABLE 9

Implementation of the ADA: Employment Policy Modification

	Regression Coefficients		
	Unstandardized	Standardized	t Ratio
(Constant)	-19.362		-0.311
Manager	1.958	0.157	1.941 *
Union	-0.808	-0.065	-0.792
Self Evaluation	4.601	0.251	3.083 ***
ADA Coordinator	2.023	0.185	2.217 **
Interest Groups	1.509	0.129	1.614
PerCapitalog	4.049	0.101	1.245
Populationlog	3.768	0.192	2.356 **

N = 135 R = .483 R^2 = .234 Adjusted R^2 = .191

Dependent = Employment Policy Modification * p < .10 ** p< .05 *** p< .01

Table 9 depicts the results of a regression analysis of employment policy modification as part of compliance. Table 9 demonstrates that the model explained some 23 percent of policy modification compliance with an adjusted R Square of .191. Of the variables, Self-Evaluation of ADA compliance status by municipalities is significant at the .01 level followed by Population and ADA Coordinator at .05, and Manager at .the .10 level. Again, the significance of Manager concerning the implementation of the ADA's second most visible component tends to confirm the career-path orientation explanation of

the policy behavior of these officials.

TABLE 10

Implementation of the ADA: Accommodation Policies

	Regression Coefficients		
	Unstandardized	**Standardized**	**t Ratio**
(Constant)	2.073		0.090
Manager	0.819	0.043	0.518
Union	-1.533	0.103	0.960
Self Evaluation	2.867	0.102	1.227
ADA Coordinator	4.361	0.263	3.054 ***
Interest Groups	3.110	0.176	2.125 **
PerCapitalog	-1.727	-0.028	-0.339
Populationlog	4.233	0.142	1.691 *

N = 135 R = .425 R^2 = .181 Adjusted R^2 = -.136

Dependent = Accommodation Policies * p < .10 ** p< .05 *** p< .01

The next ADA component subjected to regression analysis was reasonable accommodation policies. The results of this regression are depicted in Table 10. They show that the single greatest influence on reasonable accommodation policy implementation is the existence of an ADA Coordinator within a municipality. The variable is significant at .01. Not surprising is the fact that after ADA Coordinator, the existence of a strong public interest lobby most influences compliance with the reasonable accommodation component of the ADA at .05. Population size is significant, albeit at the .10 level, and manager is insignificant. The model for reasonable accommodation demonstrated an

R Square of .181, and an Adjusted R Square of .136.

TABLE 11

Implementation of the ADA: Benefits Plan Modification

	Regression Coefficients		
	Unstandardized	**Standardized**	**t Ratio**
(Constant)	-79.590		-2.868
Manager	-0.277	-0.012	-0.146
Union	-3.504	-0.152	-1.829 *
Self Evaluation	2.507	0.074	0.894
ADA Coordinator	5.985	0.296	3.492 ***
Interest Groups	0.877	0.041	0.499
PerCapitalog	14.594	0.197	2.388 **
Populationlog	7.267	0.200	2.419 **

N = 135 R = .458 R^2 = .210 Adjusted R^2 = .166

Dependent = Benefits Plan Modification * p < .10 ** p< .05 *** p< .01

The final component of the ADA subjected to regression analysis was employee benefit plan modification. Results of this regression are presented in Table 11. The model has an R Square of .210, and an Adjusted R Square of .166. Of the individual predictors, ADA Coordinator was significant at .01. Per Capita Income and Population size were significant at .05.

Of special interest concerning this model is the fact that it is in the area of employee benefits that the existence of employee unions becomes a significant influence on ADA implementation. However surprisingly, the relationship is contrary to what was earlier theorized – negative. The explanation for this finding may reside within the contracts reached by unions through collective

bargaining that may contain benefit packages separate from other employee groups. However, it remains a surprising, if not startling, finding. Given the fact that the relationship between employee benefits and city manager is extremely weak and in a negative direction, it may be tentatively concluded that city mangers do indeed concentrate on the more visible components of the ADA.

Internal Variables

As part of the statistical analysis, the original internal independent variables were examined separately as were the external independent variables.

The results of the regression analysis performed with the internal variables are shown in Table 12. The internal variable model shows an R Square of .376 and an Adjusted R Square of .337. Of the independent variables, it is obvious that the existence of an ADA Coordinator and population size are the most significant at .01. While significant, Union at the .10 level is again not in the predicted direction.

