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Re-Interpreting the Effect of Rights: Career Narratives and the Americans with Disabilities Act

DAVID M. ENGEL
FRANK W. MUNGER*

This article examines how the employment rights guaranteed by the Americans with Disabilities Act (ADA) affect the careers of individuals with disabilities. The article draws on in-depth interviews with sixty adults who provided extended life story narratives, describing early family and educational experiences and later experiences with employment. Their detailed accounts offer insights into the sometimes subtle role rights play in people's lives and careers. Relatively few rights violations actually lead to explicit or formal invocations of the law. The effect of the ADA on careers can be profound but is primarily indirect or symbolic. Moreover, other factors affect the influence of rights, including the timing of injury or diagnosis, and personal or social circumstances such as family relationships, social class, and race. The article analyzes the impact of these and other factors on the careers of a selected group of men and women with physical and learning disabilities.

I. INTRODUCTION

A junior college sophomore who hopes to become a commercial pilot must reimagine his career when his spinal cord is severed in an automobile accident. A successful newspaper reporter who contracted polio as a young child contends with the physical and social consequences of her disability as her career advances. A rising young business executive finds it difficult to perform his responsibilities as a regional manager after suffering a broken neck during horseplay with friends at a party. A father and daughter with learning disabilities attend college and compare generational perspectives on educational accommodations and career possibilities. A manual laborer with an eighth grade education struggles with the effects of a stroke suffered on the floor of a chicken processing plant. An African-

* The authors would like to thank Melinda Saran for her thoughtful comments on this article. We are grateful to the Baldy Center for Law and Social Policy and, in particular, the members of the Program on Community and Identity, for providing support and collegiality throughout our research. We also thank the participants in the conference, "Facing the Challenges of the ADA: The First Ten Years and Beyond," held at The Ohio State University College of Law, for their insights and inspiration, and we thank Ruth Colker for organizing this extraordinary gathering of scholars, policymakers, and activists. We appreciate the efforts of three student research assistants who helped us prepare this article for publication: Li Chen, Rashondra Jackson, and Kareen Zeitounzian. The research for this article was sponsored by a grant from the National Science Foundation, acknowledged *infra*, note 16. We are indebted, above all, to the generosity and insight of the eight individuals whose life stories form the basis of this article.

American high school student who has a learning disability prepares to attend college on a basketball scholarship; a college student with dyslexia who immigrated alone from Africa as a young girl plans for a career in social work with the assistance of her university's office for disability services.

When congress enacted the Americans with Disabilities Act¹ in 1990, it intended to influence the lives and employment prospects of individuals like the eight whose narratives are presented in this article.² Ten years later, we may ask to what extent the ADA has actually helped to shape the careers of millions of Americans with disabilities. When the intended beneficiaries of this landmark legislation are asked to recount their life stories and their experiences with employment, do they communicate an awareness of the rights it established for them? Did the ADA open new work opportunities? Did it transform their status in American society and "normalize" their identity in the workplace and in their daily lives? Have they actually used the ADA to gain access to mainstream jobs and to obtain accommodations that enable them to work effectively as employees? Did the ADA in fact contribute to a dramatic process of cultural and social change, reaching into the everyday lives of ordinary people with disabilities throughout the country?

This article examines the life-story narratives of Americans with disabilities in order to discern how the ADA, in combination with other social and economic factors, affects—or fails to affect—individual careers. The enactment of the ADA carried with it an implicit assumption that the articulation of employment rights for persons with disabilities would make a difference in their lives.³ The difference would be apparent not just in rectifying isolated acts of exclusion or discrimination but, for many Americans, in changing the paths of their careers.⁴

¹ The Americans with Disabilities Act, 42 U.S.C. §§ 12101–12213 (1994) [hereinafter ADA].

² The ADA, enacted in 1990 and taking effect in 1992, was intended to "provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(2) (1994). The stated purpose of the ADA was also "to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities." *Id.* at § 12101(b)(4). *See also* Cleveland v. Policy Mgmt. Sys. Corp., 526 U.S. 795, 801 (1999) (noting that "the ADA seeks to eliminate unwarranted discrimination against disabled individuals in order both to guarantee those individuals' equal opportunity and to provide the Nation with the benefit of their consequently increased productivity").

³ "[T]he Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals." 42 U.S.C. § 12101(a)(8) (1994).

⁴ Title I of the ADA, §§ 12111–12117, regarding discrimination in an employment setting, prohibits discrimination against a "qualified individual with a disability" in all aspects of employment. § 12112(a) (stating that "[n]o covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job

New rights would expand educational opportunities and job training, heighten the career aspirations of persons with disabilities, and facilitate the pursuit of a career at every step along the way—from job definition, to hiring; to accommodations, to retention, to promotion, and to equitable pay for work performed. Although researchers have produced a great deal of literature on the broad-scale effects of the ADA,⁵ little direct knowledge exists concerning the changes its employment provisions have produced in the lives of individual beneficiaries.⁶

application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment”). See also Rose Daly-Rooney, Note, *Reconciling Conflicts between the Americans with Disabilities Act and the National Labor Relations Act to Accommodate People with Disabilities*, 6 DEPAUL BUS. L.J. 387, 390 (1994):

Congress intended that the ADA would level the playing field between disabled and non-disabled employees and applicants. Recognizing that individuals with disabilities experience staggering levels of unemployment and poverty, Congress attempted to substantially alleviate a major obstacle to their employment—reliance on the cost and inconvenience of accommodations as grounds for not employing otherwise qualified people with disabilities.

⁵ See generally Bonnie P. Tucker, *The Americans with Disabilities Act: An Overview*, 1989 U. ILL. L. REV. 923 (1989); Lisa A. Lavelle, Note, *The Duty to Accommodate: Will Title I of the Americans with Disabilities Act Emancipate Individuals with Disabilities Only to Disable Small Businesses?*, 66 NOTRE DAME L. REV. 1135 (1991); Kimberly A. Ackourey, Comment, *Insuring Americans with Disabilities: How Far Can Congress Go to Protect Traditional Practices?*, 40 EMORY L.J. 1183 (1991); Robert L. Burgdorf, Jr., *The Americans with Disabilities Act: Analysis and Implications of a Second-Generation Civil Rights Statute*, 26 HARV. C.R.-C.L. L. REV. 413 (1991); Tracy L. Hart, Legislative Note, *The Americans with Disabilities Act Title I: Equal Employment Rights for Disabled Americans*, 18 U. DAYTON L. REV. 921 (1993); Steven B. Epstein, *In Search of a Bright Line: Determining When an Employer's Financial Hardship Becomes "Undue" under the Americans with Disabilities Act*, 48 VAND. L. REV. 391 (1995); Ranko Shiraki Oliver, *The Impact of Title I of the Americans with Disabilities Act of 1990 on Workers' Compensation Law*, 16 U. ARK. LITTLE ROCK L. REV. 327 (1994); *Developments in the Law: Employment Discrimination*, 109 HARV. L. REV. 1571, 1602 (1996); Richard V. Burkhauser, *Post-ADA: Are People with Disabilities Expected to Work?*, in *The Americans with Disabilities Act: Social Contract or Special Privilege?*, 549 ANNALS AM. ACAD. POL. & SOC. SCI. 71 (1997); Jason Zarin, Note, *Beyond the Bright Line: Consideration of Externalities, the Meaning of Undue Hardship, and the Allocation of the Burden of Proof under Title I of the Americans with Disabilities Act*, 7 S. CAL. INTERDISC. L.J. 511 (1998); Joan T.A. Gabel et al., *The New Relationship Between Injured Worker and Employer: An Opportunity for Restructuring the System*, 35 AM. BUS. L.J. 403 (1998); U.S. Senator Larry E. Craig, Introduction, *The Americans with Disabilities Act: Prologue, Promise, Product, and Performance*, 35 IDAHO L. REV. 205 (1999).

⁶ See Peter David Blanck & Mollie Weighner Marti, *Attitudes, Behavior and the Employment Provisions of the Americans with Disabilities Act*, 42 VILL. L. REV. 345, 347 (1997):

For the most part, prior writings on Title I focus on reviews of the provisions of the law and their interpretation by the courts. . . . Significantly less attention, however, has been devoted to study of the individual, corporate and societal implications of Title I in practice. To complement

The ADA's rights and protections are now available to nearly fifty million Americans with disabilities,⁷ yet a majority of adults with disabilities remains unemployed.⁸ Some observers have suggested that employment levels of Americans with disabilities have actually declined since the ADA's enactment.⁹

evolving and sometimes inconsistent interpretations of Title I case law, study must be conducted of the underlying attitudes (e.g., stereotypes, prejudices and biases) and behaviors (e.g., compliance and discrimination patterns and provision of reasonable accommodations) associated with implementation.

See also David M. Engel & Frank W. Munger, *Rights, Remembrance, and the Reconciliation of Difference*, 30 LAW & SOC'Y REV. 7, 10, 13 (1996):

Few studies have attempted to trace the interconnections between a new law and the everyday lives of ordinary people who are its potential subject. . . . Prior studies of legal implementation, mobilization, and consciousness have tended to focus on a relatively narrow slice of time in which to discern the effects of new law. By contrast, we ask whether and how law becomes active over the course of a lifetime and to what extent particular legal changes (such as the ADA) become relevant to individuals as they progress through different experiences and life stages.

⁷ See 42 U.S.C. § 12101(a)(1) (1994). When Congress enacted the ADA, it estimated the number of people with disabilities at 43 million, but other estimates vary. For example, Colker and Tucker conclude that in 1989, "there were 48.9 million Americans with disabilities, which encompassed 19.4 percent of the total U.S. population of 251.8 million." RUTH COLKER & BONNIE P. TUCKER, *THE LAW OF DISABILITY DISCRIMINATION* 1 (2d ed. 1998) (citing JOHN M. MCNEIL, *AMERICANS WITH DISABILITIES: 1991-1992*; PUB. NO. P70-33, *DATA FROM THE SURVEY OF INCOME AND PROGRAM PARTICIPATION* 5 (1993)).

Uncertain definitions of disability and problems of self-identification and diagnosis make it very difficult to draw a legitimate conclusion about the number of people with disabilities in American society. See Irving Kenneth Zola, *The Sleeping Giant in Our Midst: Redefining "Persons with Disabilities,"* in *IMPLEMENTING THE AMERICANS WITH DISABILITIES ACT: RIGHTS AND RESPONSIBILITIES OF ALL AMERICANS* xvii (Lawrence O. Gostin & Henry A. Beyer eds., 1993).

⁸ See, e.g., 1998 LOUIS HARRIS AND ASSOCIATES, INC., N.O.D./HARRIS SURVEY OF AMERICANS WITH DISABILITIES 7 (1998) ("Among the adults with disabilities of working age (18 to 64), three out of ten (29%) work full or part-time, compared to eight out of ten (79%) of those without disabilities, a gap of fifty percentage points.").

The Census Bureau Survey of Income and Program Participation (SIPP) adds depth to a complex picture of employment among persons with disabilities. SIPP survey data for 1994 show that unemployment rates vary widely among persons with disabilities depending on the severity and type of disability. For example, the unemployment rate among young adults (age 20-24 years old) with a "moderate" disability is relatively low—20.4%. Unemployment rates rise among groups of persons with more severe disabilities and may exceed eighty percent depending on age and years of education. See Thomas W. Hale et al., *Persons with Disabilities: Labor Market Activity, 1994*, MONTHLY LAB. REV., Sept. 1998, at 3.

⁹ See Walter Y. Oi, *Employment and Benefits for People with Diverse Disabilities*, in *DISABILITY, WORK AND CASH BENEFITS* 103, 121 (Jerry L. Mashaw et al. eds., 1996); DARON ACEMOGLU & JOSHUA ANGRIST, NAT'L BUREAU OF ECON. RESEARCH, PAPER NO. 6670, *CONSEQUENCES OF EMPLOYMENT PROTECTION? THE CASE OF THE AMERICANS WITH DISABILITIES ACT* (1998); see also Bill Bolt, *The Disabled Are Bound by Chain of*

Others claim that the ADA, in conjunction with the booming economy of the 1990s, has increased employment among disabled Americans,¹⁰ while still others claim that no perceptible change in the employment of Americans with disabilities has resulted from the enactment of the ADA.¹¹ These differing claims concerning the impact of the ADA on employment opportunities and practices are difficult to evaluate. We do have reliable information about the number of complaints of ADA violations filed with federal, state, and local agencies since the Act's inception,¹² and the number is certainly small relative to the number of individuals who remain unemployed or who are employed but face a variety of barriers to the achievement of career objectives because of their disability.¹³ Our own research suggests that many Americans with disabilities encounter what they

Unemployment, L.A. TIMES, June 28, 1999, at B5. *But see* Michael Ashley Stein, *Labor Markets, Rationality, and Workers with Disabilities*, 21 BERKELEY J. EMP. & LAB. L. 314, 315 (2000) (claiming that "unemployment of working-age individuals with disabilities appears to have . . . diminished").

¹⁰ See Tony Coelho, *A Good Investment: Disabled Persons in the Workforce; Ability: The Bridge to the Future*, 51 PARAPLEGIA NEWS 20 (1997); Otto Kreisher, *10 Years of ADA Make a Difference: More to Be Done*, COPLEY NEWS SERV., July 11, 2000.

¹¹ See, e.g., Paula Mergenhagen, *Enabling Disabled Workers*, AM. DEMOGRAPHICS, July 1997, at 36.

¹² Between July 26, 1992, when Title I of the ADA became effective, and March 31, 1998, only 175,226 charges of discrimination under the ADA were filed in all federal, state, and local enforcement agencies combined. Kathryn Moss et al., *Different Paths to Justice: The ADA, Employment, and Administrative Enforcement by the EEOC and FEPAs*, 17 BEHAV. SCI. & L. 29, 34 (1999). This figure represents an average of only 30,904 charges per year at all enforcement levels among the approximately twenty-nine million Americans with disabilities who are of working age.

