

A Rapid Review Informing About The Discrimination As Experienced By Neurodivergent Defendants

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ABSTRACT

Recognising discrimination against the legally insane has a long and ugly history, the mistreatment of neurodivergent citizens is alive and well today. Following on, this rapid review addresses the question of: in what ways is discrimination against neurodivergent defendants experienced? Content analysis was applied to 30 relevant papers identified obtained from purposive searches of Legal Source, Google Scholar and Google (grey literature) databases. Content analysis informed three themes of: a) judge or jury member bias; b) loss of freedoms; and c) outdated or narrowly defined laws. The study concludes by warning about a loss of human rights with neurodivergence itself potentially placed on trial through alarmist, inaccurate and demeaning personal judgements. Crucially, a socially just term is promoted to help to depict the discrimination that can be experienced by neurodivergent persons in the contemporary legal system. This term is that of neurodivergism.

1. INTRODUCTION

1700's, hospital patients, labelled as 'maniacs' or 'lunatics', were housed in pungent cells, some chained to walls or floors, and offered up as mad spectacles as a type of public entertainment (Whitaker, 2002; Hortas, 2004, p.157). Some of the legal commentary in the latter part of the eighteenth century described executing persons who were insane in terms of, 'extreme inhumanity and cruelty', 'against Christian charity' and, 'a miserable spectacle' (Entzeroth, 2009, p.15). The nineteenth century, however, witnessed a flood of legal action that authorised the construction of asylums, madhouses and workhouses (Eastoe, 2020). By 1914, over twenty American states had established laws that prohibited insane persons from partaking in marriage (Hortas, 2004). Throughout the 1930s and 40s, a focus on excluding the insane and the

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establishment of sterilization were precursors to other invasive measures including shock treatment, lobotomies and induced comas (Grob, 2003). Still, in the 1970s, resistance persisted against legal practitioners and former patients who advocated against the evils of involuntary commitment (Ward, 2014). In light of such resistance, it appears to be reasonable to suggest that the mistreatment of the legally insane is in no way relegated to the distant pages of history.

Sanism is incompatible with social justice. Sanism is described in terms of, “prejudice against persons who are judged to be mentally ill” (Lawrence, 2018; Kelly, 2019, p.546). Meier (2002) reported that most persons with mental ill health would be considered ‘sane’ under present legal assessments. Differentiating between the two terms of ‘mentally ill’ and ‘insane’, the Black’s Law Dictionary aligns mental illness with impaired judgements, views of reality or abilities to manage ordinary life stresses, and insanity with being deranged (Randolf, 2013, p.580). Conversely, the term sane is concisely defined as, “proceeding from a sound mind” (Merriam-Webster 2020). The medical model posits that an individual’s functional constraints are the source of the troubles they experience and that such hardships can only be resolved through treatments (Crow, 2003). Just as insanity is a historic concept that has adjusted over time (Puisys, 2014), constructions about mental illness can also be considered to be dynamic and progressive. In this context, the term neurodivergent is defined as, “neurocognitive functioning that diverges significantly from the dominant societal standards of ‘normal’...” (Hewlett & Cooper, 2018; Bielecki & Varvarides, 2019, p.62).

Neurodivergence, originating from the neurodiversity movement, opposes the pathologizing of neurological variances (Murphy, 2018). Murphy (2018) has also noted that the neurodiversity model permits neurodivergence to be acknowledged as a social classification instead of a solely medical subject. Shifting attention away from impairment, the social model of disability speaks of disabling attitudinal, social and environmental obstacles instead of a lack of proficiency (Crow, 2003). Non-medical, progressive and socially just terms of neurodivergent and neurodivergence will be widely used throughout this paper. Following on, it is important to recognise that neurodivergent defendants can experience discrimination from a variety of sources including those from within legal proceedings themselves as well through mass media reports that stigmatise individuals (Adjorlolo et al. 2017; Mooney, 2019; Wardle, 2003; Zaccour, 2018). Aiming to inform about these and other possible sources of discrimination, this rapid review addresses the research question of: in what ways is discrimination against neurodivergent defendants experienced?

