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Michael L. Perlin
New York Law School

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Online, Distance Legal Education as an Agent of Social Change

Michael L. Perlin*

I. INTRODUCTION

It has become a cliché to say that the American system of legal education is “broken.” But it is. Rick Matasar¹ has written about this clearly and eloquently,² going so far as to say, “the years ahead suggest that law schools . . . must change or die.”³ In a searing indictment of the legal education establishment, Matasar four times uses the word “dysfunctional” to define the way we operate as law schools.⁴

Many suggestions have been offered as to how to fix the system: fewer years of study,⁵ more integration with other graduate disciplines,⁶ more experiential courses,⁷ fewer law schools,⁸ innovative (and radical) ways of containing costs

* Professor of Law, Director, International Mental Disability Law Reform Project, Director, Online Mental Disability Law Program, New York Law School. This paper is based in part on a presentation entitled “New Technologies, New Pedagogies” given by Professor Perlin at the SALT Bi-Annual Teaching Conference at the Hawaii Prince Hotel & University of Hawaii in Honolulu, Hawaii on December 11, 2010.

1. I believe that Richard Matasar, my dean at New York Law School, is genuinely “one of the truly great deans of our generation.” See Bill Henderson, *Playbook for Institution Building*, LEGAL PROF. BLOG (Aug. 15, 2008), http://lawprofessors.typepad.com/legal_profession/2008/08/playbook-for-in.html.

2. See, e.g., Richard A. Matasar, *Does the Current Economic Model of Legal Education Work for Law Schools, Law Firms (Or Anyone Else)?*, 82 N.Y. ST. B.J. 20 (2010) (examining the economic model of legal education and how students, firms, clients and the public will not be served without change to the current system).

3. *Id.* at 26.

4. Richard A. Matasar, *Defining Our Responsibilities: Being an Academic Fiduciary*, 17 J. CONTEMP. LEGAL ISSUES 67, 70, 89, 114, 119 (2008).

5. See, e.g., Gregory W. Bowman, *The Comparative and Absolute Advantages of Junior Law Faculty: Implications for Teaching and the Future of American Law Schools*, 2008 BYU EDUC. & L.J. 171, 176 (noting that some commentators recommend reducing law school to two years of study although others recommend increasing it to four years).

6. See *Statement and Recommendations on Teaching Problem Solving in the Law School Curriculum*, 18 ALTERNATIVES TO HIGH COST LITIG. 91, 93-94 (2000) (recommending integration of law studies with other disciplines such as business school, economics, psychology and sociology—providing both pedagogical and substantive advantages).

7. See ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 330-34 (1992) (listing twenty-five recommendations for helping students acquire the skills and values expected of members of the legal profession).

8. See Helen Leskovic, *Distance Learning in Legal Education: Implications of Frame Relay Videoconferencing*, 8 ALB. L.J. SCI. & TECH. 305, 328 (1998) (proposing that the availability of high quality

(including changes in the system of life-tenure),⁹ etc. All of these, of course, face strong and incessant opposition from most branches of the legal establishment on all levels—deans at law schools terrified of any change *at all*; doctrinal professors who are scared of any changes that might somehow, conceivably, diminish their stature/status; alumna who are concerned that any changes might make their clients think less of their alma mater and, by osmosis, of them; faculty who are terrified that any change in the format, structure or substance of legal pedagogy might make their accomplishments in law school (probably the single greatest predictor of success in law faculty hiring) be somehow diminished; “big law” firms that have prospered with the current model in place, etc.¹⁰

None of this is news. In this article, I will instead focus on one issue that is not at the top of the legal education reform agenda, but is one that I think, in many ways, is the most potentially subversive (I say that as a good thing) and the one that has the greatest potential for causing significant ameliorative and transformative social change. I speak here of the turn to online, distance learning, legal education. And to make it clear: I write this somewhat self-consciously and self-referentially as I have created such a program at New York Law School (“NYLS”)¹¹ through which we now offer thirteen courses, a Masters degree and an Advanced Certificate in mental disability law studies.¹²

This article will proceed in this manner. First, I will talk briefly about what I mean by distance education, with special attention to its role in teaching persons

distance learning technologies may result in a need for far fewer law schools).

