

"When the Winds of Changes Shift": International Teaching For Social Change, or, Why Doing What We Do Keeps Us "Forever Young."

Prof. Michael L. Perlin

Director, International Mental Disability Law Reform Project

Director, Online Mental Disability Law Program

New York Law School

57 Worth St.

New York, NY 10013

212-431-2183

mperlin@nyls.edu

If we wish to make social change an essential element of legal education, we need to (1) incorporate international, comparative and transnational law into what we teach domestically, and (2) increase our efforts to bring what we do to other nations. In my talk today, I am going to consider only the second of these mandates. In doing so, I will limit my remarks further to two ways we should do this: (a) by embracing technological advances that allow us to teach remotely in other nations (especially in those with developing economies), and (b) by working with faculties – especially clinical faculties – in other nations to develop strategies through which we can work collaboratively to enhance clinical experiences for students abroad (again, especially for those in nations with developing economies).

As some of you know, we have been doing this for the past seven years at New York Law School through our online, distance learning mental disability law program.¹ As I don't expect any of you who aren't in hourly email contact with me to know, we are also in the first stages of doing the second of these in three different (and socially, economically, and politically almost antipodal) nations. In my time today, I am going to discuss both of these ventures, with an eye towards trying to figure out how this sort of social teaching can lead to long lasting and ameliorative social change.

Briefly, this is what I hope to be able to share in my allotted time this morning. First, I'll talk about our online pedagogy, and describe the courses we teach (and are planning on teaching in the very near future). Then, I'll talk a bit about the international work that we have done, and what some of the social outcomes of that work has been. After that, I'll discuss our plans for the

¹See generally, Michael L. Perlin, "*Ain't No Goin' Back*": *Teaching Mental Disability Law Courses on Line*, 51 N.Y.L. SCH. L. REV. 991 (2006).

upcoming years, both as to substantive courses and the creation of clinical programs. I'll conclude with some thoughts as to the sort of social change that we hope results from these ventures.

Those of you who have heard me speak or who have read my articles know that there's no topic that I can't find a Bob Dylan fit for. This one – ""When the Winds of Changes Shift" – was easier to come by than many others...

I. The pedagogy

The online courses that we've created include these elements:

- 14 hours of DVDs (or streaming video), the majority of which are "talking heads" and powerpoints, but some of which include simulated trials, simulated interviewing and counseling examples, and roundtable discussions;
- weekly reading assignments with "focus questions"
- a midterm paper, and a take-home final;
- a weekly, synchronous chat room
- on-going, threaded, on-line "question-and-answer" message boards, and
- two live two day-long seminars, one about a month after the course begins, and one at the course's conclusion (the international section seminars are each two days in length).

II. The courses

NYLS currently offers six courses, and will be adding three more in the 2008-09

academic year. Our current courses include *Survey of Mental Disability Law; The Americans with Disabilities Act: Law, Policy and Practice; International Human Rights Law and Mental Disability Law; Lawyering Skills for the Representation of Persons with Mental Disabilities; Mental Health Issues in Jails and Prisons*, and *Sex Offenders*. Next year, we'll be adding courses in *Forensic Reports, the Role of Experts, and Forensic Ethics; Mental Illness, Dangerousness, the Police Power and Risk Assessment*, and *Therapeutic Jurisprudence*. At that time, we'll also be launching an online Masters program in mental disability law studies. So far (since we began this enterprise in the fall 2000 term), we have offered about 40 sections in all. Our cohorts of students include law students, graduate students in psychology and psychiatry, lawyers, mental health professionals, activists and advocates. In addition to offering courses at New York Law School, we also have ongoing partnerships with other US-based law schools (at this moment, Southern, McGeorge and Gonzaga; we expect others to be added this year) through which we license our courses to be offered on other campuses; and are also about to launch our first partnership with a graduate school in psychology.

Of special relevance to this presentation, we have taught sections of our courses in Nicaragua (*Survey*), in Japan (*Survey* and *ADA*), and, in a compressed version, in Finland (*International Human Rights*). With the exception of the course in Finland (taught in conjunction with my time as a visiting professor at the Institute of Human Rights in Abo Akademi University in Turku,), the other three sections have all been continuing education programs: the two in Japan under the auspices of the Tokyo Advocacy Law Office and the one in Nicaragua under the auspices of Universidad Americana Managua.

