



THE LAW FOR DISABLED RIGHTS FOR THE GOOD HUMAN LIFE

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ABSTRACT

The idea of citizens as free and equal persons are the fundamental ideas of justice as fairness. The failure of Law to adequately protect disabled rights have been well documented. Yet as the contributors to this part, the denial of disabled rights and the treatment of disabled as less than full citizens found throughout the government or other sectors. The fact that there are no simple solutions to the achievement of rights for disabled. Ironically, the Law looked only at what justice required the state to do by way of compensation for the disabled persons. The law have to rethinking the good human life in light of disability. This paper seeks to expand and strengthen the link between philosophy of law and disabled rights by focusing on what values, what constitute that guide the legal response as the Laws can provide board principles arrangement for disabled rights on the good life. The conceptual approach is used to study the views and doctrines to find legal understanding, concept and principles relevant to the issues, we look beyond the law in the books to the law in action.

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INTRODUCTION

This paper is the product of ideas by the lives of people with disabilities who have been locked away for the good human life. This paper focused and dedicated to ending torture, abuse, and discrimination of people with disabilities throughout the Law and Society for the good human life in light of disability. By introducing the rights and citizenship theories into the analysis of disability, to challenge the negative conception of people with disabilities as incompetent and, for this reason, incapable of determining their own best interest. This paper is for anyone interested in relation to human rights abuses within traditional legislation setting. The method of this paper is normative juridical research, thus the type of data used is secondary data covering primary law material, secondary law material, and tertiary law material. According to Soerjono Soekanto and Sri Mamudji, "The Object of Normative Law Research Study includes: (i) research on legal principles, (ii) research on systematic law, (iii) research on vertical and

horizontal synchronization levels, (iv), and (v) legal history, the approaches taken are statute approach, conceptual approach, and case approach".¹ The structure of this paper reflects the fact that there are no simple solutions to the achievement of rights and citizenship for people with disabilities. This paper take up the challenge that disability poses to basic questions of political philosophy among others, by focusing on fundamental issues as well as practical implications of the relationship between disability and the good human life as full citizens. Today, the world population is over 7 billion people. More than one billion people, or approximately 15 per cent of the world's population, live with some form of disability. 80 per cent live in developing countries as reported by the United Nations Organization in International day of persons with disabilities 3rd December. People with disabilities are at much higher risk of violence: the selective non treatment.² Disabled Person's face significantly more difficulties – in both public and private spheres – in

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¹Soerjono Soekanto, Sri Mamuji. (2014), *Normative Law Research A Brief Review*, cited by Salim HS, Erlies Septiana Nurbani, *Application of Legal Theories in Theses and Dissertation Researches* (Jakarta: Raja Grafindo Persada), p 14

²Women and girls with disabilities, United nations, March 2017, accessed 14 May 2018 <http://www.un.org/development>

attaining access to adequate housing, health, education, vocational training and employment, and are more likely to be institutionalized (Kothari, 2005).³ They also experience inequality in hiring, promotion rates and pay for equal work, access to training and retraining, credit and other productive resources, and rarely participate in economic decision making according to O'Reilly Employment barriers for people with disabilities, *The Right to Decent Work of Persons with Disabilities*, International Labour Organization (2003).⁴ Fortunately, the values that guide legal and state responses to people with disabilities have moved away from the demeaning stereotypes of the past. The lives and self identity of people with disabilities have long been characterised by medical images of abnormally and impairment and the paternalistic responses of governments and service providers.⁵ Respecting the rights of persons with disabilities, good intentions do not always make for good policy. That is particularly true for people with disabilities, who are often stripped of the most fundamental of human rights, the right to make voice heard disability and communication, in Court, for example, people with disabilities generally communicate with the court in one of two ways either individually (without support) or through the assistance of a third party (such as interpreter, court or appointed advocate). The courtroom can be an intimidating and challenging environment for people with disabilities. Once the physical barriers and issues are overcome, the next challenge is following the proceedings and being able to communicate effectively with the court. This situation address issues which touch on communication, such as the right of audience before courts, the rule of personal presence and the experiences of lay litigants with disabilities. Schwartz discusses the importance of lawyers communicating with their deaf clients, his priorities the need for clear and effective communication, but at he same times cautions against over simplification, a common mistake when explaining legal procedures to disabled person, as well as deaf people. A variety of options deaf people to use telephone services lip reading and written notes, but focuses predominantly on the use of sign language interpreters and how lawyer should interact with their client if an interpreter is used.⁶

