

Tentative Syllabus

Disability and Discrimination

Spring 2006

Professor Ani B. Satz

Seminar Description

This seminar will examine disability and discrimination through legal and philosophical lenses. We will read the Americans with Disabilities Act of 1990 (“ADA”) and supporting regulations, federal cases construing the Act, and secondary legal literature about the ADA, focusing on Title I (Employment). In addition, we will read narratives of persons living with disabilities and analyze philosophical works about disability.

The seminar is divided into nine topics; I estimate that we will spend ten to eleven weeks on the topics and three to four weeks on class presentations. We will spend more than one week on some topics and may not address all of the topics listed. Please do not read more than one topic ahead of time, as readings are subject to change. There will be no assignments or work due during reading week, and the seminar will not meet during that time.

Assigned Texts

THE LAW OF DISABILITY DISCRIMINATION HANDBOOK: STATUTES AND REGULATORY GUIDANCE (Ruth Colker, Adam Milani, & Bonnie Poitras Tucker eds., 4th ed. 2003). (required)

LESLIE PICKERING FRANCIS & ANITA SILVERS, AMERICANS WITH DISABILITIES: EXPLORING IMPLICATIONS OF THE LAW FOR INDIVIDUALS AND INSTITUTIONS (2000). [AWD] (required)

Photocopied Materials (required)

EVA FEDER KITTAY, LOVE’S LABOR: ESSAYS ON WOMEN, EQUALITY, AND DEPENDENCY (1999). (optional)

ANITA SILVERS, DAVID WASSERMAN, & MARY B. MAHOWALD, DISABILITY, DIFFERENCE, DISCRIMINATION (1998). (optional)

EUGENE VOLOKH, ACADEMIC LEGAL WRITING: LAW REVIEWS ARTICLES, STUDENT NOTES, SEMINAR PAPERS, AND GETTING ON LAW REVIEW (2d ed. 2005). (on reserve and recommended)

Contact Information

My office is Room G527. My office telephone number is (404) 712-9505, and my email address is asatz@law.emory.edu. Marianne D’Souza is my administrative assistance. She may be reached at (404) 712-4558, mdsouza@law.emory.edu, or in Room G568. You may stop by my office anytime to see if I am available, though my official office hours are Tuesdays and Thursdays from 3:30-5:00 and Wednesdays from 2:00-4:00.

Expectations

I take class attendance very seriously, and it is required, absent compelling reason. Should your attendance become a problem, I will discuss future attendance with you and what penalty will be imposed if your attendance does not improve.

Assessment

Your assessment will be based on a research paper (60%), an oral presentation on your research (20%), and class participation (20%).

In order to fulfill the Emory writing requirement, your paper should be thirty to thirty-five pages, double-spaced, and follow the formatting and other requirements discussed at <http://www.law.emory.edu/cms/site/index.php?id=660>. (If you have already fulfilled the writing requirement and would prefer to write several, shorter papers, please come speak to me.) Paper topics are due February 22. I will meet with each of you briefly to discuss your paper topic. An annotated outline of no longer than five pages is due March 8. Writing workshops on your papers will be held the week of March 22. Paper topics and outlines should be turned in at the beginning of class on the day they are due. Your oral presentations should be approximately twenty-five minutes, including a ten to fifteen minute discussion period. The final paper is due the last day of the exam period, that is, May 5, by 5.00 p.m.

Topics

Topic One: General Definitions and Conceptions of Disability

- ADA, Title I: 42 U.S.C. §§ 12102(2), 12111(8), 12114, CFR §§ 1630.2(g)-(m), 1630.3. [review]
- Kurt Vonnegut, *Harrison Bergeron*, in *WELCOME TO THE MONKEY HOUSE* 7-14 (1968).
- *Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184 (2002).
- Stanley S. Herr, *Questioning the Questionnaires: Bar Admissions and Candidates with Disabilities*, 42 VILL. L. REV. 635 (1997), ONLY sections III and V(A).
- Ron Amundson, *Biological Normality and the ADA*, in *AWD* 102-10 (2000).
- Anita Silvers, *Formal Justice*, in *DISABILITY, DIFFERENCE, DISCRIMINATION* 59-85, 94-95 (1998) (excerpts about social and medical models of disability).

