

IN MEMORIAM: PROFESSOR PAUL STEVEN MILLER

Professor Paul Steven Miller devoted his career to the advocacy of disability rights. He served as the Henry M. Jackson Professor of Law and the Director of Disability Studies at the University of Washington School of Law, he advised Presidents Clinton and Obama, and he was a Commissioner for the Equal Employment Opportunity Commission. Professor Miller died on Oct. 19, 2010, at age forty-nine. The Washington Law Review is honored to present the following tributes to his distinguished career.

Foreword: A Tribute

Kellye Y. Testy*

I knew Paul Miller long before I became his Dean. Even though we worked as law professors at different schools in the same city for many years, we did not meet in Seattle. Instead, we met in the hotel lobby at one of the annual Association of American Law Schools (AALS) conferences. The AALS conference takes place each year right after the new year in one of four or five rotating cities in the United States. AALS is the scholarly membership organization for legal education, is attended by thousands of law professors, and features hundreds of panels and programs on most every legal subject.

But Paul and I did not meet in one of the scholarly sessions at AALS because neither of us went to many of them. Like me, he spent most of this time in the lobby talking to colleagues from around the country as they came and went throughout the day. On the day we met, we had spent most of the day not too far from one another, each with a constant stream of visitors. Late in the afternoon, we both found ourselves alone for a few minutes and he looked over at me and said, “Well, are you going to come my way to talk or do I have to get up and come over there?” I went his way and will always be grateful I did so.

Paul and I stayed in touch from that day on, and always made a point of seeing each other at every subsequent AALS conference, joking that it was easier to get together there than in Seattle. I loved Paul’s refreshing

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directness, and we shared a lot of commonalities in our intellectual and political commitments, especially around the values of public service, diversity, social justice, and equality. I especially admired Paul's work in the area of disability studies and agreed with his view that our society still has such a long way to go to achieve equality in work and social life for those who are disabled or otherwise physically challenged.

Paul and I experienced a vivid reminder of this point together in 2007 at the first conference I organized to promote diversity in law school leadership positions. Paul attended this event in order to gain insight into the process of becoming a dean. This conference was co-sponsored by the Society of American Law Teachers, a progressive organization that promotes diversity and equality in the legal academy, and most all of the speakers and attendees were committed to those values. Even so, both Paul and I had people ask "Why is he here?" It was all I could do to not respond coldly with, "Well, how many dwarfs do you see as deans of law schools today?"

When I was named Dean of the University of Washington (UW) School of Law in early 2009, Paul was serving on President Obama's transition team in Washington, D.C. During the summer of 2009, Paul and I met several times in D.C. (including a fun lunch in the White House Mess) to talk about UW Law and to give me a chance to entice him back to Seattle. He was very helpful to me in getting to know the strengths and challenges of the law school, and his insights have proven to be right on target. I will also never forget how thoughtful he was when we were due to meet for the first time after he had to have his arm amputated. He called to let me know to expect that he would "look different" and to be prepared for that but to know that he was doing fine. He did ultimately decide to come back for the 2009–2010 academic year, and I like to joke that his return proved that I was more persuasive than President Obama because the President had offered Paul several positions in his administration. Truthfully, of course, I had little to do with his decision to return to Seattle. His illness and his desire to be with his wife and his daughters were the driving factors in his decision.

Even though Paul had been battling the cancer in his arm for some time, he thought that the aggressive decision to amputate his arm would stymie its progression. As a result, when he returned to UW Law, he did so with gusto, agreeing to chair our strategic planning committee in preparation for an upcoming American Bar Association accreditation visit. I was thrilled that Paul agreed to this leadership position because he understood the university and law school well, had a thorough picture of both the challenges and opportunities for legal education in the future, and—no doubt gained from his experience in government—had an

outstanding grasp of the kind of leadership a dean most needs from tenured faculty members. When his cancer returned to his shoulder, and then even after knowing that it had metastasized to his lungs, Paul made heroic efforts to push this big project forward. He made great progress on our mission and vision statement, and our dedication to being Leaders for the Global Common Good will always have part of Paul in its charge.

When he died on October 19, 2010, I was in Japan meeting with our alumni. I spoke to him on the phone for the last time just a day before his death. Those with him said that my call energized him tremendously and after we hung up he gave them the “thumbs-up” signal. I know that part of that energy was because we were friends as well as colleagues, but a big part of it was also because I promised him that I would continue my work on issues of diversity and equality in his memory and as part of his legacy. While it is true that Paul overcame many challenges in his life, it is also true that many of those were unnecessary ones created by our biases and insecurities. Few are as strong or as accomplished as Paul; that he was able to do all he did is reason to redouble our efforts rather than to reduce them.

