Hockey League (NHL), National Basketball Association (NBA), and Major League Baseball (MLB), by their very nature, are inherently discriminatory, and their discrimination is necessarily based on disability. A man with a wooden leg can't be a running back, and a man with a limp won't be much more effective. Neither will make a good kicker. And they probably wouldn't make good forwards or defensemen on the NHL ice.

But what if a one-eyed man wanted to play pro hockey, or a man without use of his right arm felt qualified to be an NFL kicker, or a man with a bad back and a risky spine condition wanted to be an offensive lineman? In 1977–1979, a one-eyed hockey player, Gregory Neeld, sued both the NHL and the American Hockey League (AHL) for their refusal to let him participate in league play. The courts held that, as private employers, the leagues were not covered by federal rights laws barring discrimination against the disabled.

Now, however, the ADA extends civil rights protections for the disabled to all private employers with 15 or more employees, including employers, such as the major sports leagues and teams, and their pro-athlete employees. In the Neeld case, the one-eyed hockey player presented testimony that he only needed a protective mask to shield his remaining eye and would, then, be able to play hockey at a level on par with that of other professional hockey players.

Under the ADA, employers are required to ''reasonably accommodate'' disabled employees and job applicants, and most likely, a court would have required the NHL and AHL to provide Neeld with the protective mask and let him play hockey, despite the fact that his possession of only one eye put him at high risk of blindness. That may not sound so bad, but what if the NFL was required to let a man play football who needed to wear obtrusive, heavy leg and back braces on significant portions of his body? He probably couldn't run very fast, but he could still run and throw and catch the ball. Under the ADA, he could still perform the ''essential functions'' of the job. Thus, a court might force the NFL to let him play.

The problem is that Congress doesn't appear to have considered professional sports when it drafted Title I of the ADA, except with regard to the issue of drug testing, and because the ADA is fairly new, it has not yet been the subject of much litigation. Therefore, its provisions as they apply to professional sports, have not been sufficiently tested in the courts.

The ADA covers ''qualified individuals with a disability'' who are employees or applicants for employment, and defines ''qualified individuals'' as those who can perform the ''essential functions'' of the job, with or without ''reasonable accommodation'' by the employer. A one-armed man, for example, can arguably perform the ''essential functions'' of a defensive lineman, if he can still block the other team's players.

In addition, the ADA is extremely vague and ambiguous as to whom is ''disabled,'' and, thus, covered by the Act. It seems to be overinclusive in its definition of who is an individual with a ''disability,'' and, in fact, the only individuals explicitly excluded from coverage by the ADA are transvestites and illegal drug addicts who aren't seeking rehabilitation. (Perhaps, here, the only players the leagues could fire with impunity would be Larry Johnson of the NBA's Charlotte Hornets and Alexander Daigle of the NHL's Ottawa Senators, both of whom donned women's dresses in recent endorsement ads.)

Generally, when a law is vague, its definitions are refined and explained by court decisions, and because, as stated above, this law is relatively new (1990), and there have been few court cases interpreting its provisions, the sports league and their teams will have to look to court decisions involving Section 504 of the Rehabilitation Act of 1973, upon which the ADA is largely based, for legal precedent. In these cases, the courts have forced several high schools and universities to allow disabled athletes to participate in contact sports, including football players with one eye, one kidney, and other disabilities, regardless of the fact that they might pose a direct threat to themselves and others (because the courts felt the risk wasn't significant enough). These decisions may now be forced on professional sports.

In the ADA, the courts may soon have an opportunity to rewrite the rules of football. Under Title I of the Act, though some consideration is given to the employer's judgment as to what functions of the job are essential, the NFL's determination of the essential functions of a quarterback, is not final. Rather, the court decides, and in cases interpreting the Rehabilitation Act of 1973, the courts have rewritten job descriptions to their liking, as in the U.S. Supreme Court's deletion of the ability to lift with both arms as a job requirement for a U.S. Postal Service position, in Prewitt v. U.S. Postal Service, a 1981 case. In the near future, the court could decide that a man with two artificial arms could be the Dallas Cowboys' new kicker, because he can perform the ''essential functions'' of the job.

