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Lawyers With Disabilities: L'Handicape C'est Nous

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INTRODUCTION

LAWYERS WITH DISABILITIES: *L'HANDICAPÉ C'EST NOUS*

*Anita Bernstein**

I. INTRODUCTION

For having helped to make disability a twentieth-century civil rights issue in the United States, our profession deserves much credit. Lawyers have written, codified, and enforced several progressive initiatives. Inspired by the struggle for racial justice through law that culminated in *Brown v. Board of Education*,¹ the disability rights movement was itself a civil rights inspiration even before the *Brown* decision, earning important early legislative advances for rehabilitation, vocational training, and integration of disabled persons in public life. The first national organization to focus on disability as such rather than one particular condition, the American Federation of the Physically Handicapped, took an early interest in fostering legal change and lobbied for employment-discrimination laws and new statutes to advance the interests of

* Anita and Stuart Subotnick Professor of Law, Brooklyn Law School; Sam Nunn Professor of Law, Emory University, 2000-2007. Thanks to Minna Kotkin, who gave insightful comments on a draft, and to the participants at the *Lawyers and Disability* conference, held at Emory University in September 2007. Particular thanks to the gracious keynote speaker there, Richard Thornburgh, statesman and tireless activist in behalf of persons with disabilities. Marianne D'Souza and Shannan Rahman of Emory, along with Dean Mary Crossley of the University of Pittsburgh, were instrumental to the production of this special issue of the *University of Pittsburgh Law Review*. My gratitude to Judge Hugh Lawson of the United States District Court in Macon, Georgia, whose wisdom and foresight built the Nunn endowment that supported this Symposium, continues unabated as I leave the professorship.

1. 347 U.S. 483 (1954).

disabled Americans.² The Rehabilitation Act of 1973³ made federal law out of the radical yet sensible idea that societies construct disability at least as much as they reflect it and that prejudices and stereotypes, which are as potent as purely medical or anatomical facts, impede persons with disabilities.

The landmark Americans with Disabilities Act of 1990⁴ (ADA) exemplifies a unique legal concept. At its enactment it held out the stirring American promise of equality before the law. Like “race, color, national origin, religion, sex, and age,” disability became a protected category.⁵ President George H.W. Bush, when signing the Act, declared that the United States would now see an “end to unjustified segregation and exclusion.”⁶

The central locus for this improvement, according to the implicit message of the ADA, is the realm of employment.⁷ Within a market economy, and a society committed to opportunity through achievement, nothing integrates and validates persons with disabilities as comprehensively as the freedom to rise unimpeded at work. An antidiscrimination mandate, declared by Congress and enforced in the courts, advances the interests of disabled persons in the workplace and elsewhere by seeing these interests as law-based rights.

The sense of disappointment and setback that followed this legislative victory forms a backdrop behind this Symposium, *Lawyers With Disabilities*, held as a live conference over two days at Emory University School of Law in the fall of 2007. By this date, the conjunction of law and disability to achieve progressive ends—the idea that persons with disabilities, having finally won their civil rights, could seize the law to overcome injustices that had kept them relatively poor, marginalized, and segregated out of the American mainstream—had come to seem less promising. Disability scholars have documented various law-based reversals for disabled persons that the ADA did not forestall.⁸ The picture is not all bleak, of course, and the law has

2. See Louis S. Rulli, *Employment Discrimination Litigation under the ADA from the Perspective of the Poor: Can the Promise of Title I Be Fulfilled for Low-Income Workers in the Next Decade?*, 9 TEMP. POL. & CIV. RTS. L. REV. 345, 347 (2000); FRED PELKA, *THE ABC-CLIO COMPANION TO THE DISABILITY RIGHTS MOVEMENT* xi (1997).

3. Pub. L. No. 93-112, 87 Stat. 355 (codified as amended in scattered sections of 29 U.S.C.).

4. Pub. L. No. 101-336, 104 Stat. 327 (codified as amended at 42 U.S.C. §§ 12,101-12,213 (2000)).

5. See, e.g., Rulli, *supra* note 2, at 349.

6. George H.W. Bush, Statement on Signing the Americans with Disabilities Act of 1990, 1990 PUB. PAPERS 1070, 1071 (July 26, 1990), reprinted in 1990 U.S.C.C.A.N 601, 602.

7. Employment is covered in the first subchapter of the statute. See 42 U.S.C. §§ 12,111-12,117.

8. Commentary from Symposium participants on this point includes Ruth Colker, *The Americans with Disabilities Act: A Windfall for Defendants*, 34 HARV. C.R.-C.L. L. REV. 99, 100 (1999) and Samuel R. Bagenstos, *Has the Americans with Disabilities Act Reduced Employment for People with Disabilities?*,

come a long way from the days when its dealings with disabled persons consisted predominantly of forced sterilizations, restrictions on marriage, de jure deprivations of education, and the occasional gratuitous insult in a municipal ordinance.⁹ But the law could do much more to advance its own notion that the oppression of persons with disabilities violates American civil rights doctrine.

If one follows the lead of the Americans with Disabilities Act, which put the workplace into its first subchapter, and thinks of employment as the preeminent venue for advancing the rights and interests of persons with disabilities, then the law as a rights-declarer takes on another meaning: law as a place of employment, or the legal profession itself. Disability *qua* policy has been through several decades of legal iterations—statutory provisions, regulations, decisional law. Failures to recognize the entitlements of persons with disabilities can bring about a panoply of law-based remedies and responses: injunctions, workplace reinstatements and accommodations, and judgments awarding damages. Lawyers have worked hard to impose antidiscrimination rules on schools, employers, housing providers, federal contract officers, and keepers of buildings and other spaces open to the public.

But on themselves? Not so much. The most striking venue for non-application of disability law within the legal profession is lawyer discipline related to mental disability.¹⁰ Bar disciplinarians accusing a lawyer of misconduct related to a mental impairment will typically proceed as if the protections written into law do not pertain to their sanctioning powers, even though the ADA governs public services, a category that covers the lawyer-

25 BERKELEY J. EMP. & LAB. L. 527 (2004).

9. See, e.g., Rulli, *supra* note 2, at 346 n.6:

No person who is diseased, maimed, mutilated or in any way deformed so as to be an unsightly or disgusting object or improper person to be allowed in or on the public ways or other public places in this city, shall therein or thereon expose himself to public view, under a penalty of not less than one dollar nor more than fifty dollars for each offense.

Id. (quoting CHICAGO, ILL., MUN. CODE §§ 36-34 (1966) (repealed 1974)).