TABLE 12

Implementation of the ADA: Internal Variables

	Regression Coefficients		
	Unstandardized	Standardized	t Ratio
(Constant)	-87.526		-1.523
Manager	3.120	-0.069	,948
Union	-5.931	-0.132	-1.767 *
Self Evaluation	8.135	0.123	1.527
ADA Coordinator	14.664	0.370	4.878 ***
Suburb	2.412	0.061	0.719
Timeframe	4.190	0.108	1.354
PerCapitalog	14.985	0.103	0.193
Populationlog	18.967	0.266	3.568 ***

N = 135 R = .614 R^2 = .376 Adjusted R^2 = .337

Dependent = Compliance * p < .10 ** p< .05 *** p< .01

External Variables

Table 13 presents the results of a regression analysis of the external variables contained in the original model. Of these variables Interest Group strength is significant at the .01 level , and the others are insignificant. The model has a low R Square of .056 and an adjusted R Square of only .027. It is easily seen that the internal variables contained in the original model are the best predictors of ADA implementation. This is hardly surprising since it would be expected that local officials are attuned to local influences.

Table 13

Implementation of the ADA: External Variables

	Regression Coefficients		
	Unstandardized	Standardized	t Ratio
(Constant)	72.611		14.783
Liberal	0.122	0.086	0.989
State Law	0.490	0.020	0.224
Court Decision	-1.084	-.046	-0.526
Interest Groups	9.803	.232	2.640 ***

N = 135 R = .237 R^2 = .056 Adjusted R^2 = .027

Dependent = Compliance * p < .10 ** p< .05 *** p< .01

Conclusion

In this chapter some influences on municipal ADA implementation have been analyzed. Qualitatively the results show that many municipalities appear confused over the ADA's requirements. The most confusing component of the ADA is that of modification of benefits and insurance. The least confusing component of the ADA is facilities modification. Employment practices and reasonable accommodation components are sandwiched between the other two. Despite widespread confusion over the ADA, the results from the questionnaire suggest that municipalities are implementing the ADA, albeit incrementally. One might observe, however, some apparent discrepancies in the response by officials to the questionnaire items and their written comments expressing reservations about the city's degree of compliance.

The qualitative findings also show that many municipal officials are be-

having in a boundedly rational fashion concerning ADA implementation. It appears that personnel officers are concentrating on personnel related ADA requirements, building officials focus on infrastructure, and city managers concentrate on the most visible components of facility modification.

The quantitative data taken from the survey support much of the qualitative evidence. This is especially true concerning the extent of confusion among municipal officials over ADA requirements, The quantitative data also suggest that not only does confusion exist among municipal officials over the ADA itself, but also that many are unknowledgeable regarding state law and ADA – related court decisions.

Additionally, the data corroborate the qualitative finding that it is the ADA components of benefit plan and employment policy modification that are most confusing to municipal officials. Similarly, there is support in the data for the qualitative finding that city managers concentrate on the most visible ADA components. The data also confirm strongly the concept of incrementalism and provide some support for bounded rationality in regard to ADA implementation. Above all, it appears that larger cities with ADA compliance officers have progressed further than most other cities in ADA implementation.

In general, the regression analysis tends to support the above findings. Although five of the hypothesized variables proved to be insignificant and were eliminated from the original model, two of the five are explicable in terms of a lack of knowledge of state law and court decisions among many municipal of-

ficials. The final model performed reasonably well for a first attempt at explaining municipal ADA implementation. Likewise, the individual variables in the model performed reasonably well. Of those variables that were insignificant in the scaled down model, all were later found to be significant in relation to one or more of the four components of the ADA. As may be expected, the internal variables out performed the external variables in the model.

In sum, the regression analyses of the data provide some measure of support for what has been theorized in this research. The analysis shows that city managers tend to concentrate their ADA implementation efforts on the Act's most visible components. If so, this supports not only the view that city managers engage in career goal behavior, but also in boundedly rational ADA decision-making. Although it is arguable that career goal orientation is pure rationality, it is equally arguable that this orientation forms one of many bounds on managerial decision-making (Simon 1957, 79).

Likewise, the analyses provide support for incremental behavior on the part of municipal organizations. If municipalities were engaging in rational behavior, the existence of a self-evaluation would lead to an implementation plan. Yet this is not the case in the majority of cities, Similarly, individual municipalities would be moving toward ADA implementation at approximately the same rate in each of the Act's components.

