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# Defining the Rights of Law Students with Mental Disabilities

*The 'troubles' of the law student are a mirror reflecting the hidden, human depths of law school initiation rites. Law school is a powerful, transformative experience in which the soul as well as the mind is at stake.*<sup>1</sup>

## I. INTRODUCTION

I had just completed my first semester of law school classes, and finals were about to begin. My first final was Torts. I cannot begin to describe the anxiety that overcame me in the days leading up to the test. The five-hour exam would, in the professor's words, test "everything you know" about the law of torts. After wrestling with such issues as slippery banana peels, exploding packages, and the reasonable man standard, I had no idea how I would put it all together on the day of the test. During those five hours, the pressure became nearly unbearable. At the end of the exam, I breathed a huge sigh of relief. I could now look forward to studying for Civil Procedure.

I soon learned that my reaction to the Torts exam was trivial: A student in one of the other rooms taking the same test had suffered a full-fledged anxiety attack.<sup>2</sup> I do not know whether there was anything in this student's medical history that might have caused the student to faint. The incident does, however, raise an interesting question: Do law schools have an obligation to provide special accommodations to students who may have a particular disability such as anxiety disorder? This particular student may have suffered from the same stress my fellow classmates and I experienced. The magnitude of our reactions to the stress, however, may have been the only difference in this instance. This distinction demonstrates a significant part of the problem: How does one define a mental disability? And, once a disability is established, what remedies are available to law students under the law?

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1. Bridget A. Maloney, *Distress among the Legal Profession: What Law Schools Can Do about It*, 15 NOTRE DAME J.L. ETHICS & PUB. POL'Y 307, 309 (2001) (quoting James R. Elkins, *Rites de Passage: Law Students "Telling Their Lives,"* 35 J. LEGAL EDUC. 27, 28 (1985)) (citation omitted).

2. This type of reaction is not necessarily uncommon. Other law students have reported feelings of "losing control" and leaving in the middle of an exam. See Suzanne C. Segerstrom, *Perceptions of Stress and Control in the First Semester of Law School*, 32 WILLAMETTE L. REV. 593, 594 (1996).

Mental illness<sup>3</sup> is a significant problem in American society,<sup>4</sup> as statistics show that twenty-two percent of all Americans have some form of mental illness.<sup>5</sup> Studies also indicate that approximately fifteen percent of American adults seek “mental health services” every year.<sup>6</sup> American society tends to stigmatize people who suffer from mental disabilities as not being capable of functioning within the mainstream.<sup>7</sup> In other words, there is a perception that the mentally ill are somehow deficient.<sup>8</sup> Thus, accommodating students with mental disabilities can present a sensitive issue due to the increased potential for discrimination, particularly in the law school context.<sup>9</sup>

Section 504 of the Rehabilitation Act of 1973<sup>10</sup> and the Americans with Disabilities Act (ADA)<sup>11</sup> are the relevant statutory provisions concerning the treatment of mentally and physically handicapped students by law schools.<sup>12</sup> The issues of how to accommodate and what accommodations are reasonable are significant, given that studies demonstrate that about ten percent of law students have either a mental or physical

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3. “Severe and persistent mental illness is defined as a diagnosis of schizophrenia, schizoaffective disorder, manic-depressive disorder, autism, severe forms of major depression, panic disorder, and obsessive-compulsive disorder in a 12-month period.” SUSAN STEFAN, *HOLLOW PROMISES* 48 (2002).

4. *Id.*

5. Phyllis Coleman & Ronald A. Shellow, *Ask about Conduct, Not Mental Illness: A Proposal for Bar Examiners and Medical Boards to Comply with the ADA and Constitution*, 20 J. LEGIS. 147, 158 (1994).

6. See U.S. DEP’T OF HEALTH AND HUMAN SERVS., *MENTAL HEALTH: A REPORT OF THE SURGEON GENERAL* 408 (1999), available at <http://www.surgeongeneral.gov/library/reports.htm> (last visited Apr. 10, 2004); Jon Bauer, *The Character of the Questions and the Fitness of the Process: Mental Health, Bar Admissions and the Americans with Disabilities Act*, 49 UCLA L. REV. 93, 105 (2001).

7. Some commentators have noted that stereotypes about mental illnesses occur in the mass media. STEFAN, *supra* note 3, at xiii-xiv.

8. Even literary characters who are physically deformed or handicapped, such as the hunchback of Notre Dame or Captain Hook, are often depicted as outcasts. See Alfreda A. Sellers Diamond, *L.D. Law: The Learning Disabled Student as a Part of a Diverse Law School Environment*, 22 S.U. L. REV. 69, 83 (1994); see also Keith Nelson, *Legislative and Judicial Solutions for Mental Health Parity: S. 543, Reasonable Accommodation, and an Individualized Remedy Under Title I of the ADA*, 51 AM. U. L. REV. 91, 97 (2001) (stating that “historically, individuals with a mental illness have been treated with contempt, fear, and cruelty.”).

9. Disabled law students will not have equal treatment and a fair opportunity to compete on “a level playing field” if law schools fail to provide necessary accommodations sufficient to meet their individual needs. See Michelle Morgan Ketchum, *Academic Decision-Making: Law Schools’ Discretion under the Americans with Disabilities Act*, 62 UMKC L. REV. 209, 219 (1993).

10. 29 U.S.C. § 794 (1982).

