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Transcript: Career and Professional Development

American University Washington College of Law Disability Rights Law Clinic

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CAREER AND PROFESSIONAL DEVELOPMENT

ASSISTING LAW STUDENTS WITH
DISABILITIES IN THE 21ST CENTURY:
BRASS TACKS

PANEL 4: CAREER & PROFESSIONAL DEVELOPMENT
Washington, D.C.
Thursday, March 8, 2007

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PROCEEDINGS:

MARIANNE HUGER: All right, we are going to start now. Two of our panelists have to leave a little bit early, so if we could have them start now, that would be great. I am Marianne Huger. I am the coordinator for disability services at Georgetown Law School. Our panel is about careers and professional development and how that relates to disability services and issues surrounding those things. Our panelists are: Tara Sarathy, the Assistant Director of Diversity Outreach for the Office of Career Services at Georgetown Law; Claudia Gordon, the Senior Policy Advisor at the Department of Homeland Security's Office for Civil Rights and Civil Liberties; Kevin Kraham, a partner at Ford & Harrison law firm; and then finally Peggy—Mastroianni, is that?—Mastroianni, sorry, I have a name that is hard to pronounce also, and she is Associate Legal Counsel of the Equal Employment Opportunity Commission. So I think we will have everyone speak, and then we will do questions at the end.

KEVIN KRAHAM: Do you want me to go first? Okay. Good afternoon, everyone. I am Kevin Kraham. I am a partner at Ford & Harrison, where I help companies deal with employment and labor issues. I am also the founder of a public charter school in Washington, D.C. called Two Rivers Public Charter School, which uses the Expeditionary Learning Outward Bound curriculum. My point in being here today is, well, I was invited to come speak. But to the extent there are any students in the office, or to the extent that the practitioners are experts who are here, who interact with students, can take something away from what I have to say—I am not pretending that this is going to be particularly illuminating, but there might be something in there.

I have a learning disability. I was an above-average high school student, I went to school in upstate New York, and then I went to undergrad at Boston University. I was not setting any academic achievement records or lighting the world on fire at BU, you know; I think my parents thought I was having too much fun in Boston. I was an international relations major and a Spanish minor, so I took a lot of Spanish courses. One particular professor who I had had for three courses took me aside one time and said, "I notice that you are relatively intelligent, you can speak well, but I notice also that you turn in everything late. No matter what it is, or if you are taking a test, you are the last person to leave and begging for more time." She had shared with me that her daughter had recently been diagnosed with a learning disability. She said, "I do not know, I am not an expert at this, but hey, you might give it a go and see about this."

I graduated from high school and went to BU back in 1988, so it was just

as the ADA was being enacted, in 1990. And at the time Boston University had an excellent career and student support services program housed in the Martin Luther King Jr. Center. So through the King Center I went and got a referral to an educational expert in Boston and underwent the rash of tests and everything like that. And then I got a diagnosis. I did not know I suffered from learning disabilities until that point. What was explained to me was that my compensatory skills had sort of made up for my disability—I think the last panel alluded to this—you know, how all of a sudden you are in college and you are needing an accommodation. The idea that is sort of a privileged scam or something along those lines, is what I inferred from that.

In any event, I received accommodations after I was diagnosed. I got extra time on exams. I did not avail myself of that accommodation in all of my classes, just certain ones. Frankly, if I felt comfortable discussing it with a professor, I would talk about it with him or her, but for the professors with whom I was not comfortable discussing it, I just did not take the accommodations. My grades shot up dramatically. I went from being a lackluster student to all As and Bs, and it had a significant impact on my achievement. Most importantly, I had support from BU's King Center. At the King Center, one of the things they did was counseling. These were everyday things that maybe you already have, but, for example, they taught me how to be organized. It seems like a silly or trivial skill or item to discuss with someone, but the skills that I learned then about being hyperorganized have enabled me to help myself throughout the course of my career. I also relied heavily on—because my disability is primarily auditory—my visual strengths to try to make up for the auditory weaknesses. Like taking an insane amount of notes—just take notes about everything—so that hopefully, to the extent I cannot recollect what I heard, at least I have written it down. That was also another accommodation I got, was note takers.