10. This Symposium elides definitions of the overlapping concepts of “disability” with respect to mental conditions, “mental impairment,” and even “alcohol and substance abuse”—an unfortunate imprecision that follows the diction of courts, disciplinary authorities, and the ABA Model Rules of Professional Conduct. The chief vice of this too-inclusive umbrella version of “mental disability” relates to the regulatory response. Some conditions under the umbrella are relatively amenable to treatment and intervention, or what courts occasionally call a “cure.” See, e.g., *In re Higgins*, 565 A.2d 901 (Del. 1989) (efforts at rehabilitation made by attorney suffering from major depression and an anxiety disorder were considered in the Delaware Supreme Court’s decision to suspend attorney for ethics violations); *In re Sherman*, 363 P.2d 390, 392 (Wash. 1961). Others are likely to last for the lawyer’s lifetime. See Michael L. Perlin, “Baby, Look Inside Your Mirror”: *The Legal Profession’s Willful and Sanist Blindness to Lawyers with Mental Disabilities*, 69 U. PITT. L. REV. 589 (2008).

discipline apparatus.¹¹ These authorities appear simultaneously to believe that a lawyer is not disabled enough (because she made it through law school, passed the bar exam, and so on) but also too disabled (for having displeased her peers, that is: this profession, which takes pride in being “independent,” sees itself as standing in for the lawyer’s employer, whose views regarding which tasks are central to the employee’s work win deference).¹² Regulators will cut mentally disabled lawyers little slack.

Contemporary case law from the nation’s highest court shows the same regrettable inclination among lawyers, law enforcement, and legal systems, who seem to regard themselves as unburdened by the antidiscrimination mandate that extends civil rights to persons with disabilities. Lawyers representing Alabama won a 5-4 decision in the Supreme Court holding that the Eleventh Amendment shielded the state government from having to pay money damages to state employees for its sundry violations of the ADA.¹³ In *Tennessee v. Lane*,¹⁴ another 5-4 decision with a state as party, the disabled side won, but the very allegations stand as an embarrassment to the profession: Tennessee was fighting to defend a wheelchair-inaccessible status quo in its courthouse. One complainant, George Lane, was a paraplegic man who had to crawl up two flights of stairs to reach a courtroom to respond to criminal charges; the other complainant, a credentialed court reporter, couldn’t do the job for which she was qualified because her wheelchair could not pass through the courtroom doors.¹⁵ Jails and prisons—places where people end up after they encounter law enforcement or involuntary legal process—have trammled on the legal rights of inmates who have disabilities, both before and after enactment of the ADA.¹⁶ So seen, the tendency of this profession to regard itself as ungoverned by the legal rights and entitlements of persons with disabilities joins an unfortunate larger stance of unwarranted self-exemption.

11. *People v. Reynolds*, 933 P.2d 1295, 1304-05 (Colo. 1997); *Okla. Bar Ass’n v. Busch*, 919 P.2d 1114, 1118 (Okla. 1996).

12. See John V. Jacobi, *Professionalism and Protection: Disabled Lawyers and Ethical Practice*, 69 U. PITTS. L. REV. 567 (2008).

13. *Bd. of Trs. of the Univ. of Ala. v. Garrett*, 531 U.S. 356 (2001).

14. 541 U.S. 509 (2004).

15. *Id.* at 513-14.

16. The Supreme Court’s citation on this point referred to one paraplegic inmate kept from using the toilet by an inaccessible design, a “double amputee forced to crawl around the floor of [the] jail,” and a “deaf inmate denied access to [a] sex offender therapy program allegedly required as [a] precondition for parole.” *Id.* at 525 n.11.

We as a profession have applied the nation's disability law to burden and challenge the other guy, not us.¹⁷

Recent instances of attention to lawyers with disabilities have taken strides forward from this lamentable state of affairs. One must celebrate the signal National Conference on Employment of Lawyers with Disabilities, which the American Bar Association (ABA) held for the first time in May 2006 (keynoted, as was the Emory portion of this Symposium, by former U.S. Attorney General and disability activist Richard Thornburgh). The conference yielded an invaluable report that is replete with best-practices guides, anecdotes from luminaries who have succeeded with disabilities, advice about "why it pays to hire lawyers with disabilities," and recommendations of how to increase opportunities for these lawyers, their employers, and their clients.¹⁸ In 2007, the ABA House of Delegates passed a resolution urging all individuals and entities "associated with the legal profession" to make their websites accessible to persons with disabilities,¹⁹ a meaningful shift. When the *American University Journal of Gender, Social Policy, and the Law* shone a spotlight last year on law students with disabilities,²⁰ it augured a welcome new recognition in the law review community—a realm that has generally kept silent on this issue—of disability as a phenomenon internal to the legal profession, rather than a source of pathology for persons outside it.

With this background in mind, our Symposium takes a next step beyond the search for "brass tacks" in "assisting law students with disabilities." Assisting law students is an honorable endeavor. In its live, print, podcast, and online iterations, the American University conference broke new ground. Now, we may ask, what about *being* those students, and the lawyers they move on to become? When responding to someone else's "assisting law students," how do *we* accept the assistance, or negotiate a better

17. Part of the title of Michael Perlin's contribution to this Symposium, *Baby, Look Inside Your Mirror*, originally written by Bob Dylan, suggests a need for self-reflection within this profession. See Perlin, *supra* note 10, at 592 ("Perhaps it is time that we have ourselves on our collective minds.").

18. For more detailed information on the National Conference on the Employment of Lawyers with Disabilities, see PAS: Center for Personal Assistance Services, News Summary, http://www.pascenter.org/news/news_home.php?id=63 (last visited Aug 15, 2008).

19. Am. Bar Ass'n Comm'n on Mental and Physical Disability Law, *ABA Resolution and Report on Website Accessibility*, MENTAL & PHYSICAL DISABILITY L. REP. 504 (2007), available at http://www.abanet.org/disability/docs/Feature_article_31_4.pdf.

20. Symposium, *Assisting Law Students with Disabilities in the 21st Century: Brass Tacks*, 15 AM. U. J. GENDER, SOC. POL'Y & L. 769-931 (2007). David Jaffe, Dean of Student Affairs at the Washington College of Law remarked, "To my knowledge, this is the only national conference that has been set up to work and dedicated solely on addressing issues with law students and disabilities . . ." *Id.* at 788.

accommodation for ourselves? What if *l'handicapé c'est nous*?²¹ By which I mean to say, at the risk of sounding presumptuous or pretentious,²² that any lawyer with disabilities is not (only) a challenge, an inspiration, a problem, a source of diversity, an undervalued asset, and so on, but also *us*. This person, like any other lawyer, is part of the legal profession. Subject, agent, ourselves.

Accordingly, the balance of this Introduction to the Symposium proceeds with reference to lawyers with disabilities in the first person. Although I, like most of the authors assembled here, do not regard myself as a person with disabilities, I think it will be salutary for my own contribution and the nine papers that follow to be read as coming from this voice. If *l'handicapé c'est* indeed *nous*, and disability really is the civil-rights category that lawyers have formed, then lawyers with disabilities can talk about accommodations and recognition as expectations and entitlements for themselves—for ourselves—rather than as the benevolence we extend to third parties.

