

International Teaching For Social Change

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If we wish to make social change an essential element of legal education, we need to increase our efforts to bring what we do to other nations. We should do this by: (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).

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 We are also in the first stages of doing the second of these in three different (and socially, economically, and politically almost antipodal) nations. This paper will discuss both of these ventures, with a special consideration of how this sort of social teaching can lead to long lasting and ameliorative social change.

I. The pedagogy

The online courses that we have 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, sunchronous chat room
- on-going, threaded, on-line "question-and-answer" message boards, and
- two live two day-long seminars at the beginning and end of the courses.

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).

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 will 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 will also be launching an online Masters program in mental disability law studies.

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.

What we are planning now, however, involves direct partnerships with law schools in other nations.

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 each brings with it the potential of collaborating with progressive law

faculty and students in ways to bring about meaningful social change. Let me address each of these in turn.

China: We have a contract with Shanghai Jiao Tong University to offer a section of *International Human Rights and Mental Disability Law* at SJTU's Human Rights Institute in the fall 2008 term.²

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.³ I will be presenting lectures at Kanegawa University this fall (to both faculty and students) as part of this process.

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 Issues in Jails and Prisons*,⁴

²That 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.

³In 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.

⁴This course offers a comprehensive overview of the mental disability law issues in correctional

Survey of Mental Disability Law,⁵ and *Sex Offenders*.⁶ We also have an agreement with 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 *Lawyering Skills* course. 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*⁷ and *Risk Assessment*.⁸

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.

⁵In 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.

⁶This 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.

⁷This 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 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.

⁸This course will deal with the relationship between mental illness, dangerous behaviour and the

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.⁹ 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.¹⁰ By providing tools to law students, we can help promote important social change.¹¹
2. By helping create clinical programs (there are now virtually none in most nations)¹² – in tandem with a lawyering skills course – 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.

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.

⁹See Michael L. Perlin, *International Human Rights Law and Comparative Mental Disability Law: The Universal Factors*, 34 SYRACUSE J. INT'L L. & COMMERCE 333 (2007).

¹⁰See 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).

¹¹For a discussion of how NYLS's Nicaragua program accomplished this aim, see See 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).

¹²See Perlin, *supra* note 10.

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. 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 Disabilities¹³ is a welcome step that may actually begin a reversal of centuries of ignorance, inaction and brutal actions.¹⁴

In arguing why the U.S. 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 other nations, we will help make the “invisible” visible.¹⁶

¹³General Assembly Resolution A/61/611 (2006).

¹⁴See e.g., Michael L. Perlin & Eva Szeli, *Mental Health Law and Human Rights: Evolution and Contemporary Challenges*, in MENTAL HEALTH AND HUMAN RIGHTS (Michael Dudley ed. 2008) (in press)

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).