BACKLASH Against the ADA
To Vicki
Acknowledgments

Many of the articles in this collection were published in earlier form by the Berkeley Journal of Employment and Labor Law, a student-edited law review at the University of California at Berkeley, School of Law (Boalt Hall). Grateful acknowledgment is made to the journal for permission to republish these materials here in revised form.

Early drafts of the articles, along with other papers and responsive commentaries, were presented at a two-day symposium entitled “Backlash Against the ADA: Interdisciplinary Perspectives and Implications for Social Justice Strategies,” held at Berkeley in March 1999. I would like to thank the journal’s 1998–99 members and editorial board, the many students, lawyers, activists, and disability community members who attended and participated in the symposium, and the event’s major financial sponsors. These included Disability Rights Advocates, World Institute on Disability, Disability Rights Education and Defense Fund, San Francisco Foundation’s Disability Rights Advocates Fund, Pacific Bell, Lexis-Nexis, Van Loben Sels Foundation, Ladder Fund of the Tides Foundation, Corporation on Disabilities and Telecommunication, Sunrise Medical, Issue Dynamics, Inc., U.C. Berkeley School of Law (Boalt Hall), Boalt Hall Students Association, and Boalt Hall Center for Social Justice.

Acknowledgment is made to Larry Wright for permission to reprint a cartoon originally appearing in the Detroit News and to Gary Brookins for permission to reprint a cartoon originally appearing in the Richmond Times-Dispatch.

Linda Hamilton Krieger
## Contents

**Introduction**  
*Linda Hamilton Krieger*  
1

**Accommodations and the ADA**  
Unreasonable Bias or Biased Reasoning?  
*Harlan Hahn*  
26

**Judicial Backlash, the ADA, and the Civil Rights Model of Disability**  
*Matthew Diller*  
62

**Bending Over Backwards**  
Disability, Narcissism, and the Law  
*Lennard J. Davis*  
98

**Plain Meaning and Mitigating Measures**  
Judicial Construction of the Meaning of Disability  
*Wendy E. Parmet*  
122

**The ADA and the Meaning of Disability**  
*Kay Schriner and Richard K. Scotch*  
164

**Psychiatric Disabilities, the Americans with Disabilities Act, and the New Workplace Violence Account**  
*Vicki A. Laden and Gregory Schwartz*  
189

**From Plessy (1896) and Goesart (1948) to Cleburne (1985) and Garrett (2001)**  
A Chill Wind from the Past Blows Equal Protection Away  
*Anita Silvers and Michael Ashley Stein*  
221
Backlash, the Political Economy, and Structural Exclusion 254
   Marta Russell

Administrative Remedies and Legal Disputes
Evidence on Key Controversies Underlying Implementation of the
Americans with Disabilities Act 297
   Stephen L. Percy

The Death of Section 504 323
   Ruth Colker

Sociolegal Backlash 340
   Linda Hamilton Krieger

Contributors 395

Index 399