¹³ This inference is based in part, but not entirely, on a rough comparison of the limited number of complaints, the large number of Americans with disabilities who work or want to work, and the frequent allegations of unfair treatment that we and other researchers encounter in our interviews. Other indirect measures also suggest that relatively few rights violations lead to formal claims under the ADA. A 1993 survey, for example, found that although 27% of all American employees experienced some form of employment discrimination, only 10% of that number (i.e. 2.7% of all employees) filed a formal claim. See William M. Slonaker & Ann C. Wendt, *Patterns of Employment Discrimination toward Workers with Disabilities*, BUS. F., Summer/Fall 1995, at 21. There is no reason to think that employees with disabilities exceed that 10% figure for complaints per experiences of employment discrimination. Indeed, data described by Blanck from 1996 suggests that employees with disabilities may be more reluctant than other victims of discrimination to bring formal charges. In that year, only 23% of all employment discrimination charges filed with the EEOC alleged a violation of ADA rights as compared with 47% that alleged racial discrimination and 41% that alleged gender discrimination. See PETER D. BLANCK, *THE AMERICANS WITH DISABILITIES ACT AND THE EMERGING WORKFORCE* 56 (1998). Although these statistical measures are far from precise, one might be justified in drawing the preliminary inference that 10%, and possibly substantially fewer, is a fair estimate for the number of individuals with disabilities who file complaints when they believe their ADA rights have been violated.

perceive to be violations of the ADA in the workplace, yet they never file complaints or take any form of legal action to enforce their rights.

As we assess the impact of the ADA on careers, how should we interpret the relatively small numbers of formal claims it has produced? Legal scholars studying the consequences of the ADA tend to focus on cases that have been litigated rather than rights that have been foregone, and inevitably the media report dramatic legal confrontations and the much-publicized cost-concerns of employers rather than the many individuals who are unaware of their rights or decide not to assert them. Nevertheless, it is not surprising that the frequency of legal claims under the ADA has been low. In many types of civil cases, close examination of claims in relation to violations reveals that a substantial majority of Americans chooses to forego rights rather than assert them or even consult a lawyer.¹⁴ Law avoidance and conflict avoidance predominate in American society,¹⁵ popular beliefs to the contrary notwithstanding, and it is predictable that such behavior would be associated with the ADA.

This is not to say, however, that quantitative evidence of low levels of formal complaints proves that the ADA has failed to achieve its purpose. Laws may exert their influence in a number of ways and may produce social change by operating in arenas other than the courtroom or the regulatory agency. Our research suggests that the ADA often has profound but indirect and subtle effects on the lives of individuals and on their social and work settings. These effects are far

¹⁴ Barbara A. Curran, in her landmark study of the use of lawyers, reports a 4% rate of lawyer consultation per employment problem, a rate lower than for other problem types, such as consumer problems (12%), constitutional problems (12%), and personal injuries (34%). BARBARA A. CURRAN, *THE LEGAL NEEDS OF THE PUBLIC: THE FINAL REPORT OF A NATIONAL SURVEY* 143-46 (1977).

Of course, consultation with a lawyer does not necessarily lead to the assertion of a legal claim or a determination on the merits, for which the rate is presumptively lower. In a careful analysis of data concerning medical malpractice, for example, Michael Saks suggests that only 4% of injuries caused by negligent doctors led to consultation with a lawyer (a rate comparable to lawyer use for employment problems in the Curran study), and subsequently only 2% led to the filing of a lawsuit, and only 0.3% resulted in the commencement of a trial. Even this seemingly low rate of litigation per lawyer consultation was actually inflated by an unusual aspect of the Saks study. All of the cases that constitute Saks's 4% figure for lawyer consultations were determined by an independent panel of medical experts to have involved injuries caused by a doctor's negligence, yet even in a group of malpractice cases whose merits had been vouchsafed by neutral medical experts, lawyers filed a formal claim in only half of the cases brought to them for advice. Michael J. Saks, *Do We Really Know Anything about the Behavior of the Tort Litigation System—and Why Not?*, 140 U. PA. L. REV. 1147, 1178-79, 1225 (1992).

¹⁵ See generally Herbert M. Kritzer, *Studying Disputes: Learning from the CLRP Experience*, 15 LAW & SOC'Y REV. 503 (1980-81); William L.F. Felstiner, *Influences of Social Organization on Dispute Processing*, 9 LAW & SOC'Y REV. 63 (1974) (noting that "avoidance" rather than adjudication or mediation tends to characterize dispute behavior in "technologically complex rich societies" such as the United States).

more common than express invocation of rights or formal interventions through the filing of complaints.

To ascertain not only the direct but also the indirect and symbolic effects of the ADA, we conducted a study¹⁶ utilizing lengthy, in-depth interviews with sixty individuals. These interviewees constituted a purposive sample selected from a prior telephone survey and in-person pilot or focus group interviews with 178 persons. The interview sample was selected according to specific criteria, but it was not intended to be statistically "representative" of American society as a whole nor was it designed to predict frequencies in some larger universe. Instead, this group of sixty interviewees was chosen in order to illuminate the social and cultural effects of the ADA on the lives and careers of individuals whose circumstances varied in particular ways. Thus, the interviewees were divided equally along gender lines and came from three different age and career groups: (1) high school seniors, who were in the early stages of career planning; (2) persons in their early twenties, who had already acquired some experiences with employment and job-seeking; (3) persons in mid-life, who had substantial employment histories (or, in some cases, unemployment histories) and whose careers began before the enactment of the ADA. Within each age group, we interviewed individuals with two quite different types of disabilities: learning disabilities and physical disabilities requiring the use of a wheelchair.¹⁷

The interviews themselves were designed to reveal the presence or absence of rights consciousness and the influence of law at various moments in the interviewees' employment experiences and career planning. We did not ask directly about the law, or even mention its existence, until the conclusion of the interview. Rather, we invited the interviewees to use their own language and ideas to describe their life histories, beginning with early childhood experiences, recollections of family and early education, the onset or diagnosis of disability, the formation of ideas about careers and adult life, influential mentors, job training, early work experience, problems, conflicts, and achievements. As we listened to their life stories, and as we later studied the interview transcripts, we tried to discern whether and how the interviewees incorporated legal concepts in their narratives and whether the law in some obvious or subtle way had shaped their experiences. We encouraged the interviewees to explain their perceptions of situations they themselves identified as problematic or unfair and to describe the

¹⁶ Our research was funded by a grant from the Law and Social Sciences Program of the National Science Foundation (Grant SBR-9411919) and by the generous support of the Baldy Center for Law and Social Policy and the State University at Buffalo School of Law. We conducted all interviews from 1994 to 1996. An earlier related study of disability and employment was supported by the Fund for Research on Dispute Resolution.

¹⁷ At the high school level, four of our interviewees were members of a control group. As far as we knew, they had no disabilities. Because of the special difficulties associated with discussing careers and employment with high school seniors, we found it especially useful to compare the views and experiences of those without disabilities to those who had disabilities.

framework they used to analyze such situations and respond to them. We asked them to talk in some detail about their actions or inactions in the past and to describe their plans for the future. We asked them to describe the behavior and attitudes of family, friends, employers, and co-workers. Near the end of the interview, we spoke more explicitly about their awareness of legal rights and their readiness to invoke them.

Qualitative research of this kind, based on close textual analysis of personal narratives, offers unique insights into the complex processes through which individual life histories of individuals with disabilities interact with law and with the social and cultural context over a long span of time to shape a career. The concept of a career is central to this article. In using the term “career,” we refer to a perceived trajectory of one’s life linking identity and work. We do not use the concept of a career to suggest a particular sequence of stages tracked by every individual, nor do we mean to imply that an individual, once propelled toward employment early in life, follows a fixed course. Rather, when we speak of careers in this article, we mean ways of thinking about where one has been and where one is going that combine experience with aspirations, past with future, discouragement with hope. Thus, a career is not a list of jobs, but a set of malleable perceptions of work and employment, constructed out of experiences and interpretations collected over a lifetime.

We believe that perceptions of a career have an important relationship to consciousness of rights. Rights appear relevant to our interviewees only when discrimination or lack of accommodations interferes with the achievement of expectations for the future. In the absence of such expectations, rights may not seem particularly relevant, since the potential rights-holder does not perceive the absence of opportunities to be an effect of discrimination or lack of accommodations. Rights may become relevant when they are perceived as a means to fulfill career goals. Concomitantly, knowledge of rights may shape career expectations by suggesting a means to achieve goals otherwise thought unattainable. Further, rights may affect an individual’s identity by reinforcing the belief that the individual is a capable student or employee when provided with the accommodations to which she is entitled. Such beliefs, in turn, create career aspirations—and rights-related expectations—that differ from those of a person who believes she lacks ability or talent.

Our concern in this article, then, is to consider the relationship between careers and the consciousness of legal rights established by the ADA. By listening to life story narratives of individuals with disabilities, we seek to understand careers in relation to the social and personal factors that shape them. We are particularly interested in the relationship between rights and the resources available to people with disabilities as they consider what career options they have at particular moments in their lives. We use the term “resources” in its broadest sense to include upbringing, education, wealth, social relationships, imagination, character, and rights consciousness.

Social origins and family backgrounds are particularly important in accounting for differences in the identities and careers of individuals with disabilities. Families with greater wealth, families that provide more supportive relationships, have greater knowledge of a disability and its effects, or have instilled useful philosophical or religious values, may offer an individual more alternatives and guidance.¹⁸ Some of these qualities are predictably associated with patterns of social difference, such as differences of social class. Other social characteristics might have less predictable implications such as race, gender, religious beliefs, or the quality of family relationships.¹⁹ We will examine how differences in material and cultural resources shape the perceptions and actions associated with a career. In doing so, we will suggest how these factors affect the role of the ADA's employment provisions in the lives of the interviewees.

In Part II of this article, we begin our consideration of careers and rights with the life story of Sean O'Brian,²⁰ who suffered a spinal injury as a college student. Through this life story, we explore the formation of ideas about a career after a life-altering injury which required Sean to use a wheelchair. Family background plays an important role in his story about the reshaping of identity and the reconstruction of a career. Sean's narrative suggests how his consciousness of rights emerges from the interplay of disability and family as the concept of a career develops. For Sean, there was a "before," a period of time preceding the accident when identity and the arc of a career had begun to take shape; and there is an "after," a period when Sean is challenged to reinvent both his sense of self and his career.

Sean's story contains many of the elements we explore in greater detail in the subsequent sections of the article. In Part III, building on insights provided by Sean's narrative, we consider how perceptions of a career and consciousness of rights are influenced by the time of onset or awareness of a disability. By referring to the life stories of four additional individuals—Sara Lane, Bill Meier, and Dick and Joanna Seaton—we examine differences in the process of constructing a career following onset or diagnosis early or late in life. We argue that the element of timing in relation to disability and career stage has important implications for the role the ADA plays in the lives of Sara, Bill, Dick, and Joanna.

¹⁸ See generally PAUL J. GERBER & HENRY B. REIFF, *SPEAKING FOR THEMSELVES: ETHNOGRAPHIC INTERVIEWS WITH ADULTS WITH LEARNING DISABILITIES* (1994).

¹⁹ "Personal background variables alone should not predict employment integration or economic opportunity for qualified persons with disabilities. Recent studies, however, point to the emerging relationship of gender, race, and disability to possible workforce participation and advancement." Peter David Blanck, *Employment Integration, Economic Opportunity, and the Americans with Disabilities Act: Empirical Study from 1990–1993*, 79 IOWA L. REV. 853, 875–76 (1994).

²⁰ The names of all eight interviewees are pseudonyms. Quotes from interviews are taken verbatim from transcribed audiotapes on file with the authors. All interviewees were offered full confidentiality.

In Part IV, we examine another set of factors suggested by Sean O'Brian's life story, namely the influence of particular social and economic factors affecting an individual rights-holder. Drawing on the life stories of Louise Dobbs, William Thomas, and Evelyn Gardner, we consider how social class, education, race, and other social factors channel the impact of the ADA on careers and career planning, making legal rights more or less relevant to the experiences of individuals in different circumstances. In this section, we consider how the social, cultural, and personal resources available to different people at different moments in their lives can limit or enhance the role of legal rights.

In Part V, we summarize our conclusions about the consequences of the ADA for the careers and rights consciousness of our interviewees. We emphasize that, despite the avoidance of formal rights invocation by all of our interviewees, the ADA has sometimes had a profound effect on their employment experiences. The ADA tends to operate indirectly to transform the perceptions and assumptions of employers, co-workers, and the interviewees themselves. Over time, others in the workplace appear more accepting of the presence of employees with disabilities in the workplace, and, in some instances, they expect their employers to provide reasonable accommodations to make it possible for these employees to work effectively. Nevertheless, such changes have been incremental and have not reached many who might otherwise have benefited from the provisions of the ADA. As we assess the prospects for future change under the ADA, we must consider the extent to which social reform can be achieved primarily through the law's indirect or symbolic effects rather than through explicit, official acts of rights enforcement.

II. IMAGINING A CAREER

We begin with our summary of a life story narrated by a thirty-three-year-old recent college graduate. Sean O'Brian's narrative provides a starting point for our exploration of the effects of the ADA on individual lives and careers. We present Sean's story in some detail. It illustrates the research method we employ: the use of personal narratives to examine the role of rights in everyday life. It also introduces the key concepts and themes that we will explore in the remainder of the article, particularly the filtering effects of social and economic factors on disability rights at different moments in an individual's career.

A. *Sean O'Brian*

Sean O'Brian's car overturned when he was nineteen years old, severing his spinal cord and leaving him with limited use of his upper extremities and unable to walk. Before the accident, as Sean approached the second year of his junior-college education, his thoughts about a career were beginning to come into focus. Sean was planning to attend college. He loved to play sports, particularly football

and hockey, and he describes himself as an aggressive competitor who frequently got into fights. Sean is one of seven siblings in a close-knit family that includes his grandparents, who are among the most important influences in his life. Sean recalls that he enjoyed doing things with his father and grandfather. His family guided him toward higher education, and initially he aspired to become a dentist. Later he decided to train as a commercial pilot in an aeronautical program at a university in the southwest. These aspirations in themselves illustrate the extent to which Sean's family influenced his initial career choices, since his grandfather had been a dentist and his father an air force pilot during World War II.

Sean's family influences him in other ways as well. His family's closeness and strong values are sources of strength. His parents and grandparents are devout Catholics. Although Sean is not particularly religious, he emphasizes his great appreciation for their values and for the supportive relationships within his family during and following his childhood. Sean remarks, "I just admired them for the way they lived their lives. . . . And I think it is something that carried all the way through my disability and in my car accident and after that. . . . They said the family was always there and always had been and it's a prize." Sean's parents instilled other important values. They expected that their children would put themselves through college and "do something good" in the world. Thus, strong ties and mutual support within his family were matched with an expectation of self-reliance, social concern, and "pulling your own weight" in the world at large.