I graduated from BU and I took a year off before I went to law school, and then I am a 1996 graduate of WCL. I came here to WCL, and received services and accommodations. Here I received time and a half on exams and note takers. There is a woman with whom I dealt—and I do not know if she is still affiliated with AU or WCL—her name is Kathy Schwartz, and she was fantastic. Hey, Kathy. So I would just like to put in a plug for Kathy. She is excellent.

In law school, I too have a recollection of receiving similar training regarding ways to stay on task, ways to keep focused and organized. Again, I still use those tools that I learned through counseling today as a lawyer. I went to law school part-time. I went at night. I wanted to go in gradually. I had already taken a year off, but I figured I really better do this in a measured way. So my first year of law school, I worked as a barrista at

Starbucks.

That summer I got a job with Equal Employment Opportunity Commission through a Washington College of Law program, I do not know the name of it, but what it does, or it did then, is place interested law students in jobs in the summer with any of the federal agencies in D.C. I think it was Professor Baker's program, but I am not sure. So through that, I got a summer gig at the EEOC. It was unpaid, but it was great. And what better place for me as a student with a learning disability to end up than the Equal Employment Opportunity Commission? Who better would understand issues of accommodation than the EEOC? So I agree emphatically with what Judge Tatel said today at lunch, which was the federal government is a pretty decent employer if you have a disability.

So, long story short, I applied for a job there and I got it. I worked full-time during the day and went to law school at night. I worked at EEOC for five years, and I learned a lot. I worked with really great people and I did very interesting work. I was an investigator, then I was a law clerk to a supervisory administrative judge, and then I became an administrative judge, where I adjudicated employment discrimination complaints and retaliation complaints of federal employees. At about that time—I had been with EEOC for like five years—the harsh reality of paying back my law school loans sort of kicked in and it was time to stretch my legs. So I left and went to Ford & Harrison, where I have been for the last six years or so.

One thing that I did do during the hiring process at EEOC—not for the summer internship but for when I got a real job there—was to disclose that I have a learning disability and that I received accommodations, and receive accommodations at that time, at law school. And, like I said, who would be more understanding than the EEOC about learning disabilities, about accommodations? But what I found—obviously I was hired, so that was not a factor in my hiring, I do not suspect—but I did not need any accommodations, that I could tell. I had used the skills that I learned through counseling at BU and at WCL to help me do a good job, but without . . . I do not know what the accommodation would have been in any event—more time to do a case, I suppose—but I did not need it. So, in summary, there is no magic formula for success. This is just my experience with my learning disability, which may or may not be more severe than someone else's. But if there are law students in the audience or if you could communicate to the students with whom you interact that if you have a learning disability, be organized, be involved, be a leader, and be an advocate for yourself. I think at a certain point youth has something to do with it, and you might feel not particularly pushy, but, if you are on your own and you are at law school, you have to be your own advocate. You have some counseling available to you, but you have got to stay on top

of things.

Sometimes if you have a learning disability, at least in my experience, you might feel like an outsider, but there is certainly a light at the end of the tunnel. For example, when you are taking an exam and you are having time and a half and all of your buddies or colleagues in your classes are taking the test together and you are noticeably absent, it definitely sets you apart. I was laughing when Joanne was making comments about, you know, LD is an affliction of the privileged, well, she was right on the money, literally and figuratively. It is definitely something that I heard from my classmates. “Well, that is just—give me a break, you are working the system” is sometimes the response you get.

Finally, I just wanted to put in a plug for the American Bar Association—it is a very long title, it is the Commission on Mental and Physical Disability Law Subcommittee on Lawyers with Disabilities Mentor Program. I participate in that program and serve as a mentor to law students who have learning disabilities. It was not something that I was aware of or participated in when I was in law school, but I think it is a pretty great opportunity for kids to see someone who is out there. You do not have to have a learning disability to be a mentor or to participate in the program. You just have to be a lawyer and probably a member of the ABA. The URL, in case anyone is interested, is www.abanet.org/disability/subcommittee/mentor.shtml. You can learn more about either—you can send students there to get a mentor, or if you know people within your professional network who would like to be a mentor, or I should say a kid to be a mentee, and then a practitioner to be a mentor—go there.