This specific Schwartz's guidance can easily be applied to judge, opposing counsel, court clerks and others who interact with deaf people in court. In general, the role of sing language interpreters in a court setting is relatively uncontested.⁷ Law Number 8 Year 2016 concerning *People with Disabilities* is an example of Indonesian national anti-discrimination legislation which provides that sing-language interpreters in Article 19 (b) stated only that *the public service to serve the disabled rights which covered provision of facilities that are easily accessible in public service places such as translation and assistant of the third party*.⁸ The Law No. 8/2016 is not specifically clarifying

definitions where required for deaf witnesses, defendants or litigants, be provided at no cost available to the court in question. The Law is not explain details of "Communication" includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;"Language" includes spoken and signed languages and other forms of non spoken languages.⁹ The failures of legislation to use of facilitated communication for people with disabilities, obviously signifies there is no constitutional protection or recognition of the status of national sign languages to ensure that disabled person have rights to legal proceedings conducting using sign language interpreters paid for by the public to ensure effective access to justice.¹⁰ The diversity of the Law definitions, causes and consequences of discrimination against person with disabilities while illuminating fundamental themes that unite countries in their pursuit of human rights laws and policies to improve the social and economic status of person with disabilities. As Johnson Dman said "The right to communication is the right to hope... I am jumping for joy knowing I can talk, but don't minimize how humiliating it can be to know people jump to the conclusion I am mentally disabled. If people understand the punishment of perceiving other people as in human, then things will get better".¹¹ This paper takes up the challenge poses to basic questions of *what is the good human life for disability in accordance to the Law and society*. Whether disability is intrinsically a harm that lowers a persons; quality of life due to the failure of legislation or the Law.

Recognizing the Relationship Between Disability and Citizenship Rights

The values which now govern the relationship between people with disabilities and society, questions what do we mean by 'citizenship' and "disability? What are the implications of government for delivery of services? And what laws will support and reflect those values?, changes in values and laws require complementary changes in the society, government which realise them, how to effect change in the public service?¹² Despite the prevalence of disability in this society, definition of disabled persons tend to be invisible. Reliable estimates indicate that most people's lives will be touched by disability, but the community avoids the topic in much the say way as it avoids encounters with individuals who have disabling conditions. Indeed, public reluctance to deal with Human dignity, writes Nussbaum Martha, "is equal in all who are agents".¹³ Everyone is said to deserve equal respect from societal laws and institutions. The conception of dignity at play here espouses a principle of human beings as an end, and not merely a men as to another's.¹⁴ Discrimination on the basis of disability, unequal rights, discrimination due to the capability of disabilities suffered social isolation. The lack of affordable support services provided by the government discovered

³Kothari, Miloon 2005, *Women and adequate housing, Study by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living*, E/CN.4/2005/53, p 64 in ibid

⁴O'Reilly, Arthur 2003, *Employment barriers for women with disabilities, The Right to Decent Work of Persons with Disabilities*, Skills Working Paper No. 14, Geneva, International Labour Organization in ibid,

⁵Hauritz, Marge. et.al.(1998), *Justice for People with Disabilities*, NSW:Federation Press, p xv

⁶Schwartz, M. (1999), *Serving Hearing Impaired Clients*, Barrister 45 in Flynn, Eilionoir.(2015), *Disabled Justice*, NY:Routledge, p 91

⁷Ibid.

⁸Indonesia (2016) Act. Number 8, concerning *the Rights of Persons with Disabilities*, Ratified in Jakarta 15 April 2016, State Gazette of Republic Indonesia number 69, 2016.

⁹Indonesia (2011), Act.Number 19, concerning *Ratification of Convention on the Rights of Persons with Disabilities*, Ratified in Jakarta 10 November, 2011, State Gazette of Republic Indonesia number 107, 2011.