Two years ago, I spoke to a GAJE conference at Fordham about our Nicaragua

experience, and that presentation turned into a short article² in which I shared some of the experiences we had and how I hoped they would lead to ongoing social change. As part of our live seminars, we began to work with section members more intensively on legal issues in the course that were felt to be the most important to them, and to begin working with section members on post-course activities: the publication of a white paper that provides a full overview of the state of mental health care in the State, the planning of a national mental health law conference, and the creation of a regional mental health advocacy network. After the course was officially “over,” we (NYLS Adjunct Professor Henry Dlugacz and I) returned to Nicaragua on multiple occasions for meetings with both section members and other activists. I presented what was called “a magisterial lecture” at a joint meeting of the Seventeenth Central American Congress on Psychiatry, the Fifth Nicaraguan Congress on Psychiatry, the First Regional Symposium on Biological Psychiatry, and the First Regional Symposium on Addictions, attended by many members of the section, and then participated in a panel discussion at the same meeting along with two section members. Later, Prof. Dlugacz and I returned to Central America to meet with the Presiding Justice of the Supreme Court of Nicaragua and with the Director of the Nicaraguan Judicial College to discuss the possibility of offering judicial training to all Nicaraguan judges via the Internet-based course, and began negotiations with other judicial officials to offer the course to the judiciaries of all nations in Central America. I have also drafted a proposal through which we could offer sections of the course in Guatemala, Costa Rica, and elsewhere in the Caribbean/Central American region.

²See Michael L. Perlin, *An Internet-based Mental Disability Law Program: Implications for Social Change in Nations with Developing Economies*, 40 *FORDHAM INT’L L.J.* 435 (2007).

Although this has not yet happened, I believe that this approach remains an important and legitimate way to reach activists and advocates in other Central American nations with developing economies, and the judges who must ultimately rule on questions of law that affect persons with mental disabilities. It is clear that each State in the region will present different challenges and will offer different structures for both the delivery of mental health services and for the legal regulation of such services. It is hoped, however, that by modifying the syllabi and seminar presentations, the instructors can take these differences into account and present material that is most important and appropriate to the needs of participants from each nation.

None of this work, however, involved current law students. What we are planning now, however, involves direct partnerships with law schools in other nations, and that is what I am so excited about.

III. Our plans

We are about to begin new programs in China, Japan, and Uganda (perhaps, Uganda-Kenya). Each brings with it its own challenges, but, also, each brings with it the potential of collaborating with progressive law faculty and with law students in ways to bring about meaningful social change. I have been practicing law since 1971 and have been a full time professor since 1984. Nothing has ever been as exciting to me as this. Let me address each of these in turn.

China: We have a contract with Shanghai Jiao Tong University to offer a section of our course in *International Human Rights and Mental Disability Law* at SJTU's Human Rights

Institute in the fall 2008 term.³

Japan: We have an agreement with Kanegawa University Law School (in Yokohama) and with Waseda University Law School (in Tokyo) to offer sections of our course in *Lawyering Skills in the Representation of Persons with Mental Disabilities* in conjunction with new clinical programs being created at each law school, designed to provide representation to persons subject to involuntary civil commitment to psychiatric hospitals. The clinics are currently “under construction”, and I expect to return to Japan this fall so as to launch both courses in the spring 2009 term.⁴

Uganda-Kenya: We have an agreement with Nkumba University Law School (in Entebbe, Uganda) to offer sections of our courses in *International Human Rights; Mental Health*

³That course examines the relationship between constitutional mental disability law and international human rights law, primarily as that relationship deals with questions of legislative drafting, legal representation, institutional treatment, community care, and forensic mental health systems. It covers a comparison of civil and common law systems, an overview of international human rights law, an overview of regional human rights tribunals, an overview of U.S. constitutional mental disability law, the role of "sanism" and "pretextuality" in understanding developments in this area, mental disability law in an international human rights context, comparative mental disability law, the use of institutional psychiatry as a means of suppressing political dissension, the "universal factors" in this area of law, and the globalization of disability law. The course focuses on both American law and on international human rights norms and the developing body of case law in the Inter-American and European Courts and Commissions on Human Rights.

⁴In this course, students are taught the special lawyering skills - tested in two simulated trials - that are essential in cases involving the representation of persons with mental disabilities. The course covers topics including civil commitment standards, outpatient commitment, issues of proof, dealing with expert witnesses, rights to community services, forensic issues, patient advocacy issues, and dealing with stigma/public awareness.

Issues in Jails and Prisons,⁵ *Survey of Mental Disability Law*,⁶ and *Sex Offenders*.⁷ We also have an agreement the Uganda Law Society and Nkumba to create clinical programs to provide legal representation to persons with mental disabilities in civil and criminal cases, in conjunction with our online course, *Lawyering Skills*. As an extended part of this partnership (in all, it has seven pieces to it), we will also work with Makerere University Medical School Departments of Psychiatry , Pathology, and Psychology (Kampala, Uganda) and the University of Nairobi Medical School to create an enhanced forensic training program in conjunction with our online courses, specifically, though not limited to, the courses in *Forensic Ethics*⁸ and *Risk*

⁵This course offers a comprehensive overview of the mental disability law issues in correctional settings. Topics include the historical development of the constitutional right to correctional health and mental health care, issues involving staffing, transfer, record keeping, suicide prevention, the significance of professional standards, the relationship between correctional mental health care and community systems of care, monitoring, informed consent, risk assessment, and privatization of services.