Sure, it is www.abanet.org/disability/subcommittee/mentor.shtml. If that is too long and complicated, just go to abanet.org and search in there “mentor disability.” It will be the second or third link that comes up. So, thanks. This is my first official meeting where I have said to a bunch of strangers, “I have a learning disability.” So, anyway . . .

CLAUDIA GORDON: Good afternoon, everyone. I am thrilled to be back at Washington College of Law. I see lots of familiar faces, both professors and administrators. It is wonderful to see Washington College of Law host such an event. The topic for our panel today is a discussion regarding reasonable accommodation in an educational setting and does that provide a false sense of what graduates can expect in the working world. I will speak on this issue and perhaps speak a bit about resources for individuals with disabilities as they forge ahead into the employment world as well.

I believe the moderator has given my short bio. I am a Policy Advisor for the Department of Homeland Security’s Office for Civil Rights and

Civil Liberties. I graduated from WCL in 2000. During my time here I received accommodations in the form of sign language interpreter services for my classes, which was essential for me to fully participate and succeed in law school. At the Department of Homeland Security I am a Senior Policy Advisor, working on a wide range of disability policy issues as they interact with DHS policies, practices, and procedures. I am especially involved in the area of emergency preparedness for individuals who have special needs and individuals with disabilities. When Hurricane Katrina hit, I spent about two months on detail in the Gulf, assisting the victims of the hurricane and doing case management in order to get them the accommodations that they needed.

In terms of our topic for the panel today, I believe that regardless of whether you have a disability or not, attitude is everything. It is the determiner of what your life will become. As the saying goes, your attitude determines your altitude. This afternoon, I would like to share some of the key attitudes that I feel contributed to my success.

The first step is to go through the process of self-awareness and self-acceptance. I am a person with a disability. I am deaf. I cannot change that but I can go through a process of self-analysis to determine what functional limitations my disability presents. For me, the predominant limitation is in regards to communication. Without some visual representation of the spoken message, I am not going to be able to participate in that communication. Whether participating in a classroom discussion or interacting with people in the cafeteria, the spoken message must be presented to me in a visual form. My preference is to have the message presented visually via a sign language interpreter, but in a pinch, I may need to rely on pen and paper communication.

All individuals with disabilities need to be able to articulate their needs clearly in all settings—educational, workplace, etc. In the case of individuals who are deaf, some may prefer to use the services of an interpreter, while others may not sign and prefer captioning or computer-aided real-time transcription, commonly referred to as CART. There are still others who use speech and speech reading and they use an interpreter who repeats the spoken message in a way which assists speech reading.

No matter what the situation, it is important to remember that there is no one-size-fits-all approach. It is all individualized in order to accommodate that specific individual with a disability in a way which allows him or her to be most successful. Even if two people have the same disability, their accommodations may be different. As I stated previously, it could happen that an accommodation provided to one deaf student might not be successful for another deaf student. Whether dealing with a students with disabilities office or an employer, it is important for individuals with

disabilities to be able to determine for themselves what accommodations are best suited to their specific circumstances and are best able to level the playing field for them as an individual.

Another speaker mentioned other accommodations such as additional time on tests and participation in study groups. For me, study groups presented a very difficult challenge. Often times, these study groups materialized in an ad hoc manner. “Hey, let’s all head to the library for a study group!” was a phrase I heard commonly after class. Unfortunately, interpreters are generally not available on an ad hoc basis and usually must be requested at least a few weeks in advance. I once again had to rely on my self-analysis and self-awareness. Can I benefit by participating in this study group without an interpreter? Is the group small enough that I could attempt to participate via speech and speech reading? Is there someone in the group with a laptop who would be willing to take notes for me? The key was to recognize what I would be able to gain from the situation and to be flexible in terms of how I could participate. I cannot change the fact that I have a disability, but I can choose to be flexible in how I accommodate it. I have found this to be true in my professional career as well. Situations will occur that are beyond my control. In these situations, flexibility is key.

As a person with a disability, one must be aware of available resources. There are many programs and services for people with disabilities, but a person with a disability has to be aware of them in order to take advantage of them. The federal government is very proactive in their hiring and retention of individuals with disabilities. They are very liberal in their provision of reasonable accommodations. Personally, I am fortunate to have a full-time interpreter with me that allows me to participate in any number of meetings, teleconferences and off-site speeches, not to mention just the informal discussions that so often take place among colleagues. The federal government is required under Section 504 of the Rehabilitation Act to ensure that hiring and employment practices are non-discriminatory towards individuals with disabilities. The private sector is covered similarly by the Americans with Disabilities Act.