Perhaps it is in the area of the extent of knowledge held by municipal organizations that best supports both bounded rationality and incrementalism. If

municipal organizations, regardless of their form of government, were engaging in rationalism, it would be expected that they would be knowledgeable concerning appellate court decisions and state disability laws. However, the analysis shows that the opposite is true. Municipal organizations are not relying on readily available information to implement the ADA. Nor are many municipalities relying on the Act itself. Thus, while this research cannot definitively conclude that municipalities are engaging in boundedly rational ADA decision-making, it can conclude they are not reaching ADA implementation decisions in a rational fashion.

CHAPTER 6

SUMMARY, FINDINGS, AND CONCLUSIONS

This research began from the perspective that municipal implementation of policy mandates is conditioned on the environment that envelops and surrounds a municipality. The *Americans with Disabilities Act of 1990* was then selected as the case to test the validity of this perspective. The research has documented the history and evolution of mandates and intergovernmental relations from the time of the founding until the present day. The research also details the history and background of the ADA and the problems encountered by employers seeking to implement it. A theoretical perspective of the environmental influences on municipal ADA implementation has been developed. This framework has borrowed from the sub-fields of judicial behavior, political cognition and organizational behavior to take an integrated approach to the explanation of policy implementation.

From the theoretical framework for the study a model of internal and external influences on municipal ADA implementation was synthesized. The operationalized model contained twelve independent variables. The model was then measured and tested using regression analysis.

Data for the measurement of the model were collected from a variety of sources including self-generated survey research. A survey instrument was

developed and mailed to 300 municipalities throughout the United States. The survey instrument was designed to elicit both qualitative and quantitative data from respondents. Of the 300 surveys sent, 135 were completed and returned. These surveys form the sample population for the research.

The initial analysis of the data showed that five of the twelve original variables were insignificant. Thus, these five variables were removed from the model and the remaining variables analyzed. The results demonstrated that of these seven variables, six were significant. The model as a whole showed an R Square of .390 and an Adjusted R Square of .356. Thus, the model performed reasonably well.

Each of the four components of the dependent variable were then analyzed. The results show that the model best explained the employment policy modification component of the ADA followed by benefit plan modification, reasonable accommodation and facilities modification. Of the hypothesized variables, a regression analysis demonstrated that internal variables explained municipal ADA implementation efforts better than the external variables.

The research findings provide support for what has been theorized here. It does appear that municipal ADA implementation is influenced by the internal and external environment of a municipality. Of the two, the internal environment had a stronger influence. This is not particularly surprising since it may be expected that local officials are more attuned and responsive to local influences than to outside forces.

The research provides strong support for the viewpoint that municipal officials take an incremental approach to policy implementation. Although direct support for the perspective that municipalities take a boundedly rational approach to implementation decision-making is somewhat lacking, it may be inferred from the results of the qualitative and quantitative analyses of the surveys. As stated earlier, it appears that human resource managers, city managers and public works managers all tend to concentrate on what they already know and what has worked in the past.

Additionally, municipal ADA decision-makers do not appear to rely on the ADA itself as an implementation guide. For example, the ADA places the burden for ensuring that contractors do not discriminate against the disabled squarely upon the shoulders of public employers (Section 35. 130 a, b.). Yet, municipal employers appear to rely on their insurance carriers to meet this requirement. Likewise, section 35.107 of the ADA requires that public employers designate a specific official or officials to be responsible for meeting the law's requirements. However, only 58 percent of respondent municipalities have done so.

Further, the ADA requires public employers to conduct a self-evaluation of the extent of their compliance with the Act, maintain records concerning this evaluation and correct deficiencies (Section 35-105, 106). Although 90 percent of respondents report that they have met this requirement, it should be remembered that the vast majority have not turned their self-evaluation plan into

an implementation plan. It also should be remembered that the majority of respondents were not aware of ADA-related appellate court decisions in their jurisdictions and/or did not know whether their state had enacted a disability law. Thus, it may be concluded that municipal officials are not relying on available factual information to guide their ADA implementation efforts. If this is the case, it is apparent that some other decisional mechanism such as bounded rationality is being utilized.

The regression analyses of the percentage of ADA compliance show that some ADA-related variables perform quite well while others do not. For instance, the existence of an ADA coordinator within a municipality appears to have a strong affect on compliance. Likewise, the existence of a self-evaluation also affects municipal ADA compliance.

However, the regression analyses of the data also show that some of the strongest predictor variables are not necessarily related to the ADA. Population size is one of these. In fact, ADA-related variables such as the existence of state disability laws and federal court decisions performed poorly. The fact that so many municipal officials lack knowledge about the ADA in general as well as about state laws and court cases is a telling point. It may therefore be surmised that many ADA implementation decision-makers do not rely on risk assessment or other forms of rationality. Instead, they seem to rely on general, previously stored information to cue their decisions.