2. RESEARCH METHOD

This study follows the six phases of conducting a qualitative rapid review as depicted by Khangura, Konnyu, Cushman, Grimshaw and Moher (2012). These phases are: a) identifying a research question; b) selecting data sources and defining searches; c) establishing selection criteria; d) appraising texts; e) synthesising data; and f) interpreting research findings. Having identified the research question, the data sources of Legal Source, Google Scholar and Google (grey literature) were selected and the search term defined as, “mental illness” AND “not insane” AND

“discrimination”. Inclusion criteria was set to: publication date = 1990 to 2020; publication type = journal article (scholarly databases) OR PDF (grey literature) AND content described way(s) in which discrimination against neurodivergent defendants is experienced. In line with purposeful sampling (and recognising the need to attain a useful sample size), Google Scholar and Google searches were each limited to the first 12 pages of results. Data was synthesised by iteratively identifying themes, corresponding coding rules, and supporting quotes from the texts. Findings were then critically interpreted in the discussion section of this paper.

3. RESULTS AND DISCUSSION

Result

Of the papers assessed from the Google Scholar and Google (grey literature) searches, 18 relevant and 5 relevant texts were identified respectively. A search of the Legal Source database revealed 31 possibly relevant articles and 7 relevant texts after applying the inclusion criterion. A total of 30 relevant papers were identified. Following the content analysis of relevant papers, three themes were revealed as depicting experiences of discrimination against neurodivergent defendants. These themes are: a) bias among judges (i.e., according to international legal systems, judges hold the power to interpret law and instruct jury members about applicable laws) or jury members (i.e., jury members review the facts and determine the guilt or innocence of the defendant) (United States Department of Justice, 2022); b) loss of freedoms; and c) outdated or narrowly defined laws. Promoting research transparency and rigor, Tables 1, 2 and 3 provide coding rules quotes that support each of these three themes respectively.

Table 1. Bias among judges or jury members

<p>Theme: Judge or jury member bias.</p> <p>Coding rule: discrimination against neurodivergent defendants as experienced through personal bias.</p> <p>Supportive quotes:</p> <p><i>“...determining how to address juror bias during the voir dire process is crucial for ensuring fair trials for defendants who raise the issue of mental capacity at the time of the offense” (Adjorlolo et al. 2017; Mooney, 2019, p.2).</i></p> <p><i>“one important stereotype is that ‘[m]ental illness can easily be identified by lay persons, and matches up closely to popular media depictions and comports with our common sense notion of crazy behavior’” (Perlin, 1994, p.257).</i></p> <p><i>“Ableist labels rhetorically dramatize the mother’s lack of credibility. For example, rather than asserting that she is a liar, the father can say that she is a</i></p>

'pathological liar;' rather than finding that she exaggerates, the judge can find that she is "hysterical." Moreover, the labelling of a bad litigant as a "hysterical mother" need not be based on an actual diagnosis; it can come from the judge's assessment of the mother's conduct. In J.D.P. v R.M.P., the roles of judge and psychiatrist are conflated, as the judge finds that the mother's mental state, which 'impacts every aspect of [the] case,' was apparent even before her medical records were produced" (Zaccour, 2018, p.71).

"Journalists will continue to perpetuate the ignorance that persists about mental illness, crime and punishment if they ignore the wider questions surrounding these issues" (Wardle, 2003, p.250).

"Another historically troubling development for ADA claimants with mental illness, especially those that have been able to hide their conditions while working or functioning on some level in their occupational roles, is that courts, as a result of this level of functionality, are unwilling to find that the claimant has a disability at all..." (Jackson, 2010, p.225).

"Others have come forth with a similar caveat. In an article in The Journal of Psychiatry & Law, attorney David B. Saxe warned against the use of diagnoses in custody proceedings and discussed how misleading they can be and how they may complicate rather than elucidate the issues. He pointed out how the use of diagnoses such as 'schizophrenia' and 'psychosis' may mislead a court into believing that these disorders are invariably associated with an inability to function as a parent" (Saxe, 1975; Slovenko, 2002, p.437).

"selective media coverage of unusual or highly violent cases involving a mentally ill defendant is believed to cultivate and reinforce widespread public belief that mentally ill individuals are more dangerous and violent than those without a psychiatric history (Steadman and Cocozza, 1977; Daftary-Kapur et al. 2011; Parcesepe and Cabassa, 2013)" (Mooney 2019, p.2).

"madness is something that is often depicted with people either terrified, because actions caused by madness are self-mutilation, killing of relatives or suicide, or laughing because person is acting in strange ways" (Puisys 2014, p.37).

Table 2. Loss of freedoms

Theme: Loss of freedoms.

Coding rule: discrimination against neurodivergent defendants as experienced through a loss of freedoms.

Supportive quotes:

“Retaining psychiatrically described ‘mental illness’ as a criterion for involuntary commitment arbitrarily privileges the collective and individual guesses of a profession that is incapable of fulfilling the trust courts place in it” (Godwin 2012, p.708).

