
FOREWORD

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On October 2, 2020, individuals gathered on Zoom for the annual, but first-ever virtual, Drexel Law Review Symposium. The title of the symposium was *Impactful Interactions: Autism Spectrum Disorder and the Legal System*. “Impactful Interactions” could describe the myriad issues regarding Autism Spectrum Disorder (ASD)¹ and the legal system, the intersectionality implicated in considerations regarding ASD and the legal system, and the symposium itself. When we started planning the symposium, we certainly did not anticipate that it would be held on Zoom due to a global pandemic. However, the virtual nature of the symposium in a way reflects one of the recurring themes of the symposium presentations—and the diverse array of articles in this issue of the *Drexel Law Review*: meaningful access and participation.² Participating in a symposium that was entirely online may not have met the usual expectations, preferences, or needs of some of the panelists or attendees. And there are certain aspects of in-person gatherings that are lost when events move online. However, making the decision to hold a remote symposium enabled it to proceed as scheduled, and facilitated participation by individuals who might not otherwise have been able to attend, even in the absence of restrictions caused by a global pandemic. Of course, participating in an online symposium requires (among other things) access to online technology, and participating in an in-person symposium requires (among other things) the ability to be physically present at the location of the symposium. As we

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1. This term is used by the American Psychiatric Association in the DSM-5 diagnostic manual. This Foreword will use “ASD” or “autism.”

2. Noting that the modality in which a symposium (or other event) occurs raises issues about access and participation is certainly not meant to equate all issues of access and participation.

transition back to in-person gatherings, it is worth considering how different modalities can both facilitate and impede meaningful access and participation, and the steps that can be taken moving forward to re-imagine a more inclusive future for academic conferences and events.

The symposium—and this resulting issue of the law review—also demonstrate that collaboration is generative. The initial idea for this symposium was inspired by my on-going work with the A.J. Drexel Autism Institute, and we appreciate the contributions of Lindsay Shea and Dylan Cooper of the Institute to the symposium. The members of the *Drexel Law Review* and, in particular, the Executive Editor of Symposia Evan Poulgrain and Editor-in-Chief Whitney Petrie, along with Associate Editors Kenneth Grozier, Brian Loughnane, Yosef Palanker, and Alexa Tzarnas, did extraordinary work during challenging times to organize the symposium. We also appreciate the support of Kline School of Law Dean Daniel Filler and Associate Dean Deborah Gordon (the law review’s faculty advisor). Mary McGovern, Joseph Walker, and Martin Durst provided invaluable organizational and technical expertise and assistance. Many thanks are due to these and all of the other individuals who worked so hard to put this symposium together and ensure that it ran smoothly. And, of course, many thanks are owed to the panelists and moderators, along with the many people who attended the symposium.

We are especially grateful to the authors who have taken the time to contribute articles to this symposium issue. The symposium addressed a range of issues regarding autism and the law, and the articles in this issue address significant, overlapping themes that resonate widely. For example, some articles address ways in which the law promotes and impedes meaningful access and participation, in the context of education, courts, and healthcare. Some articles address systemic inequality and bias (racism, classism, ableism), and intersectionality therein. Some articles highlight the need for

deep dives into laws and other data.³ Some of the articles in this issue explicitly focus on autism; other articles are not explicitly focused on autism but address issues that may be significant to and have implications for autism. An article may address a topic (or offer suggestions) specific to ASD, and that topic (or those suggestions) may have significance beyond ASD. For example, recommendations designed to facilitate the meaningful participation of autistic defendants in court may also facilitate the meaningful participation of non-autistic defendants (and individuals in court who are not defendants). An article may address a topic that is not exclusive to autism but that certainly has significance to autism (for example, an article that addresses access to online education by students with disabilities). Moreover, as the term states, ASD represents a “spectrum,” and an issue that has significance for ASD may not have significance, or may not have the same significance, for all autistic people. Specificity and generality co-exist in these articles—in the issues they address and recommendations they make.

Demonstrating the larger context within which issues regarding ASD may be situated, in their article, *Technology as a Civil Right and a Move Toward Disability Justice: Ensuring Digital Access for Disabled Students in the Pandemic*, DeVan L. Hankerson