As a result of his injury, the major reference points for Sean's identity and career changed. He could no longer participate in sports, nor could he aspire to become a commercial pilot or a dentist. Yet, he does not allow himself to express regret at the radical transformation of his identity and his career. Instead, Sean describes the discovery of deeper, more important qualities in himself that shape his expectations for the future.

Sean credits his family's values for helping him cope with his injury and maintain a positive attitude during his rehabilitation and subsequent efforts to complete his college education in library science, obtain a professional degree, and find employment. Whereas others in the rehab unit, according to Sean, tended to "whine" and complain, Sean claims that he simply told himself, "Well this is where you're at and make the best of it. . . . I don't think my family or my friends would have stood for anything less either."

Sean's philosophy of life, influenced by his family's values, also contributed to his capacity to imagine a career after his disability. Sean has seldom asked for or desired accommodations, even when he might have been entitled to them under the ADA. After completing a master's degree in library science, he obtained a job as a volunteer in one of his university's specialized libraries, which led to a paid temporary position in cataloguing and reference work. Remaining self-sufficient in his job is a high priority. He has considered how to obtain accommodations that would make him more self-sufficient and useful to the library. His first thought is to search for grant money to purchase electronic aids

so that he will not “have to interrupt somebody else’s time, which is not the way I want to do things.” Sean thinks it is important to pay for his own accommodations within reason and avoid confrontation.

The concept of “reasonable accommodation” is key to Sean’s thinking about his participation in an employment setting. Sean’s use of this term in our interview, however, differs from its definition under the ADA. For Sean, an accommodation is reasonable if it benefits other employees as well as himself. When Sean describes the accommodations he might seek, his frame of reference is always general distributive fairness, not individual legal entitlement. For example, he explains that the CD-ROM technology he finds useful also benefits other librarians. Sean is wary of rights claims, in part because they lead to confrontation and also because they may not reflect his belief that accommodations should be of general, not personal, benefit. Even with respect to accommodations Sean needs for himself, he argues that the benefit to others is an essential element: “I’m doing it for me, but there’s also others that are going to benefit from it, and if I just moused out and gave up then I’m not being fair to somebody else also.”

Sean’s upbringing emphasized the importance of self-reliance. Although he cannot survive presently without public assistance, he intends to earn enough to become independent. For this reason, notwithstanding his unusual definition of “reasonable accommodations,” Sean believes that some kinds of on-the-job accommodations that benefit himself alone *are* justified because they enhance his ability to work and to be independent. He is, however, troubled by the fact that certain accommodations provided only to him might make his cost to an employer exceed his worth. But he maintains the accommodations would be fair because they place him on an equal footing with others:

I mean, I didn’t ask to be disabled. I didn’t do anything where I should have to foot the entire bill or something like that on my own, and I’m not asking them to cope with my mental adjustment. I’m just asking for help in being able to just kind of be on an equal plane with the rest of my profession.

If he runs into problems obtaining the accommodations he needs in order to work, Sean expressed a readiness to consult a legal aid attorney. In fact, Sean *has* gone to Neighborhood Legal Services for advice, but not to help resolve a particular conflict. Despite his professed willingness to seek legal assistance if a dispute should arise over his ADA rights, Sean clearly views the assertion of rights with ambivalence, and he attempts to explain at length why his work aspirations are fair as well as falling within the law.

In the end, how likely is it that Sean would invoke his legal rights? He is clearly more aware of the ADA than many of our interviewees and is more inclined to view his work options through the lens of ADA entitlements. Yet Sean is reluctant to invoke the law, and his reluctance suggests that his parents’ and grandparents’ belief systems continue to influence his own thoughts about self-

sufficiency and obligation to others in a way that determines the relevance—and irrelevance—of the ADA in Sean's life. The values respected by Sean's family—accepting one's lot in life and getting ahead by pulling one's own weight—have become inseparable from his rights consciousness, which, in turn, shapes the impact of the ADA on Sean's career.²¹

The socioeconomic status of Sean O'Brian's family, as well as the values his family instilled, influenced Sean's changed expectations for a career following his spinal cord injury. His parents are educated members of the middle class, and they directed him along a path toward higher education both before and after his injury. Further, his family provided material resources and social support that permitted recovery in relative comfort and enabled him to attend college and graduate school without economic hardship. Most importantly, Sean's narrative shows that the influence of such material and social resources does not occur in a vacuum. Social and economic circumstances shaped Sean's perceptions of a career, but we see their influence filtered through a network of close family relationships. In Sean's life story, relationships within his family direct the impact of social class, education, and religious values. Sean drew strength and a positive attitude from the values he perceived in the lives of family members. Other individuals faced with the onset of a similar disability at a similar life stage did not have this broad range of tangible and intangible resources available to them.

Viewing the complex and subtle interconnections among these various social factors helps to explain Sean's distinctive perceptions of disability rights in relation to his career. The life stage at which Sean was required to reconstruct his career is also an important feature of his narrative. Sean's injury occurred when he was on the threshold of adulthood—no longer a child but not yet a self-sufficient adult. He had never worked to support himself. He was old enough to have a sense of his abilities and to have acquired values that would guide career choices, but he had little experience of employment. The process of reconstructing his identity and career following the onset of his disability might have been quite different if it had occurred when he was a child who had not yet entered school, or a working adult with a family to support, or an adult whose children were fully grown. Thus, we believe that the crucial influence of social and economic circumstances on identity, career, and consciousness of rights must

²¹ A cautionary note should be appended to this discussion of Sean's moral values and rights consciousness. At times, Sean's story has an almost constructed feel, as if he consciously emphasizes only one among several equally plausible interpretations and conclusions. The life story he presents to us may reflect a strong determination to emphasize continuity between past and present identity rather than the obvious discontinuity, and to reconcile his greatly altered aspirations with a positive self-concept. In a sense, all of our interviewees tell constructed stories, selecting events, interpreting experiences, and explaining their aspirations in answer to our queries about their lives and careers, their past and present circumstances, and their future plans. In our research we seek to understand how and why our interviewees construct their narratives in particular ways.

be understood in terms of the time at which a disability intersects a life and a career.

In the remainder of this article, we explore some of the insights that Sean's life story has suggested about the construction of a career and the consciousness of rights. We focus on two of the most important insights obtained from Sean's narrative: that careers and rights consciousness are influenced by the timing of onset or awareness of a disability, and that the impact of the ADA is affected significantly by social, cultural, and economic circumstances at particular moments in an individual's life.

III. TIMING: THE INTERSECTION OF DISABILITY AND CAREER

The construction of a career is time-dependent. Different resources are available for this process early and later in a person's life, before applying for a job and after holding a job for several years, while one is still in school and after one enters the workforce. Constructing a career is the work of a lifetime and passes through many stages as an individual continually reassesses identity and direction. At each stage, the resources available to an individual affect the way he or she perceives options and choices, including the relevance or irrelevance of legal rights.

Because an individual's resources vary at different points in life, the timing of injury, onset, or diagnosis can be critically important. This is true both for physical and learning disabilities. In the case of physical disabilities, it matters *when* an injury or illness occurs that causes mobility impairment, and whether it develops suddenly in childhood or gradually in adulthood. For learning disabilities, as with physical disabilities, timing is a crucial factor. Although learning disabilities are generally present from early childhood, it matters *when* in life they are recognized, understood, and accommodated. The course of a career develops differently for an individual whose learning disability is not recognized until the age of forty, as compared with a person who is diagnosed and provided special education services in elementary school. Each of these variations suggests a different pattern of interaction over time among disability, social circumstances, and career.

In this section, as in the preceding section, we suggest that life stories provide a unique insight into the ways in which rights under the ADA become active in the careers of individuals with disabilities. We suggest that reading and interpreting these life stories requires a two-step analysis: First, one must consider the point in a life span when disability intersects career; second, one must ask at that point what the resources or socioeconomic circumstances are that determine how and whether rights will affect a career. Thus, we do not argue in this section that timing plays a simple determinative role in making rights active or inactive depending, for example, on the early or late onset of disability. Rather, we suggest that timing is a catalyst, bringing into play the particular social factors that are

important to an individual at that moment in his or her life. In Part IV of this article, we focus on several of these factors and consider how they shape the impact of the ADA; in this section, however, we first discuss the element of timing, which determines how and when particular social factors exert their effects.

Perhaps the most obvious way in which timing matters is in the availability or unavailability of legal rights at particular points in time. An individual whose disability occurs or becomes known after passage of the ADA might think about career and employment rights quite differently from an individual whose disability occurred or became known decades earlier. The enactment of disability rights at a particular point in time makes it possible from that point forward, of course, to invoke such rights in a court or before a regulatory agency. In addition, the more diffuse or symbolic effects of rights may shape careers in different ways for individuals whose disabilities occurred or became known before and after passage of the ADA. When we discuss the life stories of Sara Lane and Bill Meier, we will consider the difference that the timing of a disability makes in relation to the date of passage of the ADA.

But in this section we will also consider other, less obvious connections between timing and the impact of the ADA. If we view legal rights as one of the various kinds of resources that can be marshalled by an individual with a disability, then the orientation toward use or avoidance of such resources may be determined, at least in part, by the moment in life when a disability arises. A child, an adolescent, a young adult, and a middle-aged adult might be inclined to draw upon different kinds or combinations of resources at the moment they become aware of their disability. Reliance upon one set of resources at a particular life stage may establish a behavioral pattern or an attitude that affects an individual's identity and career for many years. Orientation toward rights or toward other quite different kinds of resources may be determined by these circumstances related to life stage, as well as by the actual date of passage of the ADA. Such considerations suggest a more complex and subtle interrelationship among timing of disability, career, socioeconomic resources, and rights consciousness. We will examine this type of interrelationship and its implications for the ADA when we discuss all four of the life story narratives that follow.

In this section, we begin by comparing the life stories of Sara Lane and Bill Meier, both of whom have physical disabilities and use wheelchairs. Sara's disability, caused by polio, originated early in her childhood and Bill's when he was a young adult. Next, we explore the life stories of individuals with learning disabilities, comparing the experiences of Dick and Joanna Seaton. Their disabilities were diagnosed at about the same time, when Joanna was about to enter third grade, and Dick was in his forties and had lived with the consequences of an undiagnosed learning disability for most of his life.

A. *Career and the Onset of a Physical Disability*

Sara Lane, a successful newspaper reporter, contracted polio as a young child nearly four decades before the enactment of the ADA. She spent her childhood with few accommodations in her school or home. Sara's family expected her to graduate from high school and college and then to work to support herself. Her mother and father, both teachers, placed a high value on education and independence and pushed her to succeed by adapting as best she could to mainstream physical and social environments.²²

By the time Sara entered journalism school, she was an academically accomplished student and had developed adaptive skills that served her throughout her adult life. Working at several different newspapers, she learned to devise makeshift accommodations and persuade her employers to provide them in the pre-ADA era. As Sara's career progressed, she became a successful young woman who could deal effectively, in most instances, with her employers. In addition to her professional skills, she also learned the importance of a positive self-presentation and attitude.

Undoubtedly, she encountered frustrations as she pursued her career, although she does not dwell on them when telling her life story. The career trajectory she describes is not one of adult setbacks but of childhood and adolescent preparation. She tells a story of self-reliance and not loss, of independence and not special needs.

We think that the intertwining of timing, family, and disability plays a crucial role in the construction of Sara's career. Sara speaks of being raised as a "type A polio victim." She possesses the outlook of a generation that was taught to respond to childhood polio with resilience and to pursue lofty career goals with high expectations. Disability rights did not exist during her childhood. She and her parents faced a set of stark alternatives: the brand of sturdy self-reliance that they embraced for Sara, or the isolated and dependent existence assigned to the majority of individuals with paraplegia and quadriplegia in the 1950s and 1960s.

Drawing upon the resources available to her at the time, Sara shaped her career trajectory by relying on her middle-class background, her excellent education, her high intelligence, her outstanding social skills, and her indomitable spirit. She is aware that others in her generation were less fortunate and that her career success is the exception rather than the rule. Many individuals with physical disabilities similar to Sara's lacked the resources she used, and they were unable either to imagine or to achieve the career that she enjoyed.

Sara's orientation toward rights is in many ways a product of the long period of training she underwent during her childhood after the onset of her disability at an early age. Self-reliance, perseverance, and adaptability were the recurring

²² We present Sara Lane's life story narrative in greater detail in Engel & Munger, *supra* note 6.

themes of her preparation for a career. Rights or entitlement to accommodations did not exist at the time, so she learned to use other kinds of resources. Thus, even after passage of the ADA, Sara views rights with ambivalence. Despite numerous frustrations over work assignments and the reluctance of her employer to provide an accessible bathroom, Sara always relied on her powers of persuasion and on the intervention of others. She has never invoked her legal rights. She is concerned about being "perceived as a whiner," and she does not want to jeopardize the chances of future employees who have disabilities. The resources on which she depends today are very much the same ones she learned to use as a young child.

The timing of Sara Lane's disability determined the array of resources she uses in pursuing her career and contributes to her current reluctance to invoke the ADA in situations of conflict with her employer. This is not to say that the passage of the ADA had no effect on Sara's career. Sara is aware of the ADA, and speaks readily about her rights. Enactment of the ADA affected her sense of fair treatment in the workplace and determined the issues she is willing to advocate. Furthermore, Sara observes that co-workers and, in particular, female supervisors at the newspaper intervened on her behalf at crucial times and helped to advance her career. It seems likely that these individuals acted not only out of compassion but also because the ADA affected their own perception of Sara as a well-qualified worker with a disability. In addition, the battle over the accessible bathroom was resolved in Sara's favor when her employer unilaterally recognized that the ADA applied to him and his newspaper. Thus, even without Sara's invocation of rights on her own behalf, the ADA produced a favorable change in her workplace.

The element of timing affected Bill Meier's career and rights consciousness quite differently from Sara Lane's, although the indirect effects of the ADA for both individuals were similar in certain ways. Unlike Sara Lane, Bill first experienced paraplegia as an adult and had to adjust the trajectory of his career in response to the new factor of physical disability. He found this readjustment to be a difficult challenge. Unlike Sara, Bill did not have years of preparation and planning while still living with his family before entering employment as a worker in a wheelchair. He did, however, have two advantages that she lacked: he had already begun to establish a positive professional reputation before his disability occurred, and the ADA was already in effect when he resumed employment after his injury.

