# Historical Implications of the Black Civil Rights Movement Prior to the Brown Decision on Legislation for the Disabled

Robert Michael Thomas
*Marquette University*

# Historical Implications of the Black Civil Rights Movement Prior to the Brown Decision on Legislation for the Disabled

By

Robert Michael Thomas, B.A., M.S. Special Education

A Dissertation submitted to the Faculty of the Graduate School
Marquette University,
in Partial Fulfillment of the Requirements for
the Degree of Doctor of Philosophy

Milwaukee, Wisconsin

May 2011

ABSTRACT
HISTORICAL IMPLICATIONS OF THE BLACK CIVIL RIGHTS MOVEMENT PRIOR TO THE BROWN DECISION ON LEGISLATION FOR THE DISABLED

Robert Michael Thomas, B.A., M.S.

Marquette University, 2011

Black children achieved equal protection rights to attend K-12 public schools following the *Brown v. Board of Education* Supreme Court holding in 1954. Scholars claimed *Brown* was a catalyst for admittance of disabled students as well. They believed tactics of the Black Civil Rights Movement influenced advocates of disabled students during the Civil Rights Era (1954-68). Scholars assumed race and minority status were key to obtaining due process legislation for the disabled in the 1970's.

An historical analysis of primary sources including court cases, Congressional testimony, biographical and personal statements of disabled individuals, and secondary sources of authors and journal writers revealed the Disability Rights Movement was influenced more by Supreme Court cases during 1948-50 than by the *Brown* decision. These cases emphasized individuality and the value of personal equal protection rights over race, group consciousness, and minority status.

The study reveals how revisiting the relationship between the pre-*Brown* activity around equal protection and the passage of due process rights legislation for the disabled changes the way scholars must now view special education.

# ACKNOWLEDGEMENTS

Robert Michael Thomas, B.A., M.S.

I would like to thank my wife, Dr. Susie Jans-Thomas for providing me inspiration to finish this project. Her pointed critique helped me focus my efforts and her encouragement to “just finish the thing!” guided my motivation. I also thank my committee members, Dr. Pink, Sister Ellen, and Dr. Lowe for forcing me to re-examine my topic to discover a contribution to scholarly learning. Most of all I thank the wonderful children with disabilities I have had the pleasure of teaching for the past 30 years.

TABLE OF CONTENTS

# CHAPTER ONE

# INTRODUCTION

## Historical Interpretation of Educating the Disabled

Most educational scholars who author textbooks have acknowledged an historical connection between the Black Civil Rights Movement (BCRM) and later enactment of legislation for educating K-12 disabled students in public schools in the United States (Hardman, Drew, and Egan, 2008; Kirk, Gallagher, and Anastasiow, 2000; Gearheart, Weishahn, and Gearheart, 1996). In their writings, designed for an audience of educators being trained to teach disabled students at the K-12 level, they imply that a seamless transition occurred to educate minority students and disabled students in regular public schools following the *Brown v Board of Education (1954)* Supreme Court decision mandating integration of blacks into K-12 public schools. According to Turnbull III, (1986, p. 8) the door to public schooling of the disabled was opened because "*Brown* gave rise to the right-to-education cases…judicial resolution of educational issues on constitutional grounds becomes precedent for judicial resolution of related civil rights issues on similar constitutional grounds".

## Focus of the Problem

One might assume from Turnbull III's (1986) reasoning that education of disabled students logically followed Court ordered education of blacks and other minorities. This reasoning would imply that disabled students constituted a minority group similar to black students. Yet Congress did not recognize disabled students as a distinct minority group until 1973, nineteen years after the *Brown* decision. Therefore, one cannot assume a linkage of expectations of due process and equal protection based upon minority status during the black Civil Rights Era (1954-68).

Data confirmed that over three million disabled students were excluded from regular public schools during this time period (U.S. Senate, Committee on Labor and Public Welfare, Subcommittee on the Handicapped, 1973). Where scholars have failed was to examine equal protection litigation prior to *Brown* and determine how those holdings influenced what later would be known as the Disability Rights Movement (DRM). This examination of litigation prior to *Brown* would better explain how advocates of the disabled acquired Congressional legislation mandating inclusion of disabled students in K-12 public schools.

The purpose of this paper is to examine this question: What was the relationship between litigation by the Black Civil Rights Movement (BCRM) prior to *Brown* to achieve equal protection for minorities to subsequent actions of DRM proponents to secure due process legislation for the disabled?

This examination will unravel how scholars view the structural framework of special education and service delivery today that adds to our scholarly knowledge beyond simplistic interpretations of textbook authors. Structural framework involves the premise upon which special education is defined. Scholars have failed to make the connection that litigation prior to *Brown* influenced legislation that established the theoretical interpretation and the structural framework of how special education was created.

Previous scholars like Hardman (2008), Gearheart et al., (1996); Kaplan, 1996; and Turnbull III (1986) have failed to explore the Black Civil Rights Movement (BCRM) and Disability Rights Movement (DRM) relationship prior to the *Brown* decision and its affects on special education legislation. Scholars instead have provided a narrative commentary on how major civil rights events in the South from 1954-68 affected those fighting for due process for

the disabled, or as Switzer (2003, p. 83) claimed, "disability community activists have been able to "piggyback" on several decades of protest from the civil rights movement". They have asked the reader to assume the fight for equal protection for blacks was aligned with due process for the disabled. However, examining actions prior to *Brown* demonstrated the lack of a seamless transition between the two movements and the uselessness of this commentary. Scholars have asked the wrong question and chosen a non-critical time period (1954-68).

It was natural for scholars to connect the *Brown* decision toward educating the disabled, because this case "laid the foundation for future right to education cases on behalf of students with disabilities" (Osbourne, Jr., 1996, p. 4). According to Osbourne Jr., (1996, p.5) "Students with disabilities became known as the other minority as special educators and parents demanded that they be accorded the same rights to an educational opportunity that had been gained by racial and ethnic minorities". Turnbull III (1986, p. 8) reinforced the connection of *Brown* toward education of disabled students by stating, "It was the seed that gave birth to other civil rights battles and to grounds for successful challenges to governmental

discrimination against certain persons because of their unalterable personal characteristics". Turnbull III (1986, p. 8) emphasized *Brown's* importance to the DRM because it legitimized the legal arguments of civil rights activists "furnishing them with a powerful tool for persuading legislatures, particularly Congress, to enact antidiscrimination legislation". He maintained there were "undeniable similarities between the *Brown* plaintiffs and children with disabilities" (p. 9). Therefore scholars could justify the leap of the right to education from minority students to disabled students.

My position states that this leap from connecting rights of the minority to rights of the disabled ignored the more subtle reasoning that education for the disabled developed around equal protection and due process rights of the individual in litigation for the disabled in the 1960's and 1970's. The value of individuality and the denial of equal protection on a personal level were lost when scholars painted a broad brush by assuming legal arguments in *Brown* that protected the minority in a class action equated similarly to the disabled.

This broad assessment might be the result of how our legal system is structured. In order to have courts address

plaintiffs' charges of denial of equal protection rights, the Legal Defense Team representing blacks filed class action suits that would encompass the entire minority group. Class action suits provided access to the federal court system. Scholars emphasized this class action linkage when DRM advocates imitated the legal tactics of the BCRM in the late 1960's and early 1970's. My claim is that these scholars, while concentrating upon group dynamics and minority status in this litigation, missed the personal and individualistic nature that was the real basis for decision making in litigation for the disabled.

Scholars neglected to cite four prior cases (1938-50) that were cited by the Justices in the *Brown* case, that will be explained in chapter two, that recognized that denial of equal protection was a personal matter that affected the individual in his or her daily societal living, and was a living reality distinct from courtroom artificial legal arguments of class action. It was the reality of denial of due process and equal protection in society that were the basis of litigation by advocates of the disabled. Alexander and Alexander (2001, p. 440) maintained "the legal mandate of *Brown v. Board of Education* set a precedent for the extension of educational

access to all children, including those with disabilities". However, it is my conviction that scholars recognize the connection to *Brown* in DRM litigation is to prior cases of individual loss of equal protection on which much of *Brown* was argued. Class action that represented an entire minority group was needed to gain access to the legal system, but collective group consciousness and recognition of minority status were not the legal constructs that made a difference for the disabled.

Rather than examining the similarities and differences of the BCRM and the DRM during the U. S. Civil Rights period, (1954-68) scholars need to examine the more germane question I propose: whether the tactics employed to acquire equal protection for blacks prior to *Brown* correlate, parallel, or refute actions taken subsequently by DRM leaders to acquire due process legislation. This question is more important because it substantiates that while much key literature attempted to address whether disabled people were recognized as a distinct minority group worthy of societal accommodations, that argument is inconsequential.

What is of paramount interest is that the relationship of the BCRM and the DRM prior to *Brown* focused on due process as personal to the petitioner along the lines of

individuality, not according solely to race, group, class minority status, or class-consciousness. The legal focus on individuality fueled litigation and legislation towards due process and helped change society's impression of disabled people from one of paternalism to independence. More important, this new knowledge can help scholars view special education within the structural framework as it exists in schools today.

## Relationship Between Two Movements

Scholars like (Switzer, 2003; Scotch, 2001; Fleisher & Zames, 2001; Francis & Silvers, 2000; Percy, 1989) have established over the years that the BCRM had a profound impact on individuals fighting for due process rights for disabled people in the similar manner and tactics they chose. Some examples included the disabled college students at Berkeley, led by Ed Roberts, who challenged their restrictive housing situation in 1962. Mobility challenged workers, directed by Judy Heumann, protested the lack of transportation options with a sit-in in Richard Nixon's election campaign office in New York City in 1972. In Denver, Colorado disabled workers created a media blitz about buses without adequate wheel chair lifts.

While this impact may be similar and has been handed forward by textbook authors to those who would teach K-12 special education, what needs to be fleshed out on a scholarly level is the relationship of litigation which led to *Brown* to activities which impelled Congress to enact legislation of due process for disabled K-12 students in 1973 and 1975. Scholars may be surprised to learn, for example, that advocacy for legislation for blacks was based on civil rights while advocacy for due process for the disabled initially followed economic concerns.

What scholars have to gain is recognition that legislation establishing their due process rights for the disabled would be based upon accepting their individuality and distinct disability, not their class-consciousness of a larger minority group like blacks. Individuality implied that society accepted a disability as endemic to the person and accommodate and change its perspective of the disabled from one of dependence to independence, recognizing the disabled person's right to control their own life. This may enable scholars to understand how expectations of disabled people evolved from dependence to independence and why treatment models evolved from medical/ institutional in the 1940's to educational/inclusive by the 1970's. This

evolution in treatment models helps to explain the increasing advocacy that special needs children be educated in an inclusive setting.

While some special education scholars (Scotch, 2001; Fleisher & Zames, 2001; Percy, 1989; Abeson, Bolick, and Hass, 1975) have noted and/or questioned the twenty-year time lag between education of minorities and the disabled, this is an unnecessary question. It adds nothing to the scholarly pursuit of how the development of special education legislation, impacted by litigation prior to *Brown*, predicated how special education is administered today in K-12 public schools.

A more important question is how litigation by the BCRM prior to *Brown* laid the groundwork for judicial acceptance of the individuality of the individual, and thus rendered the petitioner worthy of equal protection rather than valued because of race. This acceptance placed equal protection on a personal rather than a class-conscious basis. This would be a cornerstone of legal argument for advocates of the disabled in litigation from 1967-73.

An historical evolution of social acceptance of the disabled in chapter two will focus on primary sources of Supreme Court and state court cases and the participants,

testimony at House and Senate Congressional committees exploring due process legislation for the disabled, and testimony from legislative aides who helped design what became current legislation. Testimonials from disabled individual leaders will document their drive to acquire independence and greater control of their lives. Secondary sources of authors, journal scholars, advocates of the disabled, and written histories of disabled authors themselves will be used to examine evolving societal perspectives and expectations of disabilities.

Critical for identifying relationships between the two movements are the needs to examine the similarities and differences in organization, leadership, membership, and tactics by examining previously cited court holdings, Congressional testimony, analysis by participants who participated in creating legislation, and analysis from secondary source authors. Thus this paper will highlight how legislation for the disabled developed when these four characteristics were juxtaposed with the litigation displayed by the Black Civil Rights Movement (BCRM) prior to the *Brown* decision.

Chapter three will analyze, critique, and reinterpret the relationship of the two movements by utilizing the

methodology of historical research. Berg (2007, p. 234) defined historical research as “a process that examines events or combinations of events in order to uncover accounts of what happened in the past”. As Anderson (1990, p. 113) suggested, “Unlike other forms of educational research, the historical researcher does not create data. Rather, the historian attempts to discover data that exists already in some form”. Of course, scholars may differ with my historical interpretation. As Borg and Gall (1989, p. 806) reminded, “Historians add another layer of interpretation in the way they choose to emphasize or ignore facts about the past and in the way they fit facts into categories and patterns”.

My analysis will suggest an alternative relationship between the BCRM and the DRM from what previous scholars have represented based on data prior to the *Brown* decision. It will explore equal protection court cases of blacks that culminated with the *Brown* decision. It will make the connection between these cases and subsequent litigation from advocates of the disabled. This connection will allow scholars to reinterpret the relationship between the BCRM and the DRM that helps them better understand current K-12

special education theoretical thinking and its structural framework.

# CHAPTER TWO

## HISTORICAL EVOLUTION OF SOCIAL ACCEPTANCE OF THE DISABLED

### Introduction

The goal of this chapter is to present an historical timeline of education for the disabled in the United States and to highlight society's changing acceptance and expectations of disabled people from 1800-1970. This will be juxtaposed with education for blacks from 1865-1954 to show that while scholars have never questioned minority status for blacks, scholars have debated and questioned with differing viewpoints whether minority status applied to disabled people. This was a contentious issue from 1948-73 that constituted a copious amount of scholarly literature. It was, however, a pointless argument disconnected from the central issue. This issue was the relationship between the BCRM and the DRM prior to the *Brown v. Board of Education* decision. I make the contention that scholars and textbook authors examining the relationship between the BCRM and the DRM during the Civil Rights Era have examined the wrong data in the wrong time frame.

It is immaterial whether a group may be recognized with minority status and thus entitled to societal accommodations to achieve inclusion. Minority status was

never the basis upon which legislation for due process for the disabled was premised. The real premise was individuality of the person and the distinct disability that determined due process rights. The important time period was 1948-50 when the BCRM litigated several Supreme Court cases seeking equal protection, not the *Brown* case and succeeding Civil Rights Era (1954-68). *Brown* was the culminating event, not the climactic event that led to due process in the 1970's for the disabled. What was of importance with prior Brown cases was their legal emphasis on individual rights of the petitioner and that denial of equal protection harmed the petitioner in a personal sense.

The importance of the relationship I pose is that litigation prior to *Brown* seeking equal protection for blacks affected the DRM's success at achieving due process legislation, because prior litigation emphasized the individuality and personal disability of the petitioner over race, group, class-consciousness, or minority status. Evidence of the lack of importance in establishing minority status may be attributed to Congress' tardiness of recognition of minority status to the disabled until 1973, long after the Civil Rights era ended. When examining how disabled people acquired federal due process legislation, the political and lobbying support that it entailed, and

individual efforts by the disabled themselves, scholars instead should focus their attention on the role of individuality and how that influenced a societal change of expectation from paternalism to independence, instead of alluding to race and minority status.

This chapter will highlight litigation from the BCRM prior to *Brown* and subsequent DRM litigation in the 1960's and 1970's to demonstrate the linkage of individuality between the two movements and why this was important in achieving due process legislation for the disabled in 1973 and 1975. Creation of special education following passage of this legislation was based on individuality, personal disability, and personal needs toward independence.

## Compulsory Education Versus Exclusion

In order to understand why due process legislation was proposed in Congress, one must undertake an historical review of education of the disabled. Initial review revealed that educators and lawmakers who promoted compulsory education meant it for "normal" students and not those with physical or mental defects. According to Osbourne Jr., (1996) education of disabled K-12 students in the United States from 1800 to 1975 was one of either exclusion or segregation. Rothstein (2000, p. 12) noted that, "While the Supreme Court has held consistently that

there is no federally protected right to education, nonetheless, if the state undertakes to provide education…a property interest is thereby created by the state". In a pivotal Supreme Court case that defined the pursuit of happiness being linked to the ability to own property, the Court ruled that one's ability to own property was inherently linked to one's level of education (*Wood v. Stricklnd* (1975)). The Constitution under the Fourteenth Amendment protects deprivation of life, liberty, or property without due process of law or equal protection of the law. Legal scholar Ashley Thomas King (Byrnes, 2002, p. 118) maintained that between 1852 and 1918 state legislatures "promulgated a right to an education through passage of compulsory education legislation applicable, theoretically, to all school-age children within their jurisdiction".