On weighing the entirety of the evidence provided by this research, the

use of a boundedly rational, incremental, cue-fact theoretical approach is tentatively supported. It seems from among the many potential variables that may influence the implementation of the ADA, municipal organizations select only a few on which to base their decisions. While failing to provide the concrete evidence needed to positively confirm such a perspective, the bulk of the evidence in the research points in this direction.

The ramifications of the research to the discipline of political science are relatively straightforward. The research demonstrates that national public policy implementation is not necessarily a linear, top-down process as widely believed. Nor do the municipal officials who are charged with the implementation of national policy behave in a rational, comprehensive fashion. Instead, these officials seek to simplify the decision-making process through incrementalism. The research also underscores the prevailing view that it is unfunded mandates that municipalities object to and most resist. Further, the research findings provide support for the view that it is indeed the local environment that most affects municipal compliance with policy mandates.

This finding contradicts much of the existing literature concerning policy implementation. For example, the language of the ADA and its content are relatively clear concerning its basic threshold requirements. Yet, these requirements remain largely unimplemented. Likewise, the role of the courts has been found to be negligible. Similarly, federal enforcement efforts, while strong concerning the ADA, do not seem to be a major factor in municipal imple-

mentation. Additionally, political culture (state ideology) does not appear to influence municipal ADA implementation. Of course, this is not to say that these or other theories of implementation are incorrect or should be discarded. It is to say that for some reason they do not appear to apply to municipal ADA implementation.

In the area of intergovernmental relations this research suggests that although not without some utility, many existing theoretical approaches to the study of federalism may be outdated. For example, the "rowboat model" that depicts national, state and local governments as acting in concert to achieve their goals is extremely suspect in light of the findings in this study. It is hard to justify such a perspective, given that so many municipal officials are unaware of state laws dealing with the rights of the disabled. Likewise, the viewpoint that local officials keep a "weather eye" on the judicial system seems untenable in light of this research. In truth, this study shows that municipal ADA implementation effort occurs without much legal information at all.

This research also highlights the declining usefulness of political culture as a predictor of public policy innovation. In short, the ideological orientation of a state's citizens seems to have little impact on municipal implementation of national policy. For example, while by all accounts Texas is a conservative state, it has a strong disability law and ranked first among all states regarding the degree of municipal ADA compliance. Conversely, more liberal states, like Maine, present a mixed picture of ADA implementation.

In conclusion, this research, as with any good social science research, should bring forward more questions than it resolves. For example, why is per capita income negatively related to ADA compliance? Similarly, why do municipal ADA decision-makers rely on general, rather than specific, information to cue their decisions? Why are ADA implementation rates so low? What other influences exist and how do they affect ADA implementation? Additionally, why have so many municipalities not met the simplest and most straightforward of the ADA's requirements? Likewise, is the career path orientation explanation of city manager policymaking behavior correct or does this research present an anomaly concerning this issue? As is the case with most exploratory research, much could be done to improve this study. In retrospect a larger population sample would, perhaps, enhance the model's effectiveness. Less reliance on existing explanations of municipal policymaking behavior might provide greater insight. Additionally, it may be that a wider theoretical net is called for. For example, in the information age of today, is there really any difference between the technology and knowledge of suburban and rural cities? Also, would the study benefit from the inclusion of cognitive-cybernetic theory?

Steinbruner's (1974) cognitive-cybernetic theory of information processing is a mental scanning approach to decision-making.[114] Steinbruner's approach to decision-making does not totally reject bounded rationality. Instead, it views decisions as programmed and unprogrammed responses. Cognitive-cybernetic theory as formulated by Steinbruner argues that humans attempt to

escape uncertainty. When faced with a complicated problem and an uncertain outcome, a human reduces the number of variables brought to bear on the problem to a manageable number. This is accomplished by simply ignoring those variables that the person is not previously programmed by past experience to accept. Instead, according to Steinbrunner (1974, 66) humans "focus on a few incoming variables while eliminating any serious calculation of probable outcomes." Steinbruner (1974, 87-123) further proposes that humans utilize their beliefs to structure their decisions. Therefore, people remember general concepts, maintain a consistent belief system and react to their environment. Additionally, humans resist change to their belief systems and seek to keep this system as simple as possible. While far from comprehensive, this brief account of cognitive-cybernetic theory seems to comport with much of what has been found in this research regarding ADA implementation.