In conclusion, let me return to the question posed to this panel: if law students are provided reasonable accommodations, are they being set up for disappointment when they enter the work force after graduation? It is my opinion that each institution must provide whatever is necessary to level the playing field for its constituents. Educational institutions, under the ADA and Section 504 (if recipient of federal financial assistance), must provide those necessary supports in order for their students to succeed to the best of their abilities. Under the ADA, the private sector must do the same.

Of course law firms and other employers in the legal field should support their employees with disabilities. Sometimes they do not. What can we

do? Again, it goes back to attitude. We, as individuals with disabilities, must position ourselves for success. Perhaps that means we will have to work harder than our peers without disabilities in order to prove ourselves and our worth to legal employers. Perhaps we will have to once again deal with the frustrations that come when one is trying to break down barriers. But you must remember that your strongest advocate will always be yourself. Learn about yourself and your needs, find resources that will support your needs, and find someone who can mentor you. Regardless of one's disability, with the right attitude, success is attainable in school and in the workplace.

TARA SARATHY: Hi, I am Tara Sarathy and I am one of the Career Counselors in the Office of Career Services at Georgetown University Law Center. I have been in my office for about seven months. Just to give you some background about how our office is organized, there is a counselor for each section, and the counselor counsels students from their 1L section throughout their tenure at law school. We also have a sister office that focuses on careers and public interest in government.

When I started my job I canvassed a lot of my friends who are lawyers, who practiced in a number of areas, and asked them, what are the things that have made them successful in their jobs in private practice or in government? How have they navigated job changes? A lot of the things that I have found in my own career and talking to my friends, and now counseling students, I think apply equally to students with disabilities. One is certainly developing a rapport with your students, and trying to do that, I think, as early on in law school as possible so that, whether a student is disabled or not, a student feels like there is somebody that they can go to and confide in or ask questions that they might feel uncomfortable asking somebody else.

I think law schools can sometimes be uncomfortable places to show anxiety and uncertainty. For the most part—I am sure there are exceptions—students do not show their professors that they do not know what to do in their job search or how to navigate it, and it can be uncomfortable to share that with your peers. So disability coordinators, student services, and career counselors, I think, tend to be the people who see students when they are feeling anxious, and hopefully are people that students can go to to communicate that and try to navigate their career search. So one is developing a rapport with students early on and being somebody that each student, particularly students with disabilities, will feel comfortable coming to if they are encountering problems, if they are trying to pre-empt problems, or if they are just trying to make their job search as successful as possible.

The other element of career counseling, aside from all the nuts and bolts of looking at resumes and cover letters, is getting students to highlight their strengths and their skills in every step of their job search process—emphasizing their research and writing skills, their analysis skills, their enthusiasm for the law, and their enthusiasm for working for a particular employer—which I think students often think they do not need to communicate very clearly and that it is just understood.

I think the one extra hurdle that students with disabilities—and sometimes students of color—encounter is overcoming a hurdle of facing an employer who might have stereotypes or make assumptions about a student's capabilities and a student's ability to navigate a stressful workplace that are unfair. How does the student nip those in the bud and insure that an employer is not making these assumptions, and give the employer as much reason to think "I want to hire this person"—as possible? For that reason, disabled students might have to work a little harder in some cases in their job search to convince an employer "I am the person you should hire."

I think for all law students, one of the keys is making sure that they start thinking about their job search process and their career as a young attorney beginning their 1L summer and seeing that as the key summer to start developing legal skills, to have legal references, hopefully to develop a writing sample, and think of that not only as a summer to try out an area of law that might be of interest and work in a professional setting, but really start to develop their legal resume. I think for students, if it is students who did not have the GPA they wanted their first year, or are not strong test takers but are strong writers, or students who have never worked in a setting like a law firm or any kind of legal agency, or for disabled students—some of the things that 1Ls should really be focusing on going into their 1L summer, and sort of teeing them up for their 2L interview season, are making sure that they have as strong a writing sample as possible. It is something that is valued in law school, but I think law students do not realize how much more it is valued by employers. Also, trying to get to know some of their professors and making sure that they can walk into their 2L year and have one of their references be a professor who can not only attest to, how did this person perform on the exam, but also have a sense of this person and what are their aspirations. For the disabled student, I think that might be even more crucial, because those are things that attest to a person's capability, a person's judgment, and can really make a difference in an employer deciding whether to hire somebody with a similar GPA.

