



Life Without Limits Disability Discrimination Sub-Theme

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The Disability Rights Movement has been defined at least in part by its efforts to secure recognition for and following that protection and enforcement of the rights of individuals with disabilities across the lifespan. However, the recent experience with judicial weakening of the ADA requiring the passage of the ADA Amendments Act teaches us that simple legislative and regulatory action is insufficient in order to secure rights and protections. In the public perception, the disability community has not yet achieved a status on par with other minority groups determined on the basis of race, religion, sexual orientation and other perceived “legitimate” classifications. In order to address this, we require an advocacy initiative of a different type, oriented at internalizing core aspects of the disability rights message in the public consciousness.

History teaches us that rights are derived at least in part from the history of past wrongs. Each aspect of the American Bill of Rights can be traced to specific violations on the part of the British Crown or state and federal governments in the pre-Constitutional Convention period. The legacy of slavery and Jim Crow has taught the public the importance of combating racism and has deeply and appropriately stigmatized racial prejudice. One of the legacies of the Holocaust was that anti-semitism was driven out of the country clubs and gated communities where it had previously been allowed to exist with impunity and underground to the fringes of society. The Japanese internment during WWII teaches us the perils of xenophobia. Time and time again, it has been shown that one of the most effective measures a community can undertake to secure recognition of its own rights is an effort to educate the public about the history of discrimination and marginalization that community has faced.

Despite the fact that the disability community has a long history of being targeted for discrimination – in forms that exist to this very day – there has not been a similar effort on the part of the disability community. This is unfortunate, as people with disabilities



have long been the target not only of unconscious social prejudice but, through laws passed by the eugenics movement and others seeking to preserve the “purity” of the human population, active efforts to marginalize and removal from society our population. Although many of the most egregious abuses are in the past, there exists much of this today. In addition, past abuses are returning to us. A knowledge of the history of the eugenics movement would greatly alter the public debate on issues such as assisted suicide and euthanasia, pre-natal testing and selective abortion and even more traditional topics such as the need for de-institutionalization and funding for community living supports. Although we have been making a compelling case for disability rights on the grounds of logic, justice and even cost-effectiveness, we have not been making that case on the grounds of avoiding or redressing past wrongs. To quote 15th century Jewish commentator Isaac Abravanel, “experience is more forceful than logic.”

Americans need to understand the experiences that brought about the disability rights movement. This type of effort is not merely a public education project, but an exercise in legal and policy advocacy as well. Current methods of rights-based legal analysis utilized in appellate advocacy from the Supreme Court downwards look to a history of past discrimination as a means of determining the ability of Congress to invoke the 14th Amendment’s Equal Protection provisions. A lack of knowledge of that history of discrimination is part of why the Courts have not given the ADA the weight of other civil rights laws. Though the ADA Amendments Act addresses this through making alterations to the form of the law and requiring a broad construction, legislative action has a limited effect on what weight the court gives when weighing individual rights against broader principles. To tip the scales, other communities have sought to communicate the extent of past wrongs as a means of avoiding future ones. This can serve to convince the court that an avoiding of discrimination against a particular group constitutes a “compelling governmental interest”, thus allowing Congress to undertake additional efforts beyond that which would be acceptable in its traditional powers to redress and avoid such discrimination.



Policy considerations also enter into the arena. Currently, there are funding battles across the country over waiting lists for community services that force individuals seeking to exist institutions to wait years for the necessary services to allow that to happen¹. An understanding internal to the disability community about the history of discrimination and abuse in the existing institutional system has conceptualized this as a civil rights issue. However, such an understanding is not yet present in the minds of the public and thus not yet present in the minds of most legislators. Re-conceptualizing the fight for community services funding from the traditional human services policy or public health context it is currently placed in to one of more traditional social justice/civil rights will open up avenues for increased public support and advocacy for community services funding. By highlighting the generations of individuals with disabilities who have and are being needlessly segregated into institutions as well as the history of abuse in facilities such as Willowbrook and the Judge Rotenberg Center, increased closures of state institutions as well as additional funds for community services funding will result.