Before his accident, Bill was a talented young executive, whose earlier years involved what he now calls "taking it whatever way the wind blows." It was clear, however, that Bill's education and his parents' expectations had prepared him to pursue a career in business. With maturity and marriage, he realized that it was important "to set a goal and then strive for it," and not simply to drift from one opportunity to another. Accordingly, shortly before his injury, he accepted a

new position in his organization, at an attractive salary, which required him to travel extensively throughout a large geographical region.

Less than a year after accepting the position as a regional manager, Bill suffered a spinal cord injury at a party and spent the next year and a half in a rehabilitation facility. His return to work in a wheelchair produced uncertainty and bad feelings. On the one hand, he now sees that the regional assignment was inherently flawed—structural changes in the organization had made the position untenable, and another regional manager had simply stopped working the month before Bill's return. On the other hand, Bill feels betrayed by his boss, who had mouthed platitudes—"He said he thought I could do it. I had the motivation to be able to get out there and do it."—but was actually setting Bill up for failure. Bill now sees his boss as a heartless person concerned only with the bottom line and not with people or personal relationships. He is angry that his boss seemed unconcerned with Bill's struggles in his difficult assignment and that his boss never communicated with him personally about the problems Bill faced.²³

Bill's description of this period in his life is complex. He views the position itself as unworkable, even if he had not had his injury: "No one in my position could do that job." Still, he implies that his boss could have cooperated with him to restructure the job in a way that would have allowed Bill to succeed. Yet, at other times in his account, Bill suggests that his transformed circumstances simply made the job one that he could not handle: "Well, I couldn't do the job. With all that travel, it's just impossible. . . . It's a tough thing to do to travel like that. Everything is ridiculous. Rent-a-cars are difficult to get with hand controls. More difficult back then, and now it's fairly easy to get those things." Bill concludes, "I couldn't get everything that was expected of me done, although I wouldn't admit that to my boss at that time, because that would have been an easy way to let me go."

Bill's account alternates between a condemnation of his insensitive and uncaring boss and his realization that both his disability and the job itself made it impossible for him to continue as a regional manager. At one point, asked what his boss should have done, Bill responds: "What he should have done is have this whole job somehow customized for me without any major—you know—it could have been done." At other times, however, Bill speaks more in terms of the enormous change that occurred in his life and his unreadiness to deal with its consequences:

I was not psychologically ready to "get out there." I went from being 6'3" and an athlete to 4'1" in a chair that people would cross the street so they don't have to interact with you. It's an unbelievable transition. The physical barrier's not a problem,

²³ It should be noted that Bill's troubled return to work occurred during the very first years of the ADA.

but the ability to look people in the eye, the ability to act confidently. I just went from sitting in a house and doing rehab to going out there again. That was impossible.

Even when Bill's dissatisfaction with his boss became most intense, however, he did not perceive his boss's behavior as a denial of Bill's rights under the ADA. Bill never stated to his boss or to us that he had been denied his legal entitlement to on-the-job accommodations.

Bill's difficulty in resuming his regional manager position marked a watershed in his career. Just as he began a lucrative but extremely challenging new assignment, his injury intervened and transformed his identity as a worker. Whereas Sara Lane knew of her disability from childhood and could, therefore, plan and prepare for a career for many years, Bill Meier was required to reimagine himself just as his career was about to take off. The timing of his disability marks a crucial difference between his career path and Sara's, because Bill had already invested a significant part of his life in an identity and a career before his injury occurred. Although Bill's transformed career might have developed differently if he had worked with a more sympathetic and supportive boss or if the job itself had been structured more realistically, the timing of his disability would inevitably have required him to re-create himself as a worker and redirect the path of his career.

At the turning point in his life when his disability occurred, Bill managed to devise a satisfactory career path. He drew on the resources he had acquired up to this point: a philosophy that it is essential "to set a goal and then strive for it, not . . . take it whatever way the wind blows," a set of professional credentials that established him as a well-educated and capable young businessman, a current position from which he could not easily be fired or demoted, and a recently enacted civil rights statute whose effects were only gradually being felt in the American workplace. Relying on all of these resources, Bill reimaged his future. The president of his company's Buffalo office offered him a position that did not require Bill to travel from city to city. The office needed someone to work in sales and public relations. The president described the tasks that needed to be performed and invited Bill to "write your own job description." Bill became one of the three directors in the Buffalo office. His new boss, unlike his former boss, talked extensively with Bill about accommodations that would enable him to do his work effectively, and he even hired a consultant to make sure that the workplace was physically accessible. It appears that all of the factors listed above including, but not limited to, the ADA played a part in the positive redirection of Bill's career.

Bill thrived in his new position and can now state with some confidence, "I'm the best membership sales representative that's ever been here." He has taught himself to work effectively despite the barriers he sometimes encounters. He relies more extensively on the phone. When he must travel to other business establishments in the city, he no longer hesitates to ask for help from a

prospective client when necessary. After all, the sale will help the client as well as Bill if they can get together and consummate the deal:

I'll call the guy from my car and say, "Look, I'm in a wheelchair. There's this big curb out here. Can you just come out and give me a hand?" Then I'll pop a wheelie and they'll push me up the curb. I don't have a problem. For a while I was bummed; I don't really like asking people. You know, people are uncomfortable trying to help me, or whatever. Now I don't care. You know, I'll see the sale there, and I see we're helping this person, so get your butt in there and show them what's to be done. So I'm seeing a lot more people because I don't ask that question [about accessibility]. I don't make it an issue before I go. . . . I'm happy here right now. I'm happy with the money I'm making. I'm happy with the way I'm treated.

The timing of Bill Meier's disability later in his life undoubtedly created substantial problems, requiring him to "take a step back" and think carefully about how to move forward again to succeed. Yet, he identifies a very important advantage associated with the later onset of disability. At one point in the interview, he speculates on how difficult it would be if he were to have begun his career in a wheelchair. Suppose he had not already achieved some success and held a position of importance before his injury occurred. If he had first entered the job market as a person in a wheelchair, even after enactment of the ADA, would he ever have attained the position he now holds? Bill thinks not:

If I were to just quit here one day and send my resumes out, I don't think I would get a lot of calls if my resume said "disabled" on it or whatever. I think if I went out on interviews, there would be very few people that would put me in the final cut, so to speak, solely based on the fact that the guy's in a wheelchair, there's no way he can do his job. Or he's going to want this and that and the other thing as an accommodation, and we simply can't afford to address those needs. So I don't think, in this kind of perspective—other people have disagreed—I don't think I'm that employable at the level of employment that I'm at now in other places. . . . It's difficult, and most employers don't realize it's difficult, and I don't think they're going to want to take the time or money or whatever it takes to have a "special needs" employee, which is why I lead my life as a "non-special needs" kind of person.

Paraplegia certainly transformed Bill's identity in many important ways, but his persona as a highly capable employee—and as an individual who stood 6'3" tall—were familiar before his circumstances changed. If he were to present himself to strangers as a 4'1" job applicant with no employment history, he doubts whether his future would be as bright, regardless of the ADA.

It is striking that Bill never referred to his own employment rights under the ADA to his boss or to us during the interview. Yet, we believe that rights played a role in shaping his career and enabling him ultimately to succeed in a different assignment in the same organization. It is clear that Bill is aware of the ADA—he distributes a brochure on this very topic as part of his job.

We think that rights contribute to his sense of employability, his image of himself as a working professional, and his sense of entitlement. This was particularly true after Bill's negative experience when he first returned to work. Later, as the implications of the ADA became increasingly apparent, both Bill and the head of the Buffalo office thought it obvious that they should sit down together and work out the necessary accommodations for a valuable employee who had suffered an injury. Neither Bill nor his second boss appears to have mentioned the ADA explicitly during these discussions. Bill never invoked his rights. But it is reasonable to conclude that rights gradually became active in Bill's career. At the same time, however, it must be recognized that Bill's sense of entitlement and his high expectations for himself also drew on his previous professional employment and middle class background. If he had lacked the resources associated with education, professional success, and social class, rights alone were much less likely to have played a part in his career.

B. Career and Awareness of a Learning Disability

In the preceding discussion of Sara Lane and Bill Meier, we observed that the timing of a physical disability can crucially affect the role of rights in constructing a career. We now turn to the stories of two individuals with learning—rather than physical—disabilities, and we examine the rather different role that timing plays in their marshalling of social and economic resources and in their orientation toward rights under the ADA. Although a physical disability can intersect one's life history at any moment in time, sometimes (as in Bill's case) leaving the individual with a vivid sense of "before and after," learning disabilities usually exist from birth. Yet, the individual's awareness that he or she *has* a learning disability, that there is an objective category, scientifically ascertainable (or so the experts claim), to describe an important aspect of his or her life experience, may indeed represent a dramatic turning point in childhood or adulthood.

Although an individual may have experienced a learning disability and the sense of some undefined difference from his or her peers long before the moment of diagnosis, the awareness of a disability before and after diagnosis can be quite different. Interviewees who were diagnosed as teenagers or adults sometimes recall that they previously had an intangible or undefined sense that they processed information, expressed themselves, or perceived the world differently from their peers. This vague sense of difference, however, contrasted dramatically with their subsequent classification as "learning disabled"—a relatively precise and technical category with very specific social and legal implications. The realization that they could claim, or be assigned to, this category was profoundly important. For many of our interviewees, the diagnosis was a watershed moment in their lives, with significant social and legal implications. The timing of this moment—in early childhood, later childhood, or adulthood—can be just as important for persons with learning disabilities as the accident or illness that

results in physical disability, and the effects of timing on the impact of the ADA can be equally far-reaching.

Our discussion of timing and learning disability draws on two illustrative stories. The first is that of Dick Seaton, a house painter and, more recently, a middle-aged college student. Dick grew up in impoverished and rather isolated conditions on his father's farm. Dick's diagnosis came relatively late in his career trajectory—long after he finished school as a reluctant member of the “shop track” and long after he left his parents' farm and formed his own successful small business as a house painter. The second individual, by contrast, was diagnosed after second grade and immediately received tutoring and support services that enabled her, unlike Dick, to work toward a college degree and a professional career. The second individual is Dick's daughter, Joanna. Her diagnosis and her educational experiences prompted Dick to be tested and diagnosed. Her success, a source of enormous pride for Dick, also made him realize the career he might have had if his own diagnosis had come as early in life as Joanna's.

Dick describes his school years in terms of a paradoxical self image. Without knowing that he could be both bright and learning disabled, indeed without knowing that there was such a concept as learning disability, Dick vacillated between perceiving himself as stupid and as academically gifted. He was not grouped with the “college kids”—those who were talented in math and science and were destined for higher education. Because of his struggles with schoolwork, Dick thought of himself as “retarded,” a highly pejorative term applied to a variety of developmental disabilities. He recalls a big schoolmate named Wilbur Lassiter, a “farm kid,” who was “retarded.” “I kind of thought, well maybe this was my situation.” At the same time, however, Dick was “good in math,” and he maneuvered himself into Regents classes that he should not have taken so that he could pursue his academic studies more seriously than was possible in the “shop track.”

As Dick recalls his school days, he describes himself as a young man who felt both bright and stupid, both competent and incompetent. Lacking a framework for reconciling these seemingly inconsistent self-perceptions, Dick was understandably confused. His confusion and his academic struggles led him to consider dropping out of school before his junior year and enlisting in the army. Because he did well in some classes, however, and because he received a citizenship award, Dick ultimately decided not to make that particular career choice and stayed in school until graduation.

Dick later realized that, under different circumstances, he might have pursued a career as a doctor or a mental health specialist:

It's frustrating because, if you look back through your whole years, had they known when you were back in grade school, had you gotten the right form of education. . . . I'd have liked nothing better than to have been a doctor, or to be a

practicing psychologist or a practicing psychiatrist. Because that is something that I would like very much to do.

Yet, at the time he graduated from high school, undiagnosed and with a very mixed record of success, such a career choice was unthinkable. Nowadays, we might well imagine a young Dick Seaton, diagnosed at an early age, who was able to succeed academically and make the career choice that Dick can only wistfully imagine. Instead, Dick chose a career in which his learning disability did not serve as an obstacle. Not coincidentally, Dick's parents and teachers saw this blue collar career as appropriate for Dick because he had been raised in a family that was relatively poor and uneducated. His career choice matched their expectations for him, although it did not necessarily match his expectations for himself. In this career, Dick achieved considerable success and, with his wife's help, even worked out some adaptive techniques that minimized the effects of his learning disability as he interviewed clients, prepared bids, completed jobs, and submitted bills.

Nonetheless, it was not until he was more than forty years old that Dick achieved a full understanding of his own disability and was better able to resolve the confusion and ambivalent self image that he had held since childhood. He consulted Joanna's learning specialist, whose testing revealed that Dick was "severely dyslexic" but that he had an IQ of 140. By then, Dick felt it was too late to begin an entirely new career path as a doctor or a psychiatrist. He could reimagine his identity, but the passage of time made it impossible to reinvent his career as it might have been if the diagnosis—and the current array of disability rights—had come decades earlier. Instead, while continuing to run his house painting business, Dick enrolled in the local community college and began taking courses in the social sciences. His goal is to get a job in counseling. In short, Dick envisions a radical mid-life career shift that will allow him to reclaim part, though not all, of the professional life that circumstances—and timing—denied him.

Dick's enrollment in college and his intended career shift are remarkable and unique. The timing of his diagnosis at age forty is highly significant, but we think it crucially important that at that time in his life Dick had acquired the resources to respond to the diagnosis as he did. These resources are in part financial. Dick lives in a comfortable house and has a good income, so that he is in a position to consider taking college courses while continuing to work at his day job. His family is warm and supportive. He is extremely bright. He is active and outgoing by nature, as his involvement in local politics suggests. In spite of his early struggles and doubts, he appears to have a reservoir of self-confidence to draw on. His experience as an advocate for Joanna made him aware of the opportunities and legal rights now available to persons with learning disabilities. All of these factors were present at the time of Dick's diagnosis; all enabled him to respond with a dramatic decision to reclaim part of the career that had been foreclosed earlier in his life.

In addition to his successful life experience and his improved socioeconomic status, another set of resources—legal rights—were available to Dick in mid-life, but not earlier in his career trajectory. At this point in his career, however, Dick, as a self-made small-business owner, talks about the ADA with suspicion. Given his own academic history and Joanna's, it is not surprising that Dick vigorously supports the educational rights of schoolchildren with disabilities, but he expresses strong ambivalence about their employment rights once they reach working age.