One of the big issues that I imagine people encounter in counseling students who have a variety of disabilities is whether to disclose their disability and, if so, when and how. I think the career counselor or a

student advisor can really play a crucial role in sort of talking out the scenarios with the student and getting a sense of the student's comfort level. That will vary case by case. What is the student's disability, and how might that impact their job search and how employers interact with the student? When does it make sense to disclose and how? Probably the first instance where a student attempts to make contact with employers is through the application, the cover letter. In the case of students who have visible disabilities, there are reasons why it might be to that student's advantage to disclose that in that letter. One is that there are certainly legal employers, including large law firms, government agencies, and particularly federal agencies, that are aggressively recruiting students with disabilities. So that is something that if I were a student with a visible disability, I think I would want to include in my cover letter.

For students who may be reluctant to disclose a visible disability in their cover letter, and worry that either that will negatively impact how an employer thinks of them or they do not want their disability to be a consideration at all, one thing that I think might be worth discussing with that student is, if that student secures an interview with that employer, chances are they will have a short introductory interview with the employer and they will have twenty or thirty minutes to make a first impression with somebody. Maybe that will be it, maybe there will be a second round, but there is really not a lot of time to get to know an employer and convince them to hire you, and so you want to make the most of those twenty, thirty minutes that you have in your preliminary interview. To the extent that a lot of lawyers, and particularly partners who were born before 1960, it may well be that they have not worked with a physically disabled attorney before and that they may be uncomfortable. They may not know how to respond. There may be a risk that that student will start the interview with the interviewer being thrown off guard, not knowing how to react and not knowing what if any accommodations the interviewer should make. To the extent that the student can put the interviewer on notice of the disability, and also if that affects how the room is set up, or if not, I think that it can potentially save a student a couple of minutes being lost in an interview. Students should think of every minute of their interview as precious, particularly those first few minutes when people make quick judgments about, "Do I like somebody? Do I like the way they speak? Is this somebody I might want to interact with?" There is certainly no right or wrong answer, and it will vary depending on a student's disability and that student's comfort level, and may even vary depending on to whom the student is sending an application. But I think it is certainly worth talking through what are the benefits of disclosing in a cover letter that a student has a visible disability.

The next instance where the issue whether to disclose a visible disability

arises is at the interview itself. I will use our early-interview week at Georgetown as an example because it is probably our largest official on-campus program and it is probably replicated at many law schools. The way this is set up is that there are twenty-minute screening interviews. One of the things I think is important to encourage students to think about is not only how is it going to feel and how exhausting is it going to be as a student, but, how exhausting is it going to be for an interviewer. Again, the student will have a limited amount of time to make an impression and for the interviewer to walk away and remember the student's abilities, and not focus on the disability, but think of the student as somebody that the interviewer can identify with. I think for all students, particularly students with disabilities, it is worthwhile for them to consider, "How will the employer experience this?" Students should be aware that employers are going to be exhausted, too. They may be seeing over twenty students a day for twenty-minute interviews. They may or may not be familiar with the law school setting, they may or may not have any interview experience, and they may or may not have interacted with or worked with an attorney or student with disabilities before. To the extent that a student can put an employer at ease in the interview, make that employer see the student as somebody they can identify with, and focus on what skills the student has, is only to the student's advantage. For students who are uncomfortable disclosing a disability to an interviewer in advance of an on-campus interview, I think it is perfectly appropriate to have a career counselor contact the employer and say, "Just to let you know, this student will have an interpreter" or "This student will have a guide dog with him or her."

In terms of hidden disabilities, I generally think there is little advantage to disclosing the disability in a preliminary interview, because first off, what you want to do is just secure either a callback interview or an offer. So again, that is something worth discussing with a student. The extent that a disability is something a student discloses either in a cover letter or the interview setting, the primary reasons for doing so are if that is of advantage to the student or if it in any way can make the interview a smoother, easier process and give the employer all the more reason to focus on the person and their capacity to be a great lawyer.