However, Osbourne Jr. (1996, p. 4) maintained that minorities and the disabled were usually excluded because in the "dilemma between exclusionary practices and compulsory education statutes" state appeals courts granted "the authority of school officials to exclude certain students". Reasoning to exclude disabled children during the late 1800's was to relieve stress on the teacher and other students (Beattie v. Board of Education of the City

of Antigo, 1919; Rothman, 2000, p. 11). More progressive reasoning in later years was to "avoid stress on the child" and to provide first "diluted academic training" followed up with "training for manual jobs" (Rothman, 2000, p. 11).

To understand the relationship between the BCRM and advocates of the DRM prior to the historic *Brown* decision, one must compare the educational history of America's black and disabled students. Several scholars have claimed (Rothman, 2003; Scotch, 2001; Bryan, 1998; Gilson and Deploy, 2000; Osborne) that individuals with disabilities and their advocates could not help but be influenced by actions, events, and events generated by the BCRM since both groups had been routinely denied inclusion at regular public schools. These influences such as marches, boycotts, sit-ins and demonstrations have been well documented by previous scholars following the *Brown* decision, but the relationship has not been investigated in the run-up of events prior to the *Brown* decision.

These scholars have erred in choosing to focus how the judicial holding in *Brown* centered on race when the true focus centered on individuality and personal equal protection exhibited in holdings of prior cases. This error in emphasis has led scholars like Hardeman et al., (2008) Osbourne Jr., (1996) and Turnbull III (1986) to assume race

and minority status were a linkage to the DRM in a seamless transition. When in fact a time gap occurred.

While *Brown* may have been a catalyst for advocates seeking due process rights for the disabled, it did not generate dramatic improvement in K-12 enrollment of disabled students in regular public schools. Rothstein (2000, p. 16) documented that as late as 1975 one million disabled students were excluded from the public school system and over three million were attending schools in inappropriate settings for them to learn. As Cremins (1983, p. 15) noted, " The period between 1954 and 1970 was for the most part a latent one in the area of landmark cases that would impact on the education of the handicapped". Scotch (2001) added that during this time period it was the courts that supported due process rights and not legislation. Th*is was borne out in cases that will be discussed: Wyatt, Wolf, Diana, PARC*, and *Mills.*

History of Special Education in the United States 1800-1970

Education of the disabled in the United States developed slowly over time and was one of recognizing that educating meant teaching toward independence, not categorizing a disabled person into a group. The history of educational rights for disabled people has been characterized by Gearheart, el al. (1996) as one of four

phases: 1) Early history: Before 1800, 2) Era of institutions: 1800-1900, 3) Era of public school special classes: 1900-1960/70, and 4) Era of growth and reevaluation: 1960 to the present. Moreover, scholars have identified three distinct expectations of disabled people within these four phases of education: 1) vocational training, 2) paternalism, and 3) independence (Bryan, 2002; 1996; Scotch, 2001; Covey, 1998; Charlton, 1998).

Previous to modern times, local governmental authorities did not feel compelled to grant any civil or educational rights to disabled people prior to 1800 because contemporary thinking considered a disability to be the work of demons or evil spirits (Covey, 1998). Actions taken against a disabled child such as abandoning him or her or leaving the child by the side of a road were not considered barbaric, because the disabled were considered inhuman (Bryan, 2002). This attitude began to change gradually within Christian nations and Christianity's theology of compassion. By Colonial days, disabled persons were thought more to be fools, idiots, or buffoons rather than the work of the devil. They were to be protected and kept safe from social abuse.

By 1800 European nations attempted to provide a small degree of education for the disabled in institutions in

England, France, Germany, and Scotland. Researchers of the blind, deaf, and mentally defective learned that disabled individuals learned similar to normal people, but at a differing rate (Bryan, 1998; Covey, 1996). Thus they could profit from educational schooling. However, these institutions were provided mainly for individuals with visual or auditory impairments rather than for people with mental retardation or emotional disabilities.

The first institution for the mentally retarded was begun in France in 1831. There research about mental age first developed and culminated in 1904 with the development of the intelligence quotient (IQ) by Simon Binet. Binet attempted to establish a linkage between mental age and chronological age. In France by the mid 1800's, several institutions in or near Paris were operating with educational programs for the disabled.

In the United States there was little federal involvement to educate the disabled in the 1800's. According to Turnbull III, (1986, p. 13)

> "The earliest federal role – creating special schools for the mentally ill, blind, and deaf between the 1820's and the 1870's – paralleled a similar movement at the state level, in which state schools for the handicapped were established as early as 1823".

However, Kirk et al. (1996, p. 43) stated, “Before 1850 there were few public provisions for children or adults with special needs. They were “stored away” in poorhouses and other charitable centers or left at home with no educational opportunities”. According to Kirk et al., 1996) it was not until 1896 that the first special class for mentally retarded schools was established in Providence, Rhode Island, followed by a class for children with physical impairments in 1899, and a class for the blind in Chicago in 1900. Further federal activity did not occur until the government created vocational rehabilitation programs for disabled veterans following World Wars I and II (Zames & Fleischer, 2001; Scotch, 1989; Turnbull III 1986; Broudy, 1983).

Three Societal Historical Expectations of the Disabled

In regard to society’s expectation of the disabled in the United States, the first expectation elaborated by Percy (1989, p. 44-47) was one of economics and vocational training where federal and state governments created training programs to teach manual labor skills that would increase economic conditions for the disabled. Disabled people acquired job skills that were rudimentary and often government funded such as the Smith-Fess Act of 1920 that provided vocational training, job placement, and

counseling, and is administered to the present by the Federal Board for Vocational Rehabilitation. Self-help disability agencies like Goodwill and Disabled American Veterans also encouraged job skills and vocational training.

Following World War II when the nation was faced with thousands of returning soldiers with physical and mental incapacities, the federal government accepted responsibility for restoring these returning veterans to mainstream life. This responsibility was economic in nature rather than an acceptance of civil rights for the disabled. In fact, Zames and Fleischer (2001, p. 7) reported: "Although disabled veterans were given priority in employment, civilians with similar disabilities were considered unemployable … so they should seek jobs in private industry." Vocational programs were created to bestow benefits, monetary payments, and sheltered work training programs to disabled individuals that would increase their integration into mainstream society rather than recognize their disability as an accepted right (Scotch, 2001; Bryan, 1996; Percy, 1989). . These organizations formed connections with mainstream business outlets to sell their goods to the general public (Bryan, 1996).

During the 1950's a second expectation of disabilities developed that Covey (1998) and Bryan (1996) defined as a paternalistic view where either governmental or lobbyist national organizations who advocated for the disabled provided funding through either charitable contributions or governmental transfer payments. Examples provided by Scotch (2001) included Paralyzed Veterans of America (PVA), the National Association of the DEAF (NAD), the American Council of the Blind (ACB), the National Association of Retarded Citizens (NARC), the United Cerebral Palsy Associations and the federal government's Social Security Disability Insurance program (SSI). While these organizations had political involvement, it has been argued by Scotch (2001 p. 34) "none was oriented toward the general issue of civil rights for all disabled people". Disabled people themselves were not members of these organizations.

After the war, several special interest organizations and agencies like the Heart Association, the Cancer Society, Easter Seals with its March of Dimes, United Cerebral Palsy, and the Muscular Dystrophy Association provided funding and positive publicity toward educating the disabled (Rothman, 2003). However, organizations like Muscular Dystrophy and United Cerebral Palsy Association

concentrated funding and assistance more on the cause of the disability, rather than on its effects on those currently disabled. Much of their funding centered on searching for a cure or prevention of the disability rather than providing for accommodations (Zames & Fleischer, 2001).

Institutionalization rather than accommodation within mainstream society remained the method of treatment. According to Rothman (2003, p. 27) “By the late 1950’s, large, total care institutions provided most of the care for disabled people. Some of these institutions specialized in training people with specific kinds of disabilities for employment”.

Given the institutional nature of care prevalent in the 1950’s, treatment did not differentiate between disability types. Hardeman et al. (2008) reported that state run institutions housed disabled individuals into separate gender care sections where they were taught to perform menial tasks. This training did not address specific mental, emotional, or learning disabilities, but appeared to be designed more for the efficient running of the institution rather than to increase the independence of the individual. Family members were limited in the amount of contact with their disabled family members. According to

Smart (2001, p. 34-36) and Clarizio, (1983) institutions administered a standardized medical model treatment approach, which will be explained later in this chapter, with over-reliance on physical doctors and pharmaceuticals over educators and independent living trainers.

However, Hardeman et al. (2008) and Clarizio (1983) reported that by the late 1950's, a competing philosophical model of treatment called "psychoeducational" placed more emphasis on teaching to the specific disability, ignoring the need to establish causation, and increasing a person's practical living skills as a more effective treatment approach. A large number of disabled veterans, and parents of children with intellectual impairments advocated that disabled people desired public entitlements like access to housing, transportation, and employment rather than institutionalization in their living arrangements (Rothman, 2003; Bryan, 1996).

A third expectation of disabilities evolved by the early 1960's when disabled individuals, becoming more politically active in their well-being, attempted to resolve their personal local difficulties of housing, transportation, and employment. Since many disabled people no longer were seen as needing institutional care, more of them began being released and living either with family or

in independent living situations. This meant they needed practical living skills to survive in normal society. Recognizing their need for increased independence in order to be included, they appealed to local governmental bodies like city councils and housing authorities that to be independent required societal accommodations that might improve their chances for acquiring better practical living skills and more inclusion.

During the 1950's lobbying groups like the American Association on Mental Retardation (AAMR) wielded more political power than previously, and alternative treatment approaches began to emerge. These lobbying groups clamored for deinstitutionalization of the disabled and reinstatement of due process rights, and more family involvement (Hardman et. al., 2008; Turnbull III, 1986). Several (Switzer, 2003; Scotch, 2001; Francis & Silvers, 2000; Charlton, 1998) have argued that this process was slow to evolve because media attention was not focused on disabled individuals in any national public awareness in the 1950's. Clarizio (1983) noted how treatment models slowly changed from psychodynamic (medical/institutional) from the 1920'to psychoeducational in the late 1950's (educational/societal). This meant that disabled individuals obtained value within society as individuals

rather than categorization as a member of a group. Emphasis changed from requiring protection from society to learning to cope within it. Advocates advanced that disabled people had a productive role to play within the community and need not be sheltered from it.

Education of Disabled Students in the 1960's

With disabled people desiring more productive roles within society, the shifting paradigm from medical to educational was important for school age children because this meant their learning needs could be met, for the most part, in regular school settings with their peers, not in segregated state hospitals. Consequently, according to Hardeman et al. (2008) and Gearheart et al., (1996) a mass release of disabled people from state institutions occurred in the early 1960's. For students this meant inclusion and accommodation in state funded residential public school settings for classes designed for deaf, blind, and the significantly intellectually impaired. This meant they would be receiving education with their own peers in a more normal environment.

Gearheart et al. (1996) noted that with the adoption of compulsory attendance laws for students beginning in the early twentieth century, public schools faced the problem of "providing for students with mild retardation. Thus

public schools concentrated on “special” classes for students with mild mental retardation” (p. 8). This entailed that mildly disabled students, who concomitantly had behavior problems, were placed in the classroom with students having intellectual impairments, “and those who could not get along in this obviously special setting were expelled from school” (p. 8).

Thus the 1960’s to early 1970’s gave rise to the era of the special class, a self-contained group of disabled students segregated from regular peers for varying lengths of the day. Gearheart et al. (1996, p. 9) described these classes where “general educators happily sent problem students to special classes, and special educators accepted a number of students who should not have been placed…Special classes were sometimes used as dumping grounds, vehicles of segregation…”

According to Byrnes, (2002) Osbourne Jr., (1996) and Turnbull III (1986) parents of disabled students became dissatisfied with special classes and the inadequate life skills their children were acquiring. They sought litigation as their opportunity to gain inclusion into regular public school classrooms and looked to tactics previously enacted by the BCRM of marches, demonstrations, and sit-ins as their model. Many scholars (Kluger, 2004;

Gray, 2002; Payne, 1995; Carson, 1981) highlighted how this movement of litigation for equal protection for minorities begun in the 1940's, reached notoriety to the general public following the *Brown* decision in 1954. However, while many scholars (Scotch, 2001; Zames & Fleischer, 2001; Bryan, 1996; Percy, 1989; Scotch, 1989) have linked this decision to subsequent actions in the 1960's by the DRM movement, I submit prior Supreme Court cases of 1948-50 have more significance because they stressed individuality and the value of the person over race and minority rights. This will be elaborated later in the chapter with four equal protection cases from 1948-50 that emphasized individual rights besides race.

Black Education 1865-1954

According to Williams (2004) and Anderson, (1988) blacks in the United States prior to the *Brown* decision in 1954 were aware of their minority status and exclusion because they had been supporting two separate school systems with their taxes, one white and one black. Their perception of exclusion changed with a stroke of the pen on May 17, 1954 when many scholars of civil rights (Branch, 1998; Williams, 1986; Eyes on the Prize, 1986) claimed that the American Civil Rights Movement in the twentieth century began. On that day the United States Supreme Court struck

down segregation of public school students because of race. Refusing to address the issue whether black and white schools under scrutiny were inherently equal, the court maintained segregation based solely on race deprived blacks of their education "even though the physical facilities and other 'tangible' factors may be equal" (*Brown v. Board of Education*, 1954, p. 4). Irons (2002, p. 162) argued, "What the cases really involved was the psychological impact of enforced separation on black children". According to Irons (2002) and Gray, (2002) The unanimous 9-0 decision outlawing racial segregation in public schools and the Court's order for local school boards in Southern states to integrate schools, challenged Jim Crow laws in the South, enforced equal protection of the law under the Fourteenth Amendment, and transformed the Southern way of life.

Several have argued that previous to *Brown*, blacks especially in the South, had understood they were responsible for creating educational opportunity for their race; opportunity that had been denied since Reconstruction, because Jim Crow laws in the South mandated racial separation in schools (Irons, 2002; Haskins, 1998; Anderson, 1988). Because blacks took the initiative to create their own public school systems in the South, in addition to the taxation they provided for state funded Jim

Crow schools, their racial membership united them long before the *Brown* decision in 1954. They understood their local exclusion from the white community because according to Anderson, (1988) many of their K-12 schools were built with the economic funding of Northern philanthropists.

Having lived in a segregated racial society where they were restricted to where they lived, played, worshipped, conducted business, and congregated, they realized themselves as a distinct minority that needed to be unified to survive (Irons, 2002; Chafe, 2001; Vann Woodward, 1966). Chafe (2001) reported how careful and circumspect a black man must be when walking down a southern sidewalk. A Jim Crow etiquette existed that required a black man to possess two personalities; displaying an artificial deferential behavior toward all white men, but asserting individual dignity among people of his own race.

Because blacks were forced to pay the majority funding for their common schools between 1915-1935 with the help of Northern religious groups and Northern philanthropists like Julius Rosenwald, William H. Baldwin, and the Carnegie Foundation, (Anderson, 1988) they sought unity as a group for protection against the white power structure. This became more transparent in the 1950's as according to Charles Payne, (2003) in quoting Michael Honey's term: a

"transitional generation" developed after World War II of black agitators and resisters who challenged Jim Crow "on shop floors and in civic associations, in polling places and city buses pointing the ways to the mode of confrontation and direct action that would characterize the decades to come" (p. 401).

These instigators were often returning veterans who were rural oriented, poor, with little education, and who had seen an alternative way of living while fighting fascism. Payne (1995) indicated that they were unwilling to tolerate lynching or to return to the Jim Crow South of their past. They became the grassroots membership that ignited the march toward justice when led by talented leaders like the "Legal Defense Team" (Tushnet, 1987) organized by the National Association for the Advancement of Colored People (NAACP) and black ministers trained in passive resistance at reputable divinity schools. Watson 2010, p. 48) reported how one Mississippi farmer once described the power of the grassroots movement in *Freedom Summer*, (Watson, 2010 p. 48) "It was the so-called dumb people,… {who accomplished it} The school teachers, the educated people, they ain't did a damn thang!". In other words, educated blacks within local communities had failed to galvanize a resistance to Jim Crow among less educated

blacks. However, outsiders represented by the Legal Team of the NAACP, were able to inspire these people toward action.

According to Branch, (1998) collective membership of blacks had never been a contentious issue since they had experienced exclusion during slavery and post-Reconstruction. During the Civil Rights Era, blacks sought equal protection and inclusion in mainstream society but were denied by a legalized Jim Crow power structure. Kluger (2004) documented that despite sympathetic whites that joined in the resistance tactics, blacks were a distinct minority group recognized by themselves and others, especially the federal courts when their civil rights were violated.