The tributes contained within this issue are a small indication of our great loss—and the country’s great loss—that occurred with Professor Paul Steven Miller’s passing last fall. While we are grateful for his time with us and for all he added to our personal and professional lives, we will continue to miss him far more deeply than we can express.

The Marvelous Life of Paul Steven Miller

Clark B. Lombardi*

When I was hired by the University of Washington School of Law in the spring of 2004, I skimmed all of my new colleagues' biographies, including Paul Steven Miller's. I don't remember Paul Steven Miller's standing out. The biography was short and listed mostly professional positions and publications. It made clear that he had had an important career, but it did not make clear how revolutionary a figure he was.

It did not mention that Paul was a dwarf. It did not explain the seminal role he had played at a young age in devising and selling to a skeptical Congress the revolutionary American with Disabilities Act (ADA). It did not make clear that Paul's subsequent career as a highly effective government official had itself demonstrated the wisdom of giving disabled people an opportunity to be hired and had showed what they could do. It did not of course say that he would take me to lunch on my first day at work. It did not prepare me for a friendship that I cherished and changed me and ended far too soon.

I moved to Seattle from New York in July 2004. The day after my arrival, I came for the first time to my new office at the law school. It being the summer, no faculty seemed to be in the building. About an hour after I had sat down at my new computer, the phone rang. I picked it up. An unfamiliar, but enthusiastic voice said, "Hey! It's Miller!"

"Who's Miller?" I thought.

"I will be down in a minute. Maybe we can get coffee or lunch." My mysterious caller then hung up.

Figuring I would find out who "Miller" was soon enough, I went back to my e-mail. I was halfway through a long, boring e-mail to some old colleagues when I heard what I thought was a tap at my closed door. Our doors have windows starting about four feet up. I turned around to see if the mysterious "Miller" had arrived. No face was there, so I went back to typing. A few minutes later, I heard what *definitely* sounded like a knock. I turned again and to my surprise there was no face looking through the window. A bit unnerved by the spooky goings-on in this building, I set about trying to finish the e-mail. As I was reaching the very end, I was startled by a crashing and banging as if someone was trying to batter down my door. I went up and opened that door . . . and

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saw a bearded dwarf with an impeccably tailored dark suit, a bow tie, and a cane smiling at me, his head stopping just before the spot where the window on the door began.

“That took forever!” he barked. “I hope you don’t think your e-mail is more interesting than a lunch with me.”

And thus began a regular lunchtime ritual.

Paul had to overcome obstacles every day. Even our door seemed designed to hide him from view. But Paul found a way past most obstacles, and he never let anything prevent you from hearing what he had to say. He always started by knocking gently and then if someone didn’t hear him, he started knocking louder, and if no one noticed (and if what he wanted was important) he just started hammering with his cane.

I think it endearing that among the things that Paul thought really important was having lunch (and, ideally, a good laugh) with a new colleague. And those lunches came at a cost for him. Walking the two blocks to University Avenue for lunch with him took four times as long as it did when I walked alone. The walk was sometimes physically painful for him. But he loved having lunch with friends, and we went about twice a week, often chuckling the whole, slow way across the street and down to University Avenue.

The pleasure that Paul took in all the quotidian rituals of friendship was genuine. Among the many things that Paul struggled for—for himself and for other people with disabilities—was the opportunity to enjoy a “normal” life. Until I began spending so much time with Paul, I had never realized how much I take for granted as I live my daily life: The opportunity to have physical access to places where jobs are done or learning happens; the physical ability to enter a restaurant where I can fraternize with my colleagues; the ability to buy a car where my feet reach the pedals so that I can function in a city where everyone drives. He demanded the opportunity to have these things, sometimes banging on doors to get them.

More heroically, he demanded them for others. Paul’s life was devoted to ensuring that all who were disabled would automatically have available many of the opportunities that Paul himself had to fight for relentlessly. He wanted everyone to have the opportunity to be considered for places in universities and for jobs where they could demonstrate how much they had to offer. He wanted to increase the number of people who would have access to the lunchrooms and restaurants of the world where they could chat with their colleagues. With those opportunities, as far as he was concerned, people could make of themselves what they would.

Some found it strange that Paul could sometimes be hard on people.