3. Another issue addressed in some of the articles involves the use of language, and the articles themselves display variations in the use of language. Some articles address the distinction between “impairment” and “disability” pursuant to the social model of disability. Dianah Msipa’s article discusses the “offensive [and] inappropriate” language used to refer to individuals with “intellectual and psychosocial disabilities” in a law in Lesotho that was ruled unconstitutional by the Constitutional Division of the High Court of Lesotho and the impact of that language on the court’s decision. Another issue that arises, either explicitly or implicitly, is the language that is used to refer to autistic individuals, and the use of identity-first language (“an autistic person”) or person-first language (“a person with autism”). The Autistic Self Advocacy Network (ASAN) uses identity-first language, and this Foreword has tried to follow ASAN’s lead in this regard. There may be times, however, where other language is used (for example, to more closely reflect the language used in an article being described). For a deeper exploration of the issues surrounding the use of identity-first or person-first language, see Lydia Brown, *Identity-First Language*, AUTISTIC SELF ADVOC. NETWORK, <https://autisticadvocacy.org/about-asan/identity-first-language> (last visited June 24, 2021).

and Lydia X.Z. Brown⁴ examine how the move to online education during the COVID-19 pandemic failed to provide meaningful access to education to many disabled students,⁵ implicating issues of systemic inequality and the intersection of ableism, racism, and classism. The authors discuss the ways in which the move to online education excluded many disabled students from access to education because they did not have the technology and other support needed to access online education. Inequalities in meaningful access to education did not start with the pandemic, but the authors describe how the pandemic exacerbated these inequalities. While, in theory, the move to online education could have facilitated better access to education, the authors explain why this was not actually the case for many students and why, in fact, many students were deprived of meaningful opportunities to learn during the pandemic. The authors critique the effectiveness of existing laws to create meaningful access to online education by disabled students and to remedy the educational deficiencies experienced by disabled students during the pandemic. While laws are necessary, they are not sufficient: “disability rights laws can help fight back, but they cannot transform social and cultural values about disability alone.”⁶ Instead, it is necessary to “directly upend[] ableism,” “address[] systemic and structural barriers to equal access to technology and education,” and change the reality that “[s]chools have failed to shift their thinking about students with disabilities and to

4. Lydia X.Z. Brown’s presentation during the symposium was also an excellent example-in-action of how to describe displayed visual images verbally to make the content of the images more accessible. See Drexel University Thomas R. Kline School of Law, *Final Keynote Address: Lydia X.Z. Brown on Racism, Eugenics and ASD*, YOUTUBE (Oct. 21, 2020), <https://www.youtube.com/watch?v=6-x5Ejfj1I7k&list=PL15eIL21oseggDePweCzkbDo6dPk4cR3X&index=6&t=517s>.

5. In providing an overview of an article, I have frequently (although not always) used wording that reflects the language used by the author or authors of that article. For example, the authors of this article use “disabled students,” rather than “students with disabilities,” so I have used the same wording in discussing the article.

6. DeVan L. Hankerson & Lydia X.Z. Brown, *Technology as a Civil Right and a Move Toward Disability Justice: Ensuring Digital Access for Disabled Students in the Pandemic*, 13 DREXEL L. REV. 869, 880 (2021).

understand that the flaws are in the curriculum and not the students.”⁷

Systemic racial bias in mental health treatment is a central theme of Victoria M. Rodríguez-Roldán’s article, *The Racially Disparate Impacts of Coercive Outpatient Mental Health Treatment: The Case of Assisted Outpatient Treatment in New York State*. In this article, the author observes that a disproportionate number of Black and Hispanic⁸ people are subject to “court-ordered outpatient mental health treatment” under New York State’s Assisted Outpatient Treatment (AOT) law.⁹ The crucial role of data in identifying bias is also highlighted in the article as Rodríguez-Roldán notes that while the vast majority of states and the District of Columbia have AOT laws, the article’s focus is AOT in New York because of the availability of data online from that jurisdiction. The author asserts that the impact of systemic racism in mental health care has been effectively disregarded in the context of AOT in New York. As a result, “New York’s AOT system, while not necessarily *intentionally* racially-biased, has created a punitive and segregated system for the mental health treatment of low-income, Hispanic, and Black New Yorkers. This process is not ethically sustainable and is in need of extensive reform.”¹⁰ The author analogizes AOT to probation or parole in terms of the ongoing supervision of individuals subject to court orders with potentially coercive and severe consequences for non-compliance. As the author describes, the similarities between AOT and criminal supervision are also implicated by the circumstances that served as the impetus for AOT law in New York “because the motive was not necessarily to help or protect people with

7. *Id.* at 883, 899.

8. Rodríguez-Roldán notes that the term “Hispanic” is used in the article because “The New York State Office of Mental Health uses [that term] in all of its reports on AOT petitions.” Victoria Rodríguez Roldán, *The Racially Disparate Impacts of Coercive Outpatient Mental Health Treatment: The Case of Assisted Outpatient Treatment in New York State*, 13 DREXEL L. REV. 945, 951 n. 63 (2021). However, “Latinx” may actually “be more appropriate for some of the people who are captured in this data.” *Id.*

9. *Id.* at 945.