9. See Peter Lattman, *Should Law Schools Abolish Tenure?*, WALL ST. J.L. BLOG (Oct. 8, 2007, 11:23 AM), <http://blogs.wsj.com/law/2007/10/08/should-law-schools-abolish-tenure/> (presenting an anonymous post from a law school dean describing reasons why the tenure system is “an institution whose time has passed”).

10. I make these assertions based on conversations I have had and that I have overheard—at my own law school and at least forty other U.S. law schools, at law professors’ conferences, cocktail parties, development workshops, etc.—over the past twenty-seven years.

11. Where, not coincidentally, Rick Matasar is the dean.

12. See generally Michael L. Perlin, “*They Keep It All Hid*”: *The Ghettoization of Mental Disability Law and Its Implications for Legal Education*, 54 ST. LOUIS U. L.J. 857 (2010) [hereinafter Perlin, *Ghettoization*]; Michael L. Perlin & Deborah Dorfman, “*The Sources of This Hidden Pain*”: *Why a Class in Race, Gender, Class, and Mental Disability?*, in VULNERABLE POPULATIONS AND TRANSFORMATIVE LAW TEACHING: A CRITICAL READER 313 (2011); Michael L. Perlin, “*Ain’t No Goin’ Back*”: *Teaching Mental Disability Law Courses Online*, 51 N.Y.L. SCH. L. REV. 991 (2007) [hereinafter Perlin, *Teaching MDL Online*]; Michael L. Perlin, *An Internet-Based Mental Disability Law Program: Implications for Social Change in Nations with Developing Economies*, 30 FORDHAM INT’L L.J. 435 (2007) [hereinafter Perlin, *Internet-Based MDL Program*] (describing the pedagogy, course offerings, and programs as they evolved from 2006 to the present day). For a list of the current thirteen courses and a description of the Masters and Advanced Certificate programs, see Perlin, *Ghettoization*, *supra*, at 867-70; Perlin & Dorfman, *supra*, at 315-17. See also NEW YORK LAW SCHOOL: MENTAL DISABILITIES L. STUD., http://www.nyls.edu/academics/graduate_and_certificate_programs/mental_disability_law_masters (last visited Aug. 20, 2011) (describing details on current courses and offerings). Writing about our program, Professor Joseph Rosenberg has graciously characterized it as a “transformative success.” Joseph A. Rosenberg, *Confronting Clichés in Online Instruction: Using a Hybrid Model to Teach Lawyering Skills*, 12 SMU SCI. & TECH. L. REV. 19, 23 n.13 (2008). As I will discuss below, the program today has actually gone far beyond the program Professor Rosenberg described when he was writing in 2007.

with disabilities. Then, I will explain why and how we created our program and discuss its component parts, and how this all relates to the relationship between distance learning and American legal education. After that, I will discuss briefly some of the work that we have done in the past in Nicaragua (and elsewhere), and will then share some upcoming developments in Asia (that may take what we have done to an entire different plane). Finally, I will offer a few concluding thoughts.

II. DISTANCE LEARNING

Distance learning has been characterized by Professor Henry Perritt as extending to “all uses of computers, telecommunications, and digital networking technologies that permit education to occur outside a conventional classroom”¹³ via synchronous and asynchronous modalities.¹⁴ It is generally defined as “communication which connects instructors and students who are separated by geography and, often, by time” or as “the electronic connection of multiple classrooms.”¹⁵ Distance learning courses enable students to share different perspectives, and provide a new environment for teaching law students to collaborate with other types of professionals,¹⁶ a characteristic “increasingly essential to the effective practice of law.”¹⁷

Distance learning . . . —the use of computers, telecommunications, and digital networking to permit learning outside the boundaries of the classroom—holds the potential to expand the availability of cross-listed courses by reducing these barriers . . . [and] can provide professors of cross-listed courses with pedagogical tools for enhancing interdisciplinary communication and collaboration, and circumventing

13. Henry H. Perritt, Jr., *The Internet Is Changing the Face of American Law Schools*, 33 *IND. L. REV.* 253, 265 (1999); see also Anna Williams Shavers, *The Impact of Technology on Legal Education*, 51 *J. LEGAL EDUC.* 407, 410 (2001) (“Distance education takes advantage of technology that is being widely used in a number of educational settings. The technology includes Web-based instruction, closed-circuit television, videocassettes, teleconferencing, video-conferencing, and Internet links.”).