He was funny and generous, but not soft and cuddly. He did not suffer fools gladly, no matter what color, size, shape, or form they came in. Perhaps most surprising, he could be quite skeptical of some requests for ADA accommodation. But Paul's God was one of justice, not charity. Paul never expected anyone to be impressed automatically by a person with a disability. He simply expected everyone to be impressed by an impressive person with a disability. He was angry that the world had conspired to hide such people—putting the door too high, as it were, for them to be seen. It was a matter of both justice and pragmatics that the window be lowered. But conversely, everyone had a duty to contribute everything they could and everyone was to be judged, at least in part, by what they made of their opportunities.

Given that philosophy, it was not surprising that Paul drove himself harder than anyone else I knew. Paul tried to model both the act of working harder than anyone else and, happily, of savoring the joys of success. Among Paul's disabilities was not only dwarfism, but, apparently, a susceptibility to cancer. When I first met him, he had survived one bout with cancer and knew somewhere in his heart that his time on stage would probably be shorter than others'. Shortly after the election of Barack Obama, he was offered a job as a special aide to the President helping to arrange the transition. Within weeks of getting this offer, Paul was diagnosed with a recurrence of cancer. To the shock of many, Paul decided to take the job, loved the job, and excelled at it.

Paul arranged with his bewildered doctors in Seattle a chemotherapy schedule that would allow him to do his chemotherapy primarily on three or four day weekends away from Washington, D.C. I used to pick him up at the airport on his chemotherapy runs. I was always amazed both by how tired he was and by his good cheer. Why fixate on the bad luck of having to do this trip? He was lucky that his boss, the President of the United States, was flexible enough to let him schedule his work around his chemotherapy. I used to watch him exasperate his nurses in Seattle by moving his arm while they were fixing his IVs—because he was texting so furiously.

While he was working at the White House his cancer spread and one of his arms had to be amputated. He continued to work at the White House, buying slip-on dress shoes because he could no longer tie shoes and learning to text with one hand. He completed the task assigned him during the transition, making sure in the process that he took any friends who visited him in Washington to the White House Mess. He returned to Seattle with one year to live.

During that last year, his good cheer sometimes wavered. But it always returned, in ways that I found deeply moving.

About a week before he passed away, I spent an afternoon with Paul at his house. We chatted about many things. He had been deeply touched by a letter that he had just received from old colleagues—one that told him what he meant to them, what lessons they had learned from him. I asked him what he meant to himself. What was he proudest of? He hemmed and hawed at that question. I then asked him what he would want his kids to know. What lessons should they learn from his life? He grew silent and the sound of the machinery of sickness became overwhelming—the buzz of the air purifiers in his room, the wheeze of the portable IV pump. He thought for a long time and when he answered it was in a more subdued but powerful tone than I had heard in a while.

“You know, Clark” he said. “When I was born, I know my parents were scared. They looked down at this little shriveled child, and they wondered what my life would be like. Would I play ball? Would I have friends? Would I be able to do the things they dreamed that their son would do? . . . And I have played ball a bit. I have always had fantastic friends. I have had good jobs, and I have done a good job at them. Along the way, I have helped other people. I have a lovely wife and two beautiful daughters. I have had a marvelous life. And I just want my girls to know that *everyone* can, and must, live a marvelous life.”

Following in Paul Miller's (Very Large) Footsteps

Chai R. Feldblum*

Paul Miller was incredibly proud of the work he did as a Commissioner of the Equal Employment Opportunity Commission (EEOC). I thought I understood why that was so during the years that I knew him—both while he was a Commissioner and then later as a fellow academic.

But I understand Paul's pride a great deal more now.

My understanding is bittersweet. It makes me miss Paul terribly. I want to congratulate him on the groundbreaking work he performed at this agency during his tenure—but then I want to pick his fertile, creative brain on how to further the work that he started.

Much of Paul Miller's work while he was an EEOC Commissioner was very public. He was a leader on disability rights and on ensuring that the EEOC was effectively and forcefully implementing the Americans with Disabilities Act (ADA) of 1990. He was on the road constantly, educating people about disability rights. We would often be fellow panelists and I would enjoy his sly wit and self-deprecating humor, always deployed to get his message across with the greatest impact.

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 Non-Discrimination Act of 2008.

I also knew Paul's love for the intricacies of law and politics. It was a passion we shared and took delight in. After Paul left the Commission and joined the legal academy, we would look for each other each year at the annual meeting of law professors. We would find a place to stand within the milling crowd and regale each other with stories of politics and law—loving the absurdities that drove other people mad.

When Paul signed up to work in the presidential appointments office under President Obama, I became a direct beneficiary of the care and attention that Paul lavished on every political appointment he was involved with. Paul was an amazing asset to the public interest in that job. There were literally hundreds of people whom Paul helped or

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mentored during his tenure at the White House. (And all this during a time when Paul was going through extensive medical care—see Joe Sellers’ poignant tribute in this issue.)