11. Pub. L. No. 101-336, 104 Stat. 327 (1990) (codified as amended at 42 U.S.C. §§ 12101-12213 (2000)).

12. Kevin H. Smith, *Disabilities, Law Schools, and Law Students: A Proactive and Holistic Approach*, 32 AKRON L. REV. 1, 33 (1999).

disability.<sup>13</sup> In 1993, one law school reported that twenty-six percent of all first-year law students who were surveyed acknowledged that they had either been diagnosed or received some form of treatment for a mental illness at least once in their lives.<sup>14</sup>

This Comment will address the various issues concerning mentally impaired law students. Part II will discuss the background history of the Rehabilitation Act of 1973 and the Americans with Disabilities Act. Part III will describe specific problems that affect law students with mental disabilities. Parts IV and V will distinguish between depression and anxiety, and the relevant symptoms associated with each. Part VI will examine relevant case law and its treatment of students seeking protection for mental impairments. Moreover, Part VI will clarify the position of the United States Supreme Court with respect to what is required for an individual with a mental illness to receive protection under the ADA. Part VII will analyze what may qualify as a reasonable accommodation and explore policies at various law schools regarding this issue. Part VIII will focus on the difficulties that applicants with a history of mental illness face when dealing with state law licensing boards. Finally, Part IX will conclude by examining the impact of courts' rulings and the discretion afforded law schools to affect mentally impaired law students in the future.

## II. BACKGROUND HISTORY OF THE REHABILITATION ACT OF 1973 AND THE AMERICANS WITH DISABILITIES ACT

Section 504 of the Rehabilitation Act of 1973 demonstrated the first steps by Congress to protect "an otherwise qualified individual with a disability"<sup>15</sup> from discrimination by any program that receives public funds.<sup>16</sup> Both public and private schools are subject to the provisions of section 504 if they receive any type of federal assistance.<sup>17</sup> Initially, section 504 did not make much headway in improving the rights of disabled students attending institutions of higher learning.<sup>18</sup> It was not until five years after the passage of the Rehabilitation Act that section 504 was promulgated,<sup>19</sup> ultimately delaying its optimistic intentions. Another obstacle that mitigated the effectiveness of section 504 involved the requirement that a student must be "otherwise qualified" in order to

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13. *Id.* at 1.

14. Bauer, *supra* note 6, at 105.

15. 29 U.S.C. § 794 (1982); Ketchum, *supra* note 9, at 209.

16. Laura F. Rothstein, *Higher Education and the Future of Disability Policy*, 52 ALA. L. REV. 241 (2000).

17. Smith, *supra* note 12, at 33.

18. Rothstein, *supra* note 16, at 242.

19. *Id.*

be eligible for protection.<sup>20</sup> When Congress passed section 504, few students with disabilities actually met the standards for admittance into colleges and graduate schools because they had been denied educational benefits at an early age.<sup>21</sup> Moreover, attorneys demonstrated a substantial lack of interest in representing the rights of the disabled, which was necessary before section 504 would become an effective tool.<sup>22</sup>

Section 504 of the Rehabilitation Act and the ADA are "interrelated" to the extent that colleges and graduate schools must abide by the requirements of both laws.<sup>23</sup> Congress originally implemented the ADA as law in 1990.<sup>24</sup> The ADA explicitly defines a disability as "(1) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (2) a record of such an impairment; (3) or being regarded as having such an impairment."<sup>25</sup> A person must satisfy at least one of these three tests before his or her disability will qualify for protection under the ADA.<sup>26</sup>

The main distinction between Section 504 and the ADA is that the ADA provides a more expansive authority for individuals to sue<sup>27</sup> and also applies to programs and businesses that do not receive federal aid.<sup>28</sup> However, both laws are intended to ensure that the disabled are not discriminated against and are provided with reasonable accommodations.<sup>29</sup> Title II of the ADA applies to public law schools; it states that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."<sup>30</sup> Title III applies to private law schools; it prohibits discrimination based on an individual's disability "in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation."<sup>31</sup>

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20. *Id.* at 243.

21. Studies show that by 1998, the number of disabled students attending institutions of higher education had increased dramatically since 1978, reflecting the positive impact of the Rehabilitation Act. *Id.*

22. *Id.*

23. Ketchum, *supra* note 9, at 210.

24. J.J. Knauff, *Dissing Disabilities: A Student's Duty to Mitigate Maladies*, 2001 BYU EDUC. & L.J. 85, 86 (2001).

25. 42 U.S.C. § 12102(2); *see also* STEFAN, *supra* note 3, at 46.

26. Michael K. McKinney, *The Impact of the Americans with Disabilities Act on the Bar Examination Process: The Applicability of Title II and Title III to the Learning Disabled*, 26 CUMB. L. REV. 669, 671 (1996).

27. Ketchum, *supra* note 9, at 217.

28. Smith, *supra* note 12, at 36.

29. *Id.* at 37.

30. 42 U.S.C. § 12132 (2000).

31. 42 U.S.C. § 12182(a) (2000).

### III. PROBLEMS THAT AFFECT THE MENTALLY HANDICAPPED LAW STUDENT

One of the toughest challenges for all law students who seek accommodations under the ADA is establishing proof that their mental impairment "limits" a "major life activity."<sup>32</sup> The ADA does not define a "major life activity."<sup>33</sup> Congress intended the ADA to apply to individuals with any type of disability on a case-by-case basis.<sup>34</sup> Therefore, there are no concrete rules that establish how the ADA should be applied. However, Congress made the Equal Employment Opportunity Commission (EEOC) responsible for interpreting the general language of the ADA.<sup>35</sup> As a result, the EEOC has defined "major life activity" as it applies to the mentally impaired as "mental and emotional processes such as thinking, concentrating, and interacting with others."<sup>36</sup> Based on that definition, one might conclude that a "major life activity" would include law school and the functions that law students are required to perform and master.<sup>37</sup> Nevertheless, many courts have had difficulty with the meaning of "major life activity" as it applies to mental disabilities.<sup>38</sup> The EEOC is generally considered to be persuasive authority by the courts, but not binding.<sup>39</sup> The Supreme Court recently held that the persuasive authority of the EEOC is not "clear,"<sup>40</sup> but failed to decide to what extent courts should defer to the EEOC's regulations.<sup>41</sup> Thus, the impact of the ADA has often led to "confusion"<sup>42</sup> in the case law and to negative treatment of the mentally dis-

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32. Carolee Kvoriak Lezuch, *The Americans with Disabilities Act: Redefining "Major Life Activity" to Protect the Mentally Disabled*, 44 WAYNE L. REV. 1839, 1842 (1999); see also STEFAN, *supra* note 3, at xiv-xv (explaining that judges often have a difficult time understanding why someone who has a stressful job can also be mentally impaired within the definition of the ADA). This doubt seems to extend to law students who suffer from mental disabilities. I have spoken to several lawyers who say they believe mentally handicapped law students should not receive special protection under the ADA. However, if the mental disability is so substantial that it does merit special protection, then these same lawyers suggest that perhaps the particular student is not suited for the rigors of law school.