14. Perlin, *Teaching MDL Online*, *supra* note 12, at 996 nn.33-34 (describing “asynchronous” modalities as not simultaneous, such as the delay between one student posting a message and another student reading it versus “synchronous” modalities such as a live chat room which is scheduled as would be any other class session).

15. Leskovic, *supra* note 8, at 309.

16. Paula E. Berg, *Using Distance Learning to Enhance Cross-Listed Interdisciplinary Law School Courses*, 29 *RUTGERS COMPUTER & TECH. L.J.* 33, 33-35 (2003).

17. *Id.* at 34; see also *id.* at 39 (on how distance learning can “enhance the scope and depth of the course’s substantive coverage, increase opportunities for and reduce barriers to interdisciplinary interaction, and remedy specific administrative and logistical problems”).

some of the problems inherent in teaching students from different disciplines.¹⁸

This is a pivotal development in the history of American legal education, and it is essential that it be acknowledged by those committed to social change (especially in the context of the relationship between the methodologies of legal education and the substance of what is being taught).¹⁹ It is mandatory that we look to new means for providing legal education—in economic, efficient and interdisciplinary ways—to our students in innovative ways that demonstrate the linkage between education and social change.²⁰

One of the specific challenges in creating a distance learning pedagogy in mental disability law is the need to provide a program that can also be meaningfully accessed by persons with disabilities.²¹ By way of example, a recent study by the U.K.-based Disability Rights Commission showed that 81% of British websites are inaccessible to persons with disabilities.²² Scholars have begun to explore how the Internet can provide individuals with disabilities the tools to enable them to live independently and “to gain greater independence and social integration,”²³ and have thus begun to call for a coordinated program of study to examine the extent to which Internet sites are accessible to persons with disabilities.²⁴ A study of 200 websites affiliated with Centers for Independent Living concluded:

Accessible technology for persons with disabilities has the potential to enhance independence in life. Its future development holds promise for a

18. *Id.* at 34-35.

19. See MICHAEL L. PERLIN, INTERNATIONAL HUMAN RIGHTS AND MENTAL DISABILITY LAW: WHEN THE SILENCED ARE HEARD 109-10 (2011).

20. See Matasar, *supra* note 2, at 25 (noting that market pressures may encourage greater cooperation between educators and employers in order to produce graduates with skills to better meet client needs).

21. See generally William N. Myhill et al., *Distance Education Initiatives and Their Early 21st Century Role in the Lives of People with Disabilities*, in FOCUS ON DISTANCE EDUCATION DEVELOPMENTS 1 (Edward P. Bailey ed., 2007) (exploring existing varieties and uses of distance education, examining emerging learning theory and practice for delivering distance education, and proposing policy initiatives and best practices to ensure equal access and opportunity for learners with and without disabilities).

22. BRITISH STANDARDS INST., PUBLICLY AVAILABLE SPECIFICATION PAS 78:2006: GUIDE TO GOOD PRACTICE IN COMMISSIONING ACCESSIBLE WEBSITES 2 (2006), available at http://www.equalityhumanrights.com/uploaded_files/pas78.pdf; see also Axel Schmetzke, *Online Distance Education—“Anytime, Anywhere” but Not for Everyone*, INFO. TECH. & DISABILITIES 7, <http://people.rit.edu/easi/itd/itdv07n2/axel.htm> (last visited Aug. 28, 2011) (In a study of the twenty-four most highly ranked schools of library and information science, only 59% of main campus library web pages were accessible.). Barriers to the accessibility of technologies for persons with disabilities are discussed in Myhill et al., *supra* note 21, at 9-10.

23. See H. STEPHEN KAYE, U.S. DEP’T OF EDUC., COMPUTER AND INTERNET USE AMONG PERSONS WITH DISABILITIES: DISABILITY STATUS REPORT 13 (2000), available at <http://dsc.ucsf.edu/pdf/report13.pdf>.