“Forcing a person into treatment against her will flies directly in the face of the individual’s right to refuse medical or psychiatric treatment whether or not medical professionals agree” (Ward 2014, p.279).

“While the majority of insane asylums, such as the infamous hellhole on Blackwell’s Island that Nellie Bly exposed, have long been shut down, their image still has the power to haunt us because enforced confinement persists for those deemed to be ‘madmen and social misfits’” (Rosenberg et al. 2014, p.173).

“Normally, state law presumes a person so committed remains both mentally ill and dangerous and places the burden of proving otherwise on the person committed” (Fradella, 2007, pp.36-37).

“If competency includes the ability to rationally choose a plea, competent defendants should not be forced to enter insanity defenses against their wills” (Miller, 2002, p.297).

“First, Justice White opined that Foucha’s involuntary confinement at a mental institution is improper unless a civil commitment proceeding is held to determine whether he is currently mentally ill and dangerous” (Hsieh, 1993, p.243).

“As Lois’ legal team evaluated new strategies to achieve an appropriate, sustainable community placement for her, many of her caregivers at the hospital acknowledged that institutionalization was deleterious to Lois resulting in regressive behaviors” (Caley & Caley, 2010, p.655).

“The Integrationist Alternative might also help de-stigmatize people with mental illness, because it treats them the same way we treat non-mentally ill people. The

'criminally insane' are reviled and feared, probably more so than any other category of people besides terrorists. If the insanity defense is eliminated, the 'criminally insane' label is eliminated as well, which might be a small step toward rehabilitating the image of people with mental illness" (Slobogin, 2003, p.338).

"The problem here is that it can happen that the accused person, while insane at the time of committing the crime, is, at the time of standing trial, no longer mentally ill and thus in fact presents no danger to society. In such a case incarceration not only serves no purpose but constitutes an unjustifiable deprivation of freedom" (Milton, 1999, p.42).

Table 3. Bias within existing legislation

Theme: Outdated or narrowly defined laws.

Coding rule: discrimination against neurodivergent defendants as experienced through outdated or narrowly defined laws.

Supportive quotes:

"Several states with antiquated laws do not publicly emphasize the importance of demonstrating mental capacity as a prerequisite to obtaining a marriage license, suggesting the states have few modern justifications for the laws as currently written" (Matloff, 2009, p.509).

"Various commentators, perhaps most notably Professor Tom Campbell, have drawn attention to the discriminatory nature of a legal regime that permits people with a mental illness to be treated quite differently to other people with a disability by having a separate body of law – a Mental Health Act – which permits interference with the liberty and bodily integrity rights of people who have a particular medical condition" (Campbell & Heginbotham, 1991; Rees, 2009, p.77).

"In light of the history of eugenics and forced sterilization of persons with severe mental disabilities (a history that continues to the present day), the issue of sexual autonomy and reproductive rights in persons with mental illness is important to address in a careful manner" (Perlin & Cosgrove, 2008, p.26).

"Because the purpose of using a service animal or emotional support animal is to assist an individual with a disability in some manner, there should not be a hierarchy of which type of assistance is more important than another type of assistance. That is the issue created by the words, "work or tasks performed." If

the law is written to focus on those words, then it alienates the individual who needs an animal to provide comfort, support, companionship or the like to manage his or her mental health issue. By alienating a certain group of individuals with disabilities, the stigma and discrimination against those individuals is perpetuated" (Foster, 2018, p.263).

Discussion

The following section will critically discuss the evidence-based ways in which discrimination against neurodivergent defendants are experienced. These include judge or jury member bias, loss of freedoms, and negative impacts from outdated or narrowly defined laws.

Judge or Jury Member Bias

There is a need to ascertain ways of redressing juror bias on occasions where the matter of mental capacity at the time of offending is raised (Adjorlolo et al. 2017; Mooney, 2019). Jury members should therefore resist making assumptions about the *current* mental capacity or sanity of a neurodivergent defendant on the basis of historical evidence as presented at trial. Judges and juries are also challenged to move beyond culturally prominent and discriminatory depictions of madness that reside in alarmist and demeaning texts. In this light, Puisys (2014) reported of madness in terms of profoundly negative experiences of terror, death and ridicule.