10. *Id.* at 958–59.

mental illness themselves, but rather to protect the broader community *from* people with mental illness.”¹¹ The reforms suggested by the author include further research and a shift away from AOT to “greater and better funded *voluntary* mental health resources for low-income individuals that are designed to empower people with mental illness by addressing disparities in accessing treatment.”¹²

Access to justice and the role that courts can play in facilitating meaningful participation in court are some of the issues raised in Dianah Msipa’s article, *Moshoeshoe v. DPP: A Missed Opportunity for Persons with Intellectual and Psychosocial Disabilities in Lesotho?*. In this article, Msipa highlights the importance of both what is in and what is missing from the court’s opinion, implicitly inviting readers of court opinions more generally to do the same. Msipa notes the significance of the decision of the Constitutional Division of the High Court of Lesotho in which it held unconstitutional a law that precluded individuals with “intellectual and psychosocial disabilities”¹³ from testifying and rejected specific terminology used in the law, and describes ways in which the court’s opinion did not go far enough to advance the value—and reality—of meaningful access to justice by persons with disabilities. Removing a barrier to testifying is one thing, and the court did this by invalidating the law that stated that individuals with intellectual and psychosocial disabilities were not competent to testify. Facilitating meaningful participation in court is another thing, and this the court failed to do. As Msipa describes: “Using the social model of disability as a conceptual framework, this Article seeks to fill in the gaps in the *Moshoeshoe* judgment by exploring the nexus between testimonial competence, legal capacity, and access to justice.”¹⁴ The author describes ways in

11. *Id.* at 949.

12. *Id.* at 959.

13. This is the author’s language, not that of the law itself. See generally Dianah Msipa, *Moshoeshoe v. DPP: A Missed Opportunity for Persons with Intellectual and Psychosocial Disabilities in Lesotho?*, 13 DREXEL L. REV. 909 (2021).

14. *Id.* at 911–12.

which the court could have confronted ableism and advanced the rights of individuals with intellectual and psychosocial disabilities, for example by addressing accommodations that could be provided to facilitate testimony.

The theme of meaningful access to justice is also apparent in Colleen M. Berryessa's article, *Defendants with Autism Spectrum Disorder in Criminal Court: A Judges' Toolkit*. Another theme that this article implicates is the role of information about ASD—both in terms of the nature of information that is or is not possessed (in this case, by judges), and in terms of the legal significance of information and how information is used. Berryessa identifies issues for judges that may arise in connection with criminal cases where the defendant has an ASD diagnosis. While judges may have personal experience with ASD, judges may not necessarily have an understanding of ASD and its potential role in defendants' perception, comprehension, and behavior both inside and outside of the courtroom. For example, Berryessa suggests that there may be differences between the ways that autistic and non-autistic defendants perceive or respond to questions that they are asked in court and that autistic defendants may not behave or speak in ways that conform to some people's expectations, which may lead to erroneous conclusions being drawn in their cases. Even if a judge is aware of a defendant's ASD diagnosis, that does not answer the question of the significance of that diagnosis to the defendant's case. Berryessa asserts that "judges must consider the significance and effects of ASD" regarding: "fitness to stand trial," "responsibility determinations for criminal liability," and "in sentencing proceedings."¹⁵ As the author suggests, these are not straightforward issues and judges may need the assistance of experts. Another issue that this article surfaces is the role of the judge in cases where either the judge is unaware of a defendant's ASD diagnosis or a defendant has not been diagnosed with ASD but where there is information (for

15. Colleen M. Berryessa, *Defendants with Autism Spectrum Disorder in Criminal Court: A Judges' Toolkit*, 13 Drexel L. Rev. 841, 857 (2021).

example, the defendant's behavior in court) that may raise a question about whether the defendant would be diagnosed with ASD.

Lindsay Shea and Robert Field's article, *Medicaid Coverage for Autistic Individuals: Coverage Gaps, and Research Needs*, implicates themes of access to services, racial disparities in access to care and representation in research studies, and the use of data to learn more about the access of services (specifically here, through Medicaid). The authors highlight the importance of Medicaid as the means by which many autistic children receive services. However, for a lot of people, "eligibility and coverage change when they reach age eighteen."¹⁶ Although Medicaid data are a rich source of valuable information that can help understand the current state of affairs and identify areas for reform, the authors note that these data "are underutilized as a source of information about coverage and access to services in the autistic population."¹⁷ Not only would research using this data provide insights into access to services by autistic individuals as they age, but also research using this data could at least be a step in addressing the underrepresentation of Black and Latinx people and people "from low socioeconomic status backgrounds" in research regarding autism.¹⁸

Field and Shea discuss different types of Medicaid data that may be available and various ways that researchers can obtain this data "to examine experiences of individuals on the autism spectrum."¹⁹ The authors also describe existing research regarding autism that has been done using these data, including research that has identified racial disparities in age of diagnosis and receipt of services. In highlighting the value of research, Field and Shea note that the data can be used to better understand who is accessing services through Medicaid and the

16. Lindsay Shea & Robert I. Field, *Medicaid Coverage for Autistic Individuals: Coverage, Gaps, and Research Needs*, 13 Drexel L. Rev. 961, 964 (2021).