Topic Two: Mitigation of Disability

- Case excerpts. *Sutton v. United Airlines, Inc.*, 527 U.S. 471(1999), *Albertsons v. Kirkingburg*, 527 U.S. 555 (1999), *Murphy v. UPS*, 527 U.S. 516 (1999).
- Stephen Kuusisto, *Life Without Mozart*, in *VOICES FROM THE EDGE: NARRATIVES ABOUT THE AMERICANS WITH DISABILITIES ACT* 81-95 (2004).
- Susan Wendell, *Unhealthy Disabled: Treating Chronic Illnesses as Disabilities*, 16 *HYPATIA* 17 (FALL 2001), excerpts.
- Wendy E. Parmet, *Plain Meaning and Mitigating Measures: Judicial Interpretations of the Meaning of Disability*, 21 *BERKELEY J. EMP. & LAB. L.* 53 (2000), excerpts.
- Lawrence D. Rosenthal, *Requiring Individuals to Use Mitigating Measures in Reasonable Accommodation Cases After the Sutton Trilogy: Putting the Breaks on a Potential Runaway Train*, 54 *S.C. L. REV.* 421 (2002), excerpts.

Topic Three: Reasonable Accommodation

General

- ADA, 42 U.S.C. § 12111(9); CFR § 1630.9; ADA Title I EEOC Interpretive Guidance, §§ 1630.2(o), 1630.9.
- Case excerpts. *U.S. Airways, Inc. v. Barnette*, 535 U.S. 391 (2002) (Title I), *PGA Tour, Inc. v. Martin*, 532 U.S. 661 (2001) (Title III – reasonable modifications).
- Michael Ashley Stein, *The Law and Economics of Disability Accommodations*, 53 DUKE L. J. 79 (2003), excerpts.

Interactive Process

- ADA Title I EEOC Interpretive Guidance, § 1630.9.
- Case excerpts. *Skerski v. Time Warner Cable Co.*, 257 F.3d 273 (3d Cir. 2001), *Taylor v. Phoenixville Sch. Dist.*, 184 F.3d 296 (3d Cir. 1999).
- Alysa M. Barancik, *Determining Reasonable Accommodations Under the ADA: Why Courts Should Require Employers to Participate in an “Interactive Process,”* 30 LOY. U. CHI. L. J. 513 (1999).

Undue Hardship

- ADA, 42 U.S.C. § 12111(10); CFR §§ 1630.2(p), 1630.9(a), 1630.15(d); ADA Title I EEOC Interpretive Guidance, § 1630.2(p).
- Steven B. Epstein, *In Search of a Bright Line: Determining When an Employer’s Financial Hardship Becomes “Undue” Under the Americans with Disabilities Act*, 48 VAND. L. REV. 391 (1995).
- Elizabeth A. Pendo, *Disability, Doctors and Dollars: Distinguishing the Three Faces of Reasonable Accommodation*, 35 U.C. DAVIS L. REV. 1175 (2002).

Direct Threat

- ADA, 42 U.S.C. §§ 12111(3), 12113(b), CFR § 1630.15(b)(2), ADA Title I EEOC Interpretive Guidance, § 1630.2(r).
- Case excerpts. *Bragdon v. Abbott*, 524 U.S. 624 (1998), *Chevron U.S.A., Inc. v. Echazabal*, 536 U.S. 73 (2002).
- Ann Hubbard, *Understanding and Implementing the ADA’s Direct Threat Defense*, 95 NW. U. L. REV. 1279 (2001).

Topic Four: Disability and Health Care Justice

- Harriet McBryde Johnson, *Unspeakable Conversations*, N.Y. TIMES, Feb. 16, 2003 § 6 (Magazine), at 50.
- Dan W. Brock, *Health Care Prioritization and Discrimination Against Persons with Disabilities*, in AWD, at 223-45.
- David Orentlicher, *Utility, Equality and Health Care Needs of Persons with Disabilities: Interpreting the ADA’s Requirement of Reasonable Accommodations*, in AWD, at 236-43.
- Norman Daniels, *Mental Disabilities, Equal Opportunity and the ADA*, in AWD, at 255-68.
- Selected Readings on the ADA and Health Insurance (including excerpts from the EEOC Compliance Manual (2003); *Krauel v. Iowa Methodist Medical Center*, 95 F.3d 674 (8th Cir. 1996)).

Topic Five: Rights and Interests of Family Members as Caretakers of the Disabled

- EVA FEDER KITTAY, *LOVE'S LABOR: ESSAYS ON WOMEN, EQUALITY, AND DEPENDENCY* (1999), excerpts.
- Martha Albertson Fineman, *Cracking the Foundational Myths: Independence, Autonomy, and Self-Sufficiency*, 8 AM. U.J. GENDER SOC. POL'Y & L. 13 (2000).
- *Bucks County Department of Mental Health v. De Mora*, 379 F.3d 61 (3d Cir. 2004) (compensation under IDEA).

Topic Six: Genetic Disability

Misc.