Potential for judge and jury bias might also be influenced by the particular neurotype of the accused. For instance, Slovenko (2002) queried as to whether the parenting skills of a person with schizophrenia might be considered to be greater or lesser than the skills of an individual who has obsessive-compulsive disorder. Informing this enquiry, Saxe (1975) as cited in Slovenko (2002) has proposed that the usage of particular medical conditions including that of psychosis might deceive a law court into associating such conditions with parental incompetence. Moreover, Zaccour (2018) has noted that a judge's findings of a mother's mental condition (which influences all facets of the case) was obvious prior to the producing of her medical reports. These kinds of *judicial shortcuts* can result in biased perceptions of neurodivergence becoming the focus of a trial rather than the evidence that is presented. Where unconscious biases or openly held prejudices against neurodivergent defendants invade, pollute and ultimately dominate court proceedings, injustices are likely to follow.

Perlin (1992, p.375) explained that sanism is perpetuated through 'ordinary common sense' (OCS) in unconscious reactions to legal events. A juxta-positioning of mental ill health alongside danger can hold significant implications for neurodivergent persons in regards to maintaining their freedoms. Danger (i.e., menacing) behaviour is described as the most commonly mentioned instigator towards involuntary admission (Pokorny, Shull, & Nicholson, 1999). Furthermore, Hsieh (1993) reported on the legitimising role of civil commitment proceedings in

terms of judging whether a person is presently mentally unwell and represents a danger. Independent investigations are nevertheless needed to ascertain the possible extent to which OCS-based exaggerations of danger concerning sane and competent neurodivergent citizens are held by civil commitment officials. It is these discriminatory misconceptions that can exaggerate risks both to the neurodivergent individual as well as to the broader community.

OCS holds capacity to infiltrate anti-discrimination cases for neurodivergent employees. A worrying change involving ADA claimants who are experiencing mental ill health and who are hiding their conditions while performing within their positions is that courts are dismissive of their disability (Jackson, 2010). From an ideological perspective, these dismissals are progressive and in line with the social model of disability in that they draw attention away from medical impairment. Nonetheless, they fall short of social model ideals by overlooking the possible need for (and the legal right to attain) the provision of reasonable accommodations to help to manage environmental barriers that can exist in the workplace. These dismissals can also be considered discriminatory in the sense that they imply that a person cannot be both neurodivergent and productive in their working role. Courts should not treat neurodivergence and work productivity as mutually exclusive of each other.

This study has also highlighted the media influence on OCS and subsequent court perceptions about neurodivergence. Discriminatory media coverage of uncommon cases that involve defendants with mental ill health is thought to encourage common public acceptance that mentally unwell persons are dangerous (Steadman & Coccozza, 1977; Daftary-Kapur et al. 2011; Parcesepe and Cabassa, 2013; Mooney 2019). Wardle (2003) has cautioned that journalists will maintain the illiteracy about mental ill health, crime and retribution if they overlook the broader questions. Perlin (1994, p.257) has also warned that one significant stereotype involves mental illness being effortlessly recognised by untrained persons and closely fitting with popular media portrayals. As detailed in the following account of a capital murder court case, falsely based allegations as formulated from media influence hold potential to be the difference between life and death:

In particular, the prosecutors argued that Yates had watched the Law & Order episode in question, drowned her children, and concocted the insanity defense as 'a way out.' Yates's insanity defense was rejected and she was convicted of capital murder. Shortly thereafter, the defense discovered that no such Law & Order episode existed. Dietz then contacted the prosecution and indicated that he had made a mistake and agreed that no such episode existed. Despite this serious 'mistake,' the trial judge refused to grant a mistrial and the prosecution continued to seek the death penalty and fought aggressively to uphold Yates's conviction. A state appellate court later overturned her conviction (Williams, 2005, p.642).

Such apparent willingness of a courtroom to accept the prosecutor's damning (and yet unfounded) argument against a neurodivergent defendant is troubling. This case therefore highlights the need for defence teams to be vigilant and efficient in their efforts to fact-check the arguments that are being made against their neurodivergent

clients. Reviews of these kinds of cases of social injustice are also needed in order to learn from the mistakes that can influence legal proceedings, while also making efforts to avoid such errors moving into the future.