Black Minority Status and Did It Matter?

Scholars like Barker, (1948) Fine and Asch, (1988) Zola, (1989) Bryan, (1998) Nagler, 1993; Gilson and Depoy, (2000) Mansbridge and Morris, (2001) Scotch, (2001) and Switzer (2003) have debated since 1948 whether the disabled population constituted a recognized minority group, whereas they have accepted blacks' minority status. Minority status has been argued important because several scholars have agreed that minorities deserve societal accommodations that reverse discrimination in such areas as housing, employment, job opportunities, education and training, and

eligibility for social programs. Therefore, intellectual thinking could make the claim that if a group could establish its identity as a minority, society would be required to provide opportunities for greater inclusion.

However, I propose determination of minority status is irrelevant in examining the relationship between the BCRM and the DRM. The forty years of back and forth debate has been divisive and irrelevant. It was pointless because legislation for due process rights for the disabled never centered on minority status. Importance always lay in the value of individual, personal rights which advocates of the DRM were able to convince legislators had been based on equal protection cases raised by the BCRM prior to *Brown.* This point will be expounded upon later in this chapter. It is only relevant to delineate the argument of minority status in a review of key literature to understand that minority status has always lurked in the background as a bogeyman when the issue of due process and equal protection were argued. A brief review of scholarly treatment of this topic regarding blacks and the disabled is appropriate.

A review of key literature revealed that blacks were a recognized minority group with a collective consciousness. Historically, the (NAACP), founded in 1909, had been the most noted organization in support of colored peoples'

rights (Berg, 2005; Tushnet, 1987). As Berg, (2005) Branch, (1998) and Williams (1986) showed, blacks needed organizational support especially in the South where Jim Crow Laws banned them from hotels, restaurants, gas stations, recreational facilities, businesses, churches, and other facilities where white people were able to attend. Blacks in the South bonded together as a united community and were forced to fight for their equal protection against state and local officials regardless of their economic or educational status. Middle class or poor, highly educated or poorly educated, urban and rural, blacks who suffered exclusion created a unified movement. Several (Kluger, 2004; Payne, 1995; Eyes on the Prize, 1986) have shown how this movement included both a group of political and religious leaders, many trained in passive resistance techniques, and rural grassroots sharecroppers unwilling to continue bowing to suppression and degradation by the white power establishment. As Berg (2005, p. 159) stated: "In order to overcome the lamentable state of apathy among potential black voters, the NAACP activists tried to make clear that political powerlessness and economic and social discrimination were two sides of he same coin". Nossiter (1994, p. 40) documented, "By the mid-1940's the NAACP was

an accepted part of the national political landscape, recognized as the premier advocate for black advancement".

The murder of fourteen year old Emmett Till in Money, Mississippi for allegedly whistling at the wife of a white drug store owner also helped create unity within the black community, important because it signified cultural collectivism in the face of oppression, and a need to stand together in defense of blacks' rights (Berg, 2005; Crowe, 2003; Williams, 1986). Although Till's murderers were acquitted by an all-white jury, Till's uncle had the courage to testify against two white men in a Mississippi court of law.

Blacks were able to accomplish equal protection rights gradually as litigation moved slowly through the court system from 1954-64 (Irons, 2002; Tushnet, 1987). Recognition as a minority group may have contributed to some societal accommodations. Public opinion after World War II emerged to acknowledge blacks were a minority group that had been disenfranchised and excluded from general society (Kluger, 2004). Society owed them accommodations based upon wrongs inflicted from the past. However, scholars have over emphasized the value of this minority labeling as this chapter will highlight below.

Minority Labeling for the Disabled – Competing Philosophies

Scholars previously mentioned who were in agreement about minority status with blacks struggled whether the designation applied to the disabled population. Unfortunately, they wasted forty years of debate over a question that was unimportant for two reasons. First, minority status never was a significant factor when judges and legislators made determinations about due process for the disabled. Second, individuality and sensitivity to specific physical, mental, and learning disabilities were key to producing due process rights by the late 1960's. Nevertheless, it is necessary to review the argument so that scholars now may understand how previous theoretical ideas obstructed the true relationship between the BCRM and the DRM, and how disability rights legislation was created. The importance of this relationship occurred prior to the *Brown* case, not in the era following it.

A review of key literature of minority labeling for disabled people was not unanimous and only evolved over a generation (1948-73). The notion of the disabled increasing their normality to compete with normal people on a normal playing field permeated psychology in the first half of the twentieth century in articles by psychologists like Sigmund Freud, John Watson and in the 1940's and 1950's by

behaviorists like B. F. Skinner. According to Barker, (1948) the disabled individual was not considered a minority group like a Jew or Negro because according to Barker (1948) he did not share a minority position with other similar individuals: “He is almost inevitably an isolated individual who must meet the limitations which his underprivileged status imposes without the possibility of group support” (p. 32). This position came into sharper focus when it became clear that disabled people were “spread across the various social classes and status groups in society”, (Scotch, 2001, p. 30) and that the disabled actually composed a cross-section of economic life in America, (Scotch, 1989, pp. 380-399) more so than did blacks.

People with disabilities were isolated from each other for two reasons. First, they were usually living with families and out of touch with other disabled people, and second, they possessed a plethora of different disability types. According to Scotch (2001, p. 30) “Disability is an individual experience in most cases, and a community of disabled people may not exist unless it is consciously built”. It was evident to several scholars (Switzer, 2003; Gilson and Depoy, 2000; Covey, 1998) that disabled people did not consider themselves unified members with other

disability groups or united to a common cause. Switzer (2003, p. 14), for example, commented, “The lack of this common culture isolated the handicapped from each other, and the isolation was exacerbated by the fact that the handicapped differed greatly among themselves…” Scotch (1989) asserted that it was not until the early 1970’s that the name disability rights movement (DRM) emerged. At that time Seelman (1993, p. 122) contended “The leadership came from the ranks of people with disabilities who coalesced around a common experience of oppression”.

Disabled individuals were unable to immediately benefit from the collective consciousness of the BCRM despite testimony to this effect by textbook authors, because there was no evidence they formed any cohesive groups or shared communication of their issues. As Mary Jane Owen lamented in “The Ragged Edge”, an edited journal for the disabled that began publication in 1984, disabled people were like “squabbling cubs”. “Why don’t we seem to “get it together” the way other civil rights movements have?” (Shaw, 1994, p.7). Evidence of non-recognition of minority status had been advanced by Osborne, (1996, p. 3) who noted for parents and advocates of disabled children, “The federal government did not require states to provide

special education services to students with disabilities until 1974".

As previously stated, scholars in key literature recognized that the DRM was influenced by actions, emotions, and events generated by the BCRM (Rothman, 2003; Scotch, 2001; Bryan, 1996; Osbourne Jr., 1996; Turnbull III, 1986). However, they cited *Brown* as the instigating event and failed to document the influence of the BCRM prior to *Brown*. They failed to do this because they chose to categorize each movement as a group with a collective consciousness, when, unlike the unified consciousness of blacks, a collective consciousness had not developed within the DRM until the early 1970's, when several cases in litigation, that will be discussed later in this chapter, occurred. Some scholars failed to make the connection that successful DRM litigation was the result of precedence established by successful equal protection cases advanced by the BCRM from 1948-50.

When scholars referred to *Brown* as a catalyst for a right to education for the disabled, they stressed the legal argument of class action and minority rights that allowed five cases to be bundled in one hearing as *Brown* by the Supreme Court. However, lost in the reasoning in *Brown*, along racial lines, was the loss of equal protection to the

direct petitioner's involved. This individuality had been stressed in *Gaines, Sipuel, McLaurin,* and *Sweat* by the Justices, and generated a significant reasoning for their holding in the *Brown* decision (*Brown v. Board of Education*, (1954)).

Later litigation by the DRM in the PARC and Mills cases, which will be elaborated below, made reference to *Brown*, not because of the class action argument, but because *Brown* had demonstrated denial of equal protection to distinct individuals. Litigation in DRM cases referred to the "intangible considerations" lost with segregation (*Brown v. Board of Education* (1954), p. 4). This loss was personal in nature and became the basis of argument in DRM litigation, the distinct character and value of the individual. The holding in the Mills case, citing *Brown*, identified that a privilege granted to one person should not be denied to another when it read, "Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms" (*Mills v. D.C.* (1972), p. 9). This was the language of the *Sipuel* and *Sweatt* cases. So when scholars like Turnbull III and Osbourne Jr. cited *Brown* as the catalyst that propelled education for the disabled, their identification was correct, but they did not examine more

completely the individuality argument as well as class action.

Several scholars assumed a seamless transition of acquisition of due process occurred for the disabled *only* following the *Brown* case. On the other hand, others like Covey (1998) and Charlton (1998) maintained due process rights for the disabled did not seamlessly follow the successes blacks achieved in the early 1950's because the disabled lacked the unified community spirit (Covey, 1998) and the recognized minority status (Charlton, 1998) blacks had achieved through their long historical fight against Jim Crow. Neither of these theories is correct because they failed to address the individuality and personal experience of the disabled as an individual. Previous scholars have failed to recognize the lack of importance or the irrelevancy of linkage between societal acceptance of minority status and eventual success at achieving due process.

Scholars instead chose to examine this importance of establishing one's self as a minority and its linkage toward attaining due process. This argument consumed a twenty-five year period from 1948-73 and is actually insignificant because it disassociates due process from the personal, individual right of an individual by categorizing

it on an impersonal group or race basis. The argument supporting or denying minority status is specious and unnecessary in discussing the BCRM/DRM relationship, nevertheless, it occupied copious amounts of literature.

The number of scholars who maintained the argument that one difficulty disabled individuals faced was lack of recognition as a minority group both by themselves and society was pervasive {Switzer, 2003; Mansbridge & Morris, 2001; Bryan, 1996; Nagler, 1993). Nagler (1993, p. 33) stated that the disabled did not constitute a

> "group in the sociological sense…Differing in a sociological sense from other groups, the disabled do not have constituents such as a common culture, mores, folkways, laws, and a sense of 'peoplehood'". They lacked an'esprit de corps' that is necessary for group consciousness.

Mansbridge and Morris (2001, p. 95) concurred in this finding. "Lacking the necessary structural and cultural conditions, individuals with disabilities did not form a broad-based oppositional consciousness until the early 1970's". Richard Scotch, often recognized as the foremost scholar of the Disability Rights Movement and public policy since writing his Harvard doctoral dissertation in 1984,

did believe the disabled possessed a social movement at least by 1962. According to Switzer (2003, p. 71)

> "Scotch believes that until the mid-1970's the disability rights movement was a loosely structured grassroots movement. There were few resources available, "leadership by example", and only occasional focusing events that brought activists together. He noted that there are no aggregate data on individual or organizational participants in the disability rights movement…".

Two Treatment Models for the Disabled

The battle of existence of collective identity and whether disabled people should passively accept their disability or whether society should accommodate to a disability grew intense after Roger Barker (1948, pp. 28-37) first addressed the issue of a collective consciousness among the disabled in an article entitled *The Social Psychology of Physical Disability* in the *Journal of Social Issues* in 1948. In constructing what he referred to as a "medical model", Barker claimed disabled people were a minority-group, but whether they possessed a collective will to constitute what Scotch (1989) would later call a "social movement" depended upon their psychological response to their environmental condition; their

understanding that they live in a “built” world of physical, social, and emotional barriers to which they must adapt to be accepted into a general societal framework. What he meant was that although the disabled saw themselves as different from normal people, they had accepted their inequality and expected to be treated unequally by mainstream culture. Therefore, they were resigned to their inferiority status. This resignation would better help them integrate to their condition in society.

This perspective was still alive but faintly breathing by 1988 when Fine and Asch (1988) were two of the last proponents to revive this psychological/medical framework of minority group by referencing a statement by Meyerson in the same 1948 *Journal of Social Issues* “that the problems of the handicapped are not physical, but social and psychological” (p. 7). This implied that disabled individuals as a distinct minority would have to psychologically accept their condition as medically incompetent in an environment that existed as reality. They had to conform to the general culture rather than insist the general culture create accommodations for their acceptance. However, oppositional viewpoints during the years following Barker’s view expounded below by other

scholars had determined this medical model was dead on arrival by the 1970's.

Scotch, (1989, p. 381) of course, disagreed with this medical model framework. Rather, he claimed that society was responsible for adapting to the disabled. "The disabled constituted a social movement because they met criteria of collectivity acting with some continuity to promote or resist change in the society or group of which it is a part". Evidence of this collectivity and society's responsiveness occurred when Ed Roberts formed the Center for Independent Living (CIL) and fought for more independent housing at Berkeley. Additionally, Judy Heumann, previously a disabled second grade teacher turned community activist, was able to organize a group that engineered a sit-in at President Nixon's re-election headquarters in 1972 to protest better transportation for disabled workers.

Sharon Groch (Mansbridge & Morris, 2001, p. 65) reinforced the notion of collective consciousness and community responsibility to accommodation by insisting the disabled met five criteria for oppositional consciousness that beckoned for accommodation because they: 1) see themselves as members of a group, 2) regard their life situation as unjust, 3) find common interest with other

group members to oppose the injustice, 4) regard the injustice is due to structural inequalities, and 5) believe the justice can be terminated or diminished by collective action. She was able to cite as evidence that the disabled demanded accommodations in the strike against public transportation in Denver in 1978 because of a lack of wheelchair lifts on buses.

Consequently, according to the viewpoints of Scotch and Groch, it can be argued that it was society that must accommodate to the individual needs of the disability to promote more inclusion, not the individual's responsibility to succumb and to accept the existing environment. Covey (1998, p. 3) supported this notion by stating, "A handicap is not determined by an individual's physical limitations, but instead reflects the social consequences of that disability".

Adding to the confusion of identity awareness, Gilson and Depoy (2000, p. 211) took a double-sided approach that "disability identity can be viewed as internally derived or externally imposed depending on definitional lenses". From this perspective, Fine & Asch (1988) and Barker (1948) have argued that society can impose a medical model of constriction on the disabled individual where he must measure up to societal norms in order to join. On the other

hand, other scholars who supported Scotch and Groch maintained the collective identity model. A disabled person can create a collective identity with like-minded disabled others to form a social movement that challenges the majority to make accommodations so they may enter it (Switzer, 2003; Mansbridge & Morris, 2003; Bryan, 1996; Zola, 1989).

James Charlton (1998, pp. 83-84) in his book *Nothing About Us Without Us* made a strong statement that disabled people should control their own destiny in society, but society owes them the right to compete with necessary accommodations. According to Charlton, disabled individuals were faced with seven features of societal oppression in everyday life: 1) invisibility, 2) lack of support services, 3) control by charities, 4) hierarchy of disabilities, 5) vulnerability to violence, 6) inaccessibility, and 7) chasm between rural and urban life. In his view, mainstream society must initiate an attitude adjustment to even the playing field for disabled people.

Finally, researchers like Switzer (2003), Gilson & Depoy, (2000) Scotch, (1989) Bryan, (2002; 1996) and Zola (1989) pointed out, that beginning in the 1960's, members of the disabled became more familiar with the collective consciousness of other social movements such as the Anti-

War, Women's, Gay Right's, Latino, etc. The notion that disabled people could constitute a collective consciousness with power to demand societal accommodations began to outweigh the medical group model previously advocated by Barker, and Fine and Asch: minorities must psychologically adjust to the environment they faced.

As Gilson & Depoy (2000, p. 208) noted citing French, "A social model of disability is socially constructed…a social model of disability sets service goals as removal of social and environmental barriers to full social, physical, career and spiritual participation.

Unimportance of Minority Status

Despite twenty-five years of rhetoric of who constituted minority status, I have discovered the issue had no bearing when blacks sought equal protection or the disabled due process. What mattered more was the personal denial of civil rights to the individual. Blacks obtained justice from the Supreme Court from key Court cases that occurred between 1948-50, which will be explained below. Advocates of the disabled were able to utilize holdings from those cases to emphasize due process for the individual. The history of the *Brown* case (*Brown v. Board of Education (1954)*) will be studied to demonstrate that it

was not the defining case for due process of the disabled that most scholars have interpreted.