Over the years, Dick has come to resent governmental encroachments on what he considers the prerogatives of employers. He mentions OSHA,²⁴ for example, as a particularly costly and meddlesome presence in his own business. Dick believes, as a consequence, that the ADA is wrong, that the government has no right to force a for-profit organization to spend any money at all to provide accommodations for an employee with a disability. He adheres to this position even though it implies the curtailment of rights that would make it possible for Dick himself to function effectively in the workplace after he receives his college degree:

I have to go right back that the school systems are the failure; it's not the employer that's a failure. Now if you take an employer, we'll say, a county, or where funding or where money isn't as critical of an issue, but if you're an employer that's running a business for yourself, as a profit business, and somebody can produce more profit for you than someone who isn't going to produce near as much profit because of some form of disability . . . it's unfair of society to say to you, as an employer, you have to accommodate this person. . . . If a person is qualified to do the job, say more qualified than somebody else, I don't think the disability should stand in the way of that person having that job. I would support legislation that said you can't do that. . . . [But] if it's going to cost anything to do it, then I don't think we have the right to dictate it onto them.

Dick Seaton's categorical rejection of the ADA's reasonable accommodations requirement²⁵ has significant implications not only for his own

²⁴ Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651–78 (1994).

²⁵ The ADA's reasonable accommodation requirement appears at 42 U.S.C. § 12112(b)(5)(A) (1994). The ADA defines "reasonable accommodations" to include:

- (A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
- (B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

42 U.S.C. § 12111(9)(A)–(B) (1994); *see also* Regulations to Implement the Equal Employment Provision of the Americans with Disabilities Act, 29 C.F.R. § 1630.2(o) (1999).

new career but for his daughter's as well. His view of employment rights is no doubt affected by timing—he was a successful employer by the time the ADA was enacted. His perspective accordingly reflects what he perceives as the onerous demands the ADA might make on him as an employer rather than the benefits the ADA might confer on him as an employee. It is particularly interesting, then, to compare Dick's perspective with that of his daughter, Joanna, whose learning disability is probably genetically linked—and similar—to his own. It was an important fact of Joanna's life that she grew up in her father's warm and relatively affluent home rather than the cold and impoverished home of her father's father. Furthermore, by the time Joanna was born, the concept of a learning disability was better understood and was the subject of legal protection.²⁶ As a beneficiary of special education law, Joanna was tested and diagnosed²⁷ with dyslexia after the second grade. The specialist who tested her became a resource on whom she and her parents relied until his death during her sophomore year of high school. In spite of ongoing disagreements between Joanna's parents and school administrators, which resulted in a complete absence of special education services from primary school through high school, this specialist worked with Joanna as a private tutor and helped her to succeed academically. At the time of our interview, Joanna was enrolled in college, where she was on the dean's list and had a 3.9 cumulative grade point average.

Joanna's experience suggests what Dick's life might have been like if he had been diagnosed in early primary school. For Joanna, unlike Dick, her sense of difference was accompanied by an understanding of that difference. It had a name. Her learning disability was not the same as lack of intelligence. Indeed, the learning specialist reassured her that one could have dyslexia and be very intelligent at the same time. This was what Joanna learned before she entered third grade. There was an early differentiation between her learning disability and her academic potential. She was not assigned to the "shop track"; she did not identify with Wilbur Lassiter.

Although Joanna belonged to the generation of schoolchildren to whom the law guaranteed special educational rights, she did not receive the benefits of those rights before graduating from high school, nor did her early diagnosis produce an unambiguously positive and confident self image. At times, Joanna herself failed to embrace the clear distinction between dyslexia and lack of intelligence: "I had a view of myself as not being a bright individual. . . . I never tried to excel or tried to do better. I graduated [high school] with a Regents diploma, but I didn't ever really push myself until I actually got into college." Even with her outstanding

²⁶ See 20 U.S.C. §§ 1400–1419 (1994 & Supp. IV 1998), which was originally titled the Education for All Handicapped Children Act. Congress amended it in 1990 and changed the name to Individuals with Disabilities Education Act. 20 U.S.C. § 1400(a) [hereinafter IDEA].

²⁷ The IDEA requires that all students with disabilities be "identified, located, and evaluated." 20 U.S.C. § 1412(a)(3)(A) (1994 & Supp. IV 1998).

record in college, “if somebody comes up to me and says do you think you’re smart, I’ll tell them no, because that’s how I feel from all these years of feeling like I was inadequate. It really stays with you.”

Why might Joanna retain feelings of inadequacy despite her early diagnosis and her academic success? She perceives her school system as largely unsupportive. Between the third and fourth grades, Joanna recalls, the principal “wanted to pull me out and put me into the special education courses with the retarded individuals, because he said that that’s what I was.” In the subsequent battles between Joanna’s parents and the school, a stand-off resulted. The school refused to accept the evaluation of the private learning specialist, and Joanna’s parents refused to allow the school to conduct its own testing and classification. Consequently, Joanna made her way through the public schools by relying on private tutoring. She received no academic accommodations, except when her teachers provided them on their own. Some teachers, such as Joanna’s third grade teacher, were understanding and encouraging:

She recognized the fact that I was a very bright child, that I just had a learning disability, and she was one of my greatest advocates at that point in time. . . . When I was given the state exams and stuff, I failed them all. And then, when she gave them to me, orally giving them to me, I aced them all.

Other teachers were less supportive and ignored the reports of Joanna’s private specialist. In high school, Joanna chose not to tell her teachers that she was dyslexic, because “I didn’t figure it would do me any good anyways for them to know.”

Thus, when Joanna reached the stage in her career planning at which her father had left high school and begun his small business, she was able to envision a possibility that had not occurred to him: going to college. Her ability to imagine such a choice stems from the earlier diagnosis of her learning disability, which was an indirect consequence of her rights under special education law. But the earlier diagnosis did not entirely remove her self-doubts and her equation of difference with lack of intelligence. She believed what her parents and her learning specialist told her, but she also believed what her teachers and classmates told her or assumed about her. She could not entirely escape the identity confusion that her father had experienced, but it did not prevent her from going on past high school to college and a professional career. Joanna decided to study elementary education in college. She remembered the third grade teacher who had made such an important difference in her life, and she wanted to be able to do the same for young children with disabilities who confront an unsympathetic educational system.

Joanna and her father were both taking college courses at the time of our interviews. For Joanna, unlike Dick, her disability created some identity confusion in her own mind but did not prevent her from demonstrating her intelligence and ability nor from succeeding in the field that she most wanted to

pursue. She had been raised in a middle-class family with the expectation that she would attend college and have a professional career. She also entered college and began her career training after passage of the ADA in 1990. Did these differences in timing and in the resources available to Joanna at the beginning of her career produce a consciousness of rights that differed from her father's? Joanna still lives with her parents and shares some of their values. She is by no means a forceful advocate of disability rights. She has, however, thought about the accommodations she might require as a schoolteacher. She is reluctant to request a computer or the secretarial assistance²⁸ that might enable her to perform her job. She might prefer not to identify herself to her employer as a person with a learning disability because of the stigma and the possible negative repercussions on her prospects for hiring and advancement:

I'm not really sure how I'm going to handle that. I think it's going to be hard. I think it's going to be a challenge, it's going to be something that I'll have to work with somehow and compensate for it. How I'm going to do that, I'm really not sure.

On the other hand, Joanna's perceptions of her rights under the ADA differ from her father's. Although Dick directs his negative appraisal of the ADA's employment provisions primarily at the burden they can impose on for-profit enterprises, Joanna does not appear to share any of her father's ambivalence about the ADA. In her mind, she is entitled to fair treatment by her employer, and fair treatment includes reasonable accommodations even if they require the employer to incur some expenses on her behalf:

I would feel like they should, in that they hired me, and I'm doing a good job, and I can relate to these children. I can help these children because I've been there, I know how they perceive the world. I can look at them in the same way and help them in the same way that I was helped, so in that aspect I would think that I would be an asset to them. And I would think that they should do as much as they could to see to it that different children have the best education that they could. And if that meant providing me with some small measure that's going to help do so, then I would think that that should be their obligation.

The impact of the ADA on individual lives and careers depends on the particular resources and circumstances of the rights holders. These factors are

²⁸ The ADA's definition of "reasonable accommodations" suggests that Joanna might be entitled to both of these accommodations. See 42 U.S.C. § 12112 and *supra* note 25. In order to qualify for rights guaranteed by the ADA, however, Joanna would have to establish that her own self-help measures to compensate for her dyslexia did not adequately mitigate the effects of her disability. See *Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 482 (1999) (holding that "if a person is taking measures to correct for, or mitigate, a physical or mental impairment, the effects of those measures—both positive and negative—must be taken into account when judging whether that person is 'substantially limited' in a major life activity and thus 'disabled' under the Act").

affected by timing, by the historical moment and the point in the life span when disability intersects career. Joanna Seaton had an awareness and understanding of her learning disability from an early age. Growing up in a comfortable, middle-class home with supportive parents, she had many resources available to her that her father had lacked during his difficult childhood. Among these resources were a new set of legal rights. Joanna benefited from these rights in several ways. First, her early diagnosis was itself a product of the special education system, mandated by a law that did not exist during Dick's childhood.²⁹ Second, she and her parents defined Joanna as a bearer of rights, even as they fought with and withdrew Joanna from the special education program of her grade school. Finally, passage of the ADA before Joanna entered college helped to clarify in her mind that her employer would have a legal obligation to provide reasonable accommodations once she embarked on her professional career. She might choose to forego these accommodations for fear of stigma or conflict, but Joanna, unlike her father, believes that the ADA's reasonable accommodation provisions are fair and just. A generational difference in rights consciousness emerges from the life stories of Dick and Joanna Seaton, illustrating with special poignance the impact of timing on careers and the law.

IV. THE INFLUENCE OF SOCIAL CLASS AND RACE

Sean O'Brian, subject of the life story in Part II, benefited from his family's social, cultural, and ideological resources in reconstructing his identity and his career at a critical moment in his transition to adulthood. By subsequently analyzing the life stories of Sara Lane, Bill Meier, and Dick and Joanna Seaton in Part III, we have underscored the importance of earlier and later onset of a physical disability or awareness of a learning disability. The critical element of timing in Sean's life story, as well as those of Sara, Bill, Dick, and Joanna, highlights the influence of the *particular* social and economic resources available to an individual and his or her family at the moment of onset or diagnosis. In this Part, we explore in greater detail the influence of two such social factors: class and race.³⁰

In one sense, the point we make in this section is obvious: persons of lower socioeconomic status and members of racial minorities are unlikely to invoke the ADA as they construct their careers. These factors unquestionably tend to limit the effects of disability rights in the lives of their intended beneficiaries. The argument becomes more complex, however, when we recognize that persons of higher socioeconomic status and members of racial majorities are also unlikely—

²⁹ See IDEA and its testing provisions, 20 U.S.C. § 1412(a)(3)(A), 42 U.S.C. § 12112, and *supra* notes 26–27.

³⁰ A third, highly important social factor is gender. Although we do not single out gender for discussion in this article, it is the subject of a separate chapter in our book-in-progress concerning the ADA, employment, and life story narratives of people with disabilities.

as we have seen in the preceding sections of this article—to invoke the ADA. Given the rights-avoiding tendencies of all sixty interviewees in our study, regardless of social class or race, we must ask a rather different question: How do these particular social factors affect the indirect or symbolic effects of the ADA? What can we learn from life story narratives about the ways in which rights become active, or remain inactive, when disability conjoins with poverty or race-related disadvantage in the shaping of a career?

In this section, we examine the influence of social class and race in the life stories of three individuals: Louise Dobbs, William Thomas, and Evelyn Gardner. In Louise Dobbs's story, we emphasize the importance of social class. In William Thomas's story, we consider social class in conjunction with race. In Evelyn Gardner's story, we discuss race and her status as an African immigrant in the United States.

A. *Louise Dobbs*

Louise Dobbs's life story dramatically illustrates how the absence of social and economic resources at the time of disability can prevent employment rights under the ADA from becoming active, even in the most subtle or indirect ways. From the beginning, Louise Dobbs's social and economic circumstances had a profound effect on her perceptions of self and career. She was raised in a working-class family plagued by alcoholism, poverty, and psychological distress. Her stepfather, a truck driver, had a serious drinking problem. He and Louise did not get along, and Louise, the oldest of seven children, depended primarily on her mother for advice and guidance. Her mother's life was also troubled, and the suicide of Louise's younger brother dealt the family a blow from which it never recovered. Louise was never a good student in school. Because of her family's poverty, she had to pick fruit and vegetables while she was still a student in order to help the family make ends meet. By the end of the eighth grade, when Louise was sixteen, her parents advised her to quit school. Her studies were not going well, and they needed her to contribute more money toward the family's survival. Louise did as her parents wanted. She never had other friends or relatives to whom she could turn for advice. As she now recalls, "I was always by myself." Her mother was an important influence; there was no one else.

At the age of sixteen, Louise began a series of low-wage, manual labor jobs that were to continue until she suffered a serious stroke in mid-life. She cleaned houses, made pizzas, worked on an assembly line at a wax factory making novelty items, and waited on tables. At the age of twenty, she married Mike Dobbs who, like her stepfather, was a truck driver, and they had five children together. They moved to the south and southwest several times to attempt to improve their circumstances, but these efforts never succeeded. They were dogged by bad luck, and their friends and business partners took advantage of them. On one occasion, their apartment burned down, and they lost all of their

possessions. On another occasion, while they were attempting to start a new trucking company, Mike's business partner tricked him and left Mike and Louise destitute. On yet another occasion, Mike got involved with some illegal business practices in Alabama and was convicted and sentenced to prison. After each incident, Louise returned to Buffalo to live with her mother until she could resume her own low-wage employment.

Louise's last job was cutting chicken wings at a poultry farm. She worked seventy hours a week and her wages were a penny for each pound of wings she cut. On a good day, "if you hustled," she could cut 1,300 to 1,500 pounds of wings. Shortly after Louise started work as a chicken cutter, her husband was released from prison, and they divorced. Louise continued at this job for twelve years, until one day she collapsed at work. The cause of her condition was unclear, but her symptoms did not improve. She had lost substantial control over her muscles and was unable to return to work. Over time, she became completely paralyzed on one side. Her doctors began to suspect that she had suffered a stroke. She entered rehabilitation and began to improve somewhat, and Mike returned to help her.