33. Smith, *supra* note 12, at 40.

34. STEFAN, *supra* note 3, at 5; see also Smith, *supra* note 12, at 64-65 (explaining that the statutory provisions concerning disability law neither define nor articulate what qualifies as a reasonable accommodation because Congress realized that there are many different disabilities that cannot all be treated in the same way).

35. Lezuch, *supra* note 32, at 1841.

36. Smith, *supra* note 12, at 41.

37. *Id.*

38. Wendy F. Hensel, *Interacting with Others: A Major Life Activity under the Americans with Disabilities Act?*, 2002 WIS. L. REV. 1139, 1148-49 (2002).

39. *Id.* at 1149.

40. *Toyota Motor Mfg., Kentucky, Inc. v. Williams*, 534 U.S. 184, 194 (2002).

41. Hensel, *supra* note 38, at 1149.

42. STEFAN, *supra* note 3, at 40.

abled.<sup>43</sup> Part VI will include a more in-depth analysis of the case law concerning these issues.

Law students who have or may have a mental disability are less likely to "self-identify"<sup>44</sup> due to their fears about how they may be perceived by their classmates, faculty and administrators.<sup>45</sup> Additionally, mental impairments are not as apparent<sup>46</sup> as many physical disabilities are.<sup>47</sup> Thus, a law student may not want to request special treatment in hopes of concealing the impairment.<sup>48</sup> Another problem is the variable nature of such impairments.<sup>49</sup> A law student with documented anxiety disorder may, for example, experience severe panic attacks only when called upon to answer questions in class.<sup>50</sup> A student who could cope with stress at the undergraduate level may not experience intense depression until after arriving at law school.<sup>51</sup> These problems alone suggest that law schools should make themselves aware of the difficulties that mentally impaired law students could encounter.

Medications are available to assist people with mental disabilities, but a mentally impaired law student may be unwilling to seek such treatment for various reasons. Some forms of medication may induce changes in a student's mood or have significant adverse side effects such as "nausea, headaches, weight gain, and decreased sexual desire and performance."<sup>52</sup> A law student who does take medicine for a panic disorder may experience less stress, but may experience more difficulty concentrating.<sup>53</sup> The student may believe that the drawbacks outweigh the benefits. These examples suggest that medication by itself will not always provide an easy solution for the mentally disabled law student<sup>54</sup> and therefore, depending on the circumstances, special accommodations may be necessary.

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43. *Id.* at xiv-xv.

44. Smith, *supra* note 12, at 30-31.

45. See *supra* notes 7-8 and accompanying text.

46. Smith, *supra* note 12, at 30.

47. See Hensel, *supra* note 38, at 1142 (explaining that courts are more deferential to claims asserted by individuals with physical impairments as opposed to individuals with mental disabilities).

48. Smith, *supra* note 12, at 30.

49. *Id.* at 29.

50. *Id.*; see also *infra* note 82 and accompanying text.

51. *Id.*

52. *Id.* at 31.

53. *Id.*

54. This idea runs contrary to Judge Posner's assertion that "most mental illnesses today are treatable by drugs that restore the patient to at least a reasonable approximation of normal mentation and behavior. When his illness is controlled he can work and attend to his affairs, including the pursuit of any legal remedies he may have." *Miller v. Runyon*, 77 F.3d 189, 192 (7th Cir. 1996).

## IV. DEPRESSION

Depression<sup>55</sup> is one of the more prevalent mental impairments that plague American society.<sup>56</sup> In fact, studies indicate that about twenty-eight million Americans take some form of antidepressant.<sup>57</sup> Other studies show that large numbers of lawyers suffer from depression,<sup>58</sup> and some suggest these problems could have been aggravated early on in law school.<sup>59</sup>

The severity of depressive disorders can range widely.<sup>60</sup> This is significant because certain depressive disorders may or may not constitute a disability in the context of the ADA.<sup>61</sup> In other words, the severity of the depression determines the extent to which the individual is limited in performing major life activities and, therefore, whether he qualifies for ADA protection.<sup>62</sup> Various types of depression are associated with different symptoms.<sup>63</sup> Major Depressive Disorder involves major depressive episodes that are distinguishable from a person's normal course of behavior.<sup>64</sup> Clinically speaking, a person with Major Depressive Disorder must be depressed "for most of the day, nearly every day, for a period of at least two weeks."<sup>65</sup> Dysthymic Disorder<sup>66</sup> is a low-grade form of depression that lasts for many years, in which the individual suffers from chronic, but less severe depressive symptoms

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55. The American Psychiatric Association has defined depression as: "(a) self-described depressed mood, (b) diminished interest or pleasure in most activities, (c) significant weight fluctuations when not dieting or attempting weight gain, (d) disturbances in sleep, (e) physical restlessness or slowing, (f) fatigue or loss of energy, (g) excessive feelings of worthlessness or excessive guilt, (h) diminished ability to concentrate, and (i) recurrent thoughts of death." Matthew M. Dammeyer & Narina Nunez, *Anxiety and Depression among Law Students: Current Knowledge and Future Directions*, 23 LAW & HUM. BEHAV. 55, 58 (1999).

