



## Ableism, ambiguity, and the Anna Stubblefield case

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CURRENT ISSUES



## Ableism, ambiguity, and the Anna Stubblefield case\*

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### ABSTRACT

This article discusses the ongoing case of Anna Stubblefield, a former Rutgers University philosophy professor who was convicted of the sexual assault of an African American man with cerebral palsy. On appeal, the conviction was reversed, and as of this submission Stubblefield is awaiting news from the state of New Jersey Supreme Court as to whether there will be a retrial. This piece engages with Sherry's article in this journal, and dissects the many layers of ableism at play in this case, arguing that justice will not be served until the alleged victim gets to be heard.

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The events of the Anna Stubblefield case have unfolded like an elaborately planned soap opera. Anna Stubblefield developed a sexual relationship with a young man known to the public as D.J., who has severe cerebral palsy. D.J.'s disability makes him non-verbal. Watching the events of this case, I find myself unsettled on both personal and professional levels. Like D.J., I have severe cerebral palsy. I am also a survivor of two sexual assaults. When people meet me for the first time, they often assume I have an intellectual impairment because of my difficulty speaking. In reality, I hold a bachelor's degree from Harvard College where I specialized in special education policy, a Master's Degree in Political Theory from the London School of Economics and Political Science, and a Doctorate in Human Sexuality from the Institute for Advanced Study of Human Sexuality. I am also currently pursuing a PhD in Political Science at Stanford University. My dissertation explores how theories of social justice can be used to promote the sexual empowerment of people with disabilities. I would like to provide my perspective on the case, which I believe continues to be tainted by ableism and ambiguity.

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On Memorial Day 2011, Stubblefield decided to tell D.J.'s mother and brother that she and D.J. were in love and had consummated their relationship (Engber 2015). As D.J.'s legal guardians, his mother and brother went to the police alleging that Stubblefield sexually assaulted D.J. Stubblefield was subsequently arrested and charged with two counts of aggravated sexual assault. Over the course of a grueling trial, the State of New Jersey determined that D.J. was incapable of expressing legal consent to have sex. Stubblefield began serving a 12-year prison sentence for aggravated sexual assault. An appellate court reversed her conviction on 9 June 2017. The New Jersey Supreme Court is now considering whether the appellate decision should stand, in which case Stubblefield would receive a retrial (Engber 2017).

From my perspective, the Anna Stubblefield case demonstrates the pervasiveness of ableism in American society. To illustrate, consider that D.J. only appeared in court once during the entire trial for the prosecution and only for a few minutes. He did not testify. Rather, he was displayed in court in a manner that allowed the jury to witness his profound disability. I have experienced what I can imagine are the looks the jury had on their faces when confronted with someone who has minimal control over his body and has difficulty speaking. People's common reactions to my spasticity and my speech impairment range from pity to disgust. Even when I make the point of not-so-subtly showing them my Stanford ID, I am still often treated like I have an intellectual impairment. Based on my experience, I suspect that most, if not all, of the jurors came to think that there was no way D.J. could ever consent to having sex, simply by looking at him. I also suspect that this was the prosecution's intention. If this was the case, the State of New Jersey is ethically guilty of objectifying D.J. for its own purposes.

Consent is crucial to this case in two ways. First, there is the question of whether D.J. has the intellectual capability to consent to sexual activity. Second, there is the question of whether he expressed consent to sexual activity with Stubblefield. The answer to the second question is dependent on the first, but they are two distinct questions. It would be difficult to determine the answer to either of them in light of D.J.'s significant disabilities, but not impossible. No one could really know for sure without interacting with him in a much more substantial way than the jury was allowed during the trial. Potentially complicating this point even further is the fact that D.J. is African American. In special education literature, scholars consistently note that African American students with disabilities have more difficulty receiving special services and on average achieve lower educational outcomes compared with white students with disabilities (Losen and Orfield 2002, xv–xvi). I do not know D.J. or his educational history, but it would not be surprising if he was not given appropriate access to speech therapy while in public schools. Even if he is intellectually impaired, effective speech therapy could have given D.J. access to an appropriate augmentative communication system that would allow him to express himself. This is a detail of the case shrouded in ambiguity that makes it difficult to determine whether justice is being done.

Also complicating the issue of consent is the fact that the first judge did not allow any expert testimony for the defense as to D.J.'s ability to consent. If the critical issue in this case is whether D.J. could consent to sex, why was evidence about his intellectual abilities excluded? I am by no means taking sides because there is not enough publicly known information to determine whether D.J. can in fact consent to sex, and more specifically whether he consented to sexual activity with Stubblefield. However, I do think that in order for Stubblefield's case to be fairly judged, D.J.'s intellectual capacity and wishes need to be considered more fully. In the appellate decision, the three-judge panel indicated that this expert testimony must be heard in a retrial. The question is: will this evidence be presented in a way that enables D.J.'s wishes to be heard?

