



UNIVERSITY OF TORONTO
FACULTY OF LAW

HEALTH LAW, ETHICS & POLICY SEMINAR SERIES

presents

Michael L. Perlin, Professor
Director, International Mental Disability Law Program
New York Law School

All His Sexless Patients: Persons with Mental Disabilities and the Competence to Have Sex

COMMENTATOR:

Sophie Nunnelley, Lawyer and SJD Candidate
Faculty of Law University of Toronto

12:30 – 2:00

Thursday, February 5, 2015

Solarium (room FA2) – Falconer Hall - 84 Queen's Park

With the growth in the field of mental disability law over the past 50 years, very few topics involving persons with mental illness remain taboo or off limits to scholars and judges who face these issues daily. However, discussions of the question of whether persons with mental disabilities have a right to voluntary sexual interaction often touches a raw nerve in conversations about mental disability law, even with those who are practicing in the field, and the discomfort people feel in examining this topic is exacerbated when discussing individuals who are institutionalized. Although this often appears to be a difficult subject to raise, even among those familiar and comfortable with other aspects of mental disability, it is one that must be raised. Dignity concerns and rights violations will occur if there is not a full understanding of the importance of the ability for persons with mental illness to practice free sexual expression. There has been some literature that begins to discuss this and to delve into the intricacies of the subject. Much of this literature presumes that the "subjects" of these papers -- those with mental illness who are institutionalized -- are incompetent. The discussions therefore only address ability to engage in sexual activities from the perspective of an incompetent, institutionalized adult. In this presentation, I broaden the scope of these examinations, and rather than presume incompetency, deal directly with the very likely situation of a competent, mentally ill person wishing to engage in sexual activity. I examine legal competency, as well as the difficulties encountered when one begins to use different measures of "competency" for different tasks or activities. I explore the attitudes that surround this type of discourse, and their impact on advancing the rights of persons with mental illness, while seeking to answer the following questions:

- * in this area of law and policy, is there any unitary definition of competence?
- * are there certain factors that must be considered in determining "sexual competence,"
- * how does domestic law and policy relate to issues of sexual competence, and does it impact how we should approach these issues? and
- * what are the international human rights law and therapeutic jurisprudence implications of the answers to these questions.

Michael L. Perlin is Professor of Law Emeritus at New York Law School (NYLS), founding director of NYLS's Online Mental Disability Law Program, and founding director of NYLS's International Mental Disability Law Reform Project in its Justice Action Center. He has written 23 books and nearly 300 articles on all aspects of mental disability law. His most recent books are *INTERNATIONAL HUMAN RIGHTS AND MENTAL DISABILITY LAW: WHEN THE SILENCED ARE HEARD* (Oxford University Press, 2011), *MENTAL DISABILITY AND THE DEATH PENALTY: THE SHAME OF THE STATES* (Rowman & Littlefield, 2013), and *A PRESCRIPTION FOR DIGNITY: RETHINKING CRIMINAL JUSTICE AND MENTAL DISABILITY LAW* (Ashgate, 2013). He is currently working on two new books: one on sex offender law and policy with NYLS Adjunct Professor Heather Ellis Cucolo and one on sexuality, mental disability law, and therapeutic jurisprudence with Alison J. Lynch, a disability rights lawyer in New York City. Before becoming a professor, Perlin was the Deputy Public Defender in charge of the Mercer County Trial Region in New Jersey, and, for eight years, was the director of the Division of Mental Health Advocacy in the NJ Department of the Public Advocate. He has represented thousands of persons with mental disabilities in individual and class actions. He has taught mental disability law courses in Japan and Nicaragua, and has taught at law schools in Finland, Israel, Taiwan, New Zealand and Sweden. He has also done advocacy work on behalf of persons with disabilities on every continent. In the fall semester of 2012, he served as a Fulbright Senior Specialist, teaching and consulting at the Islamic University of Jogjakarta, Indonesia. Four years earlier, also as part of the Fulbright designation, he taught in the Global Law Program at Haifa University in Israel. In 2015, he will be teaching *International Human Rights and Mental Disability Law* at law schools in Australia and in Hong Kong.

For more information about this workshop, please contact Nadia Gulezko at n.gulezko@utoronto.ca.