¹⁰Flynn (2015). Op.Cit. p 91-92

¹¹Bickenbach, Jerome E., et.al. (2014), *Disability and the Good Human Life*, NY:Cambridge University Press, p 219

¹²Hauritz, Marge. et.al.(1998),Op.Cit.

¹³Nusbaum, Martha C. (2011), *Creating Capabilities: the Human Development Approach*, The Beknap Press:Harvard university press, p 31

¹⁴Ibid.

discrimination is a fact of life for many people with disabilities. Although the government never really gave much thought to discrimination growing up. It was not until a person became disabled finally understood what discrimination meant. It meant not only being misunderstood, but being rudely mistreated. No one truly understands what discrimination is until they're on the receiving end of things. Disability discrimination occurs when a person is treated less favourably, or not given the same opportunities, as others in a similar situation because of their disability. A disability is a condition or function judged to be significantly impaired relative to the usual standard of an individual of their group. The term is often used to refer to individual functioning, including physical impairment, sensory impairment, cognitive impairment, intellectual impairment, mental illness, and various types of chronic disease.

This usage has been described by some disabled people as being associated with a medical model of disability as shown in the UN International day of persons with disabilities 3 December.¹⁵ Discrimination, is a kind of injustice or unfairness. According to one ancient formulation, justice say this: To each her due. According to one modern formulation, justice is concerned with treating people well in distribution, which who gets what, how much, and why. These formulations are commonly said to exclude some teleological consideration (e.g. welfare maximization) and some deontological considerations (e.g. prohibition on promise breaking). On another, justice concerns what is due a person in some intrapersonal distribution of goods to her. Thus the question about the interpersonally individualistic and holistic nature of discrimination can also be put in terms of individualistic vs. holistic justice or fairness.¹⁶ This paper focus on discriminatory conduct practise and laws. For more than a decade, there has been a notable renewal of interest in citizenship, perhaps because the concept seems to integrate the demands of justice and community membership. The historic links between citizenship and rights have been close, but the concept of citizenship itself has undergone some recent reconstruction and we need to scrutinise its implications carefully.¹⁷ There has been a movement away from *needs* to *rights* as the basis for official policy formation. For instance discourse, deriving from a view that the way disability has been constructed is oppressive, is exemplified in the Indonesia Disability Act. Number 19 year 2011 and Act. Number 8 Year 2016. This legislation articulates the principle that disabled people should take part as citizens of mainstream society in decisions affecting their lives. Oliver views citizenship as a shorthand device for talking about the relationship between individuals and their societies, and more particularly between individuals and the state.¹⁸ He argues that the recent rediscovery of the concept citizenship can be related to the fracturing of the post Second World War consensus over the welfare state. Whereas the dominant postwar view of citizenship, derived from the influential work of Marshall,¹⁹ defined term almost entirely in terms of the possession of

political, civil and social rights, contemporary meaning are more contested.

In fact one of the first and most broad ranging anti-discrimination laws for people with disabilities take part as active citizenship was developed in the history of Human Rights Articles 28A-28J of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the "1945 Constitution").²⁰ The narrow construction of the 1945 Constitution speaks to a 'fundamental constitutional principle which has an explicit basis in statutory rights namely the Bill of Rights. That certain 'fundamental' or 'basis rights exist at the constitution or are implicitly protected by statute, and that the defense of those rights provide a legitimate contextual.'²¹ Despite the ranging anti-discrimination law have been recognized in Indonesian constitution since 1945, however over the course of the past century, government administration has expanded greatly and complaints about bureaucratic conduct have grown in parallel.²² In response, the National Ombudsman has been established in Indonesia in 2000. The ombudsman is a public institution, the legislative branch of government, to supervise the administrative activities of the branch.