Take for instance the claim that law schools should welcome and support applicants who have disabilities. At the ABA's first-ever conference about the employment of lawyers with disabilities, the president of the organization explained why:

When you realize that 50 million people in our country are not represented in sufficient numbers in the legal profession and on the bench, what that says to me is that our justice system does not now truly reflect the fabric of our country. And that is why it is important for the pipeline of lawyers with disabilities and lawyers of color and women to be part of our justice system, so that when someone walks into a courtroom, he or she sees people who give them confidence that the justice system is inclusive and will be fair to everyone.²³

This statement speaks for many: “the justice system”; the legal profession, an important constituent of that system; the 50 million disabled Americans who are not part of this profession and may feel excluded; and the visitor to a courtroom who would receive messages about inclusion and fairness from enhancements to the personnel scene there. The mixed-metaphoric assertion that underrepresenting persons with disabilities does not

21. In English: what if the handicapped person is us?

22. It's not just the foreign language: one also recalls the young Norman Mailer's cringe-inducing essay, *The White Negro*: “Only by cultivating his ‘dark, romantic, and yet undeniably dynamic view of existence’ can the white man reconnect with the primitive, vital ‘Negro’ within himself, and thereby recapture his own vaunted ‘individuality.’” See Kelly Kleiman, *Drag = Blackface*, 75 CHI.-KENT L. REV. 669, 674 (2000) (footnote omitted).

23. AM. BAR ASS'N, THE NATIONAL CONFERENCE ON THE EMPLOYMENT OF LAWYERS WITH DISABILITIES 8 (2006) (remarks of Michael S. Greco).

“reflect the fabric of our country” states an instrumental goal of diversity. I agree with it all, and go further by contending that the message grows more forceful if we speak in a slightly different register about the need for this profession to do more recruiting, inviting, and supporting of students with disabilities. Extrinsic sectors like the justice system, the legal profession, the non-lawyers with disabilities, and the professions’ goals are separate from people who want—and are owed—this change for their own sake. Here is one way to state the distinction, which I will repeat in boldface very soon:

When we earn the credentials to go to law school and choose to accept a school’s offer of admission, we expect to be welcomed into an educational environment that lets us live up to our own potential.

I continue in this first-person mode in the parts below.

II. BEFORE WE BECOME LAWYERS

When we earn the credentials to go to law school and choose to accept a school’s offer of admission, we expect to be welcomed into an educational setting that lets us live up to our own potential.

Of all the topics broached in this Symposium, the idea that law students should see themselves as entitled to a supportive environment may be the least utopian, given the strengthening of accommodation mandates that the ADA introduced to a generation of new law students. By the time most students with disabilities reach law school, they have probably had experience with the special-treatment apparatus that acknowledges their deviation from a norm and would be startled to encounter resistance to the truism that schools must furnish them the “reasonable accommodations” they need for full access to educational opportunity.²⁴ Individuals with sensory- or mobility-related impairments are entitled to modifications in their learning environment. Those with less visible conditions know the drill: document your disability, collect your dispensation.

Invisible disability has engaged the attention of the first two Articles in this Symposium: *Extra Time as an Accommodation*, by Ruth Colker, delivered also in Pittsburgh as the Thornburgh Family Lecture on Disability Law and

24. See 29 U.S.C. § 794 (2000); see also *Sanders ex rel. Marquette Public Schools*, 561 F. Supp. 1361 (W.D. Mich. 1983).

Policy,²⁵ and *Inclusive Instruction: Blurring Diversity and Disability in Law School Classrooms Through Universal Design*, co-authored by lawyer Meredith George and psychologist Wendy Newby.²⁶ Delivered at Emory during the live portion of the Symposium, these contributions spoke eloquently about what might be missing even in an accessible building like Gambrell Hall, where wide corridors connect to reliable elevators, almost every space is easy to enter on wheels, and an exceptionally dedicated audio-visual staff can wire or build an array of special platforms on request.²⁷ In different ways, the two Articles say that although we who have a disability might respond to an accommodation with relief or gratitude, for us accommodation is never the ideal. Instead, we question demarcations that put us on the lesser side of a line. Are they necessary? Thinking about law students with disabilities as ourselves provokes questions about the core and periphery of legal education.

Ruth Colker takes on the timed examination, a mainstay of contemporary American legal education that begins with the standardized Law School Admission Test (LSAT), runs through most of the first-year curriculum at most schools, and culminates in the ordeal of a bar exam. Most readers of these words will have been through speed-measuring tests. Some, like Colker herself, excelled at them and went on to improve our profession by building on these early successes. Unlike the United States senator who at the turn of the twentieth century declared his support for a proposed constitutional amendment providing for direct election of senators because he had been elected that way himself and had “great affection for the bridge” that gave him his job,²⁸ Colker disdains her privilege. What is it about speed, she asks, that justifies “our devotion to this testing instrument?”²⁹

It turns out that the timed examination makes life easier for other people rather than us lawyers-to-be with disabilities. Instructors who have to fit their grades into a curve benefit from the widened distribution of timed outputs. Employers, in turn, benefit from this wide distribution when they seek sorting,

25. Ruth Colker, *Extra Time as an Accommodation*, 69 U. PITT. L. REV. 413 (2008).

26. Meredith George & Wendy Newby, *Inclusive Instruction: Blurring Diversity and Disability in Law School Classrooms Through Universal Design*, 69 U. PITT. L. REV. 475 (2008).

27. This footnote is a place to salute the Emory tech wizards Corky Gallo and Scott Andrews, whose logistical skills and can-do philosophy advanced the live portion of the Symposium. I also recall that five years ago an Emory law student who used a wheelchair remarked to me that she found Gambrell a congenial and supportive building, better than any she had been inside during her college years at another university.

28. See RUSSELL L. CAPLAN, CONSTITUTIONAL BRINKSMANSHIP: AMENDING THE CONSTITUTION BY NATIONAL CONVENTION 65 (1988) (quoting former Senator William E. Borah of Idaho).

29. Colker, *supra* note 25, at 465.

a prejudgment of how students from the same school compare to one another. Administrators find a sequence of three- or four-hour exams easier to schedule than Colker's proposed alternative, a take-home examination that runs perhaps eight hours. Many believe that departing from the timed, proctored, rigidly supervised instrument could facilitate cheating.³⁰ Colker does not say that timed examinations strengthen institutional control over students and thereby install passivity as a condition for success—that the order “Put your pencils down, NOW” (or its teched-up counterpart) demands obedience and acquiescence in a way that an eight-hour take-home does not—but we are free to draw that inference. The timed examination sets up fast reading, fluid writing, and stopping on a dime as the norm, with a little more time available only as an accommodation for the defective minority.