56. STEFAN, *supra* note 3, at 49.

57. *Id.*

58. Studies indicate that lawyers, given the intense nature of their work, are highly susceptible to depression and substance abuse. It is estimated, based on these studies, that more than one-fourth of lawyers in the United States are suffering from severe mental health problems. AMIRAM ELWORK, *STRESS MANAGEMENT FOR LAWYERS* 15-16 (2d ed. 1997).

59. Danmeyer & Nunez, *supra* note 55, at 56.

60. See AMERICAN PSYCHIATRIC ASSOCIATION, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, DSM-IV-TR, TEXT REVISION* 369-82 (4th ed. 2000).

61. JOHN PARRY & F. PHILLIPS GILLIAM, *HANDBOOK ON MENTAL DISABILITY LAW* 10 (2002).

62. *Id.* (explaining that "a diagnosis of a mental condition does not by itself establish a substantial limitation, even for severe impairments such as mental retardation, schizophrenia, or manic depression. Rather, a substantial limitation is measured by objective criteria, such as the impairment's nature, severity, expected duration, and long-term effects.").

63. AMERICAN PSYCHIATRIC ASSOCIATION, *supra* note 60, at 374.

64. *Id.*

65. *Id.*

66. "Dysthymic Disorder is a chronically depressed mood that occurs for most of the day more days than not for at least 2 years." *Id.* at 376.



than does someone who has Major Depressive Disorder.<sup>67</sup>

Other symptoms of depression are categorized as Depressive Disorder Not Otherwise Specified.<sup>68</sup> This type of depression tends to be less severe than Major Depressive Disorder and Dysthymic Disorder and can even be associated with menstrual cycles in females.<sup>69</sup> A person's symptoms of depression are significant in light of the Supreme Court's recent determination of what constitutes a substantial limitation under the ADA.<sup>70</sup>

Few studies have been conducted to determine the extent of depression among law students.<sup>71</sup> One published study found that a majority of law students were at least marginally depressed.<sup>72</sup> The study also found that law students were more depressed overall than students attending medical school.<sup>73</sup> A follow-up study compared levels of depression in pre-law students with depression levels in first- and third year law students, and found that the law students demonstrated higher levels of depression than the pre-law students.<sup>74</sup> This might indicate that students become more depressed while in law school.

These studies might suggest that there is something about legal education that contributes to the development of depression, or at least promotes its manifestation. But, ultimately, the dearth and inconclusiveness of the research demonstrate that more attention and resources should be directed at determining what contributes to depression in law students and what can be done about it.<sup>75</sup>

## V. ANXIETY

Anxiety<sup>76</sup> can be a difficult mental impairment to characterize and

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67. *Id.* at 374.

68. "The Depressive Disorder Not Otherwise Specified category includes disorders with depressive features that do not meet the criteria for Major Depressive Disorder, Dysthymic Disorder, Adjustment Disorder With Depressed Mood, or Adjustment Disorder With Mixed Anxiety and Depressed Mood." *Id.* at 381.

69. *Id.* at 381-82.

70. *See infra* note 134 and accompanying text.

71. Danmeyer, *supra* note 55, at 64.

72. The study indicated that 72.6 percent of law students were marginally depressed, 15.8 percent were mildly depressed, and 11.5 percent were significantly depressed. *Id.* at 66.

73. *Id.*

74. *Id.*

75. *Id.* at 67.

76. The American Psychiatric Association has defined anxiety as: "(a) excessive apprehension more days than not about a number of events or activities, (b) having difficulty controlling the worry, (c) having significant distress or impairment in social, occupational, or other important areas of functioning, and, (d) having at least three of the following six symptoms: feeling restless or keyed up, becoming easily fatigued, having difficulty concentrating, being irritable, having muscle tension, or experiencing disturbances in sleep. *Id.* at 57-58.

define because a great variety of symptoms can qualify as anxiety-related.<sup>77</sup> All people are likely to experience feelings of anxiety at some point in their lives due to great pressure or fear. Anxiety in some people, however, may qualify as an actual mental disability. Law professors sometimes use the Socratic Method<sup>78</sup> as part of classroom instruction to test a law student's knowledge of a particular case or area of the law. This method of classroom instruction may induce stress in any law student,<sup>79</sup> "who come[s] to fear giving a wrong answer,"<sup>80</sup> regardless of whether the student has an actual mental impairment, such as anxiety disorder.

Like depression, anxiety disorders are also categorized based on an individual's symptoms.<sup>81</sup> Generally, anxiety can range from isolated Panic Attacks<sup>82</sup> to more chronic symptoms that would qualify as Generalized Anxiety Disorder.<sup>83</sup> Symptoms of Panic Attacks tend to include "shortness of breath, palpitations, chest pain or discomfort, [and] choking or smothering sensations."<sup>84</sup> One of the main distinctions between Panic Attacks and Generalized Anxiety Disorder is the severity of the anxiety associated with a Panic Attack.<sup>85</sup> The three different types of Panic Attacks are: Unexpected Panic Attacks, Situationally bound Panic Attacks, and Situationally predisposed Panic Attacks.<sup>86</sup> Unexpected Panic Attacks tend to involve random episodes of panic that "occur out of the blue."<sup>87</sup> Situationally bound Panic Attacks involve anxiety that is triggered by a certain event or the anticipation of such event.<sup>88</sup> This type of Panic Attack exemplifies the feelings of fear that a law student might exhibit when randomly called upon to answer questions in class.<sup>89</sup>

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77. *Id.* at 57.

78. The Socratic Method is a technique used by law professors, in which a law student is called upon in class to respond to questions, generally without warning. See Smith, *supra* note 12, at 73.

79. Jacquelyn H. Slotkin, *An Institutional Commitment to Minorities and Diversity: The Evolution of a Law School Academic Support Program*, 12 T.M. COOLEY L. REV. 559, 566 (1995).

