



Paul Steven Miller

Legends of the Legal Academy

Paul Steven Miller: A Life of Influence

Michael Waterstone

Introduction

Though too brief, there is no doubt that Paul Miller's was a life well lived. Before he entered the academy, Paul already had a distinguished career in private practice, public interest litigation, and government service. Paul started his career as a litigation associate with a law firm then known as Manatt, Phelps, Phillips & Kantor. He next became the director of litigation for the Western Law Center for Disability Rights (now the Disability Rights Legal Center). After working on President Clinton's transition team, Paul was eventually appointed to be a commissioner of the Equal Employment Opportunity Commission, where he served for ten years. Paul then entered full time teaching at the University of Washington School of Law, where he became the Henry M. Jackson Professor of Law. In 2009, Paul again returned to public service, being appointed as a special assistant to President Barack Obama, with responsibility for managing political appointments at the U.S. Department of Justice and other positions in the new administration.

But reciting Paul's CV does not tell nearly half the story. Born with the genetic condition achondroplasia (a type of dwarfism), Paul's entry into the legal profession was greeted with outright discrimination. As explained in *No Pity*, Joe Shapiro's seminal text on the disability rights movement:

[Paul Miller] graduated near the top of his Harvard Law School class in 1986. While his classmates quickly snared prestigious jobs, he was rejected by each of the more than forty law firms where he interviewed. Finally, an attorney in a Philadelphia firm explained that, although the partners were impressed with

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his credentials, they feared their clients might see Miller in the office hallway “and think we’re running some sort of circus freak show.”¹

Yet as was evident to everyone that knew him, Paul turned every obstacle into an opportunity and carried no grudges. He retained a fundamentally positive outlook on life. In his own words:

Years later, when I was a commissioner of the EEOC, those same law firms who had no interest in even considering me for a second interview would court and fawn over me. I never felt any bitterness toward those firms; rather, I liked to think that the ADA [Americans with Disabilities Act] educated them about the disability experience and oppression.²

Paul’s positivity was not naiveté. He realized that even with laws like the ADA, discrimination, stigma, and diminished expectations for people with disabilities were very much a real phenomenon. And he had little patience for decision-making from on high about disability policy without participation by people with disabilities. But Paul managed to be an advocate, intense scholar and public servant while remaining fundamentally optimistic about people and life.

Paul’s many friends, colleagues, and students were drawn to this sense of joy. With Paul taken too early from us, we are left with memories and the influence he had on our lives. For academics, a common discussion point is the influence we leave in terms of our scholarship, teaching and service. For Paul, these categories are too limiting—we need a larger frame. In the balance of this tribute, I will discuss Paul’s influence on his students, his impact on his colleagues and institutions he worked in, and the legacy of his scholarship and service on disability law and policy.

Influence on Students

Like most good teachers, Paul loved this part of his job and was constantly preoccupied with how he could be better at it. Paul’s students, recognizing the unique figure they had in their midst, made the most of their relationships with him. Their recollections are a fitting tribute to the legacy he left behind.

Adam Engst discusses an important aspect of Paul as a teacher: the extent to which he used compassion and his life experience to be a mentor (and even inspiration, although he would detest those terms) to all students, but particularly students with disabilities.

1. JOSEPH P. SHAPIRO, *NO PITY: PEOPLE WITH DISABILITIES FORGING A NEW CIVIL RIGHTS MOVEMENT* 28 (1994).
2. Paul Steven Miller, *Dear Rising Lawyer with a Disability*, 165 *LAWYERS, LEAD ON: LAWYERS WITH DISABILITIES SHARE THEIR INSIGHTS* (Rebecca S. Williford, Carrie A. Basas & Stephanie L. Enyart, eds., 2012).

I first heard of Professor Miller when I was researching law school. Professor Miller and I both have achondroplasia, which is the most common form of dwarfism, but it is still extremely rare (about 1 in 20,000). I remember reading about Professor Miller's work on the Americans with Disabilities Act, as an EEOC commissioner, and his work in the Clinton and (later) the Obama Administrations. As a bright-eyed law student, I felt I had to reach out to this incredible man. So, I did what everyone my age does: I googled him. It turned out that he was teaching law at the University of Washington, where I was an undergraduate student. It had to be fate, I thought.