The lens of *L'Handicapé C'est Nous* permits two distinct readings of Colker's thesis. At one level, *Extra Time as an Accommodation* serves a persuasive brief against one type of testing instrument and in favor of another. Law professors who follow the dominant mode of timed exams and who read this Article must at least rethink, if not foreswear, their “devotion to this testing instrument.” At another level, law students who do not have enough time to complete their analyses and arguments in the standard timed format—some of whom bear the disability label and receive accommodation—join the legal profession as subjects and policymakers, not just the recipients of a dubious administrative favor. Maybe we have to abandon the habit of measuring ourselves with a stopwatch; alternatively, we might choose to keep the timed instrument as part of a costs-and-benefits mix. But it is we who often cannot finish saying what we are in fact qualified to say.

The starting point that a minority of law students have peccadillos needing accommodation serves us poorly elsewhere in legal education, as Meredith George and Wendy Newby document in their Article. George and Newby describe the Universal Design to Instruction paradigm, an educational model intended as a counterpart to such architectural features as curb cuts and lever door handles, which can be problem-solvers for persons with and without disabilities. For educators, the Universal Design paradigm calls for multiple means of three aspects characteristic of learning: representation, expression, and engagement.³¹ Legal education does not yet hew to this ideal,

30. In the Emory version of this Symposium, Colker said in response to a question from the audience that she regards her own examinations as no more vulnerable to cheating than a timed examination.

31. See George & Newby, *supra* note 26, at 494.

despite recent expansions on what it should include.³² George and Newby give examples of variations from the lecture-and-question mode that law school classrooms do and should offer: small-group exercises, role playing, writing projects, simulations, film clips and other audio-visual elements, and response papers.³³

This pedagogical pluralism expands the pronouns of We and Us to include more variety in the law school classroom, while admittedly reducing satisfaction and ease-levels for those who thrive in the more hidebound teaching modes. Like those who can beat the competition on timed examinations, individuals in the law school classroom (on both sides of the podium) who feel engaged rather than frightened or disgusted by thrust-and-parry “Socratic” sparring, or who relax whenever the paragraphs of a lecture fill the air uninterrupted, have long enjoyed a warm welcome inside the law school. Colker, George, and Newby have not upped the comfort level for all. The norm-and-accommodation mode that they question enriches and flatters many inside the law school. We who fall outside its protections have work ahead of us before we can replace it with inclusion.

III. WE INSTRUCT

Because we know that individuals with disabilities are qualified for teaching, scholarship, and service, (we) law students expect to work with and learn from (us) law professors with disabilities.

Law school accreditation rules presume that law faculties should hold power. To be accredited by the American Bar Association, every law school must have a policy to ensure its faculty’s employment security and academic freedom.³⁴ Deans may come and go; governing boards turn over; and administrators can get fired for not fitting in. Full-time faculty, by contrast, have reaped rules that protect their continuing employment even when they give offense; they make educational policy at the school and perform, or oversee, the bulk of important work there. What about law professors with disabilities? The accreditation rules announce a policy against discrimination

32. See *infra* note 92 and accompanying text (describing the recent Carnegie Foundation report on legal education).

33. See George & Newby, *supra* note 26, at 495.

34. ABA STANDARDS OF APPROVAL OF LAW SCHOOLS, Standard 213 (2007), available at <http://www.abanet.org/legaled/standards/20072008StandardsWebContent/Chapter%202.pdf>.

based on “race, color, religion, national origin, gender, sexual orientation, age or disability,”³⁵ and then speak briefly to this point:

Standard 213. Reasonable Accommodation For Qualified Individuals With Disabilities

Assuring equality of opportunity for qualified individuals with disabilities, as required by Standard 211, may require a law school to provide such students, faculty and staff with reasonable accommodations.³⁶

As to those matters covered by Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, neither this Standard nor Standard 211 imposes obligations on law schools beyond those provided by those statutes.³⁷

Furthermore, diversity should play a role in hiring decisions:

Consistent with sound educational policy and the Standards, a law school shall demonstrate by concrete action a commitment to having a faculty and staff that are diverse with respect to gender, race, and ethnicity.³⁸

In sum, the accreditation authority tells law schools not to discriminate against persons who have disabilities or any of seven other descriptors; it says that equality of opportunity for persons with disabilities “may require . . . reasonable accommodations”; it specifically declares that in order to be accredited a law school need do no more in the realm of disability than comply with the two key federal statutes that govern educational institutions; and it commends diversity—but only with respect to gender, race, and ethnicity—as a personnel strategy. In the other co-authored contribution to this Symposium, philosopher Anita Silvers and lawyer-philosopher Leslie Pickering Francis explain why law schools must go beyond this accreditation minimum.³⁹

The ABA accreditation standard speaks to governed institutions that face a small, discrete class of job applicants or candidates who deviate from an able or unimpaired norm. *What do we have to do with these people?*, it asks. Well, we suppose we have to obey the applicable civil rights laws, if it’s not too much trouble.⁴⁰ But no more than that. Diversity, a goal that inspires

35. *Id.* Standard 211.

36. *Id.* Standard 213.

37. *Id.* Interpretation 213-2.

38. *Id.* Standard 212(b).

39. Leslie Pickering Francis & Anita Silvers, *No Disability Standpoint Here!: Law School Faculties and the Invisibility Problem*, 69 U. PITT. L. REV. 499 (2008).

40. The standards hedge by defining reasonable accommodations as “those . . . that can be provided without undue financial or administrative burden.” ABA STANDARDS OF APPROVAL OF LAW SCHOOLS,

rapturous prose in the ABA interpretations of its nondiscrimination mandate,⁴¹ is nowhere to be seen in this text.

Picking up the ball that the ABA dropped, Silvers and Francis argue that law professors found at varying points of an impairment-unimpairment continuum should be in the classroom for the same reason that variety in gender, race, and ethnicity should be present there. To borrow the ABA's words about race and gender diversity, the representation of persons with disabilities "promotes cross-cultural understanding," "helps break down . . . stereotypes," and "enables students to better understand persons" who are different from them.⁴² Silvers and Francis go further, reminding readers of standpoint theory, the tenet of epistemology "that the perspectives of marginalized individuals strengthen objectivity."⁴³ American law schools teach disability, at least in their elective courses about discrimination law and often in classes about disability alone. Most law professors who offer elective courses that cover disability law do not think of themselves as disabled. Undoubtedly, many of them perform very well; but in the aggregate, this group of instructors lacks a crucial epistemic connection to its subject matter. Classes on disability and discrimination are not enough; a law professoriate that does not replenish its own ranks with persons who have disabilities fails to gain unique knowledge and insight.

