

# A Body's Work: On Self and Peer Education as a Black Disabled Lawyer

By Britney Wilson

*"Years ago, I would've sworn there couldn't even be anybody like you. You're not natural! But you can feel pain—and you can die. Remember that and do your job."*

—Octavia Butler, *Kindred*

*"Now I felt the deeper weight of my generational chains—my body confined, by history and policy, to certain zones. Some of us make it out. But the game is played with loaded dice."*

—Ta-Nehisi Coates, *Between the World and Me*

In the summer of 2020, I watched a webinar on the history of Black disabled activism as part of the *Crip Camp* virtual series, a complement to the Netflix documentary of the same name on the history of the disability rights movement. While watching, I was surprised to learn about "the ugly laws," municipal ordinances passed in several cities in the wake of the Civil War that made it illegal for people with disabilities—specifically "[a]ny person who is diseased, maimed, mutilated or in any way deformed so as to be an unsightly or disgusting object"—to appear in public.<sup>1</sup>

I was not surprised that such laws had existed. My life as a Black woman with cerebral palsy, now also a civil rights attorney and law professor, has taught me never to be surprised at the cruelty or inhumanity of the law. I was surprised—but not really surprised—that in three years of law school, and, at the time, five years of practicing civil rights law, I had never even heard a passing mention of these laws, which the presenter had analogized to Jim Crow. I wondered what kind of disabled civil rights lawyer had never heard

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<sup>1</sup> SUSAN M. SCHWEIK, *THE UGLY LAWS: DISABILITY IN PUBLIC* (2010); see also Adrienne Phelps Coco, *Diseased, Maimed, and Mutilated: Categorizations of Disability and an Ugly Law in Late Nineteenth-Century Chicago*, 44 J. SOC. HISTORY 23 (2010); Elizabeth Greiwe, *How an 'ugly law' stayed on Chicago's books for 93 years*, CHICAGO TRIBUNE (June 23, 2016), <https://www.chicagotribune.com/opinion/commentary/ct-ugly-laws-disabilities-chicago-history-flashback-perspec-0626-md-20160622-story.html>.

about Jim Crow-like laws geared toward people with disabilities. However, it was not my lack of knowledge about this particular set of laws that really bothered me. It was that my lack of knowledge was yet another reminder of my struggle to find and learn about my history as a disabled person, and as a Black disabled person, despite my deliberate searches, at least in the form of my educational and professional paths.

I have said the same thing countless times for as long as I have been associated with the legal profession: this was not a career choice for me. Just as Supreme Court Justice Sonia Sotomayor, who grew up with Type 1 diabetes,<sup>2</sup> described in her autobiography, *My Beloved World*, “[T]he law for me was not a career but a vocation.”<sup>3</sup> Had I been born into another body, I would have published a poetry collection, a novel, and a memoir by now. I would have danced on Broadway. I would have filmed the movie script I wrote when I was ten years old. I would have been an R&B background singer. I would have been a basketball commentator.

This is not to say that I cannot or will not do those things as a disabled person or that disabled people cannot or are not already doing those things. I just felt that there was something else my body and the world, and my body *in* this world, had forced me to do. It had forced me to fight to ensure and prove that I, and people like me, can and deserve to exist here, and even to thrive. Then, there were the constant well-intentioned but harrowing reminders from my mother that I did not come from money, and I would not likely be able to do many manual labor jobs, so I had better be prepared to make a living with my mind. I did not completely understand the inherent ableism of those warnings at the time, but they consumed me. It was that sense of necessity and purpose that led me to law school and that keeps me in the profession.

But my sense of purpose often clashed with my reality. I went most of my elementary through college education without even hearing about, let alone engaging with, the history or existence of people with disabilities. I had spent four years fighting for accessibility on my college campus. While lack of disability inclusion is not uniquely or singularly a historically Black college or university (HBCU) issue, attending an HBCU heightened my sense of identity as a disabled person. HBCUs are institutions known for developing and catering to historically marginalized groups. However, on most days, disability was almost absent from collegiate structure, culture, or concern, even as the university bolstered students’ sense of racial history and identity.

So I was especially hopeful that law school would be a place where I could finally learn about and explore my identity as a disabled person, and as a Black disabled person. I was repeatedly disappointed. During my time there, no disability law class was offered. When I went to the dean of students to inquire

2 Josh Gerstein & Lorraine Woellert, *Sotomayor at work after health scare*, POLITICO (Jan. 19, 2018), <https://www.politico.com/story/2018/01/19/sonia-sotomayor-health-scare-349971>.

3 SONIA SOTOMAYOR, *MY BELOVED WORLD* 325 (2013).

about one, he said I would need to follow the formal administrative process to request one and that they would then need to find a professor to teach it.