80. Maloney, *supra* note 1, at 324 (explaining that the Socratic Method is a significant source of stress for law students).

81. AMERICAN PSYCHIATRIC ASSOCIATION, *supra* note 60, at 429-84.

82. "A Panic Attack is a discrete period in which there is the sudden onset of intense apprehension, fearfulness, or terror, often associated with feelings of impending doom." *Id.* at 429.

83. "Generalized Anxiety Disorder is characterized by at least 6 months of persistent and excessive anxiety and worry." *Id.*

84. *Id.*

85. *Id.* at 430.

86. *Id.* at 430-31.

87. *Id.*

88. *Id.* at 431.

89. See Maloney, *supra* note 1, at 324 (describing that the Socratic Method "is seen as a time to be in the 'hot seat'").

Situationally predisposed Panic Attacks, although similar to Situationally bound Panic Attacks, are not always triggered by a specific event but may occur during the course of a certain activity, such as driving.<sup>90</sup>

Generalized Anxiety Disorder involves continuous feelings of anxiety over a period of several months.<sup>91</sup> Individuals with this disorder often struggle to control their worries and fears.<sup>92</sup> Typically, the stress associated with Generalized Anxiety Disorder is not proportional to "the feared event."<sup>93</sup> The symptoms of this disorder can include muscle soreness, trembling, sweating, diarrhea, and feelings of nausea.<sup>94</sup>

As with depression, few studies have tried to gauge anxiety in law students.<sup>95</sup> One study was designed to compare the levels of stress among four graduate programs — law, medicine, psychology, and chemistry.<sup>96</sup> The study found that law students experienced the highest levels of "overall stress."<sup>97</sup> Another study found that law students experienced much greater levels of anxiety than pre-law students.<sup>98</sup> However, the data may be skewed because law professors often remind law students that they should be stressed.<sup>99</sup> The culture of law school tends to dictate anxiety, given that a law student's grade in most classes is based on a single exam at the end of the semester.<sup>100</sup> Law students are thus deprived of feedback during the semester.<sup>101</sup> Moreover, most law school classes are graded on a curve, assuring that only a small percentage of students will get A's.<sup>102</sup> This may require a difficult adjustment for students who routinely earned A's as undergraduates.

Several theories have been offered as to why law students tend to experience high levels of anxiety. One theory suggests that students admitted to law school already are disposed toward anxiety problems, and this disposition is aggravated throughout law school.<sup>103</sup> Another theory posits that law students are disposed toward anxiety because they

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90. AMERICAN PSYCHIATRIC ASSOCIATION, *supra* note 60, at 431.

91. *Id.* at 472.

92. *Id.* at 472-73.

93. *Id.* at 473.

94. *Id.*

95. Danmeyer, *supra* note 55, at 59.

96. *Id.*

97. *Id.*

98. *Id.* at 61.

99. *Id.* During my law school orientation, the deans and professors stressed how difficult law school would be and that the person in the next seat might not be there by the end of the first year.

100. Slotkin, *supra* note 79, at 566.

101. Segerstrom, *supra* note 2, at 602; *see also* Maloney, *supra* note 1, at 315 (discussing a study that indicated that many law students do not feel that their professors are concerned with their academic progress and that professors do little to make themselves available outside of class).

102. Ketchum, *supra* note 9, at 219.

103. Danmeyer, *supra* note 55, at 70.

are highly competitive perfectionists.<sup>104</sup> Ultimately, further research is needed to test these theories.

## VI. CASE LAW ANALYSIS AND STATUTORY TREATMENT OF MENTAL DISABILITIES

Courts have recognized depression, schizophrenia, and bipolar disorder as the most common mental disabilities that qualify for protection under the ADA.<sup>105</sup> Individuals suffering from anxiety disorder have traditionally brought fewer ADA claims,<sup>106</sup> while people with depression represent the largest class of ADA lawsuits.<sup>107</sup> The courts have increasingly deferred to academic institutions' discretion in making reasonable accommodations for disabled students.<sup>108</sup> The Supreme Court has stated that schools have "four essential freedoms" in determining "on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study."<sup>109</sup> Consequently, courts are not likely to interfere with an educational institution's practices unless they are blatantly discriminatory,<sup>110</sup> which means that law students with mental disabilities may have a difficult time challenging their law schools' policies on special accommodations.<sup>111</sup> The following cases illustrate this point.

In *McGregor v. Louisiana State University Board of Supervisors*,<sup>112</sup> decided in the Fifth Circuit, a mentally impaired law student, Robert McGregor, sued Louisiana State University Law Center after it failed to meet all of his special need requests. McGregor was permanently disabled as a result of head and spinal injuries.<sup>113</sup> Although the law school made some accommodations for McGregor, such as giving him extra time to complete his tests,<sup>114</sup> he continued to perform poorly.<sup>115</sup> McCre-

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104. *Id.* at 70-71.

105. STEFAN, *supra* note 3, at 47.

106. *Id.*

107. *Id.* at 55.

108. Ketchum, *supra* note 9, at 214.

109. *Id.* at 211 (quoting *Sweezy v. New Hampshire*, 354 U.S. 234, 263 (1957)).

110. *Id.* at 212; see also Sande L. Buhai, *Practice Makes Perfect: Reasonable Accommodation of Law Students with Disabilities in Clinical Placements*, 36 SAN DIEGO L. REV. 137, 172 (1999) (stating that "[c]ourts have consistently held that academic institutions are the best to judge what functions of their programs are necessary and what accommodations are appropriate.").

111. The courts' conception of mental disabilities suggests that the majority of complainants will not prevail in their ADA claims. STEFAN, *supra* note 3, at 57.

112. 3 F.3d 850 (5th Cir. 1993).

113. *Id.* at 854.

