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*A Tribute to Paul Miller: A Beloved Friend and Colleague*

Michael E. Waterstone\* &amp; Michael Ashley Stein\*\*

We mourn the loss of our friend and colleague, Paul Steven Miller. Paul served different roles in our lives. To one of us, he was a mentor and source of comfort and inspiration to someone finding his way in a new career (law teaching) and new field (disability law).<sup>1</sup> To the other, he was 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.<sup>2</sup> To both of us—and countless others—Paul was a friend: someone we could turn to for discussions about life and law. And as both a scholar and advocate, Paul was a visionary in our field.

There are stories to be told about Paul as a law student and young attorney with a disability facing systemic discrimination in the legal profession,<sup>3</sup> and as a beloved teacher; and as a public servant who reached the highest levels of government in two different administrations.<sup>4</sup> While we hope these stories are celebrated elsewhere, we write here to pay tribute to Paul's contributions as a scholar to the field of disability law, and in particular to the passage and implementation of the Americans with Disabilities Act (ADA).<sup>5</sup> We

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1. Michael Waterstone will always remember arranging coffee with Paul at the first conference of the American Association of Law Schools they both attended. Although Paul already had a distinguished career in public interest law and at the Equal Employment Opportunity Commission (EEOC) by that point, he was entering the next phase of his career as a law professor. He had the good humor to entertain Professor Waterstone's naïveté as to the field, and the humility to play the role that they were commensurate "rookie" law professors "in this together."

2. When Michael Stein 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?" Their too-often repeated joke as a dwarf and a wheelchair-user was that they "saw eye to eye" on various matters.

3. See JOSEPH SHAPIRO, NO PITY: PEOPLE WITH DISABILITIES FORGING A NEW CIVIL RIGHTS MOVEMENT 28 (1994) (detailing Paul's experiences after graduating from Harvard Law School).

4. Paul served as an EEOC Commissioner in the Clinton Administration and as a special assistant to President Barack Obama, with responsibility for managing political appointments at the U.S. Department of Justice.

5. Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (codified at 42 U.S.C. §§ 12101–12213). Paul was also a leader in the field of genetic discrimination and an early advocate for the need for federal legislation, which eventually culminated in the passage of the

highlight three articles that Paul wrote at different stages in his career, each important in its own way.

Paul's law school note, *Coming Up Short: Employment Discrimination Against Little People*,<sup>6</sup> written in 1987, 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.

While a Commissioner at the Equal Employment Opportunity Commission (EEOC), Paul wrote *The Americans with Disabilities Act in Texas: The EEOC's Continuing Efforts in Enforcement*.<sup>7</sup> 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 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 both of us would base future work.<sup>8</sup>

One of Paul's last articles was in the *Journal of Legal Education* (sent

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Genetic Information Non-Discrimination Act of 2008, Pub. L. No. 110-233, 122 Stat. 881. For Paul's work in this area, see, for example, Paul Steven Miller, *Genetic Discrimination: Does It Exist, and What Are Its Implications?*, 16 J.L. & HEALTH 39 (2002); Paul Steven Miller, *Genetic Testing and the Future of Disability Insurance, Thinking About Discrimination in the Genetic Age*, 35 J.L. MED. & ETHICS 47 (2007); Paul Steven Miller, *Is There a Pink Slip in My Genes? Genetic Discrimination in the Workplace*, 3 J. HEALTH CARE L. & POL'Y 225 (2000).

6. 22 HARV. C.R.-C.L. L. REV. 231 (1987).

7. 34 HOUSTON L. REV. 777 (1997).

8. See 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).

out to all law professors in the United States), reviewing Professor Ruth Colker's book *The Disability Pendulum: The First Decade of the Americans with Disabilities Act*.<sup>9</sup> 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 (which Paul himself had been a part of):

[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.<sup>10</sup>

Second, Paul highlighted the lack of public education and outreach on behalf of people with disabilities, in contrast to predecessor civil rights movements.<sup>11</sup> These are both important insights which, unfortunately, will have to be picked up and carried forward by other scholars.

No essay of this type could adequately present the richness and depth of Paul's contributions as a scholar. Nor could we adequately convey how much we miss him as a friend and colleague. Paul worked hard to make the world a better place for those around him, and did it with *joie de vivre* and good humor that made him a delight to be with. The scholarly community and world are grateful for the life that he led.

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9. Paul Steven Miller, Book Review, 57 J. LEGAL EDUC. 619 (2007).

10. *Id.* at 621.

11. *Id.* at 623–25.