Several states are currently addressing the topic of assisted suicide/euthanasia and Oregon has had an assisted suicide law for many years. Unfortunately, this topic has generally been depicted as a disagreement between those with religious objections to the practice and those who seek it as a matter of individual freedom. The ethical and other concerns expressed by the disability community, brought up in light of past abuses of these practices, have largely been ignored. Regardless of ones particular point of view on assisted suicide/euthanasia, a state of affairs in which the perspective of the disability community is not considered in public policy and media debates is not a positive one. Once again, increased knowledge in the minds of the public will help to ensure that the disability rights perspective has a seat at the table.

Some recognition of the need for such initiatives exists on the part of the disability community. Five states have already adopted disability history month resolutions, with

¹ It should be noted that this situation directly affects UCP affiliates, given that they are both engaged in this advocacy and likely recipients of a portion of said community services funding.



the idea of integrating the history of people with disabilities into the general history curriculum in a fashion similar to how African-American history has been integrated. However, there is limited follow up in respect to how education systems implement these mostly symbolic resolutions. State Holocaust Remembrance and Amistad Commissions pose good models for more effective integration of our history of discrimination into the public consciousness around history. Mandatory curriculum requirements are also useful, albeit hard to pass into law given usual resistance on the part of state education departments and teachers unions. Disability communities in each state will need to consider what methods will work best given the situation on the ground.

Overall, this project is well within the spirit of the Life Without Limits Project. It seeks to transform the public consciousness around disability from a narrative focused on pity and tragedy to one focused on ending discrimination and seeking to empower individuals on the basis of right rather than charity. Furthermore, in many instances an infrastructure or potential partner already exists. What follows is an initial list of potential action items within the spirit of this topic. As increased public awareness of disability discrimination rises, further action items will become apparent.

Action Items:

- Introduce discussion of these issues at the UCP 2009 Conference in San Francisco. Use these opportunity to spark interest and develop further action items (*Capable of being conducted in-house*).

- Invite Generations Ahead Summit Members to present for the first time after their expected April Summit on Ethical Issues in New Genetic Technologies

- Invite a Panel of Disability History Academics to discuss the future development of the field and what it requires to prosper and be properly integrated into the academy at large.

- Integrate these activities and the broader topic area of disability discrimination into the Life Without Limits website currently under development.



- Work with affiliates to develop and expose to the public traveling Disability History presentations along a similar model to the ADA History Presentation utilized by the Road to Freedom Tour Bus (*Potential Partner: UCP affiliates*).

- Integrate disability discrimination narratives into broader discrimination narratives (*Potential Partners: Holocaust Education Museums, Anti-Defamation League, American Jewish Committee, NAACP*)

- Provide UCP affiliates and the general public an action kit as to what they can do to educate their local communities about disability discrimination (*Capable of being conducted in-house*).

- Reach out to partners in the entertainment industry to attempt to bring about more mention of disability discrimination issues in television and movies.

- Establish a UCP Speaker's Bureau of individuals who can speak to the need for change in the public depiction of disability by drawing on their past experiences of discrimination. Utilize this to conduct outreach to schools, social clubs, and conferences. Encourage affiliates to do the same for their local communities.
 - Garner interest in this by creating a Youtube series of individuals talking about experiences of disability-related discrimination and segregation.

- Seek funding to:
 - Develop a Comprehensive Disability History Curriculum for use in schools (*Potential Partner: Rebecca Hare's Disability History Action Committee*).

 - Interview and publicize the experiences of those who have experienced past discrimination. Get oral accounts of victims of institutions and



eugenic sterilization and present them to the public. (*Potential Partner: Disability Oral History Project*)

-Fund a comprehensive documentary on the history of disability discrimination. (*Potential Partners: Production companies, Smithsonian, PBS, History Channel etc.*)