114. McGregor was also allowed to take some, but not all, of his tests at home. Additionally, some of McGregor's professors helped him with his school work outside of class. *Id.* at 856.

115. McGregor received a grade average of 65.53 while on academic probation during his second semester of law school. The law school required probationary students to earn at least a 68 grade average to stay in school. *Id.*

gor argued that the law school's accommodations did not meet his needs under § 504 of the Rehabilitation Act.<sup>116</sup> The Fifth Circuit stated that "to recover under the Rehabilitation Act, McGregor must demonstrate that his requests are reasonable and do not sacrifice the integrity" of the law school.<sup>117</sup> Ultimately, the Fifth Circuit found that the school's accommodations were reasonable,<sup>118</sup> and that McGregor was responsible for his failure to succeed.<sup>119</sup> The court concluded that while McGregor was qualified to gain admission into the law school, he was not "otherwise qualified" to satisfy the school's academic standards under the Rehabilitation Act.<sup>120</sup> Furthermore, the court found that it would be unreasonable for the law school to compromise its policies on class attendance and final examinations.<sup>121</sup>

A federal district court in New York rejected the ADA claims of Steven Maczaczjy, a graduate student with documented panic disorder, in the case of *Maczaczjy v. New York*.<sup>122</sup> Maczaczjy, a student in the Masters of Arts in Liberal Studies program at Empire State College, claimed the school did not provide him with reasonable accommodations for his mental disability under the ADA.<sup>123</sup> His condition was so severe that he rarely left his house and primarily relied on the telephone for his interactions with other people.<sup>124</sup> Maczaczjy requested special permission to participate in a required residency program by telephone, rather than attend the program in person.<sup>125</sup> Before this request, the school informed Maczaczjy that it would provide him with several accommodations<sup>126</sup> so long as he physically attended the program.<sup>127</sup> Specifically, Maczaczjy would be allowed to bring a friend, have his own room in case he needed to leave the group, and the choice of attending or not attending social events related to the program.<sup>128</sup>

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116. McGregor complained that he was not allowed to attend school part-time, that he had to take some of his exams in class instead of taking them at home, and that he had to maintain a 68 average to advance to the next year. According to McGregor, "[T]his was equal treatment which resulted in unequal opportunity to participate in the law program." *Id.* at 857.

117. *Id.* at 859 n.11.

118. *Id.* at 861-62.

119. *Id.* at 858.

120. *Id.* at 860.

121. *Id.* at 859-60; *see also* Southeastern Cmty. Coll. v. Davis, 442 U.S. 397, 413 (1979) (explaining that § 504 of the Rehabilitation Act does not require that a school "lower or effect substantial modifications of standards to accommodate a handicapped person.").

122. 956 F. Supp. 403 (W.D.N.Y. 1997); Buhai, *supra* note 110, at 168; Rothstein, *supra* note 16, at 259.

123. *Maczaczjy*, 956 F. Supp. at 404.

124. *Id.* at 405.

125. *Id.* at 406.

126. *Id.* at 405.

127. *Id.* at 405-06.

128. *Id.* at 405.

The court held that the school had made reasonable accommodations.<sup>129</sup> The court was not willing to supplant its judgment for that of experienced school officials.<sup>130</sup> Moreover, the court found that Maczaczyj's request qualified as a "substantial modification of the educational program."<sup>131</sup> This decision exemplifies the deferential treatment that courts have extended to academic institutions.

In *Toyota Motor Mfg., Kentucky, Inc. v. Williams*,<sup>132</sup> decided in 2002, the U.S. Supreme Court clarified its position on when a disability will constitute a "substantial limitation" under the ADA.<sup>133</sup> According to the Supreme Court, the test is whether the individual claimant has "an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives. The impairment's impact must also be permanent or long-term."<sup>134</sup> Ultimately, this decision demonstrates that students with mental disabilities will continue to face even greater obstacles in seeking accommodations and legal protection under the ADA.

A person with a physical disability is much more likely than a person with a mental disability to meet the Supreme Court's standard for a "substantial limitation" under the ADA. Someone confined to a wheelchair can perform significantly fewer activities "that are of central importance to most people's daily lives"<sup>135</sup> than someone who has depression, even if the depression is severe. Furthermore, law schools may find it easier to accommodate physically disabled students by building ramps and elevators. The needs of students with mental disabilities may be less obvious or concrete.

## VII. REASONABLE ACCOMMODATIONS AND LAW SCHOOL POLICIES

Legal education<sup>136</sup> — with its focus on reading casebooks, discussing cases in class, and taking comprehensive final examinations that test a student's ability to apply the law to hypothetical situations<sup>137</sup> — is

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129. *Id.* at 409.

130. *Id.*

131. *Id.*

132. 534 U.S. 184 (2002).

133. PARRY, *supra* note 61, at 11.

134. *Williams*, 534 U.S. at 198 (holding that an individual's disability must substantially limit everyday life activities, such as "household chores, bathing, and brushing one's teeth" before qualifying for ADA protection).

135. *Id.*

136. Legal education "has been charged with warping personalities, undermining ethical and social values, and fostering cynicism in students." Segerstrom, *supra* note 2, at 593.

137. Martha M. Peters, *Bridging Troubled Waters: Academic Support's Role in Teaching and Modeling "Helping" in Legal Education*, 31 U.S.F. L. REV. 861, 864 (1997).

sometimes viewed as detached from human emotion.<sup>138</sup> This is ironic given that the practice of law involves intensely human interactions between lawyers and clients. Ultimately, the lack of humanness associated with the culture of legal education may discourage some law schools from displaying sympathy to the needs of mentally impaired law students.<sup>139</sup> However, law schools must recognize the importance of accommodating students who have special needs to ensure a diverse student body. To achieve this goal, law schools should develop programs designed to help students cope with the pressures of law school<sup>140</sup> and, at the same time, account for the needs of the mentally handicapped.