Based on the Law Number 37 Year 2008 concerning Ombudsman of Republic Indonesia, the institution has the power to investigate complaints from member of the public that the administration of government is being conducted in illegal or more broadly, an unfair or improper manner.²³ Many of the public citizens includes people with disabilities as part of active citizen have the right to make complaints to Ombudsman. Despite disability related policies in Indonesia have been framed in the language of citizenship, however refer to the Law number 37 Year 2008 specifically the needs of people with disabilities and disability discrimination is unregulated. The Law of Ombudsman be accomplished with minimum regulations by government since we do not wish to burden the private sector, which should really be concentrating on assisting people with disabilities, with overly bureaucratic processes.²⁴ The Law number 37/2008 focused on mal-administration by the government functions. Despite the development of a comprehensive legal framework in Indonesia for the provision of services to disabled people, there are failures at the level of service delivery.²⁵ However in a few cases, Ombudsman have recently been given an express human rights protection function in addition to their existing responsibilities.²⁶ The classical ombudsman have been replaced by new hybrid human rights ombudsman institution. Moreover, this adaptation or hybridization of the ombudsman model although remains unregulated for disabled rights but it has produced a greater awareness of the human rights protection work on the delivery of service.²⁷ Indonesia provide a fascinating example of classical ombudsman which was turned into a human rights ombudsman in a case of

²⁰Indonesia (1945), *Constitution of The Republic Of Indonesia*

²¹Loveland, Ian (2017), *Constitutional Law, Administrative Law, And Human Rights A Critical Introduction*, UK:Oxford University Press, p 360

²²Reif, Linda C (2004), *The Ombudsman, Good Governance and the International Human Rights System*, MA:Springer Science, p 1

²³Indonesia (2008), Act. Number 37 concerning *Ombudsman Republic Of Indonesia*, Ratified in Jakarta 7 October 2008, State Gazette of Republic Indonesia Number 139 Year 2008

²⁴Moylan J (1996), *Opening Address to the 1996 National Federation of Blind Citizens of Australia Convention Albury*, 7 June, transcript of speech, p 3 in Op.Cit. in Hauritz, Marge. et.al.(1998) p 24

²⁵See *Ombudsman Act*. 2008 Article 5, 7, 8

²⁶Reif, Linda C (2004), Op.Cit., p 89

²⁷Ibid.

¹⁵International Day of Persons With Disabilities , The United Nations, accessed 15 May 2018, <http://www.un.org/en/events/disabilitiesday/>

¹⁶Hellman, Deborah, et. al (2013), *Philosophical Foundations of Discrimination Law*, UK:Oxford University Press, p 30

¹⁷Hauritz, Marge. et.al. (1998), Op.Cit. p 18

¹⁸Oliver, Michael (2009), *Understanding Disability: From Theory to Practice*, Macmillan, p 44

¹⁹TH Marshall (1952), *Citizenship and Social Class*, UK:Cambridge University press in Ibid.

discrimination case against disabled people in March 2014, disabilities organization filed a complaint report to Ombudsman Indonesia in regards to the regulation issued by the Ministry of Education and Culture Republic of Indonesia concerning. The Admission Required of National University Selection. The regulation requirements strictly prohibited for those with physical condition of blind, deaf, colour blind are not permitted to participate in the National University Selection. The discriminative requirements “good physical and mental condition” applies for all universities admission. The complaint to Ombudsman is to raise a campaign on improving disabled people’s rights” based on the Convention on the Rights of Persons with Disabilities that has been ratified by the Indonesian Government through the issuance of Law No. 19 of 2011 on Article 24, in related to all rights for disabled people. In addition, Law No. 20 of 2003 concerning National Education System. The disabled people organization demanded Ministry of Education and Culture to reform their regulation by removing the rules of requirements university admission for disabled passengers.

In response to the complaints delivered by disabled people organization, the national ombudsman conducts an investigation and if an injustice or a constitutional infringement is found, the ombudsman has the power to make recommendations for redress. The Ombudsman can also recommend changes in laws or compensation for the complainant. First step, the Ombudsman tries to resolve the problem through persuasion and negotiation with the administration of Ministry. The end result of investigating and mediation completely done within a month. In 29 April 2014 the Ministry of Education and Culture reform their own regulation by removing all the discriminative requirements to participate in National Selection of University Admission. In the new admission regulation delivered the needs and rights of disabled people who intend to enrol to the national university. The new regulation contain a broad, inclusive definition along the lines of the Disability discrimination Act, a broad definition of disability access to services should be based on need, that such people are now to be treated as full citizens with concomitant rights.²⁸ Indonesian Ombudsman deals with the nature of the change and its legal and institutional ramifications.²⁹ Indonesian’s Ombudsman follow the Swedish model, with the extra powers to investigate public authorities and the judiciary in the event of serious wrongdoing although the latter function is rarely exercised. Despite the Ombudsman’s stated function is to monitor the legality of public administration, in the contemporary period legality is construed by the Ombudsman “in broad terms, also embracing notions such as equity, fairness for all citizens and good governance”.³⁰