24. See Peter David Blanck & Leonard A. Sandler, *ADA Title III and the Internet: Technology and Civil Rights*, 24 MENTAL & PHYSICAL DISABILITY L. REP. 855, 855 (2000) (noting that the National Federation of the Blind and other groups and individuals “continue to examine the accessibility of Internet service providers and web sites”).

wide range of persons with disabilities The commitment to digital equality as a civil right must be founded in policy that incorporates accessibility and universal design in public and private programs providing technological access to all.²⁵

III. THE NYLS PROGRAM

NYLS created its online, distance learning mental disability law program in an effort to provide education in an area of the law that remains hidden in most law school curricula.²⁶ Since 2000, it has offered its mental disability law courses in an online, distance learning format to its own law students, to law students from other U.S.-based law schools, to mental health professionals, to students in all the allied mental health professions and in the fields of criminology and criminal justice, and to activists and advocates (including members of the psychiatric survivor movement).²⁷ It has offered the courses in partnership with other U.S.-based law schools and has offered them in conjunction with universities in Nicaragua and Japan.²⁸ In doing so, it has been able to work with advocates in other nations to pursue progressive social change in all aspects of mental disability law and social policy.²⁹ The courses offered cover all aspects of mental disability law—civil and criminal, public and private, domestic and international, statutory and case-based, skills and substantive—and specifically consider the impact of race, gender, class and culture on this area of the law.³⁰

25. Heather Ritchie & Peter Blanck, *The Promise of the Internet for Disability: A Study of On-Line Services and Web Site Accessibility at Centers for Independent Living*, 21 BEHAV. SCI. & L. 5, 24 (2003) (citations omitted).

26. See NEW YORK LAW SCHOOL: MENTAL DISABILITIES L. STUD., *supra* note 12.

27. See Perlin, *Ghettoization*, *supra* note 12, at 871-73.

28. *Id.* at 872.

29. *Id.* at 872-73.

30. Perlin & Dorfman, *supra* note 12, at 316. The courses are:

- Survey of Mental Disability Law;
- The Americans with Disabilities Act: Law, Policy and Practice;
- International Human Rights Law and Mental Disability Law;
- Advocacy Skills in Cases Involving Persons with Mental Disabilities: The Role of Lawyers and Expert Witnesses;
- Mental Health Issues in Jails and Prisons;
- Forensic Reports, the Role of Experts, and Forensic Ethics;
- Therapeutic Jurisprudence;
- Mental Illness, Dangerousness, Risk Assessment and the Police Power;
- Custody Evaluations, Juvenile and Family Law, and Mental Disability;
- Race, Gender, Class and Mental Disability Law;
- Sex Offenders;
- Mental Disability and Criminal Law; and
- Trauma and Mental Disability Law.

Participants in our courses are placed in sections of fifteen to twenty students, under the supervision of a professor who moderates the chat rooms, runs the live seminars, monitors the bulletin boards, and grades the written work. Credits received in these courses may be "grandparented" into the Masters or Advanced Certificate program, both of which were launched in January 2009. Our courses combine streaming video, reading assignments, asynchronous message boards, weekly synchronous chat rooms, and two full-day live seminars.³¹

Most law schools either do not offer at all or offer only one course in mental disability law, and those that do offer the course often offer it sporadically. A few offer two courses, and, other than NYLS, only two law schools offer as many as three.³² This is an area of law that has always been marginalized,³³ and one that has always been hidden from view.³⁴ The population in question is generally poor, without friends, family or social network.³⁵ For a variety of reasons—I call the most important ones “sanism” and “pretextuality”³⁶—they fall under the radar of and are ignored by many who are otherwise committed to progressive social change.³⁷ The robust mental disability law curriculum that we offer gives students an opportunity to seek employment in this most important and challenging area of civil rights law. It is not a surprise that, over the years, many of my best students migrated from New York to Utah, Washington, California, Massachusetts, New Mexico, and other far-from-home states to practice in this area.

31. See NEW YORK LAW SCHOOL: MENTAL DISABILITIES L. STUD., *supra* note 12 (navigate the pages on the drop-down menu on the left for course descriptions, course schedules, and a program overview).

32. When we created our Masters program, we surveyed all U.S. law schools and found that seventy-five ABA accredited law schools offered no mental disability law course while many other schools offered only one course sporadically, and often without the help of a full-time faculty member. See Perlin, *Ghettoization*, *supra* note 12, at 860 n.9, 865 n.40. According to my best recollection, the only other schools that offered three courses at the time were the University of Southern California and the University of New Mexico.