Going still further, an affirmative-action mandate to employ law professors with disabilities is desirable for us. If the mandate is honored in good faith, we students will feel validated and reflected when we look from our seats to the classroom podium—just as non-disabled white male law students have long seen their own phenotype on display as the embodiment of competence, authority, and well-deserved prestige. We who wish to teach and write about the law will enjoy more job openings. Once hired, we will likely flourish, because our employing institutions will view good treatment for us as good policy for itself.

Our arrival as respected incumbent members of the faculty will ameliorate a demographic disruption ahead. A recent survey of disability law as applied to university settings shows that the average age of faculty members continues to rise, and the number of professors who have formally sought accommodations has followed suit.⁴⁴ It is improbable that universities will

Standard 213, Interpretation 213-3.

41. *See id.* Standard 212 Interpretations 212-2, 212-3.

42. *Id.* at Standard 212, Interpretation 212-2.

43. Silvers & Francis, *supra* note 39, at 507.

44. Barbara A. Lee & Judith A. Malone, *As the Professoriate Ages, Will Colleges Face More Legal*

manage to exempt themselves from accommodation and antidiscrimination mandates. They have no choice but to live with us disabled colleagues. Our experiences at work—where we, in disability-law jargon, demonstrate the “essential functions” of our jobs by doing them—will shed light on new claims, perspectives, and self-characterizations.

IV. OUR CAREERS BEGIN

Every law student faces the challenge of finding the right first job—or, failing that, a good-enough first job—to launch a unique professional path. We who have a disability hope to avoid extra layers of trouble in our job search. When we are entitled to an accommodation at work, we expect to receive it without fuss. When we are not so entitled, we expect not to be punished for having dared to seek it.

The disability scholar and law library director Ann Puckett, reporting on her survey of hundreds of law students, depicts a cloud that hangs over the search for a job that will begin immediately after graduation.⁴⁵ Because an impairment related to mobility or sensory perception is hard to conceal from a prospective employer, the question of “to tell or not to tell” emerges mainly in the context of invisible disabilities. “Not to tell,” her student-interviewees concluded. Law students with invisible disabilities need not “come out” to instructors from whom they want an accommodation like extra time on an exam;⁴⁶ their requests for exceptional treatment are usually not shared with the instructor who is to grade their work product. At the on-campus interview site, the venue Puckett studied in her survey, however, a law student with an invisible disability cannot even broach the subject of accommodation without first identifying himself to a stranger as disabled. The majority of students with ADA-recognized disabilities opt for “don’t tell” in the interview.

My diction here—“don’t tell,” “come out”—echoes the locutions that Puckett uses in her Article. Puckett was struck by the parallels between disability and homosexuality as conditions that a minority of law students

Landmines?, CHRON. REV., Nov. 30, 2007, at B6.

45. E. Ann Puckett, *How Potential Employers Approach Disability: A Survey of Law Students in Georgia*, 69 U. PITT. L. REV. 509 (2008).

46. The picture is very different for the LSAT—students must submit extensive documentation in order to receive extra time, and their scores are isolated from unaccommodated data and flagged for admissions personnel at law schools to review “with great sensitivity and flexibility.” Colker, *supra* note 25, at 448.

bring to their on-campus interview with an employer. Invisible disabilities and sexual orientation can both escape detection. Unsympathetic observers have deemed them both a “choice” rather than an inherent or necessary state, equating their own inability to see these conditions from the outside with their bearers’ perceived option to jettison them from their lives.⁴⁷

An equally pertinent—and, unfortunately, even gloomier—analogy comes from the work of medical-legal scholar Jay Katz on “the silent world of doctor and patient” that defeats informed consent to medical treatment. “The legal vision of informed consent, based on self-determination,” writes Katz, “is still largely a mirage.”⁴⁸ Now comes Puckett: “[R]easonable accommodation will not be available to those who choose to keep their disabilities a secret.”⁴⁹ Before we can “come out” of the “silent world” that denies our disability, we must secure our right to accommodation. To secure our right to accommodation, we must come out of the silent world.

V. OUR MENTAL DISABILITIES

The topic of mental disability, in contrast to mobility and sensory impairment,⁵⁰ dominates this Symposium,⁵¹ as evidenced not only in the

47. See, e.g., Mike Doring, *Obama Sees Plenty of Votes in Black Pews*, CHI. TRIB., Oct. 26, 2007, at A1, available at 2007 WLNR 21105652 (referring to the view that homosexual orientation can be “overcome” through a turn to God); Jane Gross, *Paying for a Disability Diagnosis to Gain Time on College Boards*, N.Y. TIMES, Sept. 26, 2002, at A1, available at 2002 WLNR 4040690.

48. JAY KATZ, *THE SILENT WORLD OF DOCTOR AND PATIENT* 84 (John’s Hopkins Univ. Press 2002) (1984).

49. Puckett, *supra* note 45, at 519.

50. See *supra* note 10 (explaining the “mental disability” umbrella as used in this Symposium to cover impairments unrelated to movement and the senses).

51. The September 2007 Symposium at Emory included several presentations on sensory- and mobility-related disabilities. Participants who addressed these issues included Will Grignon, a blind lawyer working at a large firm in Los Angeles and frequent CLE speaker; Deborah Krotenberg, a division director for the Georgia Board of Workers’ Compensation, speaking about the reintegration of her own law practice following a severe spinal injury; and Homer Mullins, former counsel to a large Atlanta firm and co-founder of a business that consults employers and lawyers on issues related to age-related hearing loss. The three physicians who spoke on disability from a medical-professional vantage point were Dr. Kertia Black of Wayne State University Medical School, who devoted particular time to physical disabilities; Richard Limoges, who treats impaired lawyers and physicians in occupation-specific group therapy; and James N. Thompson, head of the Federation of State Medical Boards. Although these presentations do not appear in these pages, pertinent readings may be retrieved from INSTITUTE FOR CONTINUING LEGAL EDUCATION IN GEORGIA, *LAWYERS AND DISABILITY: EMORY CONFERENCE ON ETHICS AND PROFESSIONALISM PROGRAM MATERIALS* (2007) [hereinafter ICLE]. In addition, the presentation of Samuel Bagenstos, *Legal Ethics Meets Access to Justice for Clients with Disabilities*, discussed legal advocacy on behalf of individuals with mobility- and sensory-related impairments.