If this research demonstrates anything, it is that many questions remain unanswered concerning municipal implementation of the *Americans with Disabilities Act*. It further demonstrates that if the results of this research are indicative of mandate implementation in general, the federal government is not successfully meeting its public policy goals by relying on the willingness of municipalities to comply with the requirements of unfunded mandates.

NOTES

[1] Small and medium-sized cities are defined as municipal corporations having a population between 10,000 and 100,000. See U.S. Department of Commerce and Census Bureau definitions.

[2] At the very least, states and localities must react to mandates if only to acknowledge their existence.

[3] The Federalist Papers. No. 10.

[4] This component of the ADA is predicated on the Architectural Barrier Act of 1968.

[5] A diligent search reveals anecdotal and speculative evidence but no hard evidence demonstrating ADA compliance rates among small and medium-sized municipalities.

[6] As defined here, federalism is "a system of rules for the division of public policy responsibilities among a number of governmental agencies" (Anton 1989, 3).

[7] For instance, see *United States* v. *Usery* 1976 and *Garcia* v. *San Antonio Metropolitan Transit Authority* 1985.

[8] Full case cites can be found in the references. As the reader will notice, the method of legal citation varies. This is because over time, the legal community has utilized different styles of citations. Additionally, the method of citation differs between jurisdictions. Further, more than one legal reporting system exists. Finally, the method of citation varies with the type of decision and the current location of a given case in the legal system.

[9] The Tenth Amendment to the United States Constitution reserves all powers not granted to the national government to the states and the people.

[10] Article I Section 8, United States Constitution.

[11] Since *McCulloch*, Congress and the president have, more often than not, done so.

[12] It should be noted that the Justices are political appointees placed in office for their political ideologies and not necessarily for the legal skill they may possess (Murphy and Prichett 1986, 129).

[13] See Embargo Act of 1807.

[14] Over its history, the Court has utilized a number of doctrines to uphold economic freedom. Included are impairment of contract, substantive economic due process, the taking clause of the Fifth Amendment, and others. For purposes of simplification in this research, these doctrines have been consolidated under the title "economic freedom." Although from the viewpoint of legal scholars this would undoubtedly constitute heresy, to discuss in detail each economic doctrine used by the Court over the years would in itself constitute an entire research project of this size.

[15] See *The License Cases* (1847). What the Taney Court did was to uphold Marshall's dual federalism opinions while ignoring his cooperative federalism ones.

[16] For additional information, the reader is referred to such topics as "Bleeding Kansas", popular sovereignty, and John Brown. (Ward 1990 2-24 and Catton 1996 1-45).

[17] For example, as discussed later in this chapter, the theory by which the Bill of Rights has been made applicable to the states, "incorporation" depends on interpreting liberty as a code word for other rights not specifically granted to state citizens in the Constitution (Zeigler 1962; Mendelson 1965).

[18] It should be noted that in *Santa Clara County* v. *Southern Pacific Railroad Co.* (1886), the Court held that corporations were persons within the meaning of the Fourteenth Amendment.

[19] See *Lochner* v. *New York* (1905), *United States* v. *E.C. Knight* (1895), *Coppage* v. *Kansas* (1915), and *Fletcher* v. *Peck* (1810).

[20] Justice Holmes was no fan of economic due process or dual federalism. At a time when each concept was held in high esteem by the Court, Holmes consistently wrote dissents chastising his brethren for adhering to these doctrines. The dissents of Holmes are generally considered to be a prime example of how dissenting opinions, over time, may become majority opinions.

[21] A "Brandeis brief" is a legal brief in which social statistics are utilized to make a legal argument.

[22] See also *Malloy* v. *Hogan* (1964), *Near* v. *Minnesota* (1931), *Powell* v. *Alabama* (1932), *Cantwell* v. *Connecticut* (1940), and *Griswold* v. *Connecticut* (1965).

[23] Today only the Second, Third and Seventh Amendments remain unincorporated; to one extent or another, the others have been.

[24] Karl Marx in Robert C. Tucker *The Marx Engels Reader*, 2nd ed. 1978 "The German Ideology" 146-200 and "Wage Labour and Capital" 203-217.

[25] Roosevelt's proposal included increasing the number of justices by six and mandatory retirement for some incumbents.

[26] See also *Dellinger* v. *United States* (1973).

[27] For a contrarian view see Hale and Palley (1981, 113-116).