Loss of Freedoms

Acknowledging that most insane asylums are now long gone, their texts are still haunting with enforced detention continuing for persons who are considered to be social oddities and mad (Rosenberg et al. 2014). The legal sway of the medical model of disability upon the control and constraint of neurodivergent people in contemporary society should not be underestimated. Godwin (2012) had warned that preserving the psychiatric depiction of mental ill health as a condition for the involuntary commitment of individuals subjectively favours the speculations of a professional occupation that is unable to satisfy the belief as assigned to it by the courts. Hence, psychiatrists cannot lay claim to holding any sort of invincibility in terms of their recommendations that can effectively remove the freedoms of neurodivergent citizens. Moreover, as discussed by Kupers and Toch (1999) as cited in Price (2017, p.492), judges and prosecutors alike can be reluctant to redirect persons with mental illness elsewhere than incarceration:

When it came to incarcerating the mental ill, the problem was much larger in scope, and due to a failing mental health apparatus, as well as police, prosecutors, and judges unwilling to divert people elsewhere - to say nothing of the toxic social conditions and pressures that lead to mental illness in the first place, as well as lead them into the maws of the criminal justice system.

Discrimination, as promoted through 'expert' psychiatric opinions, can thus have the deleterious effect of biasing court decisions. The question arises, how many neurodivergent citizens are being involuntarily committed in modern times as a consequence of medical recommendations that are made on the basis of incorrectly calculated risks? Investment is needed in research and independent enquiries to help to answer this potentially significant and ongoing social justice issue.

A narrow 'legal definition of insanity' can also contribute to injustice (Law Commission, 2012, p.84). March (2005, p.256) concisely summarised this legal dilemma as follows:

The overarching problem is that the law offers a relatively binary approach to insanity and its role within criminal law. One is either 'sane or insane, competent or incompetent, or able-bodied or disabled' under the present legal system, one commentator notes.

The issue becomes that the defendant, though insane at the point of performing the offence, is now mentally well and therefore represents no risk to the community (Milton, 1999). In this instance, confinement signifies an inexcusable removal of freedom (Milton, 1999). Moreover, should mental capability include the faculty to be

able to sensibly select a plea, defendants who are competent should not be compelled to record insanity defenses contrary to their wishes (Miller, 2002). A capable defendant's loss of choice in legal defence strategies should therefore not become the reason for their loss of personal freedom following involuntary institutionalisation. These complexities regarding the current mental state of neurodivergent defendants at the time of trial need to be better acknowledged and redressed by a contemporary legal system.

Challenging the legal definition of insanity itself, Melancon (1998) posited that if one's reality checking is deficient but their moral reckoning remains unharmed, then the person is considered to be sane. Having recognised that once mental illness starts to obstruct one's capacity to understand that their act is immoral, then only at this time will you be judged as insane, Melancon (1998) proceeded to ask, how precisely is the first of these scenarios more sane than the second? It appears to be a perverse arrangement whereby the freedoms of sane, neurodivergent citizens can be taken away following deliberations whose very foundation centres upon a highly questionable legal definition of insanity. Clearly, policy attention is needed to redress the many confusions and imprecisions surrounding the legal definition of insanity as it presently stands.

Discrimination against the neurodivergent can be promoted through legal discourse. Armani (2017, pp.215-216) has suggested that to reduce the probability of jurors confusing a defendant's legal standing for an individual trait, legal terminologies that are linked with mental ill health (including that of 'legally insane') need to be substituted with terms that do not hold negative subtexts. Slobogin (2003, p.338) has also made the following case for the removal of the insanity defense from a perspective of reducing mental bias:

If the insanity defense is eliminated, the 'criminally insane' label is eliminated as well, which might be a small step toward rehabilitating the image of people with mental illness.

The term sanism itself, with its focus on persons who are deemed to be insane rather than simply as persons who happen to think differently to the norm (i.e., the neurodivergent), can be said to hold a negative subtext. This particular undertone aligns itself with the stigmatising medical model of disability. That is to say, it potentially contributes to unconscious bias about neurodivergent persons with the insidious undercurrent that all of these people are somehow permanently damaged. The descriptor of sanism can thus be constructed as discrimination that is carried out by 'sane' members of society against those who are necessarily 'insane'. The use of this term within the legal system, or elsewhere for that matter, should be critically questioned on this basis. Holding compatibility with the social justice goal of advancing diversity and inclusion, the progressive term of neurodivergism describes discrimination that is conducted against persons who are neurodivergent. The individual who carries out such discriminatory behaviour can thus be referred to as a neurodivergist. The construction of this discourse recognises the reality that neurodivergent people who are discriminated against tend not to be insane.