Just as I had in college, I faced accessibility issues in law school. While living in university-affiliated housing, I found myself stranded in the early hours of the morning as fire alarms went off and there was no plan for the evacuation of students with disabilities. I was late to class and forced to call building maintenance or seek outside assistance when it snowed and accessible pathways had not been cleared. My journal office was inaccessible. None of these things surprised me, however, because society tends to follow culture. Therefore, if students with disabilities are not seen or thought about in the intellectual or curricular space, our physical or personal presence in the academic space also cannot be adequately considered.

I ultimately did not request the disability law class. I probably should have. At the time, however, I just could not find the energy for another potential fight (or “process”). I was frustrated at the thought of having to request or otherwise create a disability class in an environment I thought should be designed to include one. That a class on disability would apparently not be viewed as equally essential to one’s legal education as corporations or securities was distressing to me. I could not imagine a scenario in which the average person would ever need to know about the latter, but I knew the opposite would be true for most people about the former.

I vividly remember the few times we discussed disability-related cases or topics in my other law school classes. In my first-year constitutional law class, for example, I learned that disability discrimination challenges under the Equal Protection Clause were subject only to rational basis scrutiny, which meant that the government could discriminate against me as long as it could articulate a “legitimate interest” in doing so.<sup>4</sup> In family law, I learned that while courts may not rely solely on a person’s disability to determine parental fitness, disability is one of the factors that may be considered and that courts may inquire about disabled parents’ actual and potential capabilities when making such determinations.<sup>5</sup>

In employment discrimination, I finally learned the legal definition of a “reasonable accommodation.” It had previously been a seemingly amorphous term with an accompanying process that I either had been fumbling my way through or had unwittingly forfeited because I did not know I had a right to one or how to request one. In my constitutional litigation class, which covered litigation in federal courts, I learned about *Pennhurst* solely in the context of the Supreme Court’s ruling on sovereign immunity, the Eleventh Amendment, and the circumstances under which state actors can be sued<sup>6</sup>—not its role as a

4 *City of Cleburne, Texas v. Cleburne Living Center, Inc.*, 473 U.S. 432, 442-43 (1985).

5 *In re Marriage of Carney*, 24 Cal. 3d 725 (1979).

6 *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89 (1984).

seminal disability rights case challenging institutionalization.<sup>7</sup> I only recently discovered the latter from a *New York Times* article about one of the Black disabled plaintiffs in the case.<sup>8</sup> I left law school without ever having been formally introduced to the Americans with Disabilities Act (ADA). Whatever I learned about the ADA came from an internship research assignment or from my own reading.

I have only recently begun to be able to explain the gap between what I expected and what I got from my legal education. I wanted to be equipped with information to help me navigate my life as a Black disabled person, not just to argue a point or to read and analyze a text. I viewed the law as a weapon in the fight for social justice. So I wanted concrete, relevant, digestible information about what people were entitled to under various laws and across issue areas, along with recommended actions they should take if certain situations arose. Essentially, I wanted know-your-rights trainings in every class. I think that is what most people, particularly people from marginalized groups or those not innately familiar with the law, imagine that law school provides. I can tell by the questions they ask me now that I am a lawyer. I do not think they are wrong to expect that. A practical, concrete approach to legal education would necessarily include disability because it would reflect the actual issues people face. It would also likely make the legal education experience more accessible to actual law students with different types of disabilities.

Instead, I got that education after graduation. I learned about the Individuals with Disabilities Education Act (IDEA) during my first year of legal practice while working on school-to-prison pipeline cases primarily categorized by my national nonprofit social justice organization as “racial justice” after I emphasized the importance of including students with disabilities, and especially students of color with disabilities, in our advocacy. I learned about individualized education programs (IEPs) while conducting legal research for the case. After I mentioned my newfound discovery of IEPs to my mother, she showed me a copy of my own. Suddenly, I understood the purpose of the IQ tests and creative games during the doctors’ office visits of my childhood. Being Black and disabled, even as a lawyer, has been a never-ending process of self-education, revelations, and connecting my own dots. I have the experience, then I get educated about the experience, often by happenstance. I go through something, only to learn afterward how I could have prevented it or gotten assistance with it, or the formal reasons behind my instinct that it should never have happened to me. As I continue to interrogate

7 *Halderman v. Pennhurst State Sch. & Hosp.*, 446 F. Supp. 1295, 1298 (E.D. Pa. 1977); *see also Halderman v. Pennhurst State Sch. & Hosp.*, 673 F.2d 647, 649 (3d Cir. 1982) (on remand from Supreme Court, which overruled its decision holding that the Developmental Disabilities Assistance and Bill of Rights Act created enforceable rights), *subsequent history omitted*.

8 Glenn Rifkin, *Overlooked No More: Roland Johnson, Who Fought to Shut Down Institutions for the Disabled*, *NY TIMES* (July 31, 2020), <https://www.nytimes.com/2020/07/31/obituaries/roland-johnson-overlooked.html>.

the traditional separation between civil rights and disability rights in practice, I realize that that gap may exist in part because many civil rights lawyers have also never been formally introduced to disability laws or to how the laws with which they may be most familiar specifically impact people with disabilities.