Then Louise experienced another series of catastrophes. Her ex-husband died unexpectedly. Shortly thereafter, her mother died, as did a nephew with whom she had a close relationship. Perhaps as a result of these multiple losses, Louise says, "I started going down," and she returned to therapy. Walking was very difficult. There was some improvement, but within a few years her condition worsened. By the time of our interview, Louise had to use a wheelchair when she left her house. She was isolated, without prospects, and deeply discouraged about her future.

Louise expresses a hope that she might work again, but she is unable to imagine a job she might perform or a process through which she could seek work:

LD: I'd like to find something that I could do with at least my left hand.

Q: What do you think you might do?

LD: I have no idea.

Q: Have you been consulting with anybody?

LD: No.

Q: With any agency or anybody that could help you?

LD: No.

Louise had done manual labor all her life and had always worked with both hands. She could not imagine working with just one hand, nor could she think of a process by which she might seek work as a person with a disability. She was alone, and there was no one from whom she could seek advice or encouragement. She was aware of a state rehabilitation agency that serves as a resource for

persons with disabilities,³¹ but during her single contact with this agency she was told that she should return when she was ready to go to school or work. Because of her persistent medical problems, Louise felt unable to do either of these things:

Q: Do you think that's something you'd like to do? Go back to school?

LD: I . . .

Q: Or would you rather just get a job?

LD: I have no idea yet.

Q: As you look into the future, over the next few years, what do you see down the line?

LD: I really don't know.

Louise's disability and career trajectory superficially resemble those of Bill Meier in many respects. Both Louise and Bill had begun their adult and professional lives before the onset of disability, although Louise had worked far longer than Bill before the life-changing event. Yet, it is difficult to imagine two life stories more different than Bill's and Louise's. Bill was able to restart his career with the same employer and was able to reconceptualize his identity as a successful young professional soon after his injury. Louise had no contact with her employer at the poultry plant after the day she collapsed on the job. Her employer did not even call to find out why she left work or whether she was returning. She never worked again, nor could she envision a job she might perform. Louise Dobbs remained incapable of imagining a career for herself, whereas Bill Meier successfully redefined himself as an employee. Louise appeared unable to project herself beyond her current situation, and she passively accepted a condition of isolation, inactivity, and unemployment. She did not know about the ADA; she never viewed herself as a person with rights whom the law might help to work again. Nor did her employer or her work environment

³¹ New York State's Office of Vocational and Educational Services for Individuals with Disabilities [hereinafter VESID] was established pursuant to Title I of the Rehabilitation Act of 1973, 29 U.S.C. §§ 701-18 (1994 & Supp. IV 1998). Under New York state law, N.Y. EDUC. LAW §§ 1001-1009 (McKinney 1988 & Supp. 2000), VESID's responsibilities include:

[T]o adopt and promulgate such rules and regulations and take such action as may be necessary to carry out the provisions of this [statute]; to provide vocational rehabilitation services directly or through public or private instrumentalities for handicapped persons . . . ; and to arrange and pay part of the cost of projects leading to the construction of workshops and rehabilitation facilities and the extension and improvement or the establishment of vocational rehabilitation services for handicapped persons, including the furnishing of equipment or the furnishing of funds for the purchase of equipment and supplies, personnel and other necessary and proper expenses in the construction, establishment, improvement, continuation or extension of rehabilitation facilities and workshops operated by public or nonprofit organizations and agencies.

N.Y. EDUC. LAW § 1004(1)-(2), (5).

reflect the indirect influence of the ADA in any way that proved helpful to Louise.

One of the most striking differences between Louise and Bill is that of social class. Louise's inability to move toward employment after the onset of her disability—by returning to school, for example—was not merely a failure of imagination, nor was it a simple limitation in her self-perception that prevented her from seeing viable opportunities that were actually available to her. Bill Meier's education and middle class upbringing gave him numerous career advantages, and many of them remained after his accident and injury. By contrast, Louise Dobbs's education was poor, and her family never encouraged her in this regard. They pushed Louise into taking low-skill and low-wage labor as quickly as possible, even at the expense of her education, so that she could help the family out of its poverty. Her employment history prior to her disability, however, was spotty and unrewarding. Nothing in her history prior to the onset of her disability gave her the confidence to attempt either to return to school or to carve out a job appropriate to her skills. Moreover, manual labor (literally "hand" labor) is exceedingly difficult with only one hand, and in this sense her disability was more disabling in terms of employment than was Bill Meier's or Sara Lane's for the middle-class professional work they did. Louise's perceptions of career possibilities after her disability were informed by her limited education and her lifelong working-class experience prior to her injury. In order to continue working, Louise would have had to transform the nature of her employment relatively late in life. Nothing in her social origins or in her self-perceived identity had prepared her for such a radical transformation, nor did she view herself as legally entitled to do so.

By considering class, family, social isolation, and conceptions of self, we can begin to understand why Louise's response to her disability differed so strikingly from Bill's. Other factors also contributed to the difference. For example, the uncertainty and physical discomfort associated with her medical condition may have made it more difficult for Louise to work than for Bill. Furthermore, given the low wages for which Louise had worked most of her life, it is quite possible that her disability benefits left her just as well off financially as she could expect to be if she succeeded in regaining employment. This was definitely not the case for Bill, whose income level was substantially higher than Louise's.

For Louise, then, there was no significant difference between her current situation and the career trajectory she could envision for herself. The lack of a difference between aspiration and existing circumstances left little room in which concepts of rights might operate in her imagination. Indeed, Louise had no awareness that there are laws that might benefit persons with disabilities who seek employment. Louise was asked if laws existed to assist a prospective employee with a disability who sought accommodations from a reluctant employer. She replied, "I have no idea." She was then asked to imagine herself in a dialogue with an employer in which she described the accommodations that might permit

her to do the work. If the employer refused to provide those accommodations, she stated, "Well then I wouldn't take the job." Perhaps, she added, a counselor from VESID³² might offer some advice. Then, she said, "I would take the job." But if the VESID counselor offered his or her suggestions and the employer said he didn't want to do that, she said, "Then I wouldn't take it." If there was a law, for example, requiring an employer to install a ramp for a wheelchair, would that help? "Probably. I'd be able to get in and out," she replied. But if the employer acknowledged the existence of such a law and still refused to install the ramp, where would that leave her? She answered, "It leaves me without a job."

What is striking in this terse exchange is the absence of an expansive vision of self, work, and law. Lacking many other resources—relational, financial, educational, and intellectual—Louise is equally unable to conceive of law as a resource she might use. Because she cannot imagine a career for herself that connects present and past to some future employment, she cannot imagine a space within which employment rights for persons with disabilities might operate. Because her current situation seems to her a "natural" outgrowth of her prior work and life experiences, she does not perceive an unfairness upon which the law might act to assure her a place in the world of employment. Her perceptions in this regard were apparently shared by her former employer and by her few remaining friends and relatives. For Louise Dobbs, the ADA's employment rights—if there are such things—are entirely irrelevant to her existence.

B. *William Thomas*

William Thomas and Evelyn Gardner are young African-American adults with learning disabilities. In some ways, race affects William and Evelyn similarly as they plan their careers. Both of them experienced the stereotyped perceptions and prejudices of others. Such stereotypes, it has been observed,³³ may alter the experience of an African-American child with a learning disability, because teachers and school administrators conflate the symptoms of a learning disability with the negative images they associate with the adolescent behavior of minorities. To some extent, both William and Evelyn were affected by this interaction of disability and the social disadvantages associated with race. While the experience of an African-American with a disability may be distinctive, it is also complex. William and Evelyn's race played a part in their experiences, yet their experiences were quite different. By exploring these similarities and

³² See N.Y. EDUC. LAW §§ 1001–1009 (McKinney 1988 & Supp. 2000) and *supra* text accompanying note 31.

³³ See generally Theresa Glennon, *Race, Education, and the Construction of a Disabled Class*, 1995 WIS. L. REV. 1237, 1333 (1995) (concerning "the ways in which unconscious and structural racism combine to track African-American students into special education").

differences in detail, we can understand some of the various ways in which race-related factors can influence the impact of the ADA on the shaping of careers.

William Thomas grew up in a poor, urban, African-American neighborhood. William's family environment, his early detachment from school, and what he describes as a dangerous neighborhood resemble the circumstances and experiences of many African-Americans coming of age in America's inner cities. Evelyn Gardner, on the other hand, was born in a small country in Africa. At the age of twelve, Evelyn's working-class but upwardly mobile parents sent her from Africa to a small upstate New York town to complete her high school and college education. As an adolescent she became an immigrant living in a White American community. Race and class played a role in forming both William and Evelyn's perceptions of disability, career, and rights, but their experiences were also shaped by their very different family and community origins.

William Thomas's teachers diagnosed his learning disability at an early age, and he received special education services throughout his school career. The resources mandated by special education law have been helpful to William and kept him in school even when many of his friends and classmates dropped out. But William faced other challenges growing up in a poor family in a tough neighborhood. As William prepares to graduate from high school, he sees the main factors shaping his career aspirations to be his placement in a foster home, his mentoring by a neighborhood locksmith who has employed him, and, above all, his ability to play basketball. William's legal rights and his educational entitlements, although important in some ways, have been secondary to these life-altering social and personal factors.

William is a star basketball player, and his academic average throughout high school has remained adequate to allow him to stay on the team. He was elected student council president in his junior year, and he was recruited by colleges interested in his talent as an athlete. By the time of our interview, William had committed himself to attend a nearby junior college. This important career step was not always a likelihood for William Thomas. Earlier in his life, William experienced difficulties that might have prevented him from attending college and embarking on a successful career. In elementary school, William had difficulty reading and writing because of his learning disability. Resource room³⁴ was available to him as an accommodation for his disability, but he lacked the motivation to do well in school. He often got in trouble and was disciplined. Because his teachers knew he was smart, they promoted him even though he did failing work in several grades. As he entered junior high school, things changed for the worse. School became harder, and teachers were less tolerant.

³⁴ A "resource room program" is defined as "a special education program for a student with a disability registered in either a special class or a regular class who needs specialized supplementary instruction in an individual or small group setting for a portion of the day." N.Y. COMP. CODES R. & REGS. tit. 8, § 200.1 (1985).

William's earliest aspiration was to become a truck driver like his father, but William received little guidance or encouragement at home. His greatest challenge as a young boy was not in school or in preparing himself for the future, but rather the challenge he faced on the street. In the neighborhood in which he grew up, according to his current recollections, William had to fight every day. One day, in order to keep from being picked on, he fought the neighborhood gang leader on the sidewalk in front of his home as forty or fifty other boys watched. Although he has since moved to a foster home in another part of the city, William still has friends in his former neighborhood who hang out on the streets or sell drugs.

Overcoming the pitfalls and hazards of the street life in his community has been a key to William's career. During his critical junior high school years, William, unlike many of his friends, was able to establish goals for himself, stay out of trouble, and become a better student. William associates two factors with his transition from street kid and poor student to star athlete and college-bound high school graduate: basketball and the lessons he learned from the neighborhood locksmith for whom he works. In junior high school, just when classes became extremely difficult for William, he grew taller, developed physically, and discovered he had unusual athletic potential. By ninth grade he was a starting varsity basketball player. In high school, he recalls, he possessed "clout" because he was big and good at basketball. Teachers would give him a break if he was late for school and had a good excuse.

William also matured in other ways. While he knew he had special standing as a basketball star, William was careful not to abuse the privileges that accompanied his status. He attributes his sensible behavior in part to "good guidance" from teachers who liked him, but he particularly mentions the mentoring by the locksmith who has employed him since junior high school and who has taught him the "virtues." William is proud of having learned the "virtues," which include "[h]ow to be a man, how to carry yourself, how to carry adversity." William practiced these virtues as he dealt with customers in the course of performing services as a locksmith. He learned, among other things, how to apply himself, working late on some occasions without expectation of special praise, simply because the job required it.

One might expect that many of the "virtues" of adult identity that William learned from his employer/mentor would have been conveyed by a parent's instruction or example, but William seldom mentions his parents. Nevertheless, "family" provided a third important ingredient in William's escape from the risks of the street. When he reached junior high school, William was removed from his parents' home and placed in a foster family in a racially mixed, but less troubled, neighborhood. When his old friends get involved with selling drugs, William goes home to the family he calls his "grandparents." Referring to his foster parents, he says "my family is strong." This family has provided a steadying

influence. His “grandparents” have represented him in negotiations with his high school for the accommodations he receives for his disability.

Unless asked, William does not mention his learning disability, but it seems to have had a negative effect on his self-esteem, as it did for many of our interviewees who were frustrated by their inability to read or write with facility.³⁵ Through hard work, and with the assistance of a resource room tutor provided by the school, however, William has remained academically eligible for the basketball team. As a result of the legally-mandated services he has received throughout his academic career, William understands that his learning disability can be overcome, and he takes for granted that he will receive accommodations as a college student. Yet his improved academic performance has not influenced his career aspirations, which remain almost unchanged from his earliest thoughts about work. As a young boy, he wanted to be a truck driver. He now aspires to become a locksmith, which he compares to working on motors, or he expects to do similar manual work. Although he has been accepted at a local junior college because of his ability to play basketball, he plans to learn practical mechanical skills. If college is too expensive, William will enter the military. His career goals are sensible and practical, but they are far more modest than those of other interviewees with learning disabilities, such as Dick and Joanna Seaton, who plan to use their college degrees to embark on white collar professional careers. William, unlike Dick and Joanna, does not perceive how legally-mandated accommodations might make such a career possible for him. His thoughts about a career are undoubtedly affected by the social and racial circumstances of his youth.

When asked directly about the role of legal rights, William makes it clear that they have only a limited relevance to his career planning. The success of William’s legally-mandated educational accommodations could have led him to perceive the importance of similar ADA-mandated accommodations in

³⁵ Similarly, Michael West notes that a “barrier identified by a large number of students with disabilities centered on the social isolation, ostracism, or scorn they felt from their instructors and fellow students, either because of their disabilities or because they requested accommodations to which other students were not entitled.” Michael West et al., *Beyond Section 504: Satisfaction and Empowerment of Students with Disabilities in Higher Education*, 59 *EXCEPTIONAL CHILD*. 456, 462 (1993). In her research, Theresa Glennon has encountered this sentiment as well:

While many students benefit from placement in special education, students placed in special education may suffer the negative consequences of being labeled disabled by their teachers, peers, and themselves. . . . Moreover, placement in special education may diminish students’ self-esteem and lead to feelings of humiliation, alienation and failure. As one former student recounted, “[t]he system is telling you that you have a disability and you can’t learn at the same rate as other students.” The special education label so embarrassed him that he ordered his mother not to tell anyone.