Articles that make up its concluding half—by Laura F. Rothstein, one of the legal scholars who helped to form the discipline of disability law in its contemporary incarnation;⁵² John V. Jacobi, a scholar of the Americans with Disabilities Act and health law who came to the September 2007 conference from a high-level, two-year stint in New Jersey government;⁵³ Michael L. Perlin, a leader in mental disability law;⁵⁴ and Kelly Cahill Timmons, a younger eminence in this field⁵⁵—but also in contributions from the first half: the Articles by Colker, Newby and George, Silvers and Francis, and Puckett all refer to mental disability.⁵⁶

As was observed at the September 2007 portion of this event, few law professors have been willing to declare that *l'handicapé c'est moi* when the disability in question is a mental illness.⁵⁷ A few weeks earlier, Elyn Saks, a member of the faculty at the University of Southern California School of Law, published her memoir of schizophrenia.⁵⁸ Marjorie Silver of Touro Law School has been candid with her students about her own diagnosis of mental illness.⁵⁹ Sol Wachtler, former chief judge of the New York Court of Appeals and an adjunct professor at Touro, where he teaches constitutional law and mental health law, has also spoken and written about his mental illness.⁶⁰ Ken Kress used to advert to his own bipolar disorder while teaching and writing about mental health law.⁶¹ Few other law teachers have gone on record to

52. Laura F. Rothstein, *Law Students and Lawyers with Mental Health and Substance Abuse Problems: Protecting the Public and the Individual*, 69 U. PITT. L. REV. 531 (2008).

53. Jacobi, *supra* note 12.

54. Perlin, *supra* note 10.

55. Kelly Cahill Timmons, *Disability-Related Misconduct and the Legal Profession: The Role of the Americans with Disabilities Act*, 69 U. PITT. L. REV. 609 (2008).

56. See, e.g., Colker, *supra* note 25, at 419-20; George & Newby, *supra* note 26, at 475; Francis & Silvers, *supra* note 39, at 504-05; Puckett, *supra* note 45, at 518. The September 2007 conference also included a presentation by Susan Daicoff entitled *Does the Mentally Distressed Lawyer Have a Disability?* See ICLE, *supra* note 51.

57. References by law professors to other disabilities are also rare. See Griffin B. Bell & Terrence Adamson, *Daniel J. Meador—Visionary*, 80 VA. L. REV. 1209, 1209 (1994) (noting that the honoree did not wish to be known as “that blind law professor”); see also Bonnie Poitras Tucker, *The ADA's Revolving Door: Inherent Flaws in the Civil Rights Paradigm*, 62 OHIO ST. L.J. 335, 344 (2001) (contrasting the author with her “hearing peers”).

58. ELYN R. SAKS, *THE CENTER CANNOT HOLD: MY JOURNEY INTO MADNESS* (Hyperion 2007).

59. Michael L. Perlin, “*You Have Discussed Lepers and Crooks*”: *Sanism in Clinical Teaching*, 9 CLINICAL. L. REV. 683, 715 n.182 (2003) (relating a personal communication).

60. SOL WACHTLER, *AFTER THE MADNESS: A JUDGE'S OWN PRISON MEMOIR* (1997); Sol Wachtler, Op-Ed., *Ban “the Box” for the Mentally Ill*, NEWSDAY, June 12, 2007, at A12, available at 2007 WLNR 10945245.

61. Kress taught for many years at the University of Iowa College of Law. On his departure from the legal academy, see *Editorial, Our View—Kress Case Shows Need for Greater Transparency*, IOWA

describe their own experiences with mental illness—a condition that is fairly common in the American population and even more common among lawyers.⁶² And so the law literature has few statements of mental disability from what is, so to speak, an owner's perspective. I propose a few that might be addressed to the bar.

When we practice law while being mentally ill, we expect our regulators to keep a couple of points in mind:

- 1. Legislation enacted to extend civil rights protections to persons with disabilities does not exempt lawyers like us from its protections.**

As far as the adjudication of lawyer discipline is concerned, *l'handicapé ce n'est pas nous*: only 4% of lawyers accused of misconduct cited the ADA, as Kelly Cahill Timmons learned through her searches through Lexis databases.⁶³ It appears certain that this figure undercounts the true percentage of lawyers whose disciplinary troubles originate in an ABA-recognized disability. Although the inclination not to mention disability resembles the choice of law students not to identify themselves as disabled to employers,⁶⁴ Timmons quickly explains the pertinent difference between these two avoidances. A lawyer accused of misconduct in a published decision will frequently be seeking not full exoneration—in the parlance of criminal law, an acquittal—but leniency. Advocates for these accused lawyers seem to regard the ADA as not worth using because, under American Bar Association standards for lawyer discipline, a lawyer can pursue leniency by attributing her misbehavior to “chemical dependency or mental disability.”⁶⁵ No need to reach for a statute covering them, those Americans with Disabilities.

Invoking the ADA can be a risky move for a lawyer accused of misconduct, as Timmons shows through her citation of decisions where judges and disciplinarians appear outraged by the notion of a lawyer using this statute to “evade responsibility” or try to “be insulated” from discipline.⁶⁶

CITY PRESS-CITIZEN, Apr. 10, 2007, at 11A.

62. See, e.g., G. Andrew Benjamin et al., *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers*, 13 INT'L J.L. & PSYCHIATRY 233, 240 (1990).

63. Timmons, *supra* note 55, at 610.

64. See Puckett, *supra* note 45.

65. ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS, Standard 9.32(i) (1991).

66. Timmons, *supra* note 55, at 615 & n.34 (quotation marks omitted).

L'handicapé ce n'est pas nous: how dare a lawyer blight our profession by claiming that a disability statute pertains to our line of work and supports a lesser sanction? As Timmons establishes, the ADA does apply to this particular kind of adverse action by a public entity. Individual lawyers can be wrong when they claim that their impairment constitutes a disability, or that their disability caused their misconduct. But they—we—are entitled to have government actors regard disabilities linked closely enough to misconduct as bases for mitigation of discipline. Mandatory bases, Timmons insists—not the discretionary favors that accused lawyers now sometimes receive.

Of course, space exists between the premise that the ADA governs lawyer discipline and the conclusion that a lawyer is entitled to the protections of the statute. We have noted John Jacobi's insightful observation that either the requirement of showing a disability or the requirement of showing that the aggrieved individual is "qualified" can be sufficient to derail most lawyers' efforts to claim ADA protection when faced with discipline.⁶⁷ The larger problem for a tenet like "Legislation enacted to extend civil rights protections to persons with disabilities does not exempt lawyers like us from its protections" is what Jacobi calls "the wide end of the funnel": The Model Rules of Professional Conduct impose "the obligation to assess and evaluate the abilities of attorneys believed to have mental impairments on the rank and file of attorneys," a requirement that "gives free rein to the pervasive bias against people with mental illness and will likely lead to discrimination against mentally impaired lawyers."⁶⁸ We may be entitled to claim ADA-based protection, but because other lawyers supervise us in the name of client safety, we face prejudice.

2. We agree that one of the main purposes of professional regulation is protection of the public. Mentally ill lawyers per se do not endanger the public, however; only behaviors do.