Unfortunately, I did not get to have Professor Miller as a law professor. By the time my 1L year started, Professor Miller's cancer was back. Even though I can't tell you what it was like to have him as a professor, I want to express the admiration I had for this man. Although I generally think of my dwarfism as an advantage, it certainly has its challenges, but Professor Miller achieved greatness anyway. As someone who was flying back and forth between coasts to teach law and counsel a president, he had a quiet confidence with none of the arrogance that he would have been entitled to.³

What we teach students, and the way we model behavior, goes outside the classroom. A former research assistant, Rebecca Levine, discusses how Paul consistently demonstrated his characteristic good humor, even in difficult times, and modeled friendship and love of family:

I had the honor and privilege of serving as Professor Miller's research assistant during summer 2010, the summer before he passed away. Indeed, he worked enthusiastically until his final days. Because I knew Professor Miller for less than one year, I asked myself why I felt such a deep loss upon learning of his death. His long list of political and personal triumphs? Well, I am of the privileged generation that does not know what it is like to live in a society without the ADA or GINA [Genetic Information Nondiscrimination Act]. Our shared East Coast Jewish sarcastic sense of humor, or knowing that he would have had a heyday seeing his obituary published on the same page as that of the founder of *Penthouse Magazine*? Although I placed a high value on these traits, I know that the reason I felt such a loss was that Professor Miller placed family and friendship above all other aspects of his life.

On the holiday of Passover, he opened his home to all of the Jewish law students for a potluck seder, where we each received a bowl of plastic plagues and Professor Miller read different versions of the Passover story that members of his daughter's class had written, many of which none of us had ever heard before.

3. E-mail from Adam Engst to author (May 12, 2015, 2:33PM)(on file with author).

In one of our meetings, he spent the first half of the meeting telling me how much his daughter Delia enjoyed having her face painted, and he proudly displayed her photo on his computer wallpaper. I could never figure out his music tastes because one time I would come into his office to hear jazz, the next time would be rap, and the next time would be his daughter Naomi's music mix. We would plan our meetings so that he could pick up the girls from summer camp, attend an activity with them, or stop by the video store to pick up the movie *Help* for their Beatles-themed movie night. He was a man full of pride, not merely for his work single-handedly changing the United States, but for his beautiful family and the times that they shared together.

Professor Miller treated his students, his colleagues, and his friends as members of his family. He reached out to people, bought them coffee or lunch, and listened to their points of view. His primary goal in engaging with students always seemed to be sharing his expertise to empower students to shape the future, although he did not shy away from bragging to me that he had more Facebook friends than I.⁴

Impact on Colleagues and Institutions

As someone who knew how to work with people, and indeed loved doing so, Paul was the consummate colleague. Again, I choose here to use their own words to describe Paul's impact on the institutions he served and the people he worked with.

Dean Kellye Testy of the University of Washington Law School comments on Paul's moral compass and ability to bring people together:

[Paul] was such a good advisor because of his keen understanding of how institutions work and how to support the dean's role. I think his experience in government gave him insight into supporting a leader in a way that many people in education do not have. He made us better in so many ways—some were very much behind the scenes, and it may be those I miss the most. I also feel his presence daily, too, in that he helped to craft our mission and vision statement as “Leaders for the Global Common Good”—and it is serving us very well.⁵

Another colleague at the University of Washington Law School, Professor Anna Mastroianni, offers an account of what it was like to be Paul's colleague and friend:

How often is the colleague right next door such a dear friend? Having colleagues as friends may not be so unusual, but proximity meant that there were fewer boundaries between us. Between our friendship and mutual interests in genetics and the law, we saw each other at the law school in between our bouts of intensive travel. Paul would alternately blame or thank

4. Email from Rebecca Levine to author (May 11, 2014, 10:07PM)(on file with author).

5. Email from Kellye Testy to author (May 6, 2014, 4:48PM)(on file with author).

me for moving his family across the country to Seattle, but I was always happy to have him so close by.