33. See *id.* at 859–60 (labeling this marginalization as “ghettoization”).

34. See MICHAEL L. PERLIN, *THE HIDDEN PREJUDICE: MENTAL DISABILITY ON TRIAL* xx (2000).

35. See Meris Bergquist, *No Exit for Patients Confined at the Vermont State Hospital*, 32 VT. B.J. 34, 34 (2006) (noting that states have historically segregated individuals with mental disabilities from society through involuntary confinement in institutions); Michael L. Perlin, “*I Ain’t Gonna Work on Maggie’s Farm No More: Institutional Segregation, Community Treatment, the ADA, and the Promise of Olmstead v. L.C.*,” 17 T.M. COOLEY L. REV. 53, 60 (2000) (stating that persons confined to in-patient psychiatric hospitals “comprise a population that is classically voiceless and friendless”).

36. See Michael L. Perlin, “*Half-Wracked Prejudice Leaped Forth*”: *Sanism, Pretextuality, and Why and How Disability Law Developed as it Did*, 10 J. CONTEMP. LEGAL ISSUES 3, 4-5 (1999) (defining the terms “sanism” and “pretextuality”); PERLIN, *supra* note 34, at 21-75 (developing the concepts of sanism and pretextuality as they relate to persons with mental disability).

37. See Michael L. Perlin, “*You Have Discussed Lepers and Crooks*”: *Sanism in Clinical Teaching*, 9 CLINICAL L. REV. 683, 683-85 (2003) (discussing how sanism has been largely ignored in literature addressing the clinical setting).

IV. INTERNATIONAL WORK

Self-evidently, distance learning has great implications for international legal education as well as for domestic legal education.³⁸ A report in the *Fletcher Forum of World Affairs* concluded: “[T]here is no doubt that ICTs [Information and Communication Technologies], if properly adopted and implemented, can bring economic and cultural opportunities to developing countries. Education facilities may be greatly improved through distance learning and Internet access.”³⁹

Of special relevance to this presentation, we have taught sections of our courses in Nicaragua, Japan, Israel, and Finland.⁴⁰ The syllabus of the *Survey* and the *ADA* courses was substantially the same as in the domestic versions, although we devoted significant portions of the live seminars to local issues. The syllabus of the *International Human Rights* course was virtually identical to the domestic version of that course.⁴¹

38. On the implications of the U.N. Convention on the Rights of Persons with Disabilities for issues related to how persons with disabilities can access distance learning programs, see Myhill et al., *supra* note 21, at 17-19.

39. Peter Cukor & Lee McKnight, *Knowledge Networks, the Internet, and Development*, 25 FLETCHER F. WORLD AFF. 43, 47 (2001).

40. Michael L. Perlin, “A Change is Gonna Come”: *The Implications of the United Nations Convention on the Rights of Persons with Disabilities for the Domestic Practice of Constitutional Mental Disability Law*, 29 N. ILL. U. L. REV. 483, 485 (2009) [hereinafter Perlin, *Implications*]. We have taught *Survey of Mental Disability Law* in Nicaragua and Japan, and *The Americans with Disabilities Act: Law, Policy and Practice* in Japan. See Perlin, *Internet-Based MDL Program*, *supra* note 12, at 446-47. We have taught a modified version of our course in *International Human Rights and Mental Disability Law* in Finland and in Israel. See Perlin, *Implications*, *supra*, at 485. In Japan, our courses were offered in partnership with the Tokyo Advocacy Law office, the Association for Better Mental Health and with Zenkanren. In Nicaragua, the course was offered in partnership with Universidad Americana Managua, the Nicaraguan Association for Community Integration, and with Inclusion Interamericana. See Perlin, *Teaching MDL Online*, *supra* note 12, at 999; Perlin, *Internet-Based MDL Program*, *supra* note 12, at 446-47; Perlin, *Ghettoization*, *supra* note 12, at 872. In Finland, our course was offered through the Institute on Human Rights, Abo Akademi University/University of Turku, and in Israel through the Global Law Program at Haifa University. Perlin, *Implications*, *supra*, at 485.

41. At the time that we offered the *Survey* course, the most important international human rights law that affected the population in question was the *United Nations Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care* (widely referred to as the “MI Principles”). G.A. Res. 119, U.N. GAOR, 46th Sess., 3d Comm., 75th plen. mtg., reprinted in 1991 45 U.N.Y.B. 620, U.N. Sales No. E.92.I.1. Those Principles were significantly premised on domestic constitutional law. See PERLIN, *supra* note 19, at 45-46; Michael L. Perlin, “Abandoned Love”: *The Impact of Wyatt v. Stickney on the Intersection Between International Human Rights and Domestic Mental Disability Law*, 35 LAW & PSYCHOL. REV. 121, 142 (2011), and it was felt that, without an understanding of the U.S. cases, it would be impossible to understand the basic international law principles in this area.