17. *Id.* at 970.

18. *Id.* at 971.

19. *Id.* at 973.

types of services that are being accessed, and improve services. The authors also highlight the role of lawyers in advocating for meaningful access to needed services, “advocating for individual rights, and working to advance options to ensure autistic individuals have access to the necessary services and supports as they age and their needs change.”²⁰

Meaningful participation in decision-making about education, the role of the law in promoting or impeding such participation, and the importance of access to complete and accurate information are three of the themes of Matthew S. Smith and Michael Ashley Stein’s article, *Transfer of Parental Rights: The Impact of Section 615(M) of the Individuals with Disabilities Education Act*. In this article, the authors present “the results of the first comprehensive survey” of state law and “related guidance” regarding transfer of parental rights for educational decision-making to adult students, as permitted (but not required) by federal law.²¹ As Stein and Smith observe, this area can be inherently challenging:

On the one hand, parental rights transfers reinforce students’ standing in society and at law as full-fledged decision-makers. On the other, many parents may question their adult children with disabilities’ readiness to handle navigating the IDEA’s complex provisions, particularly when their adult children have intellectual or developmental disabilities (IDD).²²

Moreover, the law does not necessarily help parents and students decide what to do in this context. Federal law leaves it to the states to determine whether to allow the transfer of parental rights and, while most jurisdictions have permitted the transfer of parental rights, there is variation among the jurisdictions in the laws and policies that provide for such

20. *Id.* at 985.

21. Matthew S. Smith & Michael Ashley Stein, *Transfer of Parental Rights: The Impact of Section 615(M) of the Individuals with Disabilities Education Act*, 13 *Drexel L. Rev.* 987, 990–91 (2021).

22. *Id.* at 989 (footnotes omitted).

transfer. Provisions relevant to transfer, moreover, are not necessarily easy to navigate, and, in some instances, may be neither complete nor accurate, further adding to the difficulty that students and parents, among others, may face when making decisions regarding the transfer of parental rights (particularly when a lawyer's assistance is not affordable or is otherwise unavailable).

Smith and Stein explore existing concerns about how Section 615(m) and state laws (and administrative guidance) may unintentionally encourage parents to use guardianship, which prevents the transfer of parental rights, to preserve their involvement in educational decision-making, even though there may be other options for enabling parental involvement that do not carry such wide-reaching consequences. In proposing reforms, the authors highlight how crucial it is for students and parents to have meaningful access to complete and accurate information about transfer of parental rights and alternatives to guardianship, as well as focus on ways in which federal, state, and local actors can promote—rather than impede—both the self-determination of students and the involvement of parents, where needed, in educational decision-making and effectuating educational rights.

As is evident from this overview—and even more evident from the articles themselves—the articles in this issue address multiple, overlapping themes. Some of these themes include: meaningful access to justice, education, and healthcare; systemic racism, classism, and ableism (and their intersection); and the importance of access to and examination of data. Shea and Field note in their article that “the prevalence of ASD diagnoses has increased dramatically,”²³ thus making the examination of issues related to ASD and the law even more important than ever. These articles demonstrate that it is necessary to identify ways in which the law addresses and needs to address (or needs to better address) issues related to

23. Shea & Field, *supra* note 16, at 985.

autism. And these articles also demonstrate that it is important to recognize the limits of the law, and identify and pursue additional avenues to promote meaningful access and participation,²⁴ and address systemic bias and inequality. ASD is not uniform, and so identifying and addressing issues related to ASD requires a nuanced approach. These articles demonstrate the importance of considering both the specific topic of ASD and the law, as well as the broader context within which this topic is situated. The themes addressed in this issue resonate widely and have very immediate, significant consequences for individual people.²⁵

24. Meaningful access and participation include, as ASAN notes, “the meaningful involvement of autistic individuals in making policy at all levels.” *About*, AUTISTIC SELF ADVOC. NETWORK, <https://autisticadvocacy.org/about-asan> (last visited June 24, 2021).

25. Perhaps reflective of the dual significance of specificity and generality, some of the symposium articles either explicitly or implicitly raise the issue of universal design. Moving forward, it will be useful to consider both the utility of universal design approaches and the need for steps that are more specifically tailored to particular circumstances.