But what I didn’t know until I assumed my current position as an EEOC Commissioner was the extent to which Paul had immersed himself into the nitty gritty of the workings of the agency—and had pushed for important changes within the agency. I am now reading long memos and reports that bear the mark of Paul’s work. Sometimes I feel as if I can hear his actual voice behind some of the sentences. The clarity, the urgency for change, the commitment to making the EEOC the best agency it can be—this is a Paul Miller as focused on the mundane substance of internal agency operations as he was so often on grand political strategy.

This is a Paul Miller that I crave to talk with. His humor, his wit, his sense of the absurd, and his commitment to change—these were elements he clearly deployed within the agency in pushing for change. And he and I would have had a grand old time using his talents again now.

The last time I saw Paul was when he came to Washington, D.C., for the twentieth anniversary of the ADA. We found our usual space in the milling crowd—and he said to me: “OK, now that you’ve been on the Commission for a year, we can sit down and talk—and now you’ll actually understand what I’m saying.”

We never got that chance to talk. But Paul’s voice is in my head whenever I read something he worked on while he was at the agency. So much good work that the EEOC does today is tied to the good work Paul Miller did during his tenure.

Paul was always adamant that he was not “one of the longest serving EEOC Commissioners,” because—as he would trenchantly observe—he was “*the* longest serving EEOC Commissioner.” I now have a keener understanding of why Paul was so proud of that work. He deserves every bit of congratulations and gratitude for that work—and then some.

As I said, the understanding is bittersweet.

Paul Miller: A Profile in Courage

Joseph M. Sellers*

I met Paul in 1993 when he was working in the White House on personnel matters for President Clinton. When we first met, this impeccably dressed, bow-tied man with a beaming smile extended his hand and, with a gleam in his eye, introduced himself: "Hi, I'm Paul Miller, the dwarf from L.A." That began a wonderful friendship, both personal and professional, as we shared a common interest in civil rights, genetics, politics, and people, among other things.

Paul had many wonderful qualities. It surprised me to learn that one of them was understatement. While Paul and I worked together on an Obama transition team, he stayed with us once in a while. One day, he mentioned he had been offered a post in the Office of Presidential Personnel and asked if he could stay with us "for a few days." He returned to Seattle nine months later, after living with us daily for most of that period. During that time, he became a fixture in our lives, a regular at our dinner table and a wise and supremely entertaining presence in our daily lives.

Just before Paul came to stay with us, he learned the cancer in his left arm had returned. Every couple weeks, Paul returned to Seattle to see Jenni, Naomi, and Delia (his wife and two daughters) and to receive chemotherapy. These treatments lasted months. Other than shaving his head to anticipate the loss of hair, Paul acted like nothing had happened. He worked twelve to fourteen hour days, had his same wry humor, and virtually never spoke about his medical needs, other than the need for emergency care if his body temperature spiked. Paul had worried that our children might be scared to know of his cancer. Instead, here was a man who had a life-threatening disease and endured punishing medical treatments but who nonetheless had a terrific sense of humor, who worked longer hours than did we who were healthy, who was actively engaged in discussions about our kids' homework, and who performed chores and did his own laundry.

Then Paul lost his left arm to cancer. He compressed his rehabilitation into a few weeks and returned to Washington three weeks later, ready for work at the same hectic pace. Other than being driven to work rather than driving himself, and having his shoes and bow-tie tied, nothing

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seemed to change in his daily routine. My morning challenge became tying his bow-tie to his satisfaction. Often, two or three attempts were needed and I knew by his facial expression when he thought I needed to try again. Rather than a cancer victim, we saw a profile in courage.

Paul's stay with us for a few days lasted nine months and what began as a good and longstanding friendship became a life-changing privilege for my family and me. While Paul began his sojourn with us as a house guest, he became a new and treasured member of our family.

A Tribute to Paul Miller: A Beloved Friend and Colleague

Michael E. Waterstone * & 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).¹ 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.² 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;³ and as a beloved teacher; and as a public servant who reached the highest levels of government in two different administrations.⁴ 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).⁵ 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*,⁶ 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*.⁷ 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.⁸

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

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*.⁹ 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.¹⁰

Second, Paul highlighted the lack of public education and outreach on behalf of people with disabilities, in contrast to predecessor civil rights movements.¹¹ 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.

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

10. *Id.* at 621.

11. *Id.* at 623–25.