Our Japanese partners specifically asked us to teach a section of the *ADA* course as they were then involved in the drafting process of an anti-discrimination law, and they wanted to insure that that law captured “the best” of the *ADA* and omitted those sections of the *ADA* that had been interpreted narrowly by the U.S. Supreme Court. The sections of the *International Human Rights* course centered on the U.N. Convention on the Rights of Persons with Disabilities (awaiting ratification at the time of the Finland section, and post-ratification at the time of the Israel section), and differed from the domestic versions of that course primarily in the context of the significance of the ratification of that Convention.

This paper will address only the Nicaragua section of our “flagship” course, *Survey of Mental Disability Law*.⁴² The state of mental disability law in Nicaragua is, and always has been, woeful.⁴³ On a site visit there, a colleague and I were shown the Nicaraguan mental health law which, in its entirety, was one brief paragraph.⁴⁴ On another site visit to a Nicaraguan public hospital, I observed male patients walking in wards totally naked (with both male and female staff present). Female patients were brought outside the hospital for lunch. They were wearing doctor’s office-type gowns, exposing their breasts and buttocks. Food was passed around in large bowls, and there were no utensils. Each patient had to reach in and scoop out food (some sort of vegetable stew) with her hands.⁴⁵ On the same visit to Nicaragua in 2003, I visited a home in which two mentally disabled persons (aged twenty-three and thirty-two at the time) were permanently confined to outdoor rooms that were built as cages to prevent them from leaving the premises.⁴⁶ When, on a subsequent visit, I was introduced to the Chief Justice of the Nicaragua Supreme Court, and told her that my special area of advocacy and research was mental disability law, she asked me, “What on earth is that?”⁴⁷ Persons facing involuntary civil commitment in Nicaragua are not appointed counsel prior to institutionalization and there is virtually no judicial review of their commitments.⁴⁸

42. This course was substantially funded by a grant from the U.S. AID office.

43. See Jennifer Fischer, *A Comparative Look at the Right to Refuse Treatment for Involuntarily Hospitalized Persons with a Mental Illness*, 29 HASTINGS INT’L & COMP. L. REV. 153, 183 (2006) (noting that in practice, most compulsory psychiatric hospitalizations in Nicaragua and several nearby countries are effected without judicial approval regardless of local law and no patient is entitled to refuse treatment); see also Lance Gable et al., *Mental Health and Due Process in the Americas: Protecting the Human Rights of Persons Involuntarily Admitted to and Detained in Psychiatric Institutions*, 18 PAN AM. J. PUB. HEALTH 366, 368-71 (2005) (noting, inter alia, that most Caribbean and Latin American countries lack mental health laws and procedures for admitting individuals into psychiatric institutions and periodically reviewing their continued detention); *Nicaragua—Mental Health Care: Towards a New Vision*, REVISTA ENVIO (May 1987), <http://www.envio.org.ni/articulo/3616> (describing the history of psychiatric care in Nicaragua including the role of government and the national health care system). I also gleaned this from nearly a dozen visits to Nicaragua—spending days talking with lawyers, psychiatrists, ex-patients, relatives of patients, and public health officials.

44. PERLIN, *supra* note 19, at 85; see also Ley No. 202, 23 Aug. 1995, Ley de Prevención, Rehabilitación y Equiparación de Oportunidades para las Personas con Discapacidad [Prevention, Rehabilitation and Equal Opportunities for Persons with Disabilities Act] ch. II, art. 5, LA GACETA, DIARIO OFICIAL [L.G.], 27 Sept. 1995 (Nicar.), available at <http://www.dredf.org/international/nicar1.html>. Many nations, of course, have no mental health law at all. See 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 241, 242 n.10 (2008) [hereinafter Perlin, *Global Education*]; PERLIN, *supra* note 19, at 84-85.

45. Michael L. Perlin, *International Human Rights Law and Comparative Mental Disability Law: The Universal Factors*, 34 SYRACUSE J. INT’L L. & COM. 333, 346-47 (2007).

46. *Id.* at 347. At the time, in an interoffice memorandum, I characterized that visit as “the saddest sight of my professional life.” *Id.* at 347 n.70 (citing Memorandum from Michael L. Perlin, to New York Law School Dean Richard A. Matasar (May 12, 2003) (on file with author)).