Jacobi looks at two ABA-authored sources of guidance: a formal opinion that tells supervisors to, in Jacobi's words, "be vigilant in [their] oversight of supervised attorneys with mental impairments,"⁶⁹ and another formal opinion that tells all lawyers, some of whom will know nothing about mental disability, to report a lawyer whom they believe has a mental condition that

67. See *supra* note 12 and accompanying text.

68. Jacobi, *supra* note 12, at 576.

69. *Id.* at 573 (citing ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 429 (2003)).

materially impairs her ability to represent clients for the (presumed?) offense of failing to withdraw from representing a client.⁷⁰ These directives, which plainly conflict with an antidiscrimination mandate, need to be modified before the ADA can serve as a robust source of civil rights for mentally disabled lawyers.

Making a separate recommendation toward the same goal, Jacobi concludes his Article by encouraging the legal profession to emulate the medical profession by laying out ideals in terms of performance. At the moment, “[t]here are few ‘best practices’ in the law,” Jacobi writes.⁷¹ We need to know what they are, so that we can be judged by what we do, rather than our colleagues’ perception of what impairment we have or who we are.

Michael Perlin explores related ground by returning to “sanism,” coined and developed by Perlin to identify the mental health counterpart to other social ills like racism and homophobia.⁷² Like any other social prejudice, sanism does not bother hewing to consistency and can take varying and contradictory forms depending on the agenda of the bigot. Lawyers who regard their mentally disabled colleagues through a sanist lens, Perlin argues, have inflicted ruinous harm through both neglect of and misplaced overemphasis on this disability. They ignore mental illness within their own profession, despite its undeniable magnitude there,⁷³ while judges ignore lawyers’ mental impairment for purposes of ineffective assistance jurisprudence.⁷⁴ Perlin recounts a case where a lawyer was so mentally disabled that he was deemed unfit to represent himself, and yet when the lawyer represented a criminal defendant and adverse results ensued, this level of disability was insufficient to support a claim of ineffective assistance.⁷⁵ When not ignoring mental disability, the profession is blaming lawyers who are disabled in this way, as we have seen with reference to what Kelly Cahill Timmons recounts about resistance to the ADA mandate for the mitigation of discipline.⁷⁶

Read together, the Articles by Jacobi and Perlin are complementary: a stance against the pernicious effects of sanism underlies Jacobi’s “best practices” recommendation, while Perlin’s critique of sanism necessarily

70. *Id.* at 574 (citing ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 431 (2003)).

71. *Id.* at 587.

72. See Perlin, *supra* note 10, at 590 n.6 (citing Perlin's article *On "Sanism"* and seven other works by Perlin that elaborate on the concept).

73. *Id.* at 589.

74. *Id.* at 598-99.

75. *Id.* at 599 (citing *Bellamy v. Cogdell*, 974 F.2d 302 (2d Cir. 1992)).

76. Timmons, *supra* note 55, at 621.

includes Jacobi's worry about "the wide end of the funnel." The two contributions address the prejudice that can accompany a stated desire to protect the public from lawyers' mental impairment. Although Perlin's intellectual commitments, which include therapeutic jurisprudence, do not lead him directly to the Jacobi focus on conduct rather than status, his Article is a fierce denunciation of bigotry. When he concludes by commending a truer resolve to be "protective of the public," the regulation he contemplates is one that sees this protection in terms of discrete dangers, not beliefs about the menace inherent in a person.⁷⁷

The Jacobi "best practices" recommendation has a counterpart in Laura F. Rothstein's contribution, a call for better factual information about what works and doesn't work with respect to mental disability in the legal profession.⁷⁸ From her base of experience as a law school dean, Rothstein sees this issue as beginning in law schools rather than the later points in a lawyer's career, on which Jacobi, Perlin, and Timmons focus. Her comprehensive study of mental disability starting with legal education provides a trove of crucial factual information that underlies the policy recommendations at the end of her Article. Despite all she knows, which she shares, Rothstein needs to know more about the prevalence of mental illness and related conditions like substance abuse, the effect of stress on lawyers, the relation of legal education to mental health, and the nature of lawyer competence. If Laura Rothstein needs to know more, then the profession *certainly* needs to know more. Her call for enhancing the store of knowledge about the mental impairment of lawyers is also congruent with the anti-prejudice stance of Perlin and Jacobi. Unless the profession can gather and assimilate facts about our disability, it will proceed blinkered against us.

3. For us in this profession with mental disabilities, justice includes overt action, not just "the right to be let alone."⁷⁹

The thin liberal ideal of negative liberties, which finds freedom present in the absence of coercion rather than the furnishing of conditions needed for a flourishing life, can be a distraction when lawyers confront the subject of mental disability in their own ranks. Regulators hardly leave members of this

77. See Perlin, *supra* note 10, at 606-07.

78. Rothstein, *supra* note 52, at 565-66.

79. See *Olmstead v. United States*, 277 U.S. 438, 478 (1927) (Brandeis, J., dissenting) (invoking "the right to be let alone"). The phrase comes from a nineteenth-century treatise on torts. See THOMAS COOLEY, *THE LAW OF TORTS* 29 (2d ed. 1888).

profession alone, and they are not likely to change their interventionist stance. Affirmative action is a given. The question posed here is: Which actions merit undertaking by the profession? Easier to answer with respect to other disabilities. Lawyers may feel committed, or at least resigned, to installing sensory- or mobility-related accommodations for disabled co-workers. They will pay, let us assume, for ramps and visual aids and voice-recognition software in the office. They presumably ordered an elevator built in the Polk County courthouse featured in *Tennessee v. Lane*.⁸⁰

This Symposium provides numerous suggestions for proactive, constructive investments that would help to assimilate lawyers with mental disabilities into the center of our profession from the present unfortunate periphery. Timmons offers new doctrines, on causation and mitigation, to replace the old. Perlin calls for modification of the *Strickland v. Washington* test that governs effective assistance claims.⁸¹ Jacobi invites research into “best practices.” All the authors, in different ways, call on the legal profession to sacrifice the comforts of its prejudices.

In addition to these conceptual and attitudinal changes, readers have before them the Rothstein-authored calls not only for more research, but for treatment and intervention. Here the regulatory tradition of linking substance abuse and non-disabling medical conditions with mental disability emerges as a source of possible confusion that Rothstein helps to clarify. Sensory- and mobility-related disabilities create a need for integration or accommodation so that the lawyer can keep going despite her disability, whereas for some conditions that fall under the “mental disability” umbrella, the profession might instead look at interventions to ease, or even cure, what ails the lawyer. Rothstein’s experiences as a CEO, founding scholar of disability law, practicing lawyer, and law school administrator with responsibility for admissions and student services in several institutions, give her an exceptionally wide perspective on mental disability and related conditions, some of which we must live with and some of which might be fixed. She sees a range of responses and initiatives beyond the prevailing narrow menu of denial, ad hoc accommodation, and occasional isolated heroism by individuals. Many of her recommendations have in common the trait of appearing costly to start and yet being a bargain in the longer run.⁸² Investing

80. See *supra* notes 14-15 and accompanying text; see also *Agreement Calls for Massive Undertaking to Make Courts More Accessible*, DISABILITY COMPLIANCE BULLETIN, Feb. 16, 2006 (noting capital expenditures around the country following the decision).