Law schools need to find ways to balance the needs of disabled and non-disabled students.<sup>141</sup> Academic Support Programs (ASPs)<sup>142</sup> are appealing in this regard because they help accommodate law students based on their individual needs.<sup>143</sup> While stress is common to most law students,<sup>144</sup> the culture of law school tends to suppress students' responses to anxiety.<sup>145</sup> Without help, students may become depressed and lose the motivation to do well in law school.<sup>146</sup> ASPs provide students with an outreach and an opportunity to discuss their emotional reactions to law school.<sup>147</sup> These programs understand the societal danger of lawyers who are trained to function as unfeeling robots. ASPs acknowledge that law students need room to express themselves and communicate their ideas on how to make law school a more cooperative environment for learning.<sup>148</sup>

Law school administrators generally make determinations concerning the values they believe are most essential to the law school curriculum and then make special accommodations on a case-by-case basis.<sup>149</sup> Thus, one of the most important considerations for any law school faced

138. Begerstrom, *supra* note 2, at 593.

139. See *supra* note 32 and accompanying text.

140. See Segerstrom, *supra* note 2, at 593 (explaining that law students generally experience similar levels of anxiety and stress regardless of where they attend law school).

141. Ketchum, *supra* note 9, at 219.

142. ASPs are geared toward helping law students succeed in an effort to create diversity. Paula Lustbader, *From Dreams to Reality: The Emerging Role of Law School Academic Support Programs*, 31 U.S.F. L. REV. 839, 840-42 (1997); see also Sheilah Vance, *Should the Academic Support Professional Look to Counseling Theory and Practice to Help Students Achieve?*, 69 UMKC L. REV. 499, 503 (2001) (explaining that ASPs help students by making accommodations based upon their individual needs).

143. ASPs recognize that there may be relevant factors, such as "test anxiety," that explain why certain law students may need special assistance. Vance, *supra* note 142, at 502.

144. Lustbader, *supra* note 142, at 857; Segerstrom, *supra* note 2, at 593.

145. See *supra* note 137.

146. Lustbader, *supra* note 142, at 857.

147. *Id.* at 858.

148. *Id.* at 858-59.

149. See *supra* note 34 and accompanying text.

with a request for an accommodation is whether that accommodation would compromise what the school has determined to be a core value.<sup>150</sup> For example, if a law school has already determined that the Socratic Method is a fundamental element of legal education, a student's request not to be pressured in class would be considered unreasonable.<sup>151</sup> The following list illustrates the range of "on-call"<sup>152</sup> policies at law schools.

- A. **Northwestern University School of Law:** Disability Services handles student accommodations for both undergraduate and graduate programs. No set standards are in place concerning the "on-call policy," and any accommodations are generally made on a case-by-case basis. The law school does give pop quizzes, and no students are given advance warning. However, students with a demonstrated special need may be permitted to take the quiz in a separate room to reduce the possibility of distraction.<sup>153</sup>
- B. **Hamline University School of Law:** Vincent A. Thomas, Assistant Dean of Students, does not believe that a student who has a panic disorder should be exempted from being called on to speak in class. He says that such an accommodation would deny the student one of the benefits of a legal education – gaining experience in thinking on one's feet. Furthermore, he says that an accommodation of this sort would require a school to "fundamentally alter" its educational objectives.<sup>154</sup>
- C. **Arizona State University College of Law:** Disability Services supports both the undergraduate and graduate programs. Requests for accommodations are evaluated in light of the particular skills that the law professor is assessing. However, professors are urged not to administer pop quizzes.<sup>155</sup>
- D. **University of Oregon School of Law:** No standards are in place for exempting a student from being on-call. Disability Services is responsible for determining whether a particular accommodation is warranted based on the student's demonstrated need. Faculty members are primarily responsible for determining whether the Socratic Method is employed.<sup>156</sup>

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150. Smith, *supra* note 12, at 70-71.

151. *Id.* at 71.

152. *See supra* note 82.

153. Interview by Marni B. Lennon, Assistant Dean of Students and Director of Disability Services, University of Miami School of Law, with Dannee Polomsky, Disability Specialist, Northwestern University School of Law (2002).

154. Interview by Lennon with Vincent A. Thomas, Assistant Dean of Students, Hamline University School of Law (2002).

155. Interview by Lennon with Andrew Shoemaker, Disability Specialist, Arizona State University College of Law (2002).

156. Interview by Lennon with Richard Ludwick, Assistant Dean for Student Affairs, University of Oregon School of Law (2002).



- E. American University, Washington College of Law:** David Jaffe, Associate Dean of Student Affairs, believes that exempting a law student from on-call questioning would substantially change the law school curriculum.<sup>157</sup> However, he notes that the professor should make the final determination.
- F. Boalt Hall (UC Berkeley):** On-call questioning is viewed as essential to the law school curriculum. However, students are encouraged to speak with their professors on an individual basis if they have concerns.<sup>158</sup>
- G. Thomas Jefferson School of Law:** The law school determined that it was more important for disabled students to be prepared than to be surprised. Therefore, students who qualify as having a mental disability may be given notice about a week before they are to be called on.<sup>159</sup>

These policies demonstrate the varying approaches to requiring or exempting a student from class participation. The policy at Thomas Jefferson School of Law seems to be the most sensible compromise because it accommodates the students with demonstrated need while not sacrificing the school's educational goals. If Thomas Jefferson's policy works, it's fair to ask whether the Socratic Method is integral to an effective legal education.<sup>160</sup> In many instances, the Socratic Method may prove to be anything but beneficial for students who suffer severe anxiety when called on without warning.<sup>161</sup> For such students, the Socratic Method may amount to less of an opportunity to interact with the professor than it is a source of fear.<sup>162</sup>

In light of these concerns, professors may be able to develop alternatives to the Socratic Method that can benefit all law students without compromising their objectives. Perhaps a system where students are called on in alphabetical order by last name would reduce some anxiety.<sup>163</sup> This system would provide a student with warning, yet still maintain traditional in-class discussion. Another alternative would be to

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157. Interview by Lennon with David Jaffe, Associate Dean for Student Affairs, American University, Washington College of Law (2002).