Rawls said, since justice as fairness starts with the special case of the basic structure, its principles regulate this structure and do not apply directly to or regulate internally institutions and associations within society. Firms and labour unions, churches, universities, and the family are bound by constraints arising from the principle of justice, but these constraints arise indirectly from just background institutions within which associations and groups exist, and by which the conduct of their members is restricted. For example, Universities cannot

discriminate in certain ways; (this constraint to help to establish fair equality of opportunity women equally with men) are equal citizens and have equal basic rights including the rights or property; they must respect the rights of their children (which the latter have as prospective citizens) and cannot, for instance deprive them of essential medical care. Moreover, to establish equality between men and women in sharing the work of society, in preserving its culture and in reproducing itself overtime. Rawls affirmed that Justice as fairness is a political, not a general, conception justice: it applies first to the basic structure and sees these other questions of local justice and also questions of global justice (what I call the law of peoples) as calling for separate consideration and their merits.³¹ Human rights exist to protect discrimination disabled people from government or society abuse and neglect. Rights limit what a state or society can do and impose obligations for how a state must act. What is needed in the face of this global assault on human rights for people with disabilities is a vigorous reaffirmation and defence of the basic values underpinning these rights.

The Link between Law of Disabled and Quality of Life, Living A Good Life

Among people aged 15 years old and above, there are 12.15 percent people living with disabilities (around 22.8 million people). Taking severity of disability into account, there are 1.87 percent people with severe disability and 10.29 percent people with mild disability. Comparing to global data, disability prevalence from Sakernas 2016 data is still lower than those published by WHO (2011), with 15.6 percent disability prevalence rate on average (19 years old and above), ranging from 11.8 percent in higher income countries and 18 percent in lower income countries and severe disability 2.2 percent for adults percent. The statistic show that the number of people with mild disability in Indonesia is five time greater than the number of people with sever disability. Most of disabilities have multiple impairments approximately 40 percent of multiple mild disabilities and 38 percent of multiple sever disabilities. Among regions in Indonesia, Sulawesi has the highest disability prevalence, which is 14.5 percent compared to 12.2 percent of Indonesia’s. The second region having the highest prevalence of disability is Nusa Tenggara. Attention should be placed to Sulawesi Island, which has many provinces having a high disability prevalence rate as seen on the Tabel 1.³²

Having a disability was assumed to be a justification for euthanasia, evidence of disability was grounds for selective abortion, and political theorist looked only what justice required the state to do by way of compensation for the underserved misfortunes people with disabilities had to endure. Modern philosophers, at least since the twentieth century, have pursued a variety of methodologies and tactics to address the good life. Political philosophers typically address the impact of disability on the good life from the perspective of the implications of disability on distributive justice generally, and the demands of social and political equality specifically. Confronting the hard fact that the combination of increased longevity and medical improvement more or less guarantees an ever increasing prevalence of persons with disabilities and

²⁸LBH Jakarta (2014), *Finally disabilities are permitted tofull participate in the selection of national university*, <http://www.bantuanhukum.or.id>

²⁹Hauritz, Marge. et.al.(1998), Op.Cit.

³⁰Ibid. p 138

³¹Rawls John in Kelly Erin (Eds), (2001). *Justice As Fairness A Restatement*, Massachusetts:The Belknap Press of Harvard University Press, p 10-11

³²International Labour Organization (2017), *Mapping Person With Disabilities in Indonesia Labor Market*, Jakarta:University of Indonesia, p 9-10

chronic health conditions. The naïve view that political theory can ignore disability as a social justice outlier has been recognized as utterly untenable.³³

Table 1. Provinces in Top Ten Highest Disability Prevalence from Five Disability Data Sources³⁴

| Prevalence Rate in Indonesia | |
|------------------------------|--|
| Top 10 in 5 Data | Gorontalo |
| ↓ | |
| Prevalence Rate | |
| Top 10 in 4 Data | South Sulawesi, West Sumatera, West Sulawesi |
| ↓ | |
| Top 10 in 3 Data | East Nusatenggara |