History of *Brown a*nd the Legal Defense Team

That the *Brown* case ever reached the Supreme Court in the spring of 1954 is testimony to a group of highly talented black lawyers who struggled throughout the 1940's against racial subordination. They worked for the Legal Defense Team of the National Association for the Advancement of Colored People, an organization founded in 1909 "by a biracial group desiring to counter an increase in white violence against blacks throughout the country" (Tushnet, 1987, p. 1). Proof that the NAACP Legal Defense Team was instrumental in bringing black civil rights to the forefront within the federal court system was Walter's (1992) claim that prior to action by the NAACP beginning in the 1940's, "There are no known efforts of blacks in Mississippi to integrate public places other than a boycott of public transportation in 1904", (p. 91) an effort that failed because blacks had no support in the courts. Watson (2010 p. 41) indicated that while Mississippi's population in 1900 was 62.5 percent black, "the state had not one black elected official". Vann Woodword (1966) indicated in his book, *The Strange Career of Jim Crow* that white power

in the state of Mississippi was absolute – a complete police state for blacks.

Beginning in the 1930's, acting secretary of the NAACP, Walter White, assembled a talented team of black attorneys, mostly graduates of Howard University, to represent the organization "for an intensive campaign against specific handicaps facing the Negro" in the area of segregation (Tushnet, 1987, p. 15). According to Anderson and Byrne, (2004, p. 27) lawyer Nathan Margold was hired to develop a "strategy to positively affect the legal status of blacks in the United States". The plan, known as the Margold Report, was designed to be an all out attack against racial segregation in the Jim Crow South.

As Anderson and Byrne (2004, p. 27) reported, White hired Charles Houston, Dean of Howard University's law school, to represent the NAACP's legal defense team permanently in 1935 to litigate "planned test cases across the country to generate favorable legal precedents". By 1950 the team had added two highly competent attorneys and graduates of Howard University, Robert L. Carter and Thurgood Marshall They had argued four equal protection cases from 1948-50 where blacks had been denied higher education. However, as Irons discovered, (2002, p. 12) if blacks would be successful at acquiring equal protection

rights, "The heart of the Jim Crow system, and the institution most central to its functioning was the public School system".

Under Charles Houston's guidance it was Redding, Carter, Marshall, and Spottswood Robinson, another gifted black attorney, who argued a series of bundled cases, two from Delaware and one each from Virginia, South Carolina, and the District of Columbia known as *Brown v. Board of Education* ( Kluger, 2004; Irons, 2002). Richard Kluger (2004) eminently described the case in his book *Simple Justice*. These cases centered upon petitioners who represented model clients: employed, middle class, hard working, stable family structure, and respected in the community. According to Irons (2002) and Tushnet, (1987) race had been the exclusionary factor in denying inclusion in the K-12 public schools. However, equal protection cases argued by the Legal Defense Team were decided by acknowledging personal individuality as well as race.

Several civil rights authors (Anderson and Byrne, 2004; Gray, 2002; Irons, 2002; Tushnet, 1987) have argued that attorneys were critical at pressing for individual rights and dignity for black people, coordinating organized local resistance to segregationist policies, and appealing this resistance through federal courts. Tushnet (1987, p.

145) noted how Lawyers for the NAACP "identified not a single target but a group of generically defined evils --- school segregation, lynch law, Jim Crow laws --- and directed its efforts at those broadly defined evils". The Court agreed to hear these cases collectively on December 9-11, 1953.

Byrnes and Anderson (2004, p. 29) reported "This grouping was significant because it showed that school segregation was a national issue, not just a southern one". Anderson and Byrnes (2004) and Tushnet (1987)) reasoned that to strengthen its case, the NAACP Legal Defense Team presented plaintiffs who possessed credibility, and they would likely impress liberal justices with their high moral character, family values, and strong work ethic. Irons (2002) maintained the credibility of plaintiffs in the *Brown* case had a profound effect on how the justices viewed segregated education.

The Supreme Court justices ruled 9-0 in favor of the plaintiffs. Their equal protection rights were being denied because of race. While Turnbull III (1986) indicated race appeared to be a hot-button issue that excluded disabled children could utilize in their fight for inclusion, key literature (Hardeman et al., 2008; Gearheart et al., 1996) did not support that a great degree of movement toward

inclusion of the disabled in public schools occurred following *Brown*.

Impact on the DRM

Both Cremins (1983) and Turnbull III (1986) noted that this judgment had no immediate effect upon disabled students other than to demonstrate to their advocates that litigation and not legislation would be the initial avenue for them to pursue due process and inclusion. Advocates realized skillful attorneys as demonstrated by the Legal Defense Team would be valuable assets in the fight for due process. What *Brown* did demonstrate was that equal protection under the Fourteenth Amendment was a culmination of several prior cases that the Legal Defense Team had adjudicated between 1948-1950.

Yet educational and historical scholars (Kluger, 2004; Daugherty, 2001; Kirk, 2000; Payne, 1995; Branch, 1998; Tushnet, 1987) have noted little linkage between these earlier cases in regard to the BCRM's relationship to what would become the DRM. These scholars have detailed how an emphasis on the BCRM and its effects on other movements have often centered on its tactics such as demonstrations, marches, sit-ins, and boycotts and the leadership ability of able preachers of noted divinity schools like Martin Luther King Jr., Rev. Ralph Abernathy, Rev. Fred

Shuttlesworth, and blacks in leadership positions with positive ties to the white community like A. Phillip Randolph (Porters' Union) and E. D. Nixon (Montgomery NAACP). While the DRM was propelled to emulate the tactics and leadership of the BCRM in its early years, its success at achieving due process for disabled students resulted initially from resorting to litigation in a similar fashion as the BCRM had employed prior to *Brown,* stressing personal rights of the individual. Scholars who narrated this did not particularly denote it (Osbourne Jr., 1996; Turnbull III, 1986; Cremins, 1983). As an example, in the *Wyatt v. Hardin (1967)* case in Alabama, the district court ordered the institution housing mentally challenged individuals to uphold what became known as "Wyatt Standards", one of which required "individual treatment plans" (*Wyatt v. Alabama, 1967*, p. 5).

Precedent Cases in the BCRM Prior to *Brown*

As previously argued, one reason why the DRM developed gradually was Switzer's (2002) contention of the slow transformation of disabled people toward class-consciousness. A second reason was Gilson and Depoy's (2000) supposition of society's slow movement of evolving expectancies of disabled people from paternalistic to independent. However, Scotch (2001) and Percy (1989)

indicated that leadership also affected how and when the disabled fought for their civil rights. Whereas a legal team of attorneys represented blacks, together with key preachers who were scholars of divinity schools with black church congregations where they could express their views, leaders of the DRM were middle class white college students, from both Coasts fighting for their individual and local interests (Scotch, 1989). It can be argued (Irons, 2002; Payne, 1995; Branch 1987) that blacks were unified in their mission to achieve equal protection and overcome Jim Crow Laws, while leaders of the DRM sought to overcome localized, personal difficulties like access to housing, mobility, and meaningful employment (Disability Rights and Independent Living Movement, 2009; Roberts, 2007; A Discussion with Judy Heumann on Independent Living, 2008).

Judy Heumann related how in fighting for her teacher's license she learned "when you begin to push, push, push, in many cases you can beat the system" (Heumann, 2008 p. 10). Leadership and localism of issues affected the speed of progress toward due process for the DRM. In the *PARC (1972)* and *Mills (1972)* cases leaders did however, copy the legal tactics of respect for the individual and the intrinsically personal nature of equal protection employed by the BCRM in

a series of cases from 1948-50, once lobbying groups for the DRM acquired enough political and public support to challenge the status quo during the period 1969-72. These cases will be itemized below.

BCRM Supreme Court Decisions Prior to *Brown*

As early as 1938, the Supreme Court addressed the equal protection clause of the Fourteenth Amendment in exclusion of blacks in the nation's schools of higher education in *Gaines v Canada* (*Gaines v Canada*, 1938). William Hogsett and Fred L. Williams of the Legal Defense Team argued the case. Lloyd Gaines was a student who had earned a Bachelor's degree from an all black College and sought to enter the University of Missouri Law School. A state statute offered to pay tuition for admission to a law school in an adjoining state, but did not allow admission of black students into Missouri's law school. The Supreme Court struck down the state statute by reversing the decision of the District Court. Denying Gaines admission to Missouri's law school amounted to violation of his equal protection rights. While Gaines was permitted to enroll, the issue was moot according to Irons, (2002) when Gaines moved away from Missouri and the state was never faced with the physical reality of providing a law school for members

of the black race or integrating its current white law school.

Building from the precedent of the *Gaines* case, Thurgood Marshall and Amos T. Hall argued *Sipuel v. Board of Regents of University of Oklahoma* (1948) before the Supreme Court, a similar case where a black female was denied entrance to the University of Oklahoma Law School solely because of race. The Court ruled "The state must provide it to her in conformity with the equal protection clause of the Fourteenth Amendment and provide it as soon as it does for applicants of any other group" (*Sipuel v. Oklahoma*, 1948) p. 1). Significantly, the Court ruled that denial of equal protection rights to this petitioner was a personal affront, not just an injustice because of race. This ruling recognized the value of the individual for herself, not just because she was a member of a group or race. The Legal Defense Team with Marshall in charge chose to pursue other cases where denial of higher education was involved (Irons, 2002; Tushnet, 1987).

Two additional cases were argued on the same day in the 1950 term of the Supreme Court, both similar in their legal demands. Robert L. Carter in the lead with Thurgood Marshall, Amos T. Hall and three other members of the Legal Defense Team providing counsel on the brief, argued

*McLaurin v. Oklahoma* (1950). This case involved a black doctoral student at the University of Oklahoma who was allowed to attend with white students, but was required to be segregated from them in his seating, studying, and eating environments. The Court addressed the specific question "whether a state may, after admitting a student to graduate instruction in its state university, afford him different treatment from other students solely because of his race" (*McLaurin v. Oklahoma* (1950) p. 2).

The Court held that separating McLaurin from his fellow students infringed upon his ability to learn and "deprived him of his *personal* and *present* (author's italics) right to the equal protection of the laws; and the Fourteenth Amendment precludes such differences in treatment by the State based upon race" (p. 1). This was a personal affront to his dignity as an individual. He was allowed to join his fellow white students. However, justices had noted this personal affront to him, and this holding was important because it was not determined purely on race.

Similarly, in *Sweatt v. Painter* (1950) Thurgood Marshall, Robert L. Carter, and others on the Legal Defense Team argued that a Texas law student was denied his equal protection rights when he was denied admission to the

University of Texas law school in exchange for the state's creation of a Negro law school. They argued, again, that the plaintiff had been denied equal protection. The Court ruled the University of Texas law school was inherently superior to the newly created black law school. Therefore the separate but equal argument of *Plessy v. Ferguson (1896)* did not apply. Chief Justice Vinson, speaking for the majority was careful to point out in his holding that this was a narrowly defined case based upon the two cases, *Gaines* and *Sipuel*, "which present the issue of the constitutional validity of race distinctions in state-supported graduate and professional education" (*Sweatt v. Painter* (1950) p. 3). However, the Court recognized again the personal nature of rights when Justice Vinson stated: ""It is fundamental that these cases concern rights which are *personal* and *present*" (author's italics). Significance lay in that the court recognized denial of equal protection affected the life of the individual and constituted more than a race based obstruction.

From these successes, Tushnet (1987) related that the NAACP had learned equal protection for blacks in higher education could be obtained through the nation's courts through specific incidents when the issue of equal protection was personal and narrowly defined to pertain to

a specific individual. As Irons (2002) documented, by the early 1950's, the Legal Defense Team realized if it intended to attack exclusion and segregation at a broader community level, it would have to create a series of cases at a lower educational level where a multitude of black children existed. This would be the K-12 grade level at regular public schools. Eventually, five cases bundled together are what became *Brown v. Board of Education* (1954).

Due Process Supreme Court Decisions for Disability Rights

While no immediate litigation success occurred for due process for educating disabled students from 1954-70, nevertheless, according to Cremins, (1983, p. 15) "It was a time of active parent organization, federal intervention, evolution of more and better preparation programs, research, etc." Parent lobbying groups proliferated, especially among parents of students with intellectual impairments.

The first major breakthrough for inclusion of disabled students occurred in Utah when parents filed suit against the state for denying two children with intellectual impairments admission to public school (*Wolf v. Utah*, 1969). Here Osbourne (1996) argued, "The court in *Wolf* declared that children who were mentally retarded were

entitled to a free appropriate public education under the state constitution" (Osbourne Jr., 1996, p. 8). Osbourne Jr. demonstrated how current scholars like himself have missed the importance and impact of decisions like *Gaines*, *Sipuel*, *McLaurin*, and *Sweatt* prior to *Brown* that emphasized the personal and individualistic rights of the minority person rather than the class action remedy of *Brown* when he stated about the *Wolf* case, "The Court's opinion reads remarkably similar to portions of the *Brown* desegregation opinion" (p. 8). By missing the relationship of *Wolf* to prior *Brown* cases, Osbourne Jr. failed to discern that success at litigation to achieve due process for the disabled depended on courts identifying with the individual rights of a single person, not necessarily identifying with class action suits in favor of a race or group.

Success in the prior *Brown* cases was more effective in encouraging parents of the disabled to press for due process in their individual cases, although I have failed to discern in key literature any scholars who identified this strategy. Thus while scholars have emphasized *Brown* as a climactic case that opened the door of inclusion for other groups like the disabled, *Brown* could more correctly be described as a case that eliminated race and minority status as reasons for exclusion, and these two factors were

instrumental for this case to reach the supreme Court. I maintain that prior *Brown* cases that documented infringement of individual equal protection rights were more effective precedents for the disabled in their subsequent litigation. These cases were based upon infringement on a present, personal, and individualized basis.

Political Support

According to many scholars, (Hardman et. al., 2008; Switzer, 2003; Fleischer & Zames, 2001; Scotch, 2001; Kaplan, 1996; Percy, 1989) despite the influence of the BCRM, the DRM may not have pursued litigation for due process if the political will within the country had not existed in the 1960's. According to Hardeman et al., (2008) mental retardation received prominent exposure with the election of John F. Kennedy in 1960 because Kennedy's sister, Rose, was intellectually challenged. After his election, Kennedy listened to science experts who recommended alternative living programs to supplant the stodgy, unsuccessful benign neglect programs of the 1950's, that continued to leave the intellectually challenged institutionalized. Having proposed an alternative competing philosophy for more productive lives for the disabled,

Kennedy sought to deinstitutionalize intellectually impaired patients.

Many state institutions for the mentally challenged were closed during the 1960's (Hardeman, 2008). Kennedy created the American Association on Mental Retardation (AAMR) and appointed Senator Hubert Humphrey as its first chairman. The President's sister, Eunice Shriver, founded Special Olympics for disabled children. Consequently, disabled people were in the national consciousness, seen as individuals who could be productive, who could accomplish tasks if given opportunities. The House of Representatives conducted hearings in 1972, (U. S. House of Representatives, Committee on Education and Labor, Subcommittee on Select Education, 1972) and acknowledged awareness of 40 million Americans with mental and physical handicaps who were underperforming economically in America. Rothstein (2000, p. 12) documented that "of the more than eight million children with disabilities in the United States, more than half were receiving either inappropriate or no educational service". Advocates were able to gain significant attention to their lack of inclusiveness from legislators and courts by flooding U.S. district courts with due process cases from 1967-72 (Osbourne, Jr., 1996).

According to Scotch, (2001, p. 37) “In addition to grass-roots advocacy and legislative activity, the federal courts became an arena for efforts to establish the rights of disabled people”. As lobbying groups for individuals with intellectual impairments gained more influence by 1970, they instituted litigation against school districts that refused to admit disabled students (Daugherty, 2001).

Covey 1998) unfortunately missed the legal argument of individuality and loss of personal rights when he cited that advocates for the disabled saw themselves as a minority group similar to racial minorities who had been denied access to public education in the 1950’s, and they had used many of the same legal arguments against segregation blacks had used in *Brown.* However, he missed the point of the argument because once their cases were addressed, legal arguments in *Wyatt*, *Diana*, *Wolf*, *PARC*, and *Mills* actually centered on the personal rights of the individual. Scholars like Covey, who briefly summarized results of the litigation, have overlooked the importance of personal rights of the individual in these cases.

There were several examples where federal district and appellate courts ruled in favor of Fourteenth Amendment equal protection rights for the disabled. A Federal Appeals Court in Alabama, for example, under Judge Frank Johnson

ruled against Alabama state institutions for the mentally retarded for indiscriminate housing of mental impairment individuals (*Wyatt v Hardin*, 1971). This was seen as a breach of their constitutional right to receive treatment that would give them a realistic chance to be cured or to improve their mental condition (Irons, 2002). The ruling considered the individual member within the institution and that person's individual need rather than the categorization of a group with intellectual impairments. It was ironic that Johnson was the same appellate judge who had previously mandated integration of James Meredith to Ole Miss in 1962.