Here's another contradiction that occurred to me. How could it be that such a subtle and skillfully diplomatic advocate was so darn loud? I always admired Paul's ability to sit in a faculty meeting, punching the keys of his Blackberry while also listening intently, staying removed from the debate until the last moment when he would invariably present a practical solution that satisfied everyone. That's subtle and diplomatic advocacy. Then we'd return to our offices where immediately I'd be treated again to his booming voice and pulsing jazz recordings. That's loud!⁶

Professor Mastroianni also commented on another defining aspect of his personality that all who knew him recognize: his commitment to social justice. As she explains:

I can think of many words to describe him but none really suffice. He was patient...but also infuriatingly impatient. He was patient in that day-by-day he would fight the small battles for disability rights—a Seattle parking lot that failed to have spaces designated for disabled visitors. His refusal to lunch at places lacking access for patrons with disabilities. If he experienced a barrier or even perceived an injustice, he did not shrink from the fight. He addressed it no matter how small and no matter how much time it took. As he told me, he believed that he had a duty to use his privileged position to give voice to those who were denied a voice.⁷

Anne Bloom, a professor at McGeorge Law School who was a friend and co-author, comments on what many felt around Paul—how he would push the boundaries of our own thinking, challenging our scholarship to new and improved directions—but also with his distinctive sense of humor:

I don't remember exactly how it happened but one night during an AALS conference in San Francisco, Paul and I ended up at the Starlight Room in the Sir Francis Drake Hotel on what appeared to be Latin Tranny night. As we stood at the door and contemplated the scene inside, I hesitated. Paul, however, was utterly undaunted. He marched across the floor to a table and promptly ordered a round of martinis.

Perhaps it was the setting, but that night we began the first of many conversations on bodily differences. I had been using feminist and queer theories to analyze the breast implant litigation and surgical practices on intersex infants. Paul had been writing about normalizing surgeries on children with disabilities. We found common ground in our shared concern about the growing role of medical experts in diagnosing and erasing bodily differences. As torts professors, we couldn't help but note how tort law subtly

6. Anna C. Mastroianni, Eulogy at Memorial Service for Paul Steven Miller (Oct. 20, 2010).

7. *Id.*

encouraged these practices, in part through its assumption that plaintiffs with disabilities needed to be “made whole.”

I’m not sure we got very far with our thinking that night but, in a series of subsequent conversations, we began to re-imagine tort law as a place where people with bodily differences could become empowered to be and feel “whole,” with or without medical intervention. Paul died before we could complete the project but I eventually finished the article on my own. And, in a nod to that night in the Starlight Room, I included a quote from transgender activist Ricki Ann Wilchins: “What kind of system bids us each to make of our bodies a problem to be solved...?”⁸

Unfortunately, the legal academy, like the larger legal profession, has not been a particularly welcoming place for professors with disabilities.⁹ There are few legal academics with visible disabilities.¹⁰ Professor Michael Stein, of Harvard Law School and William and Mary College of Law, describes Paul as “a law school contemporary, and, as one of the few other persons with a visible disability in the legal academy, someone with whom he could share confidences.”¹¹ Demonstrating Paul’s sarcasm and humor, Professor Stein writes:

When [I] became the first person with a visible disability to become a member of the *Harvard Law Review*, Paul had just graduated law school but took the time to telephone. “Congratulations on breaking a hundred-year barrier,” he said, “now how the hell are you going to get up the stairs?” [Our] too-often repeated joke as a dwarf and a wheelchair-user was that [we] “saw eye to eye” on various matters.¹²

Finally, Chai Feldblum, an EEOC commissioner (and one of the architects of the ADA) comments on the importance of Paul’s friendship and professional influence:

Paul Miller and I always seemed to find each other at the AALS mega-receptions. There were always hundreds of people milling around—and yet one short person (me) and one little person (Paul) always seemed to find each other. It’s almost as if we each desperately needed a shot of low-brow,

8. E-mail from Anne Bloom to author (June 19, 2014, 6:29PM)(on file with author).
9. See Leslie Francis & Anita Silvers, *No Disability Standpoint Here!: Law School Faculties and the Invisibility Problem*, 69 U. PITT. L. REV. 499 (2008).
10. In recent years, two tenured law professors have been public about their schizophrenia and manic-depression, respectively. See ELYN SAKS, *THE CENTER CANNOT HOLD: MY JOURNEY THROUGH MADNESS* (2007); see also James T. R. Jones, *Walking the Tightrope of Bipolar Disorder: The Secret Life of a Law Professor*, 57 J. LEGAL EDUC. 349 (2007).
11. Michael E. Waterstone & Michael Ashley Stein, *A Tribute to Paul Miller: A Beloved Friend and Colleague*, 706 WASH. L. REV. 706, 706 (2011).
12. *Id.*

practical, political, non-theoretical talk and gossip at the end of an AALS day—and we found that in each other. In spades!