81. Perlin, *supra* note 10, at 598-600 (citing *Strickland v. Washington*, 466 U.S. 668 (1984)).

82. See, e.g., Rothstein, *supra* note 52, at 548 (arguing for expanding access to mental-health

in our capacity makes demands, we admit, of which financial outlay is just a fraction. Not investing in us, however, costs the profession more.

VI. THE SOCIAL CONSTRUCT IN WHICH WE LIVE

Our disability is as much socially constructed as it is a medical condition. Acceptance and access make us less different.

The concluding Article by Wendy F. Hensel reiterates the themes of the Symposium with reference to a foundational tenet of disability studies: the contrast between a “medical model” and a “social model” of disability.⁸³ The former model is crabbed, the latter capacious. Echoing John Jacobi, who found lawyers with disabilities deemed either too disabled or not disabled enough when they cite the ADA,⁸⁴ Hensel notes the unfairness of refusing to see the socially constructed staging that reifies any disability:

Instead, when an individual within the profession claims protection under the ADA, she is often met with skepticism that her impairment truly could be sufficiently limiting to warrant legal protection, particularly in the context of intangible impairments. On the other hand, if the impact of an impairment is more obvious to the observer, it is common in the profession to challenge whether the individual could ever be sufficiently qualified to practice in the esteemed profession of law.⁸⁵

Prejudice against many people, for many of their traits, is pervasive and not unique to legal education. Hensel argues that legal education adds to the baseline bigotry whose origins lie outside the profession. As she explains, both the medical model of disability and the case method of legal study “take[] institutional arrangements as a given,” not inquiring into the justice of preexisting or pre-political distribution.⁸⁶ Socratic colloquy in the classroom treats justice, fairness, and values as out of line, external to the law.⁸⁷ The pedagogy of forcing students to work by themselves, with only their computers and the insides of their heads for company—a mode of learning that medical students and business students would find peculiar—turns them

treatment within law schools); *id.* at 562 n.138 (recommending more study of stress, with an eye toward reducing its detrimental impact).

83. Wendy F. Hensel, *The Disability Dilemma: A Skeptical Bench and Bar*, 69 U. PITT. L. REV. 637 (2008).

84. See *supra* note 12 and accompanying text.

85. Hensel, *supra* note 83, at 642.

86. *Id.* at 647.

87. *Id.* at 647-48.

away from social contexts. Zero-sum competitions for grades and other rewards encourage observers to suspect malingering whenever a law student seeks recognition of a disability that nobody can see.⁸⁸

Law practice, which often creates familiar conditions of competitiveness, snobbery, hierarchy, exclusion, and a stylized horror of weakness, offers no respite from the rejection and hostility that many of us encountered in law school. As the Article by Ann Puckett has pointed out, the disability closet in which most of us hide (if we can) provides only an uneasy shelter, and prevents us from knowing about our colleagues with whom we have disability in common.⁸⁹ We know they (we) are there, but one study reported our number only as fifteen out of more than 18,000, or an absurd 0.1% of lawyers practicing in firms in New York.⁹⁰ Hensel also notes the crushing workloads and high levels of stress that fill contemporary law practice. Impeded by disability, we want a break from the normalized pressures that law firms impose. Or at least an explanation of why we can't get one. But don't you, too? If we ask, will you become enraged?

Hensel's suggestions for repair, which focus more on legal education than the practice of law, urge the profession to modify its inclinations that over-privilege the medical model of disability. Inside the law school classroom, this modification could take the form of "highlight[ing] the factual narrative of cases to emphasize their context within the larger social environment" or "introducing more group-oriented, problem-solving work that fosters a community orientation."⁹¹ This perspective comes on the heels of the much-discussed Carnegie Foundation report on legal education, published five months before the live portion of the Symposium, which urges law schools to add more emphasis on "serving clients and a solid ethical grounding."⁹² So Hensel is timely; but then again, before Carnegie there was MacCrate,⁹³ and indeed every critical assessment of American legal training that I know of makes recommendations for pedagogy that would enhance the quality of education and life for law students with disabilities. The oft-iterated call for

88. *Id.* at 649-50.

89. *See* Puckett, *supra* note 45, at 509-10.

90. Hensel, *supra* note 83, at 651 (citing NEW YORK CITY BAR ASS'N, LAW FIRM DIVERSITY BENCHMARKING REPORT: 2006 REPORT TO SIGNATORIES OF THE STATEMENT OF DIVERSITY PRINCIPLES 28 (2006)).

91. *Id.* at 654.

92. WILLIAM M. SULLIVAN ET AL., CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 4 (2007).

93. *See* AMERICAN BAR ASSOCIATION, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992).

engaged experience as integral to legal education received new support when Wendy Hensel added her voice to this Symposium. Her account of lawyers with disabilities shows that shortfalls in the law school curriculum have done powerful harm.

VII. CONCLUSION

The nine Articles that fill this Symposium take on a big challenge by dividing the job into increments. Practices that subordinate, exclude, thwart, and burden lawyers with disabilities amount to a terrible tax on the legal profession: they deprive it of energies, knowledge, new ideas, kindness, respect, and problem-solving solutions.⁹⁴ They will not be easily erased. In response to the daunting task, each Article has offered both a critique grounded in theory and specific proposals for reform on a particular point. Our contributors have addressed law students with disabilities, law professors with disabilities, entrants into the profession with disabilities, and lawyers with less visible or tangible disabilities or impairments. In the aggregate and individually, they express optimism that the best ideals of this profession will be extended to nourish a group of lawyers now disadvantaged.

Inviting us lawyers to “look inside [our] mirror,” one of our authors has warned that a clear sighting of ourselves may not necessarily follow.⁹⁵ In that spirit, I have tried to get inside the frame of the mirror by urging readers to consider the lawyer with disabilities waiting there. Whenever we are supported and understood in this profession, we enhance it. As we nourish each lawyer who is “qualified,”⁹⁶ the lawyer with talents and contributions to offer, we nourish ourselves. The lawyer with disabilities is *us*.

94. Cf. Francis & Silvers, *supra* note 39, at 507-08 (evoking standpoint theory to show deprivation of truth).

95. Perlin, *supra* note 10, at 592.

96. See 42 U.S.C. § 12111(8) (2000).