[28] As used herein, social mandates means a federal rule, regulation, or law designed or intended to advance social, political, or economic equality. Judicial social mandates means decisions that serve the same purpose.

[29] *Brown* was a class action suit; thus it was applicable not only to the parties to the case, but to all similarly situated persons.

[30] See also *Sipuel* v. *Oklahoma* (1948) and *McLaurin* v. *Oklahoma State Regents* (1950).

[31] It is widely rumored in legal circles that not only did Eisenhower attempt to dissuade the Court from its pro-civil rights decision in Brown but also that he called his appointment of Earl Warren as Chief Justice the worst mistake of his life.

[32] The Act also provided for federal oversight of state and local elections where past history evidenced discrimination against black voters.

[33] See also *Cipriano* v. *City of Houma* (1969).

[34] It should be noted that elections, apportionment, and voting were traditionally policy areas left to the states.

[35] Categorical grants may only be used for the purpose intended and thus allow very little flexibility in spending.

[36] See pages 14-15 of this study.

[37] See also *Wyatt* v. *Aderholt* (1974).

[38] It should be noted that one of the judges was a state judge and the other, federal.

[39] See for example the *New York Times* August 7, 1977. 1-40.

[40] In the author's experience as a city manager in a city having a Community Development Block Grant at the time.

[41] Nor was the Reagan administration noted for its bargaining and negotiation skills. As then United States Senator David Boren said to the author, "I can't even talk to those people."

[42] The term became a euphemism for a cost sharing arrangement by which states and localities had to repay the national government for the majority of the costs plus interest associated with the lake's construction and agree to operate and maintain recreational facilities.

[43] As a percentage of total expenditures.

[44] Speech to the National Governors' Association, August 8, 1988.

[45] The twelve years spanning the Reagan/Bush presidencies allowed them to pack the federal court system with restrainist conservative judges and justices.

[46] President Clinton appointed Ruth Bader Ginsberg, a Democrat, judicial activist, and liberal in 1993.

[47] Convictions of state criminal defendants would no longer be subject to federal court review except in very limited circumstances. It is important to note that the Rehnquist Court has also determined that innocence does not preclude the execution of a convicted criminal. See Ignagni and Slayton (1994).

[48] President Bush had been slow in making nominations for federal judgeships.

[49] Surveys show that, in general. minorities tend to take a more nationalistic view of public policy.

[50] This Act is controlled by Executive Order No. 12866 and No. 12875.

[51] Near the end of the Clinton presidency, the Court seems to be split by a narrow 5-4 conservative majority concerning federalism issues.

[52] It should be understood that in this instance theory and reality often differ greatly, especially in regard to large municipalities.

[53] In comparison to large cities.

[54] The author once served as the city manager in a city where the city council adjourned a meeting in order to engage in a fist fight with some members of the local community over a policy issue. Also see Lineberry (1971, 23).

[55] Basic services include police and fire protection, sanitation and water and sewer services.

[56] Swimming pools and other recreational facilities function as de facto child care services during the summer. Despite high costs, prices remain low because of the pressure put upon city councils by parents. Likewise, senior prices at golf courses are kept artificially low because of the senior citizens' lobby.

[57] See pages 6-7.

[58] Public Law 101-336.

[59] 42 U.S.C. 2000e-4, 20000e, 2000 e-6, 2000 e-8, 2000 e-9.

[60] Title 1 continued.

[61] *BNA Employment Discrimination Report* April 1997, 8:14.

[62] It should be noted that reliance on an opinion letter does offer the employer a "good faith" defense if charged with an ADA violation. A "good faith" defense, however, does not absolve the employer although it may mitigate the damages somewhat since a "willful violation" of ADA will extend the time frame when damages can be assessed and the amount of damages to be assessed.

[63] *Fair Employment Practices* Sept. 5, 1996, 108)

[64] Public Employment Law Report Sept. 1993, 3.

[65] Ibid.

[66] Includes concurrent filings under Title VII, EPA and ADEA.

[67] From the U.S. Equal Opportunity web page, January 12, 2000 (eeoc.gov/stats/ada-charges.html)

[68] The EEOC defines a disability related question as "one likely to elicit information about a disability." Thus, even indirect questions about a disability are an ADA violation (*Fair Employment Practices* Oct. 2, 1996, 122).

[69] *Fair Employment Practices*. November 4, 1996.

[70] A careful reading of the ADA shows that the reverse is also true. The mere perception on the part of an employee that he or she is disabled is also cause for legal action (Title 1, Section 4c.).