158. Interview by Lennon with Holly A. Parrish, Coordinator of Student Programs, UC Berkeley School of Law (2002).

159. Interview by Lennon with Lisa Ferreira, Director of Student Services, Thomas Jefferson School of Law (2002).

160. See Maloney, *supra* note 1, at 324 (explaining that "Socratic teaching has been attacked as infantilizing, demeaning, dehumanizing, sadistic, a tactic for promoting hostility and competition among students, self-serving, and destructive of positive ideological values") (quoting Alan A. Stone, *Legal Education on the Couch*, 85 HARV. L. REV. 392, 407 (1971)).

161. *Id.*

162. *Id.*

163. *Id.* at 330. My Torts professor used this system, and it worked surprisingly well. Students were generally prepared, and the possibility of embarrassment was greatly reduced.

allow students to "pass" when called on.<sup>164</sup> In the end, law schools should question traditional methods and explore alternative ways to provide the best legal education possible without discriminating against mentally impaired law students.

### VIII. LAW LICENSING BOARDS AND THE ADA

State bar examiners, as a general practice, require applicants to disclose any past history of treatment for mental illness.<sup>165</sup> Only eight states do not ask about mental disorders.<sup>166</sup> Many applicants find this practice intrusive and discriminatory, especially since their bar applications are usually delayed if they admit to having been treated for a mental illness.<sup>167</sup> Moreover, law students may be reluctant to seek help, knowing that they will have to disclose their treatment to the bar.<sup>168</sup> Before passage of the ADA, law students did not have any recourse to challenge the policies of state licensing boards.<sup>169</sup> Bar examiners are not subject to the Rehabilitation Act because they do not receive federal funding.<sup>170</sup> However, bar examiners must comply with the ADA under Titles II and III.<sup>171</sup>

Since the passage of the ADA, most states have eliminated general questions that ask if an applicant has ever received help or treatment for some type of emotional problem.<sup>172</sup> Many states, however, continue to inquire about an applicant's history of mental illness in narrower terms.<sup>173</sup> For example, the application might ask whether the applicant has ever received treatment for a specific mental disorder such as schizophrenia.<sup>174</sup> This kind of question is still troubling because it provides little insight into an individual's past behavior or potential ability to practice law.<sup>175</sup> In fact, by discouraging students from seeking treatment, such questions may result in producing applicants who may be

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164. *Id.*

165. Coleman & Shellow, *supra* note 5, at 147.

166. See Deborah Landan Spranger, *Are State Bar Examiners Crazy?: The Legality of Mental Health Questions on Bar Applications Under the Americans with Disabilities Act*, 65 U. CIN. L. REV. 255, 256 n.8 (1996). These states include Arizona, Massachusetts, Hawaii, Illinois, New Mexico, Pennsylvania, Utah, and Virginia.

167. See Coleman, *supra* note 5, at 147-48.

168. Rothstein, *supra* note 16, at 260.

169. McKinney, *supra* note 26, at 669.

170. *Id.*

171. Stanley S. Herr, *Questioning the Questionnaires: Bar Admissions and Candidates with Disabilities*, 42 VILL. L. REV. 635, 635-36 (1997).

172. Bauer, *supra* note 6, at 96-97.

173. *Id.*

174. *Id.* at 97-98.

175. Coleman & Shellow, *supra* note 5, at 148-49.

less fit to practice. Thus, no applicant should be punished for seeking help for his or her mental disability.

State bars commonly defend such questions as protecting the public from mentally troubled lawyers<sup>176</sup> who might eventually commit legal malpractice.<sup>177</sup> However, an argument can just as easily be made that a lawyer who has had a history of mental illness may be more sensitive to the needs of clients, given the obstacles he or she has had to overcome.<sup>178</sup> Bar examiners' questions about mental history also have been challenged under the ADA on the grounds that they "stigmatize" certain applicants.<sup>179</sup> The Supreme Court of Florida has determined that the public nature of legal practice requires deference to state bar examiners' "probing" questions.<sup>180</sup>

## IX. CONCLUSION

This Comment has argued that there are challenges inherent in law school for students with mental disabilities, and that those students should be afforded reasonable accommodations to succeed. The courts have given institutions of higher learning broad discretion to formulate policies consistent with their educational goals.<sup>181</sup> Therefore, the responsibility falls on the law schools to adapt to the needs of their students. Law schools have maintained traditional teaching techniques, but law schools, of all institutions, should question those traditions. No one claims that law school is or should be easy, but reverence for rigor does not mean that mentally disabled law students should not be given a fair chance to compete. In the long run, law schools willing to confront these issues will stand a much better chance of producing exceptional attorneys who can ultimately make a difference in the lives of others.

ADAM J. SHAPIRO\*

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176. Herr, *supra* note 171, at 638.

177. *Id.* at 639.

178. See Buhai, *supra* note 110, at 180 (stating that "'lawyers with disabilities can contribute as much [as] or more than others' because people who have 'gone to law school . . . with disabilities are able, intelligent, and most important, highly motivated.'").

179. See Bauer, *supra* note 6, at 98 (explaining that there are more legitimate methods to evaluate an applicant's fitness to practice law by focusing on past behavior, rather than on mental illness).

180. Spranger, *supra* note 166, at 274-75; see also Florida Bd. of Bar Exam'rs Re: Applicant, 443 So. 2d 71, 74 (Fla. 1983) (stating generally that applicants themselves put their mental, emotional, moral, and educational fitness at issue when they file state licensing applications).

181. See *supra* note 110 and accompanying text.

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