Sources: Halimatussadiyah et al. (2015)

Bruce Winnick has found, once a person is labelled incompetent to perform certain tasks, the person will no longer be given an opportunity to engage or learn those tasks. Thus this person will be denied the opportunity to do certain life activities and consequently may fail to develop his or her capabilities.³⁵ Further once a person is declared incompetent. Or lacking legal capacity, the person's own choices and preferences are ignored, and other people step into make all the person's decisions. According to Winick, this loss of decision making and control causes many people to believe that the events of their lives are now outside their control. This feeling, Winick further finds, may force people into learned helplessness which may cause them refuse to make the effort to live a full life.³⁶

Notwithstanding the impact of a health condition, and even in a world that is not designed to facilitate well being, let alone full participation, of people with disabilities, in contract the empirical evidence and testimony shows that for many people with disabilities life is surprisingly good.³⁷ Gary Albrecht and Patrick Devlieger (1999) marshal the evidence that reveals that people with disabilities consistently report a quality of life as good as, or sometimes even better than that of nondisabled people.³⁸ What reasons can be found to explain the life of disability is good? Some cast doubt on the \reports of good quality of life, in terms of the "happy salve" idea: people think they are happy because they do not know any better. Psychological research has supported disabled people's self reports of good quality of of life, rejecting the scepticism of. The use of objective standard of Quality of Life assessment is problematic, not because there are no such standards, but because from a first person perspective their application may appear arbitrary. On any account of standards like social indicators or normal functioning life will fail to qualify as good. Some people are content with their quality of life, even when others thin they shouldn't be. The main concern regarding the various domains of Quality of Life, then , is to ask how people can be supported in developing their gifts and talents and how their own capabilities can be put to work for them in this respect. A capabilities approach to quality of life

reflects the Aristotelian conception in that it in fact conceives of Quality of life as an activity rather than a state of being. Quality of life is reflected by *what people can do or become*.³⁹ Most strongly, people who have experienced being labelled as severely intellectually impaired emphasize how having access to communication and being able to change how people perceive them contributes to their quality of life. As Seybert writes: "When people are supported to emerge from behind the mask of 'disability' and are able to reveal their true selves, they become the beautiful butterflies God meant them to be".⁴⁰

Conclusion

Barriers are a key factor in respect of which society as a whole must work intensively and permanently both in removing obstacles as creating necessary conditions for equal opportunities and even material equality or of results. From invisible Citizens to Agents of Change, a short history of the struggle for the recognition of the Rights of Person with Disabilities. As a result, the conditions for good human life realization depend on the establishment of relationship of mutual recognition. These relationship s include relations of love and friendship and legally institutionalized relations of universal respect for the dignity of disabled persons. On the other hand the State is obliged to refrain itself from interfering with the people's human rights, in this case economic right, social and cultural rights. The State is obliged to protect the human rights of its citizens from any violations and the State's obliged to fulfill legislation and other measures towards the full realization of such rights".⁴¹In any legal system, respect and protection of human rights can be guaranteed only by the availability of effective judicial remedies, the State must changes the law to disabled people based on the proper role that the law and jurisprudence should pay in its determination and implementation, making the goal of which to arrive at the 'greatest happiness of disabled rights'.

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³³Bickenbach, Jerome E., et.al. (2014), Op.Cit., p 2-3

³⁴Ibid. p 5

³⁵Robert Rosenthal, et.al. (1968), *Future Expectations and Peoples Intellectual Development*, p 54-55, 116-18 in Kanter, Arlene S.(2015), *The Development Of Disability Rights Under International Law From Charity to Human Rights*, NY:Routledge, p 243

³⁶Winnick, *supra note 8* in Ibid.

³⁷ Op.Cit. p 96

³⁸Albert, G.L., Devlieger, P.J.(1999), *The disability paradox :High quality of life against all odds*. Soc ci Med. Apr. 48 (8):977-88 in Ibid.

³⁹Ibid. p 212-214

⁴⁰Gillingham, Gail. Sandra McClenned. (20018), *Sharing Our Wisdom; A Collection of Presentations by People on the Autism Spectrum* (Autism National Committee), Ibid.239

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