In a similar case in California, when mentally challenged students of color were overly represented in special education classes in California, parents were able to insist that students must be tested in their native or primary language for potential placement in a special education program as a distinct individual, not as a member of a specific racial or minority disability group. (*Diane v California State Board of Education*, 1970). What is important is for scholars to recognize that litigation for the disabled from 1967 onwards always followed a legal argument that rights for the individual were paramount, not rights for a group or race.

Beginnings of Leadership for the DRM

Prior to *Brown*, Scotch (1989; 2001) indicated that leadership of the disabled consisted of benevolent and charitable organizations absent any disabled individuals. Subsequent to *Brown,* a small cadre of disabled people drew inspiration from successes they observed from the BCRM. Ed Roberts, who will be depicted below, had stated: "I'm tired of well meaning noncripples {sic} with their stereotypes of what I can and cannot do directing my life and my future" (The Father of Independent Living, 2007, p. 2).

Ed Roberts was representative of leaders of the DRM. He was a polio victim, disabled, white, college educated, and upper middle class. When he enrolled at the University of California at Berkeley in 1962, he was housed in the campus medical facility at Cowell Hall with other disabled students, a restrictive setting, where students were unable to perform living tasks with any degree of independence. While at Berkeley he fought to improve housing independence for the disabled. According to a biographical piece, (Ed Roberts, "The Father of Independent Living", 2007, p. 1) "Ed was quick to grasp that the struggle for independence was not a medical or functional issue, but rather a sociological, political, and civil rights struggle". Roberts sought to develop a "self help movement that would

radicalize how people with disabilities perceived themselves" (2007, p. 2).

After establishing a campus organization for housing for the disabled, Roberts created an off campus community organization in Berkeley called the Center for Independent Living (CIL). CIL housed disabled individuals who wished to perform practical living skills more independently. After establishing a successful center for a number of years, California Governor Jerry Brown appointed him director of the state's Vocational Rehabilitation Agency for housing in 1975.

Judy Heumann is also attributed as a beginning leader of the DRM based on her personal desire to become a New York City elementary teacher and the physical barriers imposed against her to prevent her from achieving that goal (McMahon and Shaw, 2000 p. 87-106). Heumann was a graduating senior with a teaching degree in May 1970 when she experienced difficulty obtaining her New York State teaching license. According to her interview, (A Discussion with Judy Heumann, 2008) She had successfully completed the necessary twelve academic credits, passed the oral and written exam, but failed the physical exam miserably because she was a victim of polio in a wheelchair.

Convinced she was a victim of discrimination, she was determined to receive her license.

She contacted the American Civil Liberties Union (ACLU) and consulted a friend who was a reporter for *The New York Times*. The *Times* sent a reporter to record her story. A few days later an editorial appeared entitled: "You Can Be President, Not Teacher, with Polio (McMahon & Shaw, 2000, p. 97). The publicity helped her secure her license and a second grade-teaching job.

More important, Heumann transitioned from teacher to advocate of the disabled. She founded Disabled In Action (DIA) in 1971, a support group for the disabled in Brooklyn, New York by networking with other disabled individuals who also experienced discrimination in employment. Through a series of meetings over several months, DIA was launched. Members grew more and more active and advocated for curb cuts and ramps to gain physical accessibility. "The group demonstrated against the Jerry Lewis telethon with its "Give it to the poor, pitiful, handicapped children" theme" (McMahon & Shaw, 2000, p. 99).

Influenced by the work of Ed Roberts in the San Francisco Bay area, Heumann accepted Ed Robert's invitation to join him on the CIL staff. Together they helped unite disabled people of California fighting for independent

living. According to Heumann's account, (A Discussion with Judy Heumann on Independent Living, 2008) they challenged the California Vocational Rehabilitation Agency in the early 1970's to strengthen its employment program when it was apparent the need for employment of the disabled was not being sufficiently met.

Heumann used her skills as an advocate to lobby California legislators to pass CIL legislation. By 1977 she had risen to Assistant Secretary of Health, Education, and Welfare (HEW) in the Carter Administration. Success in California had led to passage of federal CIL legislation in Washington in 1978. Heumann from the east coast and Roberts from the west coast had brought the issue of due process rights for the disabled into public view, and more importantly, to enactment of federal legislation, which will be discussed below.

According to the Disability Rights and Independent Living Movement (DRILM) (The Bancroft Library, 2004, p. 1-3) leadership of the DRM in the 1960's surfaced on the East and West Coasts, Chicago, Texas, and Washington D. C. out of basic local needs of housing, transportation, and mobility to secure employment. These individuals were not members of a mass movement such as the BCRM, and they did not constitute an organizational chain of command with

various organizational strands and membership. These leaders were responding to local conditions where their independent living was jeopardized. According to Scotch (2001) and Fleischer and Zames, (2001) they sought to compete with normal society where accommodations would enable them access to employment, housing, transportation, and leisure on an equal and individualized basis; where recognition of their disability entailed due process and inclusion within normal society. According to Fleischer and Zames, (2001) they sought a hand up rather than a hand out, but most of all dignity rather than pity.

Leaders of the DRM, who sought to increase their independence by improving their personal housing, transportation, and access to the environment, were faced with “biting the hand that fed them” because according to Percy (1989) demands for power, independence, and inclusion often clashed with powerlessness, dependence, and segregation associated with accepting charity. Yet without this charity, they were unable to compete in a normal world as Barker had constructed. While they worked to increase their independence and inclusion on local issues, they had no synchronization of organization. Therefore, according to Rothman, (2003) Scotch, (2001; 1989) and Percy (1989) there was no mass movement of disability rights advocates

as there was for black civil rights during the 1950's and early 1960's, only localized areas where proponents operated without knowledge of others' movements.

According to these scholars, the DRM had no united grass roots movement from the bottom-up as had the BCRM. However, civil rights for the disabled had caught the attention of some major Congressional leaders, influenced by Robert's and Heumann's personal stories. Senate leaders (U.S. Senate Committee on Labor and Public Welfare, Subcommittee on the Handicapped, pp. 1-28, 1973) considered it imperative that more productivity should be brought forth for the nation's 30 million disabled individuals by amending the 1972 Education of the Handicapped Act. The Subcommittee heard testimony that raising economic productivity of the disabled was a basic civil right.

Now that disability terminology was linked to civil rights rather than entitlement rights, the 93rd Congress (U.S. Senate Committee on Labor and Public Welfare, Subcommittee on the Handicapped, 1973 pp.1-701) also recognized the disabled as a distinct minority class. This contentious although inconsequential designation was finally determined.

I deduce these Congressional leaders became more responsive to the federal government's involvement in due

process for the disabled when they admitted the linkage between civil rights and a minority group, although this linkage and its association with *Brown's* legal argument was irrelevant and distracting to the actual argument of individual needs. Congress hoped that by creating legislation that produced greater inclusiveness, disabled individuals would deliver an economic payback once they were able to develop and display their skills and expertise.

However, with more opportunity came the necessity of societal accommodations so disabled individuals could compete with normal society (Kaplan, 1996). In their review of public policy toward the disabled, Scotch, (2001) Fleischer and Zames, (2001) and Percy (1989) corroborated that to increase societal involvement for the disabled meant that accommodations were essential, so the disabled could acquire access and mobility to produce economic performance. Foremost among societal inclusion was education.

Major DRM Due Process Cases

Two federal district court cases that addressed due process rights for intellectually impaired K-12 students in 1972 were the equivalent of the *Brown* decision for disabled students. *Pennsylvania Association for Retarded Citizens*

*(PARC) v. Pennsylvania* was a class action suit on behalf of all retarded students ages 6-21 in Pennsylvania who were being denied access to public education by four state statutes. The plaintiff class sought to overturn the statutes as unconstitutional. Despite its class action nature, litigators were fastidious in recognizing the personal, individual rights of the seven individuals involved. Exclusions were justified only if a school psychologist certified a child was uneducable or untrainable. However, the Commonwealth could not foresee many instances, since education for self-improvement could be defined by many criteria other than academics (*PARC v. Penn*, 1972).

Osbourne Jr. (1996, p. 8) noted, "The dispute was settled by a stipulation and consent agreement between the parties and the court". The three-judge panel ruled that

> "Having undertaken to provide a free public education to all of its children, including its exceptional children, the Commonwealth of Pennsylvania may not deny any mentally retarded child access to a free public program of education and training" (*PARC v. Penn*. (1972), p. 3).

Although the case was argued as a class action suit, legal representation stressed that each child should be

educated based on his or her individual need to acquire the greatest amount of independence, and that individual education plans (IEP) be created for each student. Thus it can be argued that the legal principal of free appropriate public education for each individual student (FAPE) was established Daugherty, 2001; Turnbull III, 1986; Ballard et al., 1982).

This case was also important because it declared that all children were teachable and could learn, and that learning need not pertain specifically to academics but also included developmental skills like self-help, communication, and functional academics. Functional academics were defined as achieving reading and mathematical ability at a fourth grade level. As a result, parents obtained due process rights since school officials were restricted from placing students with intellectual impairments in exclusionary special education programs without permission.

The second major due process case occurred in the District of Columbia (*Mills v. D. C.* (1972). This case extended free appropriate public education to students of other disability groups: hyperactive, emotionally disturbed, epileptic, orthopedically impaired, and learning disabled. As Abeson (1973) noted, these students had been

excluded from D. C. schools, approximately 18,000 out of 22,000. It was shown that the District knew these students resided in the school census tract, but had failed to bring them into school. The District was ordered to "go find" these students. According to Trumbull III, (1986) finding these students was the creation of the special education principle of excluding no student, designated by the district court as the principle of "zero reject".

A major significance of the *Mills* case was the court's refusal to accept a lack of funding as an excuse to exclude disabled students. As a result, the school district was ordered to provide due process safeguards before any student could be excluded (Abeson. 1973; *Mills v. D. C.*). Osbourne Jr. (1996) argued that these safeguards later formed the foundation for due process that was mandated in the federal education statute.

While school districts might bristle and complain about the high cost of providing for large numbers of disabled students with various individual needs, Turnbull III, (1986) *Mills v. D C.* (1972), and *Sipuel (1948)* maintained that cost had never been accepted as an excuse to exclude disabled students by federal courts during litigation. While blacks had faced hostile whites whose simplistic denial of civil rights were because of

prejudice, the disabled faced a more sophisticated denial: thrifty school boards who presented economic constraints as justification to deny inclusion.

## Litigation and Beginning Congressional Activity

During 1971 and 1972 the number of cases litigated for inclusion and the right to an education proliferated in federal district courts. Alan Abeson, Director, State Federal Information Clearinghouse for Exceptional Children, presented findings to the Subcommittee on the Handicapped within the Senate Committee on Labor and Public Welfare during committee hearings on March 20, 1973. During his presentation he submitted a paper entitled: *A Continuing Summary of Pending and Completed Litigation Regarding the Education of Handicapped Children*. The paper highlighted 21 cases involving the right to an education, six cases demanded the right to adequate treatment, and among them were six cases that requested appropriate placement for disabled students. All twenty-one of these cases cited by Abeson identified lack of due process rights as their main concern (U.S. Senate, Committee on Labor and Public Welfare, Subcommittee on the Handicapped, 1973, pp. 39-153).

According to Abeson, the explosion in the numbers of due process cases by the time of the Senate Labor Committee

Hearings in March 1973 could be attributed to society's gradually changing perception of disabled people as individuals who needed job skills, and disabled individuals who desired independence and the opportunity to develop their own skills. Disabled people like Roberts and Heumann came forward outside of formal Congressional hearings, and indicated they desired independence and a level playing field in order to compete and be included in society, not sheltered, and protected from it.

A second reason mentioned by several scholars for increased litigation was the proliferation of parent groups who were able to lobby for their disabled children (Switzer, 2003; Fleischer & Zames, 2002; Scotch, 2001; Percy, 1989; Broudy, 1983). As Covey (1998) detailed, these parents flooded district courts in 1971-72 with class action suits using arguments similar to those employed by BCRM attorneys from 1948-50, namely, that equal protection rights of the individual were paramount to any restrictive state statute. Since the federal government provided funding to the states for special education programming, these court cases emphasized due process under the Fifth Amendment, equivalent to states' insurance of equal protection, under the Fourteenth Amendment.

The Rehabilitation Act of 1973 – Section 504 Due Process

While increased litigation in the 1970's for due process may have accentuated media attention for the DRM movement, Scotch (2001) and Percy (1989) argued that Congress was already greatly influenced by the Disability Rights movement by spring 1973 to enact legislation to increase societal inclusion and improve economic underperformance of disabled people. According to Bryan, (2001, p. 33) "In the early 1970's, rehabilitation leaders backed by disability rights groups began to push for changes in the legislation to advocate a broader non-vocational role for rehabilitation programs". Disability rights organizations, which had gained considerable experience in politics, coalition building, lobbying, and compromising had challenged lawmakers to act. They had effectively developed a friendly base of Congressmen like John Brandeis and Senators Alan Cranston, Randolph Jennings, and William Stafford. Some Congressmen themselves with disabled family relatives related to the DRM. Among these friends were Senators Hubert Humphrey and Charles Vanik. Humphrey had been active with organizations lobbying for the intellectually impaired and Vanik had a granddaughter with mental retardation.

Previously, on January 20, 1972 Senator Humphrey had introduced a bill that attempted to amend the Civil Rights Act of 1964 in order to prohibit discrimination on the basis of physical or mental handicap in federally assisted programs. Humphrey proclaimed: "The time has come when we can no longer tolerate the invisibility of the handicapped in America…I am insisting that the civil rights of 40 million Americans now be affirmed… (Scotch, 2001, p. 43).

While the bill languished and finally died in committee, its sentiments reappeared in March 1973 when the Senate Committee on Labor and Public Welfare conducted hearings to consider reauthorization of the vocational rehabilitation program within the Rehabilitation Act of 1972 (P.L. 93-112). In conjunction with the House Committee on Education and Labor, the committees scheduled hearings with intent to pass a bill that expanded and improved the vocational rehabilitation program.

According to testimony by advocates of the disabled like South Carolina state Senator James Waddell, Jean Garvin, Director of Special Education for Vermont, William Geer, Executive Director of the Council for Exceptional Children, and John Nagle, Chief of the Washington office of the National Federation of the Blind, to name a few, (U.S. Senate, Committee on Labor and Public Welfare, Subcommittee

on the Handicapped, 1973) proponents emphasized preparation for work and independent living over vocational training, and creation of a general rehabilitation program for more severely disabled people unable to work. During testimony before the subcommittee, proponents on increasing funding for the Rehabilitation Act stressed economic advantages. John F. Nagle, Chairman of the Washington office of the National Federation of the Blind, remarked,

> "The real question, the only question, is whether large sums of money should be used to educate handicapped children toward useful, productive and taxpaying lives as handicapped adults, or whether far larger sums of money should be expended for the maintenance and support of the handicapped for all of their lives" (Subcommittee on the Handicapped, 1973 p.243).

Actor Lloyd Nolan, the father of an autistic son, noted, "It seems we have a clearcut case. We can educate the children at a cost of as much as $50,000; or we can let them rot, and that will cost us about a quarter of a million" (Subcommittee on the Handicapped, 1973 p. 200). Referring toward increasing self-sufficiency for the disabled, James Gallagher, Director of the Frank Graham Porter Clinic for Child Development at the University of

north Carolina, offered, “What we also know is that this is not just a humanitarian thing to do, but this is an economical and practical thing to do” (Subcommittee on the Handicapped, 1973 p. 350).

Interestingly, those opposed to the bill were not conservative legislators. “Rather, the opposition apparently came from those who were committed to protecting the groups already covered by Title VI of the Civil Rights Act, notably blacks” (Scotch, 2001). Francis and Silvers (2000) noted that during an interview session between civil rights leader Stokeley Carmichael and Ed Roberts of the Council for Independent Living, Carmichael had denied their causes were the same. Francis and Silvers (2000, p. xvii) indicated in regard to the disabled, that for years prior to passage of the Civil Right Act of 1964, “few provisions to relieve people with disabilities of their exclusion from the opportunities available to everybody else were integrated into comprehensive legislation aimed at safeguarding them along with other minorities”.

Within this context of time, Congress was also challenging the Executive in the area of civil rights (Scotch, 2001). Nick Edes, for example, a legislative aide to Senator Harrison Williams, described 1972 as a confrontational time between the executive and legislative

branches as to who would administer social policy, with a President who was impounding appropriated Congressional funds. According to Scotch, (2001, p. 48) Edes contended, “It was a time for sweeping gestures, attempts to help people, with social and economic costs considered not as important as potential benefits and the political opportunities that might be gained”.