A key component that the other panelists have talked about is making sure that a law student is successful in his or her summer jobs and once permanently placed in a job. In the case of summer jobs, I think career counselors and other student advisors can serve as continual resources for students who may encounter difficulties over the course of the summer, and do not know how to respond to the difficulties, or if they should ask for a particular accommodation if they have a hidden disability. Developing a rapport with individual students, so you can walk through scenarios with that student during the course of their summer, is crucial. What I often do

with students is try and play a risk-management type of role and say, “if, for instance, a hidden disability that you find makes deadlines for projects difficult or complicate how you finish your work product over the summer, if by the end of the summer you find that people are not satisfied with your work product and they conclude it is because either you were not invested in the job or are not competent, would you have wished that you had disclosed your disability to somebody, either a head recruiter or an attorney at that firm that you developed a rapport with?”

The other thing that makes summer jobs and entry-level jobs for law students and lawyers crucial is not feeling isolated on the job and feeling like there are attorneys and colleagues that are invested in that student. The student should feel he or she can turn to another attorney when they do not know how to do something or how to handle a particular situation. In the case of a disabled student, there may be quite a few attorneys at the firm that they might identify with in a variety of ways, but there may not be a cohort of other attorneys that have similar disabilities. That is something I think diverse students encounter as well. Another key point to make to students who have disabilities is to really make sure that they find mentors at their summer jobs and people that they can ask questions, both in terms of, “How do I do this memo?” and “I got feedback on this memo and I do not know what went wrong.” Mentors are also helpful in learning about the insides of the work environment and the politics of it.

It is important that students can make employers aware that they want feedback. Sometimes employers feel uncomfortable giving feedback to students who are diverse, and maybe students who are disabled, because they feel awkward giving negative feedback or they do not know how to handle the situation. It is important to educate employers to realize that it is really doing a disservice to those students, and that disabled students, like any other law student, are going to make mistakes in their summer jobs and as young attorneys and they have the same needs as any other attorney in getting feedback, in learning how to correct their mistakes, and in having lawyers around willing to give them a second chance when they make a mistake on the job. Students who are disabled may find that some employers are more likely to conclude, once they make a mistake, that it was because of their disability, rather than they were not given proper instructions as to how to complete the assignment. The other role that a career counselor or a law student advisor can be—to the extent that they communicate with employers—is educating employers about being aware of, are they as willing, and do they give as thorough feedback, to their disabled law clerks and attorneys, as well as making students aware that they should be aggressive in asking for feedback from the lawyers for whom they work. They should be aggressive in telling lawyers, “This is what I can do.” By approaching lawyers that are doing work that they

would like to do and being aggressive, they make their summer and permanent employers aware of their abilities, their interests, and ensure that they are developing the same kind of skills and resume builders as any other law student.

PEGGY MASTROIANNI: Okay, I am going to have to talk very fast. I am really glad to be here. At the EEOC where I work, we enforce Title I of the ADA, which is the employment provision. We investigate claims, we litigate, and we also try to educate. Actually, after discussions with the ABA Commission on Mental and Physical Disability, we issued a document called, “Reasonable Accommodation for Attorneys with Disabilities,” this past May. It is on our website. You should get it. You can do anything you want with government documents except sell them. You cannot sell them, but you can give them out. I think it may be helpful to a lot of your clients. To get there, go to our website, www.eeoc.gov, click on “Disability” and you will find this very practical document.

I am going to focus on three things: first, the transition from law school to employment; second, the rules for lawyers with disabilities—what they are entitled to, what they are not entitled to; and finally, how lawyers with disabilities might increase their presence and their visibility in the legal profession, because they are not doing it right now, and I have some ideas about how they might do that.

In my view, from what I know of law schools, and certainly a conference like this tells you that law schools know about reasonable accommodation, and law schools know how to be generous. But in my experience, law firms and in-house legal departments generally do not know about these things. That means that your students with disabilities are going to have to educate them. So not only are they starting out on the job, but they are going to have to do the educating. They are going to have to be more assertive than perhaps they have been in the past. Assertive in a non-threatening way, of course.