[71] For instance, persons with poor eyesight must be evaluated for disability while wearing their eyeglasses or contact lenses.

[72] See also *Kirkingburg v. Albertson* (1999) and *Murphy v. United Parcel Service* (1999).

[73] "Update on 1998-1999 Supreme Court Decisions and What May be Ahead." November 3, 1999 handout at Oklahoma Public Personnel Association's Annual Conference. Presented by Bettye Springer of Haynes and Boone Law Firm, Fort Worth, Texas.

[74] Kansas Commission on Disability Concerns Disability Update. Dec. 9, 1999, 1-2.

[75] Ibid,. pp. 2-7.

[76] It should be noted that such requirements as thirty-two inch guardrails present municipal governments with a substantial legal risk regarding negligent injury or death.

[77] The EEOC supports this position.

[78] In the author's professional experience in municipal organizations.

[79] Statement to author by Department of Labor representative during a 1988 investigation into possible FLSA violations. The investigation occurred while the author was the city administrator of Springtown, Texas.

[80] *National Public Employers Labor Relations Association Newsletter* March 28, 1991.

[81] Thereby adding uncertainty to the ADA implementation equation.

[82] Game theory is founded on the rational choice model.

[83] Baum (1981, 51) also notes that rational choice does not travel well from the level of individual decision-making to that of aggregated decisions .

[84] Dallas Graham, city manager, Edmond, Oklahoma, December 6,1982 upon the author's appointment as city manager of Midwest City, Oklahoma.

[85] The *Tulsa World* , "Unbelievable: Pass the Mandates and Hold the Deduction." Interview with Ripley, Oklahoma school superintendent, Roger Shaw. January 9, 2000. p. G1.

[86] This observation is based on the author's experience as a city manager in three different cities.

[87] For instance, the author once served in a city where the annual budget only reflected ten months of expenditures. A previous city council had decreed an across the board budget reduction and the bureaucratic method of resolving this problem was to present the council a ten month balanced budget that they approved assuming it was a budget for twelve months. The ten month budget was later supplemented with a two month budget and the council never caught on until it was pointed out to them by the author when he was hired as city manager.

[88] The so-called "group influence model" of politics is so well entrenched in political science as to not require an accounting here (Ringquist 1993, 323).

[89] See *The Tulsa World* "Census Bureau Recruits Indian Workers." January 7, 2000. Page A11.

[90] Derived from data reported in *American Enterprise* 1 (January/February 1990): 96-103 and the *General Social Survey*, 1996 (Chicago: National Opinion Research Center, 1997).

[91] See endnote 6 above.

[92] "Failure to represent" is a serious violation of national labor law.

[93] For example, the state of Kansas has its own statutorily-created Kansas Commission on Disability Concerns.

[94] The sheer size of the court system dictates that an in-depth study of all decisions at the state and federal level is beyond the scope of this project.

[95] Public interest lobbies are defined here as good government groups such as the League of Women Voters, environmental lobbies, councils of government, mental and physical disability advocates and civil rights and civil liberties lobbies such as the NAACP and the ACLU. For an explanation of this approach see Thomas and Hrebenar (1990, 145).

[96] See also Kingdon (1984) who has called these policy communities.

[97] CFR Vol. 56 No 144 Section 33-105.

[98] CFR Vol. 56 No. 144 Section 30-107.

[99] 25 % + (3 x 12.5 %) = 62.5%.

[100] The reason this variable was coded in this manner was because the survey was random. Several large gaps occurred between the numerical rankings of state ideology when Wright et al.'s typology was strictly applied. This meant that the data was skewed. By breaking the data into five categories, these gaps were filled and the variable performed better.

[101] The population of cities selected ranged between 10,000 and 100,000.

[102] For an interesting discussion of the robust characteristics of regression analysis see Dometrius. (1992, 435-437).

[103] As noted in the Introduction, what is being measured in this research is compliance effort. However, by utilizing the four major compliance components in the ADA as the measure of ADA compliance, the by-product automatically becomes a combined approach.

[104] Americans with Disabilities Act. Section 35.130

[105] The survey instrument did not allow for the identification of any of the respondents to the survey. Thus, quotes are not attributed to any particular city or individual.

[107] The previous question on the survey concerned modification of personnel policies.

[106] The previous question on the survey concerned modification of personnel policies.

[107] Americans with Disabilities Act. 42 U.S.C.12131. Section 35.105.

[108] Americans with Disabilities Act. 42 U.S.C.12131. Section 35.130.

[109] Americans with Disabilities Act. 42.U.S.C. 12131. Sections 35. 149-164.