During Subcommittee hearings in March 1973, several proponents for reauthorizing the Rehabilitation Act promoted civil rights for the disabled. Minority chairman Senator Stafford remarked, “It is a legal right and it has been established now in many court cases that handicapped youngsters have a right in this country to an equal education” (U.S. Senate, Committee on Labor and Public Welfare, Subcommittee on the Handicapped, 1973, p. 211). At the same Subcommittee hearing when referring to DRM litigation, Dr. Gallagher stated, “These legal suits make the case that the State has an obligation to provide appropriate educational services for all handicapped children” (p.349). Ultimately, Turnbull III (1986) and Shrybman (1982) denoted that the focus of the rehabilitation program in the reauthorization bill shifted from vocational to civil rights and anti-discrimination against disabled people because four amendments were added

that guaranteed due process. They were known as Sections 501, 502, 503, and-504. As Percy (1989, p. 64) noted, “With the passage of the Rehabilitation Act of 1973, Section 504 became law, following in the footsteps of other civil rights laws”.

Scotch (2001) informed us that Congressman John Brandemas, chairman of the House Committee on Education and Labor, did the majority of the footwork on the House floor, but Senators Alan Cranston and Harrison Williams took on the mantle of civil rights over vocational rights for the disabled in the Senate Committee. As Scotch (2001) and Percy (1989) detailed in the legislative history of the bill, the bill was “marked up” and sent to committee staffers to be compromised. Senate Staff members included Michael Burns, Jonathan Steinberg, Nik Edes, Lisa Walker, Patria Forsythe, and Robert Humphreys on the Democratic side and Michael Francis and Roy Millenson on the Republican side of the aisle. House Staffers trying to arrange a compromise bill included Jack Duncan for the Democrats and Martin Lavor for Republicans.

As it was initially drafted, the Rehabilitation Act of 1973 did not include Section 504, which according to Shrybman (1982, p. 29) “is the basic civil rights provision

for ending discrimination against America's handicapped citizens". Section 504 states,

> "No otherwise qualified handicapped individual in the United States… shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance" (Rehabilitation Act of 1973, p. 41; Shrybman, p. 29).

The insertion of Section 504 originated in August 1973, when staffers were completing language on the bill. (Scotch, 2001) indicated a fear existed that once disabled individuals had received training, employers might discriminate against them and refuse to hire them. They wished to insert a civil rights provision similar to Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972, but these staffers were not experienced in the area of civil rights. However, Scotch (2001) reported that they had previously done work in civil rights on Title VI of the Civil Rights Act of 1964 and Title VII that dealt with employment and affirmative action. Thus it was evident that their linkage to the civil rights movement in the past benefited the disabled with

respect to getting an Act passed with a strongly affirmed civil rights amendment.

The most important provision was Section 504. Here was the equivalent of Title VI in the Civil Rights Act of 1964 that had guaranteed blacks their equal protection rights. Ironically, when the bill came to the floor for debate, Section 504 was not mentioned nor debated. Lawmakers failed to realize the longstanding impact Section 504 would play in the future for civil rights for the disabled. National media attention was muted compared to passage of the Civil Rights Act of 1964.

President Nixon signed the bill into law on September 29, 1973. According to Scotch (2001) and Schrybman (1982) the President paid little to no attention to the Section 504 anti-discrimination provision that would cost millions to the federal government in later years. Staffers had added the provision as an afterthought. Scotch (2001, p. 49) summed up passage of the Rehabilitation Act of 1973 by remarking, “As it was initially drafted, the legislation did not include Section 504. Nor was Section 504 suggested at any of the hearings held on the proposed law”. Rather, Roy Millenson of Senator Javits staff had been involved in the development of the Education Amendments. He was able to integrate a civil rights statement with language from Title

VI and insert it at the end of the bill. Hence it received the name Section 504. Covey (2002, p. 173) argued that the Rehabilitation Act of 1973 meant “a new view of what rehabilitation was” and “persons with disabilities being identified as a “minority class” of citizens of a distinct nature, not simply aggregated with other minority categories”.

As it evolved, Section 504 became a strong civil rights plank for the disabled in the Rehabilitation Act Amendments of 1973, (P.L. 93-112) according to Daugherty, (2001) Osbourne Jr., (1996) and Turnbull III (1986) because bureaucrats within the Office of the Handicapped within the Education Department sought to implement it whenever provision of the Rehabilitation Act needed interpretation. This Office for the Handicapped (OCR) within the Education Department had been created with passage of the Rehabilitation Act, and its officers became strong supporters on disability civil rights after 1973, often challenging federal interpretation of rehabilitation rules and regulations. Thus a precedent was established intoned by several scholars (Switzer, 2003; Fleischer & Zames, 2001; Shrybman, 1982) where with each interpretive ruling, disabled individuals gained greater due process.

## Genesis of the Education for All Handicapped Act

The Rehabilitation Act of 1973 guaranteed due process rights to disabled adults involved in federally funded activities. There was as yet, of course, no legislation protecting children, only rights won through litigation in federal courts in the judicial branch of the government. This was to change as documented by Ballard et al., (1982) the National Education Association, (1978) and Abeson et al. (1975) in their histories of the genesis of the Education for All Handicapped Children Act (P.L. 94-142). This change occurred once public awareness had been created, the Rehabilitation Act of 1973 had passed, and the government accepted the disabled as a distinct minority. Switzer's (2003, p. 75) historical analysis that "disabled people do not speak with one voice" had been altered.

## Legislation for a FAPE is Enacted

Given the highly charged atmosphere of litigation, the conclusion of House and Senate hearings that emphasized greater productivity for the disabled, and passage of the Rehabilitation Act of 1973 affirming civil rights for the disabled, the 94th Congress met in session to extend funding for the states for special education with Public Law 93-380. Turnbull III (1986, p. 14) noted that Congress realized "its 1974 law was an interim measure only and

would have to be supplanted". Parent lobbying groups, increased media attention of alternative treatment and educational programs for the disabled, and demonstrations and testimonials from disabled people themselves who pushed for greater independence and the right to pursue more fulfilling economic and social roles were also pressuring Congress.

Senator Harrison with 29 co-sponsors introduced the EHA, on January 15, 1975 as Senate Bill Six (Library of Congress, 1/14/11). Cremins (1983) argued that it became the landmark legislation statute passed by Congress during the decade of the seventies. It passed the Senate on June 18, 1975 and the House on July 29, 1975. President Ford signed it into law as P. L. 94-142 on November 29, 1975.

According to Turnbull III, (1986) Cremins, (1983) and NEA, (1978) the law mandated a free appropriate public education for all children aged three to twenty-one. A multidisciplinary team must evaluate each child, the results of which were to yield an individualized education plan (IEP). The plan must specify the child's present level of performance, annual short and long-term goals for instruction, services to be provided, and a schedule of implementation in the least restrictive environment, and criteria for evaluating pupil progress. Parents obtained

due process rights to challenge assessment, identification, and placement for their children.

States were ordered to develop a plan for education of special education students and have the plan approved by the Office of Civil Rights (OCR) within the Department of Education by September 1977. The plan must address six principles of due process: 1) zero reject, 2) testing, classification and placement, 3) individualized and appropriate education, 4) least restrictive environment, 5) procedural due process, and 6) Parent participation and shared decision making (Turnbull III, 1986; NEA, 1978; Abeson et. al., 1975). This legislation protecting due process rights for children under the federal Fifth Amendment was equivalent to states' equal protection rights protected by the Fourteenth Amendment under the Civil Rights Act of 1964.

Since 1977 all fifty states have submitted special education plans to the Office of Special Education and Rehabilitative Services (OSERS) within the Department of Education in Washington, D.C. States have received annual funding from Congress, albeit never at the forty percent proposed funding level originally designed. Turnbull III (1986) has verified that cost has continually been a nagging factor affecting the establishment and maintenance

of special education programs in every school district in the United States, with many states siphoning funds from their regular education budgets to satisfy the due process mandates of special education required by the EHA.

## Conclusion

In summary, the Disability Rights Movement owes its success at achieving due process to the BCRM and the Legal Defense Team who waged an aggressive campaign from 1948-50 that convinced the Supreme Court in several cases that denial of higher education in a white environment was an infringement of equal protection under the Fourteenth Amendment to black students in an individualized and personal manner. Recognition of this infringement by the Court on a class basis reached a culmination with the *Brown* case in 1954. Accordingly, a small number of leaders with disabilities were influenced by the achievements of the BCRM, and within the context of competing minority group movements of the times, advocated for their personal rights, their right to compete on a level playing field within normal society, where their disability was accepted as part of who they were, as opposed to something they must overcome to obtain inclusion.

DRM leaders like Ed Roberts and Judy Heumann educated themselves to enter the governmental power structure, and

some influential federal Congressmen recognized the importance of securing increased economic performance from the disabled. Legislation was crafted from 1973-75 that guaranteed civil rights to the disabled and recognition as a distinct minority. The Education for All Handicapped Children Act (P.L. 94-142) promised a free appropriate public education (FAPE) for students aged three to twenty-one in the least restrictive environment (LRE).

According to Clarizio, (1983) the shift of societal perception of disabilities toward more productivity changed expectations from one of paternalism to more independence. With this independence, disabled individuals required more accommodations to become inclusive and adapt to what Smart (2001, pp. 36-38) called an environmental model of inclusion. A changing perception of disabled people fueled a change in methodological outlook from a medical model of entitlements, training, and subservience by mainstream society to a more psycoeducational outlook that stressed civil rights, more independent living, rehabilitation, and contribution to normal society when individuals with disabilities were provided with accommodations. This changing outlook meant education was key toward treatment and development of independent living skills.

A Recognition of due process rights meant that society could never return to the exclusionary practices of education, housing, and employment of the past. It is clear that the combination of advocacy, organizational talent, federal litigation, and conspiring events within other minority movements such as the Black Civil Rights Movement helped propel a small cadre of talented college educated disabled people to positions within the power structure where they could lobby for additional meaningful legislation to produce legal due process and special education for the disabled.

Scholars and textbook authors who have written how *Brown* was the catalyst for the DRM have failed to recognize the importance of the accomplishments of the BCRM from 1948-50 prior to *Brown.* Acknowledging these accomplishments means scholars may depict an alternative knowledge base of due process/equal protection from the simplistic class based depiction of the past. It remains to analyze and interpret this reconstructed knowledge to see how scholars can benefit from this new awakening. I will address this issue in chapter three.

# CHAPTER THREE

# ANALYSIS AND INTERPRETATION

## Methodology

I have attempted to assemble primary and secondary sources that addressed the relationship of the BCRM prior to *Brown* to the DRM and its subsequent efforts to acquire due process legislation for the disabled, and what scholars can glean from that. I have attempted to review judicial and Congressional data, personal testimony, influential personalities of the era, and respected scholarly writing to expose that previous scholars have asked incorrect questions when comparing the BCRM and DRM movements and arrived at conclusions too simplistic and not very insightful.

Critics may suspect my interpretation and analysis because I was limited by sample size, as many disabled people in the 1950's and 1960's remained out of public view. A question arose whether leaders of the DRM like Ed Roberts and Judy Heumann accurately represented the mood of the disabled population. Nevertheless, as I examined history, Eichelberger (1989, p. 246) shared that when selecting data "the selection process determines the likelihood that the sample of subjects who actually participated in the study was representative of the

accessible population and that the target population was of concern to the researcher or reader". As an historian making an analysis of people and events, causality need not inhibit analysis and interpretation because causality can never be established. "The best that can be done is to establish a plausible connection between the presumed cause and effect" (Anderson, 1990, p. 118). In the final analysis I valued the judgment of C. H. Edson who said there was no single, definable method of historical inquiry.

I have examined holdings from Supreme Court Cases and state courts prior to *Brown* that addressed equal protection rights for blacks from 1948-1950 in an attempt to discern judicial reasoning that resulted in the protection of those rights. Key to this investigation was the primary sources of the legal team of participants representing the plaintiffs, referred to as the Legal Defense Team of the NAACP. Secondary authors who are literary experts on the civil rights era (1954-1968) like Charles Carson, Taylor Branch, Charles Payne, Richard Kluger, and Juan Williams furnished a narrative commentary of actions and events that occurred during that time period. The video series "*Eyes on the Prize*" on the civil rights era by Blackside, Inc. was a valuable source of primary graphic imagery of the Civil Rights Era.

Disabled individuals like Ed Roberts and Judy Heumann provided personal testimonials of how it is to be disabled, and how they developed into effective lobbyists. Their education and political activity allowed them access to the established governmental decision-making power structure. Authors Willie Bryan and James Charlton provided insight of how disabled people have been treated in the past and how they seek acceptance and desire independence in their societal treatment. Supreme Court and state court cases involving due process rights for the disabled from 1967-72 formed a core of primary sources that demonstrated the progression of due process prior to passage of the Rehabilitation Act of 1973.

Another set of primary sources consisted of influential members of Congress and their Congressional aides who helped to design legislation for due process for the disabled and created the language of special education law. The pages of testimony presented to the Senate Subcommittee on the Handicapped, part of the Senate Committee on Labor and Public Welfare, and the over 500 pages of testimony presented by the House Committee on Education and Labor provided valuable primary sources of those who partook in eventually creating and passing legislation for the disabled. Both famous and common

people presented testimony to both Senate and House subcommittees extolling the value of educational programs for the disabled that enhanced independence, practical living skills, and a more productive economic future.

Secondary sources included scholars like Doris Fleischer, Frieda Zames, Jacqueline Switzer, Stephen Percy, and Laura Rothstein and scholars who were also disabled like James Charlton and Willie Bryan who enumerated and offered analyses of disabilities and disability litigation and legislation. The work of Richard Scotch, pre-eminent scholar in documenting the rights of the disabled was an invaluable secondary source, especially in documenting passage of the Vocational and Rehabilitation Act of 1973.

Connecting BCRM / DRM Litigation

In analyzing litigation the BCRM undertook prior to the 1954 Brown decision, principally the *Gaines*, *Sipuel*, *McLaurin*, and *Sweatt* cases, the Supreme Court ruled that a state could not deny privilege under equal protection to a group based solely on race. In the *Gaines v. Missouri* (1938) decision Chief Justice Hughes declared that denying state privileges based upon race was “a denial of the equality of legal right to the enjoyment of the privilege” (p. 4). In succeeding cases, the Court consistently held that the issue of race could not be a factor determining

privilege. “The state must provide legal education for petitioner in conformity with the equal protection clause of the Fourteenth Amendment…” (*Sweatt v. Painter*, 1950, p. 3). While it is undeniable that scholars (Irons, 2002; Gray, 2002; Tushnet, 1987) agreed that in these early cases race and minority group status was one of the benchmarks for which the Court determined the disenfranchisement of equal protection, it was not the only factor.

What scholars have failed to scrutinize in these early cases is that the Court set the precedent for recognizing the *individuality* of the petitioner in his/her denial of rights not his/her denial based solely upon minority and racial status. Chief Justice Hughes had stated in the *Gaines* decision, (1938) “It is the individual who is entitled to the equal protection of the laws…” (p. 4). This precedent continued through the *Sipuel, (1948) McLaurin, (1950) and Sweatt (1950)* cases. Chief Justice Vinson declared in *Sweat v. Painter*, (1950, p. 3) “It is fundamental that these cases concern rights which are personal and present”. The word “fundamental” was key, for it indicated the Court no longer conceived of equal protection privilege solely along racial and minority status, but also because of the intrinsic *personal* nature and value of the individual.

Importance in acceptance of individuality was a primary connection with subsequent due process cases for the disabled. This individuality was key to accepting the petitioner not as a group but as an independent person, a distinct personality with an individualized disability.

While scholars like Rothstein, (2000) Osbourne Jr., (1996) and Turnbull III, (1986) may wish to emphasize how national attention and increased parent advocacy intensified to designate the disabled as a recognized minority group during the 1960's and early 1970's, litigation during this time centered specifically on recognizing the rights of the individual through class action suits. Attorneys in the *Wolf, Diana, Wyatt, PARC*, and *Mills, cases,* which were highlighted in chapter two, argued that these disabled petitioners were individuals with personal specific disabilities. Their value as individuals required inclusion in the mainstream and accommodations within an Individual Education Plan (IEP) to succeed independently to their greatest capability.

Scholars like Covey (1998) have argued how advocates of the disabled emulated the BCRM by using similar legal arguments of minority status. However, he has missed the notion of the importance of individuality in these initial DRM court cases, made possible by BCRM cases argued by the

Legal Defense Team previous to *Brown*. This is a critical omission because his reasoning assumed early DRM success at litigation was based on recognition of minority status, class-consciousness, and a common goal. In fact, courts never suggested minority recognition in these judicial cases. Due process rights of personal, individual children were paramount in these case holdings. These decisions ultimately paved the way for the creation of special education on an individualized basis rather than on a class basis.