It is not my intention to offer unduly harsh criticisms of my professors or the quality of my legal education. I firmly believe that the true goal of education is to prepare people to obtain and evaluate their own information from a variety of sources and perspectives. Some degree of self-education will always be necessary. From rational basis scrutiny to factors weighed in parental fitness determinations, I also believe that each of my professors taught the disability case law that they found to be relevant to their respective courses.

Similarly, I do not mean to suggest that the curricular deficiencies I have identified are unique to disability. Many of my observations also apply to students from other marginalized backgrounds or identities. They apply to students who attend law school in pursuit of social justice goals and careers, more broadly. Law school is not very good at incorporating individual identity and lived experience in all of its various forms. I learned little more about race or the racial context for the concepts we discussed in law school than I learned about disability. Such context destroys the illusion of legal formalism upon which the model of legal education often depends, the notion that law is created in a void, that it is even *created* at all.

I think often, particularly in the midst of a pandemic, about how everyone would benefit from a truly contextual legal education that is inclusive of disability. Such an education might have included a discussion of the “ugly laws” in constitutional law in conjunction with a discussion of the Thirteenth, Fourteenth, and Fifteenth amendments. That discussion would also include the circumstances of the passage of both the “ugly laws” and the Reconstruction amendments against the backdrop of Reconstruction itself.<sup>9</sup> It would also explore the contemporaneous passage of the Black Codes<sup>10</sup> and examine the relationship between post-Civil War sentiments toward people of color and people with disabilities who were classified as part of a lower social order, segregated, discriminated against, and subjected to endless other atrocities.<sup>11</sup>

Students would evaluate how those sentiments are reflected during the legislative and judicial pronouncements of that period and reflect on comparisons to our current time. Lawyers already trained with those considerations are much more likely to understand the overlap of issues in both practice and the world, as well as the impact of the overlap of those issues. For example, those lawyers would be better equipped to defend their clients because they would understand how perceptions of their clients' intentions,

9 See Phelps Coco, *supra* note 1, at 25, 28.

10 *Black Codes*, HISTORY.COM (June 1, 2010), <https://www.history.com/topics/black-history/black-codes>.

11 See, e.g., *City of Cleburne*, 473 U.S. at 461-62 (Marshall, J. concurring in the judgment in part, dissenting in part).

dangerousness, capabilities, and criminality are informed by both race and disability.

Much of the education I did not get about disability law and history—especially as it relates to people of color with disabilities—I have gotten from my disabled peers and advocates. Many of these teachers I have never even met in person. I have interacted with them only virtually. Yet, without them, I would barely know where to begin doing my own reading.

Alice Wong has basically created her own university highlighting the work, art, and diversity of the disability community.<sup>12</sup> Dustin Gibson,<sup>13</sup> T.L. Lewis,<sup>14</sup> and Cyree Jarelle Johnson<sup>15</sup> have given me historical context and a macro-framework and understanding for how ableism intersects with racism, patriarchy, and capitalism. Vilissa Thompson has taught me.<sup>16</sup> Keah Brown has taught me.<sup>17</sup> Matthew Cortland<sup>18</sup> and Rebecca Cokley<sup>19</sup> have kept me updated on legislation and policy that is essential to the disability community's needs and interests. I learned so much from the virtual *Crip Camp* series. I could add so many more names, contributions, and lessons to this list, but I often wonder where I would be if I had not found these people and resources myself. I wonder about the people who may never find them, especially the people being trained to serve the populations they represent.

While virtual learning from my disabled peers has been invaluable, and, undoubtedly the best method, they need to be on the syllabus. Disability deserves its rightful place in the legal curriculum, because no matter how skilled some people may be at connecting the dots, true access means providing everyone with the complete picture.

12 See *About*, DISABILITY VISIBILITY PROJECT, <https://disabilityvisibilityproject.com/about/> (last visited Nov. 11, 2020).

13 See DUSTIN P. GIBSON, <https://www.dustinpgibson.com> (last visited Nov. 11, 2020).

14 See TALILA A. LEWIS, <https://www.talilalewis.com/about.html> (last visited Nov. 11, 2020).

15 Cyree Jarelle Johnson, *A Paradoxical History of Black Disease*, DISABILITY VISIBILITY PROJECT (May 14, 2020), <https://disabilityvisibilityproject.com/2020/05/14/a-paradoxical-history-of-black-disease/>.

16 See RAMP YOUR VOICE, <https://www.vilissathompson.com> (last visited on Nov. 11, 2020).

17 See Keah Brown, <https://keahbrown.com> (last visited Nov. 11, 2020).

18 See, e.g., Matthew Cortland, TALK POVERTY, <https://talkpoverty.org/person/matthew-cortland/> (last visited Nov. 11, 2020).

19 See Rebecca Cokley, FORD FOUNDATION, <https://www.fordfoundation.org/about/people/rebecca-cokley/> (last visited July 6, 2021).