Breaking free from a grasp of involuntary commitment is no easy task. Many states persist with an outlook that once having been restrained in an institution or pronounced as 'mentally incompetent', one is perpetually unwell and presents a social danger (Edwards 1993, p.421). Fradella (2007) too posited that state laws generally assume that an individual who has been committed continues to be mentally unwell and a danger, with the burden of proof to the contrary laid upon this person. Heeding these warnings, it is critical that neurodivergence is not legally equated with proof of insanity, proof of incompetence, or proof of danger in commitment appeal proceedings. Such proceedings that refuse to move beyond these biases which can target neurodivergent defendants who are fighting for their freedoms need to be seen for what they truly represent. And what they represent is a state approved instrument of discrimination.

A medical model endorsed, uncritical worshiping of psychiatric recommendations is not without its own dangers. Indeed, the health price that relates to forced mental health 'treatments' should not be underestimated. Coercing an individual into having treatment against their freewill fails to recognise their right to decline medical therapy (irrespective of whether medical professionals concur) (Ward 2014). The costs to neurodivergent people in terms of the mental traumas that can follow involuntary treatments should not be dismissed or downplayed by the medical profession. To do otherwise is not only to discriminate, it is to breach the longstanding medical oath of 'do no harm'.

Sustainable policy options to enforced mental health treatments do exist. Caley and Caley (2010) reported on the evaluation of legal strategies to attain community placement as a sustainable option to harmful institutionalisation. These kinds of progressive proposals, however, cannot necessarily expect to receive fair hearings. According to Cockrell (2013), courts are reluctant to take into account psychiatric or psychological injury. It appears to be rather ironic, however, that courts do appear to be quite willing to embrace medical 'expertise' surrounding the dangers and risks that are claimed to follow mental illness. Hesitancy on behalf of the courts to acknowledge the health risks of institutionalisation should be seen as a form of neurodivergism. It is this pervasive 'ism' which continues to proceed largely unchecked in the institutionalising of neurodivergent defendants. The mental health implications of such attacks on personal freedoms and social justice warrant swift and decisive policy attention.

Outdated or narrowly defined laws

Antiquated laws continue to be used in efforts to constrain the sexual lived experiences of some neurodivergent citizens. Perlin and Cosgrove (2008, p.26) have cautioned about the 'history of eugenics' and of the ongoing practice of 'forced sterilization' involving individuals with 'severe mental disabilities'. Moreover, Matloff (2009) has suggested that outdated laws concerning establishing mental competence as a precondition to marriage struggle for justification in modern times. Hence, much-needed legal reform in this highly personal area is compatible with the principles of advancing social inclusion and social justice.

A fair and just society does not tolerate legal processes that discriminate against people on the basis of their neurodivergence. Commentators have also raised the discriminatory disposition of a legal system that allows people with mental ill health to be dealt with in a different way to others with disability by having in place a discrete 'Mental Health Act' (Campbell & Heginbotham, 1991; Rees, 2009, p.77). It is therefore appropriate that objective investigations are conducted to examine the potential ways in which aspects of targeted mental health legislation might be at odds with more broadly directed anti-discrimination legislation.

Finally, laws involving the use of emotional support animals can be narrowly defined (i.e., narrow in terms of limiting access to the population of neurodivergent people who might benefit from attaining this form of support). As a consequence, these marginally constructed and applied laws are discriminatory. Foster (2018, p.263) has noted that the wording of, "work or tasks performed", isolates the person who requires an animal to help them to handle their mental health concern. Any review of law concerning the use of emotional support animals (and the associated scope of use) should thus recognise and reflect the wider mental health benefits that these animals can promote.

4. RESEARCH LIMITATIONS

This rapid review is confined to the restrictions as raised in the purposive sample of scholarly articles that were accessed. These include: research that was archival or preliminary in character; sampling challenges; and modest new proposals of law reform (Pokorny, Shull, & Nicholson, 1999; Mooney 2019; Wardle, 2003; Rees, 2009). Recognising the notable scholarly contributions of this exploratory study, additional research is nevertheless warranted to increase greater understanding about neurodivergence and discrimination in a contemporary legal context.

5. CONCLUSION

This paper has highlighted that discrimination involving neurodivergent defendants is alive and well today. Such discrimination, social injustice and loss of human rights are experienced in various ways including forced insanity pleas, involuntary confinements, and forced sterilizations. Troublingly, neurodivergence itself can be potentially placed on trial through alarmist, demeaning, and inaccurate personal judgements concerning neurodivergent defendants. Crucially, this paper has attempted to move beyond the discourse of sanism and its medical model endorsed reference to insanity. A socially just term has therefore been promoted to help to depict the discrimination that can be experienced by neurodivergent persons in the contemporary legal system. This term is that of neurodivergism.

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