[110] Americans with Disabilities Act. 42.U.S.C. 12131. Sections 35. 133 and 35. 50.

[111] Although the survey was anonymous, many responding officials voluntarily provided their names and titles in case the author needed additional information. Additionally, many respondents requested copies of the research results when it was completed.

[112] The rule of thumb is thirty cases.

[113] This is because each additional variable explains some part of the phenomenon under investigation.

[114] Cognitive cybernetic theory proposes that decision-makers mentally store and retrieve information in one of two fashions. On the cybernetic side they automatically store experiential information. Conversely, when faced with complex, non-experiential information, they will seek to compute a response.

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APPENDIX A

SURVEY QUESTIONNAIRE
THE AMERICANS WITH DISABILITIES ACT OF 1990

The following survey is for the purpose of academic research. It is intended to measure implementation efforts of municipalities nationwide in meeting the requirements of the Americans With Disabilities Act of 1990. Your city was selected at random for participation in this survey.

All responses will be held in strict confidence and no city or person will be individually identified in the research findings.

Instructions: Please fill out the questionnaire completely. When it is complete, please return it to me in the stamped, self-addressed envelope that has been provided. Thank you for your cooperation. If possible the survey should be completed and returned as soon as possible.

Name of State _____

_____ City Manager (or Administrator)/City Council form of government

_____ Strong Mayor form of government

Are employees in your City represented by one or more Unions?
_____ yes _____ no

Americans with Disabilities Act Information

Does your state have a **state** law mandating accommodations for disabled employees and/or applicants for employment? _____ yes _____ no ____don't know

Have there been any federal appellate court decisions in your jurisdiction that have upheld all or part of the ADA? _____yes _____ no _____ don't know

My City has

_____ yes _____ no a. enacted a policy or ordinance requiring that future public facilities be accessible to the disabled.

_____ yes _____ no b. an internal written policy requiring future public facilities to be accessible to disabled persons.

_____ yes _____ no c. budgeted funds to renovate existing public facilities to provide access for disabled persons

_____ yes _____ no d. conducted a study of existing facilities to determine what needs to be done to make them accessible to disabled persons.

_____ yes _____ no e. If the answer to "d" above is yes, have the study results been turned into a formal renovation plan with time frames for completion?

_____ yes _____ no f. adopted a reasonable accommodation policy for existing disabled employees.

_____ yes ____ no g. adopted a reasonable accommodation policy for disabled job applicants.

_____ yes _____ no h. written policies and guidelines concerning what kinds of questions can be asked of disabled job applicants.

_____ yes _____no i. checked the job descriptions for City positions to identify the essential functions of the jobs?

_____ yes _____ no j. changed the job descriptions to include the essential functions of the jobs.

Over all, how would you rate your City's progress toward ADA implementation in the following areas?

Facility modification:

_____ very low _____ low _____ moderate _____ high_____ very high

Estimated percent of required facility modifications completed _____%

Modification of employment policies and procedures

_____ very low _____ low _____ moderate _____ high_____ very high

Estimated percent of required modifications to employment policies and procedures completed _____%

Modification of employee benefit plans such as paid and unpaid leave plans , health and/or life insurance plans, etc.

_____ very low _____ low _____ moderate _____ high_____ very high

Estimated percent of required modifications to health and/or life plans _____%

What level of compliance with ADA requirements has your organization achieved?

_____ Full compliance

_____ Partial compliance, currently implementing accommodations

_____ Partial compliance, currently reviewing needs.

_____ Currently reviewing needs only

_____ Have not begun compliance efforts.

Please indicate which of the following areas have been modified by compliance with ADA requirements and to what degree.

	No Effect	Some Effect	Extensive Effect
a. Pre-employment job skill testing	_____	_____	_____
b. Pre-employment medical screening	_____	_____	_____
C. Pre-employment drug testing	_____	_____	_____
d. Pre-employment background investigations	_____	_____	_____
e. Job descriptions were re-written	_____	_____	_____

Please provide any other information you would like to share concerning your City's ADA efforts and experience, circumstances particular to your organization, or your experience with ADA requirements.

_____

_____

_____

_____

Has your City appointed a full time ADA Coordinator to oversee ADA implementation?

____ yes ____ no

Has your City appointed a board or commission to oversee ADA implementation?

_____ yes ____ no

Has your City conducted a self-evaluation of its ADA implementation status?

_____ yes _____ no

What is your City's annual budget? _____

Thank you for your participation in this research project.