

# The New Boys:

## *Women with Disabilities and the Legal Profession*

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**ABSTRACT:** This essay fuses the fields of law, feminist theory, and cultural studies to examine the status of women attorneys with disabilities. It is the first study of its kind in the United States. The author conducted an empirical, qualitative, and ethnographic study of thirty-eight women attorneys with disabilities in the United States. Their narratives form the basis for a critical analysis of disability animus and discrimination in the legal profession. The results show an alarming trend toward disabled women attorneys self-accommodating in the workplace, rather than enforcing their employment rights under the Americans with Disabilities Act. Relying on the scholarship of covering, passing, and mitigation conducted in the law and social sciences, the author advances theories about ableism in the legal profession, particularly with regard to disabled women. These theories inform and complement strategies for increasing overall diversity in the profession. She suggests litigation and professional-culture-based measures for improving the status of disabled women attorneys and all attorneys stigmatized by perceived differences.

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## INTRODUCTION

I am an individual first (and also a woman) who happens to be disabled.  
— Sheri<sup>1</sup>

I was born with a rare genetic syndrome affecting my joints and connective tissues and necessitating forty-some odd surgeries on my hips, knees, and feet, but I did not feel *disabled* until law school.<sup>2</sup> My health declined around that time and, rather than walking everywhere, I began to use a scooter—not a mint vintage Vespa, as the cool kids might imagine, but one of those orthopedic scooters commonly advertised during any show involving Bob Barker.<sup>3</sup> Even then, while I seemed more obviously disabled to the outside world, the reflections of other people’s attitudes toward my physical appearance—their quick summaries and sizing up of my abilities and weaknesses—always surprised me.<sup>4</sup> When fellow students at Harvard Law waited patiently some fifty yards ahead of me to push the blue button on the automatic door, I wished they would slam the door in my face as they had done with other students. I wanted the same level of rudeness in order to feel as if I had received the same level of kindness. Equality meant no deviations from the norms of law school behavior.<sup>5</sup>

These daily events, while having a cumulative effect, did not serve as my initiation into the profession as a woman with a disability as much as one professor’s reaction to my disability.<sup>6</sup> Our class was originally slated to be held in a building on campus that did not offer an accessible door and, therefore, left

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1. Response of Sheri, Survey of Disabled Women Attorneys (on file with author). The survey questions appear in Appendix B of this article.
  2. For more information on Larsen Syndrome, a congenital condition affecting one in 100,000 people, see Cedars-Sinai, Larsen Syndrome Research Project, <http://www.cedars-sinai.edu/6015.html> (last visited Feb. 18, 2010).
  3. For the uninitiated, Bob Barker was the host of the television game show “The Price is Right.” Some readers may enjoy an intellectual analysis of the show found in Jonathan B. Berk et al., *The Price is Right, But Are the Bids? An Investigation of Rational Decision Theory*, 86 AM. ECON. REV. 954 (1996) (finding that contestants’ rational behavior was suboptimal and many elements of the show were left to unsophisticated strategies).
  4. For an in-depth discussion of discrimination on the basis of appearances, see, for example, Norman Goodman et al., *Variant Reactions to Disabilities*, 28 AM. SOC. REV. 429 (1963) (examining stigmatized appearances of people with visible disabilities); Note, *Facial Discrimination: Extending Handicap Law to Employment Discrimination on the Basis of Appearance*, 100 HARV. L. REV. 2035 (1987) (drawing parallels between the treatment of people with impairments and individuals with different or unattractive appearances).
  5. See generally Robert Leckey, *Embodied Dignity*, 5 OXFORD U. COMMONWEALTH L.J. 