Paul was funny, sharp and sassy. He had a clear vision of what he wanted to accomplish—both in his professional life and in personal life—and he went for that with gusto. I had met Paul a few times while he was a commissioner at the EEOC and I was struck by his focus and determination regarding disability rights and genetic non-discrimination protection. Once I became an EEOC commissioner myself, I learned much more about what Paul had tried to do inside the agency as a commissioner—and some of the changes he actually managed to help bring about.

The last time I saw Paul, he told me he was going to give me six more months on the Commission and then we would sit down for our “real” talk about the Commission. We never got to have that talk. I miss that. Paul would have been funny, sharp, and sassy—and he would have helped me. As he helped so many people in his lifetime. A lifetime that was way too short.¹³

Paul’s influence on people and institutions will be missed.

Scholarly Impact

Finally, I would like to comment on the legacy of Paul’s scholarly contributions to both disability law and policy.¹⁴ Even as a law student, Paul’s writings impacted our field. Paul’s law school note, “Coming Up Short: Employment Discrimination Against Little People,”¹⁵ was prescient in noting the lack of protections against discrimination for dwarfs, as well as other categories of people with disabilities, in the workplace. Paul’s arguments about the need to consider disability through the lens of social stigma would come to fruition four years later in the passage of the ADA, and Paul’s persuasive explanation about the limited and patchwork nature of existing legislation was instrumental in the Act’s passage.

A decade later, while a commissioner at the EEOC, Paul wrote “The Americans with Disabilities Act in Texas: The EEOC’s Continuing Efforts in Enforcement.”¹⁶ Written seven years after the ADA’s passage, that article offered a spirited defense of the ADA’s employment provisions from attacks that the ADA had been ineffective in increasing the employment of individuals with disabilities, from assertions that ADA compliance was expensive and resisted by employers, and from claims that the ADA was not helping individuals

13. E-mail from Chai Feldblum to author (May 30, 2014, 5:43PM)(on file with author).

14. Portions of this section are drawn from the tribute I co-authored with Michael Stein in the *WASH. L. REV.*, *supra* note 11.

15. Paul Steven Miller, *Coming Up Short: Employment Discrimination Against Little People*, 22 *HARV. C.R.-C.L. L. REV.* 231 (1987).

16. Paul Steven Miller, *The Americans with Disabilities Act in Texas: The EEOC’s Continuing Efforts in Enforcement*, 34 *HOUS. L. REV.* 777 (1997).

with “genuine” disabilities. Drawing first hand on his EEOC experience, Paul presented a compelling (and necessary) account to these critiques, demonstrating that the ADA had increased employment levels, had been accepted by some in the employment community who realized that compliance costs were minimal, and that accounts of ADA abuse were overblown by the media. Although the article could not put to rest any of these debates, Paul’s early contributions defending the ADA provided an important starting place upon which other advocates would build. Paul’s account of the nature of the ADA and the necessity for its public enforcement also provided an important foundation upon which I and others would base future work.¹⁷

Paul was also at the forefront of the issue of genetic discrimination. Along with other writings, Paul wrote “Genetic Discrimination: Does It Exist, and What Are Its Implications?” as part of a symposium on genetic discrimination in the *Journal of Law and Health* in 2002.¹⁸ In this article, Paul noted the need for society, the EEOC, and industry to be in front of the curve on this issue, both because genetic discrimination is fundamentally wrong and because of the link between potential discrimination and health insurance and employment. In this way, Paul was prescient. As Chai Feldblum has noted, “Paul was particularly important as a leader in the newly emerging field of genetic discrimination. His early writings in the field, as well as the leadership he took within the Commission on the issue, laid the groundwork for what would ultimately become the Genetic Nondiscrimination Act of 2008.”¹⁹