This misunderstanding can alter the impression of the theoretical philosophy and structural framework scholars and specialists who teach K-12 education may possess. These providers might lose sight of the personality and individual needs of the individual and mistakenly classify and categorize disabled students by disability type rather than by individual need. A grouping mentality is anathema to the theoretical way of thinking in special education.

Scholars like Hardeman et al. (2008) maintained the DRM was influenced by the BCRM during the Civil Rights Era 1954-68. It is accurate DRM advocates emulated and copied some tactics employed by blacks for many of their local housing, transportation, and work accommodation concerns: marches, demonstrations, sit-ins, and boycotts. Some

scholars like Kirk et al. (2000) and Gearheart et al. (1996) assumed this emulation also helped to increase class-consciousness of the disabled and their evolution into a mass movement during this time period. However as Fleischer and Zames, (2001) Scotch, (2001) and Percy (1989) demonstrated in key literature, the DRM was a fractured, disunited group with questionable minority status during the Civil Rights Era. It required a generation (1948-73) before the DRM accepted itself as a unified movement, achieved minority status from Congress, and was thus able to achieve due process legislation with passage of the Rehabilitation Act of 1973 (NEA, 1978; Abeson et al., 1975). It is important that scholars denote this slowly evolving class-consciousness so they do not assume a seamless transition of educational inclusion occurred following *Brown*. However, it is not essential because minority status was not the benchmark determined by Congress when it established due process legislation for the disabled. Instead Congress considered individuality as evidenced by linking federal funding to anti-discrimination (Rehabilitation Act of 1973, 1973).

Differences in Two Movements

What scholars need to note is that the civil rights litigation by the BCRM prior to *Brown* was the crucial time period in the relationship between the BCRM and the DRM, not the period following *Brown*. Prominent civil rights writers like Taylor Branch, Juan Williams, and "Eyes on the Prize" archival video footage have exaggerated scholarly emphasis of actions and events between 1954-68 in its influence in promoting civil rights for all minorities.

What is more accurate when scholars investigate the leadership, membership, and organization of the two movements during the Civil Rights Era, is more their differences rather than their similarities. It is these differences that help one understand how the movements worked more distinct from each other than in concert together. Other than Thurgood Marshall, named a Supreme Court justice in 1967, Hubert Humphrey, a hero for black civil rights at the 1948 Democratic Convention, and Judge Frank Johnson, appellate judge for the *Wyatt v. Hardin* case and the judge who allowed James Meredith to enroll into Ole Miss in 1962, blacks or their supporters, according Francis and Silvers, (2000) were mostly tepid bystanders during the Civil Rights Era (Francis and Silver, 2000).

There may have been two reasons for this lack of support. First, limited resources in affording litigation. Second, lack of identification with class-consciousness with disabled individuals who differed in color, education, geographic location, and socio-economic status.

An indicator of the importance of the relationship between the BCRM and the DRM prior to *Brown* rather than after *Brown* is to analyze leadership, membership, and organization of both movements. A review of major literature revealed stark differences in these categories between the movements. Leadership within the BCRM of talented lawyers, literate preachers trained at highly respected divinity schools, and national organizers trained by a top-down organization (NAACP) contrasted sharply with leadership characteristics of the DRM who were white, upper middle-class, college educated, urban, and by the 1970's, connected to the existing white power structure (Scotch, 2001).

Juan Williams, (2004) Richard Kluger, (2004) Charles Payne, (1995) Taylor Branch, (1998) and Charles Carson (1981) highlighted how membership of the BCRM consisted of the entire black community whether urban or rural, rich or poor, educated or illiterate united together to fight a legally enforced Jim Crow power structure that ostracized

and excluded them from social and economic acceptance. Whereas disabled individuals, many would not even refer to themselves as a “membership”, (Scotch, 2001) lacked a unified collective consciousness because of their disparate disabilities. They mainly lived with family, separated from other disabled individuals, and ignorant of the size of their numbers.

Their success at achieving due process rights according to Scotch, (2001) Bryan, (1996) and Turnbull III (1986) lay with lobbying top-down power brokers, Congressmen, Congressional aides familiar with the black civil rights legislation language, and from testimonials from notable and famous personalities who had stories to tell of disabled loved ones (U.S. Senate, Committee on Labor and Public Welfare, Subcommittee on the Handicapped, 1973; U.S. House of Representatives, Committee on Education and Labor, Subcommittee on Select Education, Hearings on Education of the Handicapped Amendments, 1973).

According to Carson, (1981) the BCRM utilized a bottom-up strategy of organization that took advantage of trained organizers in organizations like the Southern Christian Leadership Conference, Student Nonviolent Coordinating Committee, (SNCC) Congress of Racial Equality, (CORE) and the NAACP who energized a mainly rural and

poorly educated base. They emphasized that blacks could no longer accept the status quo power structure, humiliating and demeaning as it existed. The organization courted both national and local media to get this message across, represented most visually during the 1968 strike by garbage workers in Memphis, Tennessee, when workers paraded down Memphis streets wearing sandwich boards that read: I AM A MAN! (Williams, 1987; Eyes on the Prize, 1986).

This contrasted with any concerted organizational strategy by the DRM during the Civil Rights Era. Key was historical research (Scotch, 1989, pp. 380-400) that showed the DRM was a loosely structured grassroots organization with few resources and achieved coordination on occasional events that brought activists forth. According to Scotch, (1989 p.389) the DRM " did not control an institutional network". There was no aggregate data on individual or organizational participation in the DRM. Instead their interests were advanced during the 1960's and early 1970's by top-down advocacy from parent lobbying groups and non-disabled beneficent leaders of charitable and governmental organizations.

The few individual leaders with disabilities like Ed Roberts and Judy Heumann who spoke for the disabled did not do so in a coordinated organizational fashion, but did so

randomly, to address personal local concerns of housing, transportation, and working conditions. Had those commanding the power and authorization adequately addressed these localized issues, one may doubt whether serious advocacy action may have occurred, or whether there would have been notable media attention.

Therefore, rather than scholars emphasizing the coalescence of two movements during the Civil Rights Era and the so-called seamless nature of inclusion by blacks and the disabled, they need to stress the irony that the two movements moved in the same direction toward civil rights at all. As previously stated, a review of major court cases following the *Brown* decision revealed little to no interchange of expertise from leadership of the BCRM to advocates of the disabled. Members of the Legal Defense Team, with the exception of Thurgood Marshall, were noticeably absent, as were major BCRM organizational leaders.

Thus scholars have examined inaccurate events and the wrong time period when exploring the relationship of the black and disabled movements. They have incorrectly surmised that one movement (BCRM) seamlessly ushered in due process rights for the other movement (DRM). They have explored the wrong question: How did one movement assist

the other during the Civil rights Era? The important question is how did the DRM value its relationship to the BCRM during the time period before *Brown*?

Individuality As Linkage of Two Movements

The answer may be that the Legal Defense Team litigated a number of equal protection cases that established precedence that first, individuals could not be denied equal protection privileges based solely on race. Second, what would prove most important as a legal justification for future advocates representing due process litigation (1967-72) for the DRM, Supreme Court justices became convinced that equal protection was personal and specific to an individual petitioner and not a legalistic abstract tenet only of race, minority status, or class-consciousness.

The idea of individuality gave a human face to what is meant by equal protection and due process. This was accomplished through the holdings in these crucial cases that preceded the *Brown* decision. Holdings in *Gaines*, *Sipuel, McLaurin*, and *Sweat*t emphasized the value of the individual and acceptance of individual differences. It gave a human face to a legal argument. Litigators in future DRM cases would assert the value of the individual, acceptance of individual differences, the petitioners

personal disability, and the realistic accommodations that were necessary to protect individuality and personal independence. This idea supersedes the more restrictive thinking generated in *Brown* that denying inclusive education on a K-12 level was based upon a collective racial or class-conscious paradigm.

Independence

Whereas the concept of group and collective class-consciousness may be associated with classification and categorization such as race, gender, religion, or national origin, the idea of individuality is rooted in the notion of uniqueness, independence, and personal characteristics. While the *Brown* decision legalized public education for a particular class of people, namely non-whites, prior *Brown* cases addressed a personal individual. It was this individuality that led litigants of the disabled to emphasize how education could create acceptance of their character, require society to provide accommodations, and therefore increase their independence to achieve practical living skills to the best of their functioning ability.

Charlton (1998, p. 23-24)) noted that without economic independence, the disabled were characterized as “outcasts” and “surplus population”. Rather than being lumped into a class-conscious group, litigation for due process for the

disabled in the early 1970's stressed the inherent respect and value of the individual, (*Wolf*, 1969; *PARC*, 1972; *Mills*, 1972) what Nagle referred to as the petitioner's basic civil rights. Bryan (2002, p. 173) stressed the pre-eminence of the individual over being labeled as a minority class when he stated, "Instead, those with disabilities were defined as unique with their disabilities overriding any other minority status as a class title…" As a result, Civil rights obtained, according to Bryan (2002), required accommodation from mainstream society.

Scholars have neglected to emphasize the importance independence meant for the disabled as they struggled to obtain due process legislation from 1954-73, instead focusing on minority status as *Brown* emphasized. This created unnecessary delay as scholars argued back and forth who was and who was not a minority group. Michael Hineberg, Independent Living Coordinator for Independence First in Milwaukee, Wisconsin, cautioned non-disabled people about helping the disabled in his article *Seven Statements People With Disabilities Do Not Want To Hear* to "use careful judgment when you offer help, because independence is a core issue to anyone with a disability" (Hineberg, 2010, p.7). He also intoned that the term "those" people connotes

separateness and what is different. “People with disabilities want to be treated as equals” (p. 7).

Scholars need to cease emphasizing that attaining minority group status during the Civil Rights Era was important for disabled people. First, it never occurred since they were not legitimately recognized as such until 1973. Second, they did not desire to be categorized into being another minority group. They were already separated from society.

## Federal Legislation of Due Process Rights for the Disabled

It has been established by several scholars (Hetzner, 2011; Longmore, 2003; Bryan, 2002; Charlton, 1998) that in order to achieve greater economic potential, societal accommodations were needed that created opportunities for employment, independence, and the development of practical living skills. By the 1970’s, the disabled needed legislation to guarantee their civil rights, and improved accommodations so they could compete more fairly in normal society. While Congressional House and Senate hearings in 1973-74 sought to extend the economic potential of the disabled, Scotch (2001) maintained that advocacy soon evolved toward basic civil rights. Thus Section 504 of the Rehabilitation Act of 1973 reflected nearly intact language

in the Civil Rights Act of 1964 that protected minorities from discrimination.

The difference in constructing this civil rights language for the disabled from language that was developed for minorities in 1964 was that rights of an individual were emphasized over civil rights of a race or class. This individuality of the person's right ultimately owes its creation to Supreme Court cases reviewed in the literature prior to *Brown*: *Gaines*, *Sipuel*, *McLaurin*, and *Painter*.

However, one would search diligently to find this connection in scholarly writing, where importance easily shifts to the connection with *Brown*. Had this connection to *Brown* been accurate, one could question whether a twenty-year delay of due process for the disabled would have occurred. It is more difficult to explain how, if this connection were indeed true, there was not a concomitant push for litigation and legislation for both movements during the same time period.

Due process for disabled children also lagged years behind the equal protection that had occurred for minority children during the Civil Rights Era. However, once Section 504 guaranteed due process for disabled adults, efforts to extend rights to school age children for inclusion in public education became an extended outgrowth. Legislation

eventually passed in 1975, The Education for All Handicapped Children Act (EHA or P. L. 94-142). It guaranteed a free appropriate public education (FAPE) in the least restrictive environment (LRE) in a program that met the individual needs of the child. Parents had the right to challenge assessment and placement in a special education program. The safeguards of Section 504 applied to children as well.

Implications of Section 504 and P. L. 94-142

Analyzing the historical context of Section 504 revealed that neither its creators nor its enforcers envisioned the millions of dollars in revenue that were needed to enforce it within the executive department of the federal government over the next thirty-five years. Section 504, according to Scotch (2001) and Shrybman, (1982) had been added to the bill as an afterthought. The President, distracted with his own impeachment proceedings in 1973, had paid no attention to its ramifications, nor had he anticipated what a powerful lever for due process it would be for special education policy. At times, historical trends and events may be the result of serendipity.

When comparing legislation that established due process for the disabled to the court cases before *Brown*, the linkage to individuality, personal rights, the

intrinsic value of the person, and acceptance of the individual's distinct disability and needs established two basic premises that have influenced creation and implementation of special education over the past thirty-five years. First, acceptance of one's disability and the right to have it and to compete in a more equal societal setting has rendered the argument of philosophical approach to treatment models between a medical model or an educational model moot. Causation of disability is no longer an issue. Debates in the 1940's and 1950's that argued whether society or the disabled individual needed to accommodate are no longer important.

Education, independence, and approximating the individual to his highest level of independent living are paramount. This involves societal accommodation and the acceptance of civil rights for the individual. Scholars no longer depict the disabled as one class or one minority, but as a host of individuals, each with his or her individual needs. The class-conscious sweeping holding in *Brown* does not apply nor should it be the standard scholars depict when comparing the BCRM to the DRM.

Second, independence is emphasized over economic consideration. While economic factors like employment are an integral part of one's independence, they do not

ultimately uphold the basic value itself of the individual and societal acceptance of the existence of a person's disability and strength of character. Today organizations like L. I. F. E. Academy (Leisure, Inclusion, Fun, Experiences) in West Allis, Wisconsin plan for a smoother transition from high school to independent living by challenging the individual to work within the realm of his disability (Hetzner, 2011, pp. 1-2).

Acceptance of the basic rights of the individual over the economic potential the person can generate to benefit society is key. Education that increases practical independent living supersedes any individualized vocational training or dispensed paternalistic offerings that address solely economic behavior. In a comparison, due process rights supplant economic rights, and in treatment of the disabled, the economy should be a non-factor.

In conclusion, I maintain that individuality and the value of the person reflected the relationship between the BCRM and the DRM in the holdings in several cases that preceded the *Brown* decision, not race, class-consciousness, or minority status. Scholars have overemphasized the importance of *Brown* in this relationship, and they have overly relied on the collective class-consciousness and racial overtones of the case. They have incorrectly assumed

a seamless transition of due process rights for blacks and the disabled based on the holding in *Brown*. They have chosen a time period of the Civil Rights Era (1948-68) to explore the relationship between the BCRM and the DRM that did not compare because this era addressed the rights of a minority class as an aggregated group and missed the evolution of rights for the disabled as one of individuality, linked to the BCRM in a pre-*Brown* time period.

Scholars need to revisit their interpretation of equal protection and due process for these two movements and be more accurate in noting similarities and differences. As scholars reinterpret the relationship between the two movements, they will develop an alternative understanding of the structural framework and theoretical interpretation of special education in K-12 education. Chapter four will provide some conclusions about this alternative thinking.

# CHAPTER FOUR

# CONCLUSION

## Individualism Versus Minority Status

If scholars examine the relationship between the BCRM and the DRE, the critical time period was 1948-50. It was during that period the Legal Defense Team established the importance of individuality and the present and personal experience of equal protection of the litigant to the Supreme Court. While race was a factor in the court decisions of *Gaines*, Sipuel, *Sweatt*, and *Painter*, scholars have overlooked the deeper insightful thinking of the justices. They have overlooked the importance of individuality because of the landmark *Brown* decision of 1954 outlawing denial of equal protection because of race and minority status. Scholars seized the idea that outlawing discrimination against blacks meant all minorities would benefit from the judicial ruling.

This did not prove to be the case as key literature demonstrated those with disabilities obtained few opportunities for inclusion over several succeeding years. Too much scholarly time was devoted toward trying to establish minority status when that factor never mattered. Advocacy groups for the disabled appealed to an alternative strategy other than minority status to influence

legislators and the courts. They resorted to emphasizing the importance of the individuality of the person. This importance enjoined society to accept the character of the individual disabled person by accepting the person's distinct disability. Implicit in this acceptance was society's responsibility to provide reasonable accommodations for the disabled individual to compete as equally as possible in those aspects of society deemed most necessary for the pursuit of happiness: education, housing, mobility, employment, and leisure.

Even though litigation was pressed in the form of class action suits to enjoin courts to hear the cases, advocates stressed individuality over minority status as a legal strategy, emphasizing personal goals over group goals. Litigation for the disabled from 1967-72 centered upon education. This education had to increase independence, practical living skills, and preparation for life in mainstream society. An individual education plan was paramount, and the idea of categorization, classification, class-consciousness, or group identification did not apply.

Therefore, the *Brown* decision was not representative of the relationship between the BCRM and the DRM. The crucial relationship was the linkage with the prior Supreme

Court cases *Gaines*, *Sipuel, Sweatt*, and *Painter*. These cases provided the link of individuality that united the two movements.