Here I would like to acknowledge Mark Sherry's argument in an earlier issue of this journal. He critiques disability studies scholars who have argued that because D.J. was not allowed to testify we cannot know whether he actually consented, and therefore there was no real case against Stubblefield (Sherry 2016, 977). He cites no particular sources as evidence to support his charge. As someone who has followed this case closely, I have never encountered any commentary that supports Sherry's characterization of disability studies scholars' positions. Assuming, however, that a disability studies scholar has articulated this argument, I would distinguish it from my own. As D.J.'s legal guardians, his mother and brother have the right to represent his interests. Accordingly, there appear to be legitimate grounds for a case if they believe D.J. was sexually assaulted and there was sufficient evidence to support their claim. However, when a prosecutor brings a sexual assault case to trial, they have, in my view, an ethical obligation to ascertain the interests of the alleged victim to the fullest extent possible. This is different from claiming that there is no case against Stubblefield.

Also at play here is society's discomfort with the notion that people with disabilities are sexual beings who might be appealing romantic partners to those without disabilities. The prosecution highlighted the fact that D.J. wears diapers. This in itself is not a sign of intellectual impairment, but even if it were, he should not have been infantilized, especially in light of how briefly he was paraded to the jury. I think that one likely reason for mentioning this was to appeal to the stereotype that a non-disabled woman could not possibly develop genuine romantic feelings for a man with a disability who wears diapers. Consider, for the sake of argument, the possibility that D.J. does have an intellectual disability. This would not preclude him from having the same sexual desires as anyone else. Further, when someone has an intellectual disability, they do not, in my view, waive their right to be treated with dignity and respect, especially by political actors and institutions.

We do not have enough information to know the exact nature of the relationship between Stubblefield and D.J. Further, it would not be unusual for the family of a man with a severe disability to have difficulty seeing him as a sexual being. Romantic relationships develop between disability-related professionals and their clients with relative frequency, and families of those with disabilities sometimes

have trouble accepting those relationships. Nonetheless, it should not be the role of the legal system to place judgment on them, and I fear that, in this case, the prosecution was inappropriately combining legitimate consent issues with value judgments about D.J.'s sexuality, marginalizing and objectifying him once again.

Philosophers Jeff McMahan and Peter Singer also marginalize and objectify D.J. in their op-ed in *The New York Times* (McMahan and Singer 2017). In particular, they argue that if D.J. truly is severely intellectually disabled, then it is not clear what harm was done to him if Stubblefield did, in fact, sexually assault him. Their logic is flawed because it supposes that for someone to be harmed, they have to actually perceive the harm being done to them. This would also imply that sex crimes against anyone who is incapable of perceiving harm are not explicitly harmful. What would that mean for cases involving children who might not understand when harm is being done to them, the unconscious, or the intoxicated?

As a professional in the field of human sexuality, I find this conclusion appalling and dangerous. There is not enough research on the effects of trauma in these kinds of cases to be able to definitively determine whether such assaults are or are not harmful in their own right. As a matter of practicality, these crimes often trigger reactions from loved ones, government agencies, and the general public that make a victim's experience even more traumatic. When working with survivors of sexual assault, the point McMahan and Singer are making about the elusive nature of harm in such acts is made moot by the inevitable trauma suffered in their aftermath.

As a political theorist, I am equally disturbed by McMahan and Singer's reasoning because it seems to ignore the harm of undermining human dignity. McMahan and Singer are utilitarians, meaning they seek to identify societal arrangements that maximize aggregate rather than individual happiness. I believe this is why they objectify D.J. They believe that if an intellectually impaired D.J. does not perceive harm when he is sexually assaulted, then the assault does not contribute to diminished societal utility because D.J. does not experience diminished individual utility. Their logic elicits a common critique of utilitarianism supported by John Rawls, Martha Nussbaum, and others – namely that individuals should be treated as ends in themselves rather than means to a broader end. In other words, utilitarians often advocate the sacrifice of individual liberty and autonomy for the sake of collective happiness (Nussbaum 1998, 60; Rawls 1999, 24–26).

Nussbaum's capabilities approach is particularly relevant to understanding my position here. This theory holds that societies have obligations to promote human dignity and flourishing through facilitation of, among other capabilities, freedom of sexual satisfaction and affiliation (Nussbaum 2000, 78–79). I believe the harm D.J. experienced if he was assaulted is that Stubblefield would have violated his freedom of sexual satisfaction and affiliation, thereby undermining his dignity. Despite his disabilities, D.J. is a human being worthy of dignity and respect, and it would be a grave harm and injustice for the US legal system to not have procedures in place to punish Stubblefield for sexually assaulting him if that is indeed the case.

It remains to be seen how the real-life soap opera that is the Anna Stubblefield case will conclude. It is not for me to pass judgment on Stubblefield's guilt or innocence. Instead, I write this with the hope that, as the case proceeds, D.J. will no longer be marginalized because of his significant disabilities. Given all that has transpired, I am skeptical as to whether this will ever happen. Nonetheless, justice will not be served in this case until ableist assumptions are put aside and our legal system enables D.J., after far too many years of silence, to find his voice.

### Disclosure statement

No potential conflict of interest was reported by the author.

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