One of Paul’s last articles was in this *Journal*, reviewing Professor Ruth Colker’s book *The Disability Pendulum: The First Decade of the Americans with Disabilities Act*.²⁰ Now a full-time academic, Paul was ideally situated to comment on Professor Colker’s analysis. Paul noted two important themes that are underdeveloped, yet crucially important, in disability law. First, the broad-based political advocacy that helped the ADA become law (of which Paul himself had been a part):

[T]housands of disabled people of all types of impairments, backgrounds, and experiences came together from across the country to advocate and lobby for the ADA . . . These activists motivated Congress to act, even though their movement was largely invisible outside of their advocacy before the Congress, and, in many respects, the movement remains largely invisible today.²¹

17. See, e.g., Michael Ashley Stein, *Same Struggle, Different Difference: ADA Accommodations as Antidiscrimination*, 153 U. PA. L. REV. 579 (2004); Michael Waterstone, *A New Vision of Public Enforcement*, 92 MINN. L. REV. 434 (2007).

18. Paul Steven Miller, *Genetic Discrimination: Does It Exist, and What Are Its Implications?* 16 J.L. & HEALTH 39 (2001-02).

19. Chai Feldblum, *Following in Paul Miller’s (Very Large) Footsteps*, 86 WASH. L. REV. 702, 702 (2011).

20. Paul Steven Miller, review of Ruth Colker, *THE DISABILITY PENDULUM: THE FIRST DECADE OF THE AMERICANS WITH DISABILITIES ACT*, 57 J. LEGAL EDUC. 619 (2007).

21. *Id.* at 621.

Second, Paul highlighted the lack of public education and outreach on behalf of people with disabilities, in contrast to predecessor civil rights movements.²² These are both important insights which, unfortunately, will have to be carried forward by other scholars.

But as an academic, Paul was never content to just write articles. Using the force of his personality, Paul brought people together to accomplish more than they could individually. In 2008, Paul secured funding from various sources to host a symposium on “Framing Legal and Human Rights Strategies for Change: A Case Study of Disability Rights in Asia.” Symposiums in the academy are not unusual. But, as all who attended will recall, this was a unique and special event. Apart from high level academics, Paul brought together politicians, policymakers, and advocates to discuss emerging international principles of human rights for people with disabilities. The resulting papers from this symposium have had influence on the development of a human rights framework within disability law.²³ In his keynote, Dick Thornburgh, former Attorney General of the United States and Under-Secretary-General of the United Nations Counsel (and a staunch and consistent supporter of disability rights), acknowledged the efforts of his longtime friend Paul Miller “for bringing together so many of those who are at the front lines of this important undertaking.”²⁴ There were participants from over eight countries, and following the formal event, Paul had the insight to convene an advocacy meeting to discuss strategies to support ratification of the UN Convention on the Rights of People with Disabilities. I had the honor of moderating that discussion, and some of the principles that were discussed and vetted in that discussion provided part of the intellectual underpinnings for the ongoing political movement to secure the signature of the United States to and ratification of the UN Convention. None of this would have happened without Paul.

Conclusion

I was very lucky to get to know Paul. We entered the profession at the same time, and he was kind enough to pretend he was a “newbie” like me, despite his long and distinguished pre-academy career. I spoke with Paul often about the articles I was writing, and he always brought both real-world insight and bigger picture challenges to our dialogues. Mostly, though, I appreciated his friendship. Paul never took life too seriously; in an often intense profession, spending time with Paul was always enjoyable and fun.

22. *Id.* at 623-25.

23. See, e.g., Ani Satz, *Disability, Vulnerability, and the Limits of Antidiscrimination Law*, 83 WASH. L. REV. 513 (2008).

24. Remarks of Dick Thornburgh, available at <https://digital.law.washington.edu/dspace-law/bitstream/handle/1773.1/243/Thornburgh%201409.pdf?sequence=1> (last visited June 25, 2014).

Paul's professional life was meaningful and consequential in many ways, and the academy was lucky to count him as one of its members. Students and colleagues will miss his friendship and insights. Institutions, and even fields of law, are better off for his contributions. Rest in peace, Professor Miller.