- Ruth E. Ricker, *Do We Really Want This? Little People of American Inc. Comes to Terms with Genetic Testing: A Project to Study the Ethical and Social Implications of Genetic Screening for the Dwarf and Short Stature Community* (July 1995), available at http://home.earthlink.net/~dkennedy56/dwarfism_genetics.html (last visited Mar. 1, 2005); Little People of America, *Position Statement on Genetic Discoveries in Dwarfism* (Jan. 1996), available at http://home.earthlink.net/~dkennedy56/dwarfism_genetics.html (last visited Mar. 1, 2005).
- Helen Houghton, *Does Prenatal Genetic Diagnosis Discriminate Against the Disabled? A Disabled Person's Viewpoint*, ETHICAL ISSUES IN PRENATAL DIAGNOSIS AND THE TERMINATION OF PREGNANCY 97-101 (John McKie ed., 1994).
- Eva Feder Kittay & Leo Kittay, *On the Expressivity of Ethics of Selective Abortion for Disability: Conversations with My Son*, in PRENATAL TESTING AND DISABILITY RIGHTS 165-95 (Erik Parens & Adrienne Asche eds., 2000).
- Clifton B. Perry, *Is Being a Carrier of a Disability, a Disability?* 11 INT'L J. APPLIED PHIL. 11 (1996).
- Katherine A. Schneider, *Adverse Impact of Predisposition Testing on Major Life Activities: Lessons from BRCA1/2 Testing*, 3 J. HEALTH CARE L. & POL'Y 365 (2000), excerpts.
- Eugenia Liu, *Bragdon v. Abbott: Extending the Americans with Disabilities Act to Asymptomatic Individuals*, 3 J. HEALTH CARE L. & POL'Y 382 (2000).
- Roger Clegg, *Bragdon v. Abbott, Asymptomatic Genetic Conditions, and Antidiscrimination Law: A Conservative Perspective*, 3 J. HEALTH CARE L. & POL'Y 409 (2000), excerpts.

Workplace

- 42 U.S.C. § 12102(2), EEOC Compliance Manual, Order 915.2002 § 902 (1995); 42 U.S.C. § 12112(a), (d), EEOC Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (ADA), available at <http://www.eeoc.gov/policy/docs/qanda-inquiries.html> (last visited Mar. 1, 2005), excerpts.
- LORI B. ANDREWS, MAXWELL H. MEHLMAN, & MARK A. ROTHSTEIN, GENETICS: ETHICS, LAW AND POLICY 679-92, 716-18, 732-33 (2002).
- *Norman-Bloodsaw v. Lawrence Berkeley Laboratory*, 135 F.3d 1260 (9th Cir. 1998).
- Sarah Schafer, *Railroad Agrees to Stop Gene-Testing Workers*, Washington Post, April 19, 2001, available at <http://www.washingtonpost.com> (last visited Mar. 1, 2005); Rebecca Porter, *EEOC Settles First ADA Challenge to Genetic Testing in the Workplace*, 37 TRIAL 104 (July 2001); Condon McGlothlen, *Disability Genetic Testing: Today's Solution or Tomorrow's Nightmare?*

HR REPORTER, Aug. 16, 2002.

- Executive Order 13145: To Prohibit Discrimination in Federal Employment Based on Genetic Information, *available at* <http://www.eeoc.gov/abouteeoc/35th/thelaw/13145.html> (last visited Mar. 1, 2005).
- GA Code. Ann. § 33-54-1 - 8 (2004).

Topic Seven: ADA and State Sovereign Immunity

- ADA Title II: 42 U.S.C. §§ 12131-33.
- *Tennessee v. Lane*, 541 U.S. 509 (2004) (Title II).
- *Goodman v. Georgia*, No. 04-1236, 2006 U.S. LEXIS 759 at *1 (Jan. 10, 2006) (Title II).
- *Bd. of Trs. of the Univ. of Ala. v. Garrett*, 531 U.S. 356 (2001) (Title I).

Topic Eight: Disability Accessibility Audit <activity>

- Title III: 42 U.S.C. §§ 1281, 12812(a)-(b)(2)(A), 12183, 12187-89.

Topic Nine: Conceptions of Disability Revisited

- Claudia Center & Andrew J. Imparato, *Redefining “Disability” Discrimination: A Proposal to Restore Civil Rights Protections for All Workers*, 14 STAN. L. & POL’Y REV. 321 (2003), excerpts.
- Mark A. Rothstein et al, *Using Established Medical Criteria to Define Disability: A Proposal to Amend the Americans with Disabilities Act*, 80 WASH. U. L.Q. 243 (2002), excerpts.
- Samuel R. Bagenstos, *The Future of Disability Law*, 114 YALE L. J. 1 (2004), excerpts.
- Ani B. Satz, *A Jurisprudence of Dysfunction: On the Role of Normal Species Functioning in Disability Analysis*, YALE J. HEALTH POL’Y L. & ETHICS (forthcoming 2006), excerpts.