47. This description is based on my personal recollections of the meeting with the Chief Justice.

48. PERLIN, *supra* note 19, at 85. On the significance of counsel in such cases, see Perlin, *Global*

As part of our live seminars in Managua, we began to work with section members—practitioners, judges, mental health professionals, advocates—

more intensively on legal issues in the course that were felt to be the most important to [Nicaraguan participants]; 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.⁴⁹

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, which was attended by many members of the section, and then we participated in a panel discussion at the same meeting along with two section members.⁵⁰ Later, Professor 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.”⁵¹ 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.

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. Each State in the region clearly 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

Education, *supra* note 44.

49. See Perlin, *Internet-Based MDL Program*, *supra* note 12, at 452.

50. *Id.* at 452-53.

51. *Id.* at 453.

that is most important and appropriate to the needs of participants from each nation.⁵²

V. ASIA

As I indicated above, we have taught sections of two of our courses in Japan.⁵³ Like the course in Nicaragua, these courses included lawyers and mental health professionals, and also journalists and academics (both in law and in social welfare). We have also done extensive work in China with the American Bar Association's Rule of Law-Asia office where, in conjunction with the All China Lawyers' Association and the Northwest University of Politics and Law, we conducted "Training the Trainers" workshops in Xi'an, China to teach experienced death penalty defense lawyers how to train inexperienced lawyers, employing the online distance learning methodologies used in our Online Mental Disability Law curriculum just discussed.⁵⁴ Related to this topic, I have also worked with lawyers and activists in Taiwan "in an effort to create a Pan-Asian mental health advocacy network to be built on the framework of the online courses."⁵⁵

Earlier in this paper, I painted a bleak picture of American legal education in the area of mental disability law. It is far, far bleaker in Asia. Although there is a right to counsel in India,⁵⁶ research has revealed no such right in a range of other Asian nations, including Afghanistan, China, Indonesia, Pakistan, South Korea, Sri Lanka, Thailand, and Vietnam, when a person is faced with involuntary commitment or other mental disability-based detention.⁵⁷ There is no question that one of the most critical aspects of law reform is the presence of dedicated and knowledgeable counsel. Without the assignment of such counsel, meaningful and ameliorative change is almost impossible to achieve.⁵⁸

With this as backdrop, I have been working for the past several years with advocates from Japan and other Pacific Rim nations to create a Disability Rights Tribunal for Asia and the Pacific.⁵⁹ That is the only area of the world that does

52. *Id.*

53. These took place in Tokyo on April 2002 and October 2004 respectively.

54. Perlin, *Implications*, *supra* note 40, at 485-86; *see also The Rule of Law Initiative—Asia News Briefs*, A.B.A., http://apps.americanbar.org/rol/asia/asia_news_briefs.html (last visited Aug. 20, 2011).

55. Perlin, *Internet-Based MDL Program*, *supra* note 12, at 447.

56. The Mental Health Act, 1987, No. 14, Acts of Parliament, 1987 § 91 (India), *available at* <http://nhrc.nic.in/Publications/Disability/annexure3.html>.

57. Perlin, *Global Education*, *supra* note 44, at 251; PERLIN, *supra* note 19, at 161. Of course, many Asian nations have no mental disability law at all. *See* Michael L. Perlin, *The Convention on the Rights of Persons with Disabilities, the Disability Rights Tribunal for Asia and the Pacific, and the Future of Online Legal Education in Chinese Law Schools as a Means of Training Lawyers to Represent Persons with Disabilities*, at 18-19 (N.Y.L. Sch. Legal Stud. Ser. No. 10/11 #16, 2010) [hereinafter Perlin, *DRTAP*].

58. Perlin, *Global Education*, *supra* note 44, at 251-52.

59. *See* Perlin, *DRTAP*, *supra* note 57 at 2-3, 10-12.

not have a regional human rights court and/or commission.⁶⁰ We envision, first, a subregional commission, and then, ultimately, a region-wide court.⁶¹ There are multiple issues that need to be addressed—questions of jurisdiction, selection of judges, scope of remedies, sanctions, reporting mechanisms, status of non-governmental organizations (“NGOs”), and more—but the one that, to me, is the most important is the question of assignment of counsel. Consider the range of questions that need be addressed:

- What constitutes “adequate” counsel?
- Who qualifies as counsel (can law students provide representation)?
- How will counsel be assigned?
- How can there be assurance that counsel will be expert on his/her own nation’s disability rights, law and cultural practices?
- How will counsel be properly trained?
- How will counsel be paid?
- Will counsel be mandatory?⁶²

With all of this in mind, NYLS is currently making plans to create a partnership with the lawyers and advocates working on the creation of this Tribunal to (1) offer an online course (in the relationship between international human rights law and the Tribunal) to lawyers and others in the Asian and Pacific region working on this question, and (2) create an Internet Center on Disability Rights in Asia. The course would be a modification of the *International Human Rights* course offered regularly through the online program that I am discussing here, with a focus on the issues that I cover in the ongoing Project-Based Learning course that deals with the Tribunal creation. The Center would serve as a clearinghouse for cases, scholarship, advocacy postings and the like, and would include web pages with discussion boards and the option of creating chat rooms

60. *See id.* at 2.

61. *See, e.g.*, Perlin, *DRTAP*, *supra* note 57, at 2-3; PERLIN, *supra* note 19, at 169-203; Michael L. Perlin & Yoshikazu Ikehara, *Creation of a Disability Rights Tribunal for Asia and the Pacific: Its Impact on China?*, at 2 (N.Y.L. Sch. Legal Stud. Ser. No. 10/11 #19, 2010) [hereinafter Perlin & Ikehara, *China Impact*]; Michael L. Perlin & Yoshikazu Ikehara, *Promoting Social Change in East Asia: The Movement to Create a Disability Rights Tribunal and the Promise of International Online, Distance Learning*, at 11 (N.Y.L. Sch. Legal Stud. Ser. No. 10/11 #17, 2010).

62. Students in my Project-Based Learning class that focuses on this Tribunal have addressed each of these questions, and have prepared a series of “white papers” that will be part of the Tribunal’s blueprint. *See* Michael L. Perlin, *Promoting Social Change in Asia and the Pacific: The Need for a Disability Rights Tribunal to Give Life to the Convention on the Rights of Persons with Disabilities*, available at http://works.bepress.com/michael_perlin/4.

(modeled after our online course format) so that lawyers and advocates throughout this region would have a virtual homeplace dedicated to these issues.⁶³

These latter initiatives are still at the formative stage. I sketched out their contours with colleagues at a conference held at the Asia-Pacific Center for Disability in Bangkok, Thailand (co-sponsored by U.N. ESCAP) this past October,⁶⁴ and we hope to have the course launched by early 2012. I regularly tell colleagues that, if we are successful in the creation of this Tribunal, it will be the most important accomplishment of my professional career. And I believe that, if we are able to offer this course and create this Center, we will have taken another major step towards that creation.

VI. CONCLUSION

Writing in the most recent issue of the New York State Bar Association Journal, Rick Matasar concluded his article with these thoughts: “The years ahead suggest that law schools and firms must change or die. We are colleagues whose futures are inextricably tied to each other. Schools exist to train lawyers. Lawyers exist to serve clients and the public. Our economic success is bound to the fulfillment of those functions.”⁶⁵

These are strong and ominous and challenging words. I agree completely. And I also believe that, if we take seriously and embrace online, distance learning, we will make one of those inevitably necessary changes. Even more: if we do make this change, we can find that it leads to authentic and ameliorative social change at home and around the world. And I think that is a very good thing.

63. See Perlin, *DRTAP*, *supra* note 57 at 18; Perlin & Ikehara, *China Impact*, *supra* note 61, at 15-16; Yoshikazu Ikehara, *What is the DRTAP Project and its Future?*, <http://disabilityandlaw.web.fc2.com/loads/DRTAP22Oct2010Ikehara1.ppt> (last visited Aug. 20, 2011). This Center will be created in late 2011-early 2012 via a grant from the Toyota Foundation.

64. See *Conference Bangkok*, DRTAP: DISABILITY RTS. TRIBUNAL IN ASIA-PACIFIC, http://disabilityandlaw.web.fc2.com/conference_bangkok.html (last visited Aug. 20, 2011) (presenting the conference program); Michael L. Perlin, *The Need for a Regional Disability Rights Tribunal in Asia: What Can We Learn from the Inter-American Experience?*, <http://disabilityandlaw.web.fc2.com/loads/DRTAP22 Oct2010 Perlin.ppt> (last visited Aug. 20, 2011).

65. Matasar, *supra* note 2, at 26.