Glennon, *supra* note 33, at 1240–41.

employment, but this does not appear to be the case. William thinks it fair for an employer to refuse to hire a prospective employee with a reading disability if the job requires reading, and he does not believe the employer should be obligated to provide accommodations in such circumstances. "If you don't get hired, you don't get hired," William concludes. An employee whose reading skills are inadequate should be treated fairly, but fair treatment does not mean offering reasonable accommodations to enable the employee to work: "You shouldn't discriminate nobody. But if it requires reading and you don't know how to do it, you just can't take the job. It's as simple as that. You just can't take the job. Or shouldn't even apply for the job if you know it's reading." William believes that accommodations should be required only to facilitate a task that the employee can already perform well, rather than a task the employee has difficulty performing. William does not focus on the legal obligations of the employer. Instead, he asserts that it is up to the employee to prove he is qualified without accommodations. William uses his basketball experience to explain how an employee with a learning disability should respond:

[Y]ou would have to keep on just showing him, just keep on showing him. Just like you playing basketball. You can do everything else but you just can't shoot the three pointer . . . you have to keep on shooting it. 'Cause you miss one, take the next shot. Show him that you can shoot. It's the same thing freshman year, I had to show . . . them I could play. . . . And all employers don't look at what you can do. They look at how you listen, how you carry yourself, how you act, how you treat others and stuff like that.

William's own experience with deprivation and prejudice contributes to his emphasis on self-reliance rather than legal entitlement. He has learned how to conduct himself responsibly as an employee, but he has also learned that unfair treatment of persons with disabilities by employers may be something he will have to live with. William believes that his career objectives must be established without reference to the enhanced opportunities that reasonable accommodations might make possible:

Just live with it because there's ignorant people everywhere so you just have to learn how to live with it. And that's one of the downfalls of having a disability. You always going to get put down. Every single day somebody always going to tell you, "Oh, you can't read." Or somebody always going to be trying to put you down and that's why you gotta just say to yourself, "Man that's why you just work hard. . . ." Make the ignorant people look like fools, that's what I think. Make them look like fools.

In contrast to the spirit and purpose of the ADA, William believes that in the employment setting his learning disability is something he must overcome on his own. At most, an employer can be expected to "accommodate" him by employing him and assigning him a job that he can perform without special

arrangements, rather than a job that his learning disability would make it difficult for him to perform.

At no point in the interview does William refer to his race to characterize his upbringing or treatment by others. Yet, we believe that race played a role in shaping William's career trajectory and the role he perceives for rights. His practical but limited career aspirations are, in part, a product of systemic racism in his community and the resulting deprivation of economic resources in his family and in the neighborhood that shaped his identity and his concept of a career. William has had success in overcoming many of the risks posed by family difficulties, a dangerous neighborhood, and early failure in school. William eventually found counselors, teachers, and foster parents who encouraged him to complete high school and to consider obtaining a college education. Indeed, race may have indirectly played a role in guiding William out of danger. William's attraction to basketball may have been partly inspired by the success local and national African-American role models have enjoyed in this sport.

Thus, while it is likely that many of William's experiences and perceptions have been shaped by his race, the role that race has played is complex. Further, many of William's experiences may be associated with the social circumstances of a working-class family or with William's individual qualities and perceptions. For these reasons, we cannot attribute his particular self-image, its relationship to his disability, or his career aspirations solely to race-related factors. Yet, in spite of his unique success relative to many of his peers, William's perception of the role of rights does reflect the social circumstances in which he grew up. William's limited views of his own legal entitlements are closely connected to his limited career aspirations—in comparison, for example, to those of Dick and Joanna Seaton. He cannot imagine a set of reasonable work accommodations for his learning disability. We think this is in part because he may not fully perceive his own abilities and career potential, or the likelihood that accommodations could help him develop and use those abilities. Self-reliance, but not rights-consciousness, has been the hallmark of the earliest stages of William's career. Perhaps college will transform his career path and will open a new space in which the ADA could play a role. For the time being, however, as William stands on the threshold of adulthood, the ADA has exerted little influence on the trajectory of his career.

C. *Evelyn Gardner*

Evelyn Gardner, an African-American college student with a learning disability, grew up far from the impoverished inner-city neighborhood that shaped William Thomas's experience, and race had a very different influence on her perceptions of career and disability rights. Evelyn Gardner's life has bridged two different family experiences, one characterized by close relationships among members of her biological family in Africa, in the small, predominantly Black

country of her birth, and a second experience living among strangers in a predominately White community in the United States. An older brother brought Evelyn to America and left her "like baggage" with a family in a small town in upstate New York without relatives or friends. Evelyn spent a number of lonely and frustrating years in her new surroundings. Her learning disability was not diagnosed until she reached college, seven years after her arrival in the United States.

Evelyn describes herself as a "hands on" person born into an African family that valued formal education and had white collar aspirations for their children. Her father worked at the post office, and he placed great emphasis on his children's upward mobility. Her parents sent her oldest brother to the United States to attend college, and they likewise expected Evelyn to do well as a student. Her father all but forced her to leave home after fifth grade to complete her education in the United States, over her mother's and her own objections. Although virtually abandoned in the United States by her family, Evelyn's adaptation to American culture and American schools has been guided by the sense of educational purpose imparted to her by her father.

Prior to leaving Africa, Evelyn attended a Baptist school, where her undiagnosed learning disability made reading and mathematics difficult. She was held back in the fourth grade. Her poor performance in grade school may be explained by her undetected learning disability, but in Africa, she recalls, she was simply a student who performed poorly. Evelyn observes, one was considered either smart or stupid:

Back home, if you didn't get it you were stupid or you're just held back in school. I failed fourth grade because I didn't get things so, it's just, you know, they hold you back. There isn't a support system like there is here. You know, if you can't read, you have to go to a special reading class to help you strengthen your reading skills. Because everything back home is so competitive . . . you're in a class with thirty other people and you're graded [in comparison to] the next person. If they can do better than you, then they get a higher grade. They're better than you. They're smarter than you.

From her earliest years, Evelyn sensed her unexplained difference, a difference that she initially attributed to a lack of intelligence. Even after diagnosis of her learning disability she expresses doubt that being a good "hands on" person is the same as being smart, and she still thinks she is not as smart as her brothers.

Like William Thomas, Evelyn Gardner was influenced by her family and cultural background, in particular by the value her family placed on education. Unlike William, Evelyn's skin color was not a highly significant factor in her life until she became an immigrant in a small, predominantly White American town. As an immigrant, she became conscious of her cultural as well as her racial difference from other members of the community. She had to get used to "just

everything, the way people talked, the way people looked at you.” Further, in striking contrast to the support she received from her family and community at home, as an immigrant she was considered an outsider: “I was made fun of when I came here. Because you know if you’re different from any American, you’re just weird; you’re inferior and all this other stuff. So I went through it all day in school and at the home I was living in.”

Evelyn’s status as an outsider affected her life in many ways. In school she was the subject of jokes and insults by other students, and she regularly got into fights. If she had been living with her own family, her parents might have intervened to make sure that the school protected Evelyn from the cruelty of other students. But Evelyn was living with strangers. Instead of providing support, the family in whose care Evelyn had been left by her brother treated her poorly.

Although American schools are required to offer diagnosis and an appropriate accommodation for children with learning disabilities, Evelyn’s learning disability was not diagnosed until she reached college. Until that time, her disability was masked by her identity as an immigrant. Like Dick Seaton’s placement in the shop track, Evelyn was placed in English classes for speakers of other languages (ESOL) and was not given accommodations because neither the school nor Evelyn herself suspected that she had a disability. Her slow start and difficulty in reading and math was expected of immigrant children. Even a supportive ESOL teacher to whom Evelyn frequently turned for help did not suspect that Evelyn had a learning disability. Although she had been sent to America because the schools seemed to offer better educational opportunities, she had the same difficulties with school work that she had had in Africa. As she pointed out, however, in America she had no brothers to help her with her homework.

Even though Evelyn struggled in school and did not know that her difficulties were due in part to a learning disability, she displayed remarkable tenacity in completing high school and pursuing admission to college. She had little contact with her family in Africa, but her father wrote a brief letter every month to remind her to pursue her studies. Evelyn jokes that her father simply Xeroxed these letters and mailed one each month, but she was faithful to his goal of finishing school. Evelyn overcame barriers by seeking out adults at her school who could provide the support she needed. Her ESOL teacher became her mentor. When her assigned guidance counselor told Evelyn she was “not college material,” Evelyn found another counselor who was more helpful to her in applying to college. Evelyn’s relationship with her host family remained strained and difficult, but she felt very close to the family of a good friend on the track team. Her friend’s mother was positive and enthusiastic about Evelyn’s ability, and she even helped Evelyn obtain permission to reenter the United States after an emergency visit to see her mother in Africa. Her friend’s mother became Evelyn’s “angel” and “mom.” She told Evelyn she was smart and capable, a very different characterization from the “stupid” self-image she had carried from her childhood,

and this enthusiasm rubbed off on Evelyn. With her “mom’s” support she was able to overcome setbacks and self-doubts in high school. She continued to live with her friend’s family after high school.

Evelyn was motivated to complete high school and enter college, but she did not have a clear idea about the kind of work she might do. Her self-concept as a hands-on person suggested a skilled trade, possibly cosmetology, and she also considered becoming an interior designer. Her options for college were limited because she was not a top student. Her ability as a track star won an invitation to apply for admission to Bucknell University, but she soon realized that neither she nor her family, who were now in the midst of a war in their African country, could afford a private college. Instead, she worked for a year flipping hamburgers and enrolled in a local community college, initially in a tourism and travel program. A professor immediately identified Evelyn’s difficulty in reading and interpreting text or speech and referred her to the special education staff, where Evelyn’s learning disability was quickly diagnosed. Evelyn’s diagnosis had a profound effect on her concept of a career. She discovered that, with accommodations for her disability, she could be a good student and could choose among a number of fields that were appropriate for her abilities. Her undergraduate counselor suggested that human services might be well suited to Evelyn’s “people person” skills. With the advice and support of her “mom” and her special education counselor at college, she decided to pursue a degree in human services, possibly social work. Eventually, she made plans to begin work toward a bachelor’s degree in social work after completing her two year program at the community college.

Evelyn’s expectations for employment were greatly affected by the diagnosis of her learning disability. Although many people had told her prior to diagnosis that she had ability and valuable skills, the diagnosis reduced her own uncertainty and self-doubt. She began to see herself as a person with unique skills, as someone who could earn a professional degree. Gradually, her work experience began to support this identity and career expectation. She was invited to become a summer intern at a halfway house for teenage boys during her two-year program at the community college. She found that she related well to the boys and could understand their problems. She received high praise from the program’s director and was invited to apply for a job when she finished her community college program.

Despite diagnosis and the assurances of her mentors and American “family,” and despite her positive work experience, however, Evelyn harbors doubts about her career and how future employers might respond to her disability. Like William Thomas, she feels reluctant to tell a prospective employer about her disability. She fears that an employer, like society in general, would not understand that she is indeed an able employee despite her disability:

I don't know if your label will follow you. I'm sure it does somehow . . . the label that you have a learning disability or you don't read well or you don't do this well. So it's, if there's somebody else in mind who's got all A's in school and reads 500 words a minute, whatever . . . he or she's going to be more fit for the job that I'm going for . . . I don't personally think so, but that's how society thinks.

She understands such confusion well, partly because she herself was confused about her ability until she was diagnosed. Disclosure of her disability could produce stigma and bias that might jeopardize her career prospects. On the other hand, Evelyn thinks it may be more fair to a prospective employer to tell him or her about her learning disability so that the employer can choose an employee who is right for the job:

[It] depends on if it's going to interfere with my job. . . . I would want them to know why . . . because if they knew, they'd try to find somebody who they think wouldn't have a problem. . . . If I'm not going to be fully qualified to perform the way that I know I'm capable of, then that would, you know, it would kind of be holding me back and holding the employer, the place of employment, back.

In this statement, Evelyn echoes William Thomas's assumption that the burden is on a prospective employee to establish her or his qualifications for a job without reference to the reasonable accommodations the ADA might require the employer to provide.

Evelyn, like William, thinks first in terms of self-reliance rather than legally-mandated reasonable accommodations. If she already had the job, she might not tell an employer about her learning disability, as long as she could find ways to prevent it from interfering with her work. On the other hand, if her disability interfered with her work, then she might tell her employer "so that if they can help you, they will help you." Here, Evelyn, unlike William, perceives a space where rights might become active. She imagines what it would have been like if her high school teachers had known she had a learning disability and had offered her the accommodations that have made college a better experience. Evelyn struggles in drawing the line between what is fair and not fair to ask from an employer. Yet she states emphatically that if her employer were extremely rigid and refused to make any allowance for her disability, whether or not she could do the work unaccommodated, she would invoke her rights under the law: "We, whatever we are, disabled, we have a right to full equal employment just as anybody else." She would litigate this issue to open the way for future employees, although she probably would not work for such an employer even if her claim were successful. Nevertheless, we can see in Evelyn's interview an element that was missing in both William Thomas's and Louise Dobbs's—a sense that the ADA is available to make employment possible for a person with a disability who requires reasonable on-the-job accommodations. Evelyn's consciousness of rights is associated with a more expansive view of the career opportunities she might

pursue. Her career aspirations exceed those of William and Louise by a considerable margin.

As for race, it is a crucial part of Evelyn's life story, but not in the same sense as it is for William Thomas. For Evelyn, race is primarily associated with cultural differences and with her experience as an immigrant rather than with social class or economic deprivation. While she lived in Africa, race did not affect her career expectations in any obvious way. When she immigrated to America, however, race became quite relevant to her life, but the differences that others perceived and responded to were explainable by the obvious differences between her cultural background and the culture into which she migrated. Thus, the perceptions that she was "weird" and different were not attributed to her as an individual who had specific intellectual or social deficits, but to her different nationality and to the fact that she had not yet learned about American culture. Most importantly, being Black and an immigrant did not have as profound an effect on her identity as being labeled "stupid" from childhood. She still remembers, and struggles with, being "stupid," even though her disability has now been diagnosed and explained to her.