⁶In this course, students examine the civil and constitutional bases of mental disability law in such areas as civil commitment; institutional rights (with specific focus on the right to refuse treatment); and deinstitutionalization, aftercare, and federal statutory rights (with specific focus on the Americans with Disabilities Act). Students explore all aspects of the role of mental disability in the criminal trial process, including criminal incompetencies; insanity defense; sexually violent predator laws; federal sentencing guidelines; and the death penalty. Students also study the history of mental disability law and why and how it has developed as it has; and most importantly, why judges and fact finders decide mental disability law cases the way they do, to facilitate our predictions of future trends and outcomes.

⁷This course reviews contemporary public policy regarding sexually coercive behavior. A major focus is the aggressive legislative approaches to sexual violence developed in the United States over the past 15 years. Students examine and evaluate these controversial legal approaches, as well as alternative approaches to the societal effort to address sexual violence. The course includes an examination of the current state of social science research into sexual violence, including etiology, classification, treatment, supervision, recidivism, and risk assessment.

⁸This course will deal with both the reports that are prepared by forensic experts for use by lawyers (pre-trial and at trial), and with the ethical issues that are posed when such experts interact with the legal system. The focus here will be on the full range of issues involving

*Assessment.*⁹

IV. What this all means

We hope that, by creating these programs, we can accomplish multiple aims:

1. We will be able to bring courses in all aspects of mental disability law to nations where there are currently no such courses available. By doing this, we will help create a cadre of lawyers – those who will work domestically and those who will work internationally – who can provide legal services to this most underrepresented of all minority groups.¹⁰ There is no question that social change in this area of policy – the treatment of institutionalized persons with mental disabilities – inexorably tracks the availability of trained, competent counsel.¹¹ By providing the tools to law students, we can help promote important social change in these nations.

2. There are few clinical programs in the United States that include persons subject to

forensic experts and the mental disability law system: the rights of persons subject to institutionalization and who have been institutionalized, and the role of mental disability in the criminal trial process, in the civil trial process, in the criminal trial process, and in the family law process.

⁹This course will deal with the relationship between mental illness, dangerous behaviour and the police power, the ability of mental health professionals to predict dangerousness, and the significance of risk assessment instruments for a variety of decisions to be made in the legal system, including the detention and institutionalization of persons who have committed no act that violates a jurisdiction's criminal code.

¹⁰See Michael L. Perlin, *International Human Rights Law and Comparative Mental Disability Law: The Universal Factors*, 34 SYRACUSE J. INT'L L. & COMMERCE 333 (2007).

¹¹See Michael L. Perlin, "*I Might Need a Good Lawyer, Could Be Your Funeral, My Trial*": *Global Clinical Legal Education and the Right to Counsel in Civil Commitment Cases*, 28 WASH. U. J. L. & POL'Y – (2008) (in press).

involuntary psychiatric institutionalization as a target group to be afforded representation,¹² and virtually none in other nations.¹³ By helping create clinical programs – in tandem with a course dedicated to the enhancement of lawyering skills – we hope to help alter this parched landscape and to encourage advocates for social change elsewhere (especially in nations with developing economies) to follow in this same path.

3. Many of the social problems faced in nations with developing economies are regional ones. We hope that the creation of programs that span two nations – in this case, Uganda and Kenya – we will offer new paradigms for the solutions of some of these problems.

4. When I have shared with others our vision of working in sub-Saharan East Africa, those others have often scoffed, suggesting that the problems faced in that part of the world are so profound that it is almost frivolous to create the programs we are seeking to launch. As you might expect, I disagree – profoundly. People with mental disabilities are among the most disadvantaged and vulnerable in any society, more so in developing nations, where the daily struggle to survive is difficult enough for the many who do not face such additional challenges. Of the estimated 600 million worldwide who have a disability, two-thirds of those are living within developing nations where they are too often subject to a wide range of human rights violations. The recent publication of the UN Convention on the Rights of Persons with Disabilities¹⁴ is a welcome step that may actually begin a reversal of centuries of ignorance,

¹²See Michael L. Perlin, “*You Have Discussed Lepers and Crooks*”: *Sanism in Clinical Teaching*, 9 CLINICAL L. REV. 683 (2003).

¹³See Perlin, *supra* note 11.

¹⁴General Assembly Resolution A/61/611 (2006).

inaction and brutal actions.

In arguing why the United States should ratify the new UN Convention, Tara Melish focused on the “deeply entrenched attitudes and stereotypes about disability that have rendered many of the most flagrant abuses of the rights of persons with disabilities ‘invisible’” from the mainstream human rights lens.”¹⁵ Our hope is that – by bringing our program and these courses – to nations with no tradition of enhanced human rights in this subject matter area, we will help make the “invisible” visible.¹⁶

To return to my title’s metaphor, the winds of change have, indeed, begun to shift. By doing what we are doing, we seek to keep the law – and, not coincidentally, ourselves – “forever young.”

Thank you.

¹⁵Tara Melish, *The UN Disability Convention: Historic Process, Strong Prospects, and Why the U.S. Should Ratify*, 14 HUM. RTS. BRIEF 37, 44 (Winter 2007).

¹⁶On this dilemma in general, see MICHAEL L. PERLIN, *THE HIDDEN PREJUDICE: MENTAL DISABILITY ON TRIAL* (2000).