Recognizing Structural Framework of Special Education

If scholars recognize this linkage, and they acknowledge that the DRM identified 1948-50 as the important time period to emulate the tactics of the BCM, then they will comprehend how legislation to create special education developed. They will more clearly understand why special education in K-12 public schools is based on six principles elaborated by Turnbull III: (1986) 1) Individual and appropriate education, 2) Least restrictive environment, 3) Zero reject, 4) Testing, assessment and placement, 5) Procedural due process, and 6) Parent participation and shared decision making. Each of these principles was designed to protect the due process of an individual, not a group or class.

Scholars should realize that due process of the disabled is inherently bound up with individual and personal rights, not the rights of a group or a minority. Thus all actions to increase academic, social, and emotional performance of the student must be individually based and never compared to a norm.

Scholars who recognize the DRM copied the Legal Defense Team's posturing of individuality in cases prior to *Brown* may view the structural framework of special education in that vein. Structural framework refers to the manner in which special education due process was established and how it is implemented in today's schools. Individuality avoids educating students together as a group or category type. Each student is assessed, programmed for coursework, and evaluated based on his individual education plan. Performance success is measured by what skill development is needed to reach the next level of performance. The student is never compared to the performance of others.

Scholars in the past, when comparing the inclusion of blacks as a minority and disabled students, have erred in their perception of special education. Based on how they compared it to the inclusion promised in *Brown* for minorities, they have incorrectly classified special education as a secondary arm of regular education devoted to another type of minority. When in fact an analogy of special education depicts it as a mosaic of individuals and not a unified systemic complete picture. Each child in special education possesses a unique, specialized, individual education plan. Scholars have erred if they have

categorized special education as a monolithic systematized institution.

## Independence and Accommodation

If one views the structural framework of special education as a collection of individuals rather than as one systematized wing of the broader education system, one comprehends the essence of independence upon which it is built. The goal of special education is independence of the disabled individual. This involves increasing practical living skills and functional independence. For this to occur, the individual will need opportunities to compete in society where he or she can develop the skills needed to be independent. Scholars need to redevelop their perception of disabilities away from paternalism toward independence, because the burden then shifts responsibility for providing accommodations upon society. Scholars who have devoted research toward maintaining medical models of treatment for the disabled are not contributing to their independence. They may be promoting paternalistic dependence by failing to recognize a need to balance society's competition.

Key literature indicated that most disabled individuals desire independence and want to achieve in an inclusive society. If scholars recognized individuality instead of categorizing the disabled as a group, they will

better understand that the goal of K-12 special education is to increase a disabled person's ability to the greatest level of their performance. That means their education will be practical and relevant to their life needs. This will insure dynamic programming that meets the individual needs of the learner, rather than a rote set of courses.

## Conclusion

Finally, examining the relationship between two movements, the BCM and the DRE, has revealed that scholars erred when they assumed the Brown decision ushered in a new era of inclusion for the disabled. It did not occur because the premise upon which it was based, minority status, was faulty. Scholars wasted considerable research time arguing about minority status when it was not a factor. Individuality was the factor that eventually opened the door of due process in legislation for the disabled. This was made possible by tactics advocates of the disabled emulated from legal arguments promoted by the Legal Defense Team of the BCRM from 1948-50, when these attorneys convinced Supreme Court justices in four crucial cases that equal protection was a personal, individual matter with repercussions to the individual when rights were denied. It went beyond group or class-consciousness.

Future research may have scholars stress the importance of individuality to implementation of special education when they author textbooks designed for an audience that will teach disabled students. Students in the field need to be cognizant of the individualistic nature of special education for a student-by-student approach so they do not categorize special education as an organizational institution administering to yet another minority group. Future studies will hopefully emphasize the humanness of special education over the organizational role.

## The Future of Special Education

Given the individuality of special education as it was designed educational professional will need to explore equal protection in the context of the regular education classroom the special education student will attend. As important as the individual needs are of the disabled students, so are the equal protection rights of regular students and the educational climate of the classroom. The school must provide a learning environment free of disruption and distraction. This may pose a challenge to the regular teacher and support special education personnel given the nature of intellectual, emotional, and learning disabilities displayed by disabled students. Guaranteeing due process rights of the disabled cannot be at the expense

of regular education students whose civil rights must also be protected.

Promoting a more inclusive setting that protects due process rights for the disabled while ensuring a calm learning environment for a majority of regular education students will continue to pose a challenge for educators. Special educators will need to coordinate their teaching with regular education colleagues to insure that the needs of all students are met. In addition, it will be important to sensitize both regular education students and their parents to the individual needs of their disabled classmates while not sacrificing the pedagogy of regular education students. Balancing rights for all students is an issue that needs more in depth research by scholars in future studies. Maintaining a quality learning environment that protects equal protection and due process rights for all students is a priority educators must fulfill. This will require more scrutiny in the future.

# BIBLIOGRAPHY

Abeson, A., Bolick, N., & Hass, J. (1975). A primer on due process education decisions for handicapped children. Reston, VA: The Council for Exceptional Children.

_____(1973). A continuing summary of pending and completed litigation regarding the education of handicapped children. (6), March 20th. Arlington: VA: Council of Exceptional Children.

Alexander, K. & Alexander, M. D. (2001). American public school law, 5th ed. Belmont, CA: Wadsworth/Thomson Learning.

Anderson, B. (1990). Fundamentals of education Research. New York: The Falmer Press.

Anderson, J. D. (1988). The education of blacks in the south, 1860-1935. Chapel Hill: University of North Carolina Press.

Anderson J. & Byrne, D. (2004). The unfinished agenda of Brown v. Board of Education. Hoboken, NJ: John Wiley & Sons Inc.

Ballard, J. B., Ramirez, F., & Weintraub F. J. (1982). (Eds.). Special education in America: Its legal and

governmental foundations. Reston, VA: The Council for Exceptional Children.

Barker, R. G. (1948). The social psychology of physical disability. *Journal of Social Issues*, (4) 4, 28-37.

Beattie v. Board of Education of the City of Antigo, 169 Wis. 231, 172 N.W. 153.

Berg, B. (2007). Qualitative research methods for the social sciences, 5th ed. Boston: Allyn & Bacon.

Berg, M. (2005). The ticket to freedom: The NAACP and the struggle for black political integration. Gainesville, FL: University Press of Florida

Borg, W. R. & Gall, M. (1989). Educational research, 5th edition. New York: Longman.

Boyle, J. R., & Weishaar, M. (2001). Special education law with cases. Boston: Allyn & Bacon.

Branch, T. (1998). Parting the waters: America in the King years 1954-63. New York: Simon & Schuster.

Broudy, H. S. (1983). Federal intervention in education: Expectations and frustrations. *Education and Urban Society*. (15) No. 3, 291-308.

Brown v. Board of Education Topeka ET AL., 347 U.S. 483 (1954), 1-8. Retrieved from http://caselaw.lpfindlaw.com/scripts/getcase.pl?court=us&vol=163&invol=537

Bryan, W. V. (2002). Sociopolitical aspects of disabilities. Springfield, IL: Charles C. Thomas Publisher.

_____(1996). In search of freedom: How persons with disabilities have been disenfranchised from the mainstream of American society. Springfield, IL: Charles C. Thomas Publisher.

Byrnes, M. A. (2002) (Ed.) Taking sides: Clashing views on controversial issues in special education. Guilford, CT: McGraw-Hill/Duskin.

Carson, C. (1981). In struggle; SNCC and the black awakening of the 1960's. Cambridge: Harvard University Press.

Chafe, W. H., Gavins, R. & Korstad, R. (Eds.). (2001). Remembering Jim Crow: African Americans tell about life in the segregated south. New York: The New Press.

Charlton, J. I. (1998). Nothing about us without us: Disability oppression and empowerment. Berkeley: University of California Press.

Clarizio, H. F, & McCoy, G. F, (1983). Behavior disorders in children. New York: HarperCollins.

Covey, H. C. (1998). Social perceptions of people with disabilities in history. Springfield, IL: Charles C. Tomas Publisher.

Cremins, C. (1983). Legal and political issues in special education. Springfield, IL: Charles C. Thomas Publisher.

Crowe, C. (2003). Getting away with murder: The true story of the Emmett Till case. New York: Dial Books.

Daugherty, R. F. (2001). Special education: A summary of legal requirements, terms, and trends. Westport, CT: Bergin & Garvey.

Department of Health, Education, and Welfare, Office of Education, Bureau of education for the Handicapped. (1979). Exploring issues in the implementation of P.L. 94-142: Due process – developing criteria for the evaluation of due process procedural safeguards provisions. Washington: D.C. Research for Better Schools, Inc.

Diana v. State Board of Education, Civ. No. C-70-37 RFP (N.D. Cal. 1970, 1973).

Disabled in Action of Metropolitan New York (2008). A discussion with Judy Heumann on independent living, 1-22. On-line interview. Retrieved from http://www.disabledinaction.org/heumann.html

Ed Roberts. (2007). "The father of independent living", 1-3. Retrieved from http:www.ilusa.com/links/022301ed_roberts.htm

Education for All Handicapped Children Act (1975).

Eichelberger, R. T. (1989). Disciplined inquiry: Understanding and doing educational research. New York: Longman.

"Eyes on the Prize": America's civil rights years. (1986). PBS Video Series, Episodes 1-6. Boston: Blackside, Inc.

Fine M. & Asch, A. (1988). Disability beyond stigma: Social interaction, discrimination, and activism. *Journal of Social Issues*, (44) 1, 3-21.

Fleischer, D. Z. & Zames, F. (2001). The disability rights movement: From charity to confrontation. Philadelphia, PA: Temple University Press.

Francis, L. P. & Silvers, A. (Eds.). (2000). Americans with disabilities: Exploring implications of the law for individuals and institutions. New York: Routledge.

Gaines v. Canada, 305 U.S. 337 (1938).

Gearheart, B. R., Weishahn, M. W., & Gearheart, C. J. (1996). The exceptional student in the regular classroom. (6th ed.). New York: Macmillan.

Gilson, S. F. & Depoy, E. (2000). Multiculturalism and disability: A critical perspective. *Disability and Society*, (15) 2, 207-218.

Gray, F. (2002). Bus ride to justice: The life and works of Fred Gray. Montgomery, AL: New South Publishing.

Hardman, M. L., Drew, C., Egan, M. W. (2008). Human exceptionality: Society, school and family, 9th edition. Boston: Allyn & Bacon.

Haskins, J. (1998). Separate but not equal: The dream and the struggle. New York: Scholastic Books.

Hetzner, A. (2011, January 25). New center teaches L.I.F.E. for disabled. *The Milwaukee Journal Sentinel*, B1, B2.

Heyward, S. M. (1992). Access to education for the disabled: A guide to compliance with Section 504 of the Rehabilitation ac of 1973. Jefferson, NC: McFarland & Company, Inc.

Hineberg, M. (2011). Seven statements people with disabilities do not want to hear. *Breaking Away*. Milwaukee: Independence First.

Irons, P. (2002). Jim Crow's children: The broken promise of the Brown decision. New York: Viking.

Kaplan, P. S. (1996). Pathways for exceptional children: School, home and culture. Minneapolis, MN: West Publishing.

Kirk, S. A., Gallagher, J. J., & Anastasiow, N. J. (2000). Educating exceptional children, 9th edition. Boston: Houghton Mifflin Company.

Kluger, R. (2004). Simple justice: The history of Brown v. Board of Education and black America's struggle for equality. New York: Alfred A. Knopf.

Library of Congress. (2011). Bill summary & status 94th Congress (1975-76) S.6 all information, 1-3. Retrieved from http://thomas.loc.gov/cgi-bin/bdquery/z?d094:SN00006:@@@L%7CTOM:/bss/d094query.html%7C

Longmore, P. K. & Umansky, L. (Eds.). (2001). The new disability history: American perspectives. New York: University Press.

Mansbridge, J. & Morris, A. (2001). (Eds.). Oppositional consciousness: The subjective root of social protest. Chicago: The University of Chicago Press.

McLaurin v. Oklahoma State Regents, 339 U.S. 637 (1950).

McMahon, B. T. & Shaw, L. R. (Eds.). (2001). Enabling lives: Biographies of six prominent Americans with disabilities. Boca Raton, FL: CRC Press.

Mills v. Board of Education D.C. 348 F. Supp. 866 ( D.D.C. 1972).

Nagler, M. (Ed.). (1993). Perspectives on disability, 2nd edition. Palo Alto, CA: Health Markets Research.

National Education Association, ( March 17-19, 1978). Education of all handicapped Children and PL 94-142:

Report of the sixteenth national conference on human and civil rights in education. Washington, D.C.: NEA.

Nossiter, A. (2002). Of long memory: Mississippi and the murder of Medger Evers. Cambridge: Da Capo Press.

Osbourne, Jr., A. G. (1996). Legal issues in special education. Boston: Allyn & Bacon.

PARC v. Commonwealth of Pennsylvania. 334 F.Supp. 1257 (E. D. PA. 1972), 1-12. Retrieved from http://www.faculty.piercelaw.edu/redfield/library/case_parc.pennsylvania.htm

Payne, C. M. (1995). I've got the light of freedom: The organizing tradition and the Mississippi freedom struggle. Berkeley, CA: University of California Press.

Percy, S. L. (1989). Disability, civil rights, and public policy: The politics of implementation. Tuscaloosa: The University of Alabama Press.

Plessy v. Ferguson, 163 W. S. 537 (1896) No. 210.

Rehabilitation Act of 1973. (1973). H.R. 8070, 93rd Congress, 1-41. Retrieved from http:www.dotcr.ost.dot.gov/documents/ycr/REHABACT.HTM

Roberts, E. (2007). "The father of independent living". Document accessed 10/31/07.

Rothstein, L. F. (2000) Special education law. New York: Addison Wesley.

Scotch, R. K. (2001) From goodwill to civil rights: Transforming federal disability policy. Philadelphia: Temple University Press.

_____(1989). Politics and policy in the history of the disability rights movement. *The Milbank Quarterly*, (67), Suppl. 2, Pt. 2, 380-399.

Seelman, K. D. (1993). Assistive technology policy: A road to independence for individuals with disabilities. *Journal of Social Issus*, (49) 2, 115-136.

Shaw, B. (Ed.). (1994). The ragged edge: The disability experience from the pages of the first fifteen years of the disability rag. Louisville, KY: Avocado Press.

Shrybman, J. A. (1982). Due process in special education. Rockville, MD: Aspen Systems Corporation.

Sipuel v. Board of regents of the University of Oklahoma, 332, U.S. 631 (1948).

Smart, J. (2001). Disability, society, and the individual. Gaithersburg, MD: Aspen Publishers, Inc.

Sweatt v Painter, 339 U.S. 629 (1950).

Switzer, J. V. (2003). Disabled rights: American disability policy and the fight for equality. Washington D.C.: Georgetown University Press.

The Bancroft Library. (2004). Disability rights and independent living movement: Geographical listing, 1-3. Retrieved from http://www.lib.berkeley.edu/

The Disability Rights and Independent Living Movement. (10/04/09), Berkeley: The Regents of the University of California.

Turnbull III, H. R. (1986). Free appropriate public education: The law and children with disabilities. Denver, CO: Love Publishing Company.

Tushnet, M. V. (1987). The NAACP's legal strategy against segregated education, 1925-1950. Chapel Hill: University of North Carolina Press.

U. S. House of Representatives Committee on Education and Labor, Subcommittee on Select Education (1973). *Hearings on education of the handicapped amendments*. 93rd Congress, 1st session.

_____Subcommittee on Select Education. *Hearings on vocational rehabilitation services to the handicapped*. 92nd Congress, 2nd session.

U.S. Senate, Committee on Labor and Public welfare, Subcommittee on the handicapped. (1973). Hearings on the Rehabilitation Act of 1973. 93rd Congress, 1st session.

_____(1975). Hearings on Education of All Handicapped Children Act, 1975. 94th Congress, 1st session.

Vann Woodword, (1966). The strange career of Jim Crow. New York: Oxford University Press.

Walter, M. (1992). Mississippi challenge: New York: Simon & Schuster.

Watson, B. (2010). Freedom summer. New York: Viking.

Williams, J. (2004). My soul looks back in wonder: Voices of the civil rights experience. New York: Sterling Publishing.

_____(1987). Eyes on the prize: America's civil rights years, 1954-65. New York: Viking Penguin, Inc.

Wolf v. State of Utah, Civ. No. 182646 (Utah Dist. Ct. 1969).

Wyatt v. Hardin, 325 F. Supp. 781 (M.D. Ala. 1971).

Zola, I. K. (1989). Toward the necessary universalizing of a disability policy. The Milbank Quarterly, (67) Suppl. 2, Pt. 2, 401-42