Race and social class interact with disability in Evelyn Gardner's life story to produce a consciousness of rights and a career trajectory quite different from William Thomas's and Louise Dobbs's. Unlike them, Evelyn's middle class background and—for the most part—her encouraging family created a set of assumptions about the professional career she might pursue. Although she is a "hands-on" person, she, unlike William and Louise, never considers manual labor as a career option. Social class and family background steer her in a different direction and make the denial of professional opportunity appear to her to be unfair. Unfairness makes the ADA's guarantee of rights seem relevant to her life. The factors of race and social class do not limit the potential impact of the ADA on Evelyn's career as they do for William and Louise.

Evelyn's experience as a middle-class, African-American woman with upwardly mobile and highly ambitious parents has shaped her thinking about a career in a way that opens a space in which rights might become active. Whether she would actually invoke her ADA rights remains uncertain, yet rights have already had an impact on her career simply by affecting the future she imagines for herself and by validating her expectations of fair treatment by prospective employers. For Evelyn Gardner, unlike Louise Dobbs and William Thomas, rights guaranteed by the ADA have already helped to determine the trajectory of the career for which she has begun to prepare.

V. CONCLUSION

Sean O'Brian prefers not to ask for accommodations that benefit him alone, but he believes it fair for an employer to provide modest accommodations that make it possible for him to work and pursue an independent career. Sara Lane has

avoided making rights claims³⁶ throughout her career, although co-workers have sometimes intervened on her behalf, and at least one supervisor unilaterally realized that the ADA requires him to make the workplace accessible. Bill Meier and his new boss, without referring directly to his rights under the ADA, engage in discussions to plan his work routines and his physical surroundings when he returns to work in a wheelchair. Dick Seaton criticizes the cost burdens that the ADA places on employers, although Dick recognizes that his plan to become a counselor when he graduates from college could be placed at risk if he foregoes on-the-job accommodations. Dick's daughter, Joanna, believes future employers should provide her with "some small measure" that will enable her to succeed as a teacher and help children with disabilities to learn. Louise Dobbs, unaware of the ADA and unable to envision a job she might hold after suffering a stroke, finds no place for legal rights in her thoughts about a career. William Thomas believes no one should discriminate against persons with disabilities, but he does not think employers should have to provide accommodations for any employee who could not do the work unassisted. Evelyn Gardner, although fearful about disclosing her learning disability to an employer, thinks the provision of reasonable accommodations is fair because she believes that people with disabilities "have a right to full equal employment just as anybody else."

As we consider the impact of the ADA on the careers of persons with disabilities, we are struck initially by the fact that none of the eight individuals described in this article—and none of the sixty individuals interviewed in our study—invoked his or her rights under the ADA to resolve a conflict with an employer. None brought a formal claim under the ADA, none consulted a lawyer regarding an ADA-related dispute, and none invoked the ADA in the course of discussion or debate with an employer. Our sixty interviewees are not statistically representative of American society as a whole, but their voluntary participation in our study suggests that our sample is, if anything, biased toward persons who are more active, responsive, and alert to opportunities. Other researchers have corroborated our general finding that people are reluctant to invoke disability rights.³⁷

We think that the low level of rights invocation under the ADA is highly significant, but such findings should not lead to the conclusion that the ADA has had little impact on the careers of persons with disabilities. By listening to the life stories of people with learning and physical disabilities, we can discern what surveys cannot reveal—the complex ways in which rights weave in and out of the lives, experiences, and consciousness of the individuals they are intended to benefit. From the life story narratives presented in this article, we can cite at least

³⁶ In this context, "rights claims" refers not only to the formal lodging of a complaint concerning an alleged violation of the ADA, but also to a claim Sara Lane could have made (but did not) during discussions with her employer concerning her right to reasonable accommodations in the workplace.

³⁷ See generally sources cited *supra* notes 12 and 13.

five ways in which ADA rights shape careers even when they are not formally or explicitly invoked:

First, rights can change the self-image of individuals with disabilities, enabling them to envision more ambitious career paths by incorporating in their plans the reasonable accommodations and the non-discriminatory treatment guaranteed by the ADA. Joanna Seaton and Evelyn Gardner, for example, embarked on careers that Dick Seaton never considered several decades earlier, because, unlike Dick, they viewed themselves from an early age as qualified for professional careers. They assumed that rights would help to make their careers possible. The availability of rights can create more positive and confident self-images, encouraging individuals with disabilities to believe themselves capable of pursuing a career and to perceive many obstacles as the product of unfair treatment rather than personal shortcomings.

Second, as individuals with disabilities incorporate rights into their self-image and their career planning, their everyday interactions with friends, co-workers, and supervisors reflect rights-based assumptions. That is, ADA rights become part of the discourse of everyday life and affect the way others perceive individuals with disabilities as employees. Sara Lane, for example, never invoked rights, but it is apparent that the ADA contributed to a shift in the behavior and perceptions of many people in her workplace, partly because of her own discourse with them, and partly because of the broad and diffuse cultural transformations that the ADA helped to promote. These broader cultural shifts derive from many sources, including media reporting of the ADA and the relatively rare and atypical acts of enforcement it has spawned.

Third, as a result of cultural and discursive shifts, as well as the fear of legal enforcement, rights are sometimes implemented unilaterally by third parties rather than through advocacy by the rights-bearers themselves. Sara Lane benefited from the intervention of co-workers and, eventually, from the unilateral action of her boss. Bill Meier's second boss engaged in precisely the sort of employer-employee dialogue about accessibility that the ADA was intended to promote, although neither he nor Bill apparently mentioned the ADA explicitly.

Fourth, ADA rights may be implemented through institutional transformations that are not directed at any particular individual. Sean O'Brian, Joanna Seaton, and Evelyn Gardner, for example, found that their colleges provided reasonable accommodations and educational services to all qualified students. Sara Lane's workplace became more accessible when the editor of the newspaper engaged in a general assessment of his organization's responsibilities under the ADA.

Fifth, the impact of special education laws and practices, apart from the enactment of the ADA, has had a dramatic effect on the rights consciousness of children and adults. Young adults whose education was influenced by the IDEA are particularly inclined to view themselves as rights-bearing individuals under the ADA and to expect the law to require that future employers refrain from

discrimination and provide reasonable accommodations that integrate people with disabilities into the workplace. Individuals who had no experience with the IDEA, such as Louise Dobbs, are more likely to be unaware of their rights under the ADA or to doubt the relevance or fairness of such rights.

The life story narratives of the eight individuals described in this article, and of the sixty individuals interviewed in our study, illustrate the surprising variety of ways in which employment rights guaranteed by the ADA become active. Certainly there are occasions when the purposes of the ADA appear to have been frustrated by the refusal or inability of individuals to assert their rights directly and explicitly. Yet, the true impact of the ADA cannot be appreciated without taking into account the many indirect ways in which its provisions affect the careers of its intended beneficiaries.

The purpose of this article, however, is not simply to demonstrate through the presentation of life story narratives that rights can become active without explicit invocation. We also have suggested a method for reading and interpreting these narratives. We argue, in particular, that a two-step interpretive process demonstrates the crucial interaction between the timing of diagnosis or onset of disability and the resources available to individuals as they attempt to shape their careers. As a result of this analysis, we can identify particular social factors that tend to complicate or interfere with the effectiveness of the ADA's employment provisions. Among the factors discussed in this article are:

(1) Many individuals simply do not recognize that they have a disability as defined by the ADA. Our interviews contrast the experiences of individuals with learning and physical disabilities. Often individuals with learning disabilities are never diagnosed, and obviously such individuals would never have volunteered to participate in our study much less invoke their rights under the ADA. Other individuals, such as Dick Seaton, are diagnosed late in life after their career is well underway. Their self-image and their employment history have already been shaped by an assumption that they lack ability and should not aspire to an ambitious career path. Even after diagnosis and the realization that they may possess legal rights under the ADA, it is difficult for such individuals to re-imagine their careers and to break out of the employment pattern established earlier in their lives. Dick was exceptional in this regard, although his life experience prior to diagnosis made him particularly reluctant to invoke his right to reasonable accommodations.

(2) Individuals who recognize that they have a disability are often reluctant to reveal this fact to their employers or co-workers. In our study, persons with learning disabilities feared that disclosure would bring stigma and discrimination because learning disabilities are poorly understood in American society and are often equated with lack of intelligence or even mental illness, or are disbelieved entirely. Rather than risk stigmatization, some interviewees conceal their disabilities and attempt—often unsuccessfully—to improvise their own

accommodations. Obviously, individuals who do not identify themselves as having a disability will be unable to invoke their rights under the ADA.

(3) Even when employers and co-workers are aware that an employee, or potential employee, has a disability, the individual in question may fear that the invocation of rights under the ADA will prove detrimental. Many of our interviewees express fear that they will be seen as expecting "special" treatment that unfairly favors them over other employees. They worry that rights could be viewed not as leveling the playing field and enabling full participation in the workplace but as preferential treatment that gives an inequitable advantage to persons with disabilities. These individuals fear that the assertion of rights will create a backlash of resentment among co-workers and could cause employers to become concerned about the high cost and disruptive effects of accommodations. Moreover, men and women who assert rights are sometimes viewed as placing themselves in opposition to the very persons and institutions they seek to join.³⁸ All of these negative consequences, real or imagined, cause many of our interviewees to forego the invocation of rights under the ADA.

(4) Individuals who do not know about the ADA or are unfamiliar with the specific protections it provides are unlikely to assert their rights. Few of our interviewees knew much about the ADA, and some were completely unaware of its existence at the time of our interview. Unfamiliarity with the ADA may be associated with lack of education. Schoolchildren who received special education services were more likely to know about the ADA as adults and were more inclined to expect the protection of legal rights in employment that resembled the legal rights they had enjoyed while in school or later in college.

(5) Social class and race interact in very complex ways with ADA rights and with careers. Both of these social factors may, in some cases, produce societal expectations that are inconsistent with high career aspirations. When career aspirations are low, the denial of rights is not perceived as unfair because the victim of discrimination, or the person who receives no on-the-job accommodations, is merely fulfilling very limited expectations. Social circumstances can lead employers, teachers, counselors, and even the individuals with disabilities themselves to assume that the ADA is simply irrelevant to these situations. In such cases, the denial of rights is like the sound of a tree falling in the forest: because no one hears it, everyone assumes it does not exist.

Considering the indirect but significant impact of the ADA on careers of individuals with disabilities, and given the particular social and economic factors that may interfere with the ADA's effectiveness, what conclusions can be drawn

³⁸ Cf. MARTHA MINOW, *MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW* (1990); David M. Engel, *Law, Culture, and Children with Disabilities: Educational Rights and the Construction of Difference*, 1991 DUKE L.J. 166 (1991); and David M. Engel, *Origin Myths: Narratives of Authority, Resistance, Disability, and Law*, 27 LAW & SOC'Y REV. 785 (1993).

about the past and future of the ADA? Perhaps the most obvious conclusion is that scholars and policymakers have a responsibility to discuss and evaluate the ADA in its full social and cultural context, and not exclusively in terms of litigated cases, formal claims, or theoretical abstractions that fail to take account of the actual life experiences of the ADA's intended beneficiaries. Both the supporters and detractors of the ADA have tended to assume that its effects are determined primarily by individuals who lodge formal claims, yet empirical research provides little if any support for this assumption. There is no reason to believe that the ADA's virtues or vices, its effectiveness or ineffectiveness, can be evaluated exclusively by analyzing formal claims or by analyzing how courts or regulatory agencies respond to such claims. Yet discussion of the ADA among scholars and policymakers continues to focus on formal rights claims and to reflect an assumption that they provide the most significant index of the ADA's social impact. Such misperceptions of the ADA could lead to socially undesirable and misguided efforts to expand or limit its provisions.

Further, if we are correct in concluding that the primary influence of the ADA on the careers of persons with disabilities results from the ADA's indirect or symbolic effects, then special consideration should be given to enhancing those effects. Efforts to improve implementation of the ADA should not be confined to facilitating the formal assertion of rights. Efforts should also be made to expand awareness of the ADA in particular sectors of American society, such as schools and colleges, social service providers, medical providers, and churches and community groups. Publicity campaigns directed at the workplace could prove effective for the ADA, as they have for laws and regulations intended to improve workplace safety. Media awareness campaigns might contribute to broader social and cultural shifts in the perception of workers with disabilities.

A triple benefit could be obtained from ADA educational efforts linked to existing special education programs. As we have already observed, schoolchildren who receive services under the IDEA appear better able to understand their rights under the ADA and to incorporate them into their career planning. In addition, schoolchildren who do not participate in special education could also benefit from increased publicity about the ADA. Due to the IDEA, nondisabled schoolchildren nowadays are more accustomed to interacting with peers who have disabilities. Educating an entire generation about the benefits of inclusion and nondiscrimination will promote the ADA's goal of cultural and social change. Because many non-classified children will eventually become adults with disabilities, and many more will interact with such adults in the workplace, the education of all children about the ADA is crucially important. Furthermore, enhanced publicity efforts through existing special education programs could provide significant benefits to parents of children with disabilities. In our study, we encountered a number of parents whose experiences with a child in special education led them to understand that they, too, had a disability and that the rights of their children under the IDEA had a counterpart in

their own rights under the ADA. If every parent of a child in special education received more extensive information and counseling about disabilities—especially those that may be hereditary—and about the rights of persons with disabilities under the ADA, the impact of the ADA on adults and children could be greatly enhanced.

Finally, we urge that more attention be given to the possibility that the ADA's primary impact may derive from its indirect or symbolic effects rather than direct enforcement. Is it inevitable that the ADA's impact on careers should follow this pattern? Would it be desirable to shift the balance from indirect to direct effects? Will the ADA's role as a mechanism for social and cultural transformation ultimately be limited by the relatively few formal claims it has fostered? Are formal claims a necessary element in implementing civil rights? If so, should the proponents of the ADA be concerned about the low frequency of rights claims? Should reform be directed primarily at increasing such claims, at enhancing the indirect impact of the ADA, or at making substantive changes in the ADA or its regulations through legislative reform and appellate advocacy? Our research cannot answer these questions, but listening to the life story narratives of individuals with disabilities can at least underscore their importance.