I think summer employment—and I agree with the things that Mary said—is actually a very good rehearsal. You only have two months, but in those two months, if you have a disability and you need accommodation, you are entitled to it unless it poses an undue hardship. I think it was SMU recently in Texas, SMU Law School, had a conference like this, and some of the students talked about the kinds of things that they were getting in the summer—a close parking place, a printer in the office as opposed to down the hall—rather simple accommodations, but ones that were very important for a two-month job. I also think that summer work at firms is a great rehearsal for dealing with inaccessible social events, and the summer context at firms is intensely social. Of course later on, if people stay with

firms and in-house, they are going to involve clients. It is important to remember here that reasonable accommodation is not just to enable you to apply for a job or do the job, reasonable accommodation is also to enable you to enjoy equal terms and privileges of the job. When we look at privileges of the job—things like training, services like the cafeteria, and also any kind of employer-sponsored social event—those, too, have to be accommodated. Looking at what Judge Tatel said—he talked about how you have to negotiate—you have to learn how to negotiate. I think the summer job may be the place where young students start learning that whole process. Which battles are you going to fight? You cannot fight them all in two months, so you are going to have to pick which ones you really have to address and how you are going to negotiate them.

Now I just want to move to the thing that we know the most at EEOC, and that is the rules on employment—once a lawyer with a disability is on the job. Now I am talking either about at a law firm, in-house, or in a government job. You should look to our guidance on “Reasonable Accommodation for Attorneys” because it has examples from all these sectors, starting with job interviews. If your applicant has an obvious disability, the employer is allowed to ask a couple of questions that normally the employer cannot ask. Those questions are—well, let me backtrack. If the applicant has an obvious difficulty and if the interviewer reasonably believes that it could affect their ability to do the job or, their functioning on the job, then he can ask two questions: “Will you need a reasonable accommodation?” and “What kind?” Notice the interviewer cannot ask about disability ever, but just these limited questions about reasonable accommodations. Your students should be prepared for them, they are legal, and actually they tend to clear the air, because then the student has a chance to answer in a very concrete way, so the employer that is speculating millions of dollars for reasonable accommodations will understand it better.

Post-offer: I thought there was a little bit of confusion at lunchtime that I just wanted to clear up. After an offer of employment is made, an employer can ask about the disability, about reasonable accommodations, about anything it wants to, under the ADA, and the applicant, your student, has to answer truthfully. So if they asked about their disability, yes, they have got to answer truthfully. But if they are not asked, they do not need to disclose at that point unless there is some strategic reason why they want to. But if they are not asked the questions about disability, they do not have to disclose in order to preserve their rights to insurance or anything like that. There is no requirement there, although strategically, again, you may want to disclose.

Requesting accommodation: it is very important to know that the EEOC and the courts have said that if you want an accommodation, you must ask

for it. Your students should never assume that just because the employer knows they have a disability, the employer is supposed to figure out when they need an accommodation. The only situation where we have ever said that is true is with people who have very severe cognitive disabilities like retardation. In a situation like that, the employer would have to be proactive. There is no set time for an accommodation request. Just because you do not ask for it at the beginning does not mean you cannot ask for it a week later, or two months later, or five years later. As a practical matter, though, your starting lawyer with a disability should be asking for an accommodation before performance is affected. I mean, this is just practical advice, it is not a legal requirement. In our guidance in example five, we have a very experienced attorney, a senior attorney in a federal agency with bipolar disorder, who has already gotten one accommodation that has been working. But now she is changing her medication, so she is having some difficulties. Her work is changing in some way and she is having some difficulties from that. She is afraid to ask for more accommodations. She does not ask for more, but she probably should at this point before the performance starts falling apart.

The interactive process for figuring out the reasonable accommodation: law firms very often do not like to talk about reasonable accommodations. But they must talk about it. That is the interactive process. Your students also should not be surprised when a legal employer says to them, “It is not obvious to me that you have a disability, it is not obvious to me what kind of accommodations you need. You need to give me documentation of both.” The answer is, the employer is entitled to documentation on both of those issues if the disability is not obvious or if the need for that accommodation is not obvious.

Now I am not going to go over all the types of accommodations, but I want to focus on two. First of all, leave. We are talking in the ADA context. Leave is unpaid leave over and above whatever leave to which a person may be entitled. I think it is very important for us to remember that employers cannot penalize lawyers for taking leave. But this is precisely the issue that comes up in the context of billable hours. It is our position, however, and we have stated it in this guidance, that to punish someone for not meeting their full yearly complement of billable hours, because they took leave as a reasonable accommodation under the ADA, is a form of retaliation. So what is an employer to do? The most obvious thing is to prorate the billable hours to account for the leave that is taken as a reasonable accommodation. On the other hand—and this is an important piece of this, a very important piece—we have been talking the whole time about certain kinds of accommodations that are available in law school, and then things change. Well, when that law student goes into the workplace, there is absolutely no requirement for the employer to lower its billable

hour standard.

That brings me to some things that employers do not have to do as reasonable accommodations. One thing that lawyers with disabilities may have gotten in law school is more time—something that the lawyer will not be entitled to under Title I of the ADA. If the brief is due COB Wednesday, it is due COB Wednesday, so you are not going to get these time situations where somebody can take longer doing it. Furthermore, an employer does not have to lower its production standards. In the legal profession, the production standard in the law firm context is the billable hours. Third, employers do not have to remove essential functions. You may have to restructure a job and say to a lawyer, “You do not have to be on the hiring committee because you have too much going on.” That is a marginal function. But the most famous case is a government case on this, *Bolstein v. Reich*, where a GS-14 government lawyer wanted his job restructured so as to not do appellate work and not do complex cases, and the judge said, “If that is what you want, you are gutting the essential functions of the GS-14 job. You can have a GS-13 job, and then you can have those things.” Finally, employers do not have to excuse prior misconduct or prior poor performance. Reasonable accommodation is prospective.

One more plea here: I do not think that disability is part of the whole discussion that the American Bar Association is having about diversity in the legal profession. I absolutely recommend that you encourage people to join the Commission on Mental and Physical Disability Law. But also, I am not a joiner. The only club I have ever had is the EEOC, which I adore. But I joined the ABA so I could be in the Labor and Employment Section, the EEO Committee. Part of the EEO Committee is working on diversity issues in the legal profession. The model, the best model, is that from minorities and women. What did they do? They infiltrated. Where did they start infiltrating? In the government. Although the government could be doing a lot better on disability issues—the percentage is going down when it should be going up—you should still start with the government because that is the most receptive place. Where do you go from there? In-house corporate counsel. You are seeing a lot of movement of African-Americans and women into in-house corporate counsel. Once you are an in-house corporate counsel, you start influencing those big companies who are now starting to say to the outside law firms, “How come your legal team is not diverse?” That is all because you have got people in all these other places leveraging. That is the whole theory behind the diversity efforts within the Labor and Employment Section of the ABA. But they are doing it for race, national origin, and gender, but they are not necessarily thinking disability. So you have to get your students to join and infiltrate to make their voices heard.

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CAREER & PROFESSIONAL DEVELOPMENT

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MARIANNE: Tara has to leave in a second, but she just wanted to mention something.

TARA: I put flyers out on several of those chairs that are from the Arizona Law website. One is frequently asked questions about the ADA, and one is a list of resources. Then I also just wanted to flag those flyers for the Impact Career Fair for law students and lawyers with disabilities. This will be the third year of the career fair. It is co-hosted by Georgetown and Arizona, and this year it will be August 10th. So if you would like more information, there is a flyer on one of those chairs over there.

MARIANNE: Claudia also left several handouts and flyers on the chair, so please pick them up. Do we have time for a few questions? Okay.

MALE VOICE: Just one thing. You mentioned that billable hour requirements are not subject to reasonable accommodation. So does that mean pretty much the law firm route—if firms are not willing to accommodate on that on their own—is generally limited for people with disabilities? I mean, just from numbers or any statistics you might know.

PEGGY: No, I would not say that. I think you can really speak to the law firm route better than I can because you are a partner in a very good one. I guess I have a more limited point. Lowering the number of billable hours that is required would not be a reasonable accommodation from EEOC's perspective. However, providing reasonable accommodations in order to enable people to meet the billable hour requirement absolutely is.

MARIANNE: If we have one more question? Have we answered them all?

PEGGY: Can I make one plug? We welcome your law students to intern at the EEOC. We have one right now, Emily Nugent, who is from AU, and we are very interested in having more.