As Rep. Bill McCollum (R–FL) stated during the ADA debate on the Floor of the U.S. House of Representatives, ''The issue * * * [is] who decides what those essential functions are. Ultimately it could be a court, it could be a lot of different folks who could decide this thing in the long run.'' This ADA provides ample opportunity for ''courts [to] arbitrarily substitut[e] their judgment for an employer's when it comes to determining the essential functions of the job.''

The current standard ''NFL Player Contract'' requires that a player be, and ''maintain himself in excellent physical condition.'' The NFL may have to do some editing and go back to the printer. Next season's Los Angeles Raiders (with the Raider pirate as their mascot) might truly resemble Long John Silver, wooden leg and all. Superbowl XXIX, beware.

JEANNE GUTHEIL

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 1995

Mr. SOLOMON. Mr. Speaker, it is my pleasure to introduce you to Jeanne Gutheil of Moreau, NY, in our 22d Congressional District. For the past 5 years she has devoted her time and strength to the seniors of her area as director of the Moreau Senior Center.

Too often, it seems, people in our society dismiss the feelings and concerns of the aged. However, Jeanne has demonstrated an understanding and indeed, an appreciation of what they have to offer. From directing Meals on Wheels programs, to organizing senior-run charities, to arranging but trips to popular cities and sites, Jeanne has provided her senior neighbors with necessary assistance, enjoyment, and a sense of personal dignity.

In a time where society has become increasingly impersonal and dependent on strangers in government, Jeanne has exhibited the kind of community concern and activity which used to characterize this Nation. Mr. Speaker, as we attempt to limit the size and scope of government, might I suggest we would all do well to emulate the example of Mrs. Gutheil has set. It is time we all took such an active approach in tending to the welfare of our neighbors, especially our senior citizens who have given so much of themselves.

I am confident, Mr. Speaker, that with people like Jeanne Gutheil in the lead, we are capable of restoring the sense of pride in community that made America, and Americans, great.

LOCAL GOVERNMENT LAW ENFORCEMENT BLOCK GRANTS ACT OF 1995

SPEECH OF

HON. BRIAN P. BILBRAY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, February 13, 1995

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 728) to control crime by providing law enforcement block grants.

Mr. BILBRAY. Mr. Chairman, there was a resonant message in the November elections: Americans are tired of Washington telling them what is best for their families and their communities. The bill we will consider today provides a response to that message.

The crime bill passed by the House last year is a perfect example of Washington passing a big government-knows-best, one-size-fits all solution. We know, as the American people do, that the most innovative and effective solutions to our crime problems are found and developed by those closest to the problem.

Today, as we consider the Local Government Law Enforcement Block Grants Act, I urge my colleagues to remember and respect the local control that will be granted by this legislation.

H.R. 728 provides local units of government with the resources to fight the crime problem that sweeps our Nation. However, this bill does not dictate how these resources must be used.

Instead, it provides unprecedented flexibility to those law enforcement officials closest to the crime problem. Funds in this bill can be used in a variety of ways—from improving security at schools to hiring and equipping law enforcement personnel.

We have heard a lot of rhetoric from the other side, and from President Clinton himself about our re-write of the crime bill. Here is what the Democrats had to say about the flexible funds available to localities in this bill: ''In short, these funds can—and no doubt will in too many cases—be used by local officials for ill-advised, wasteful, and even counterproductive uses.''

Apparently, the liberals in Congress and the White House think only Congress is wise enough to tell localities how best to spend their money. The truth is, the American people were angry at the presumption of the 1994 crime legislation. They know that pork barrel spending on discredited social programs will not keep their children safer. That is one of the main reasons they sent us to Washington—to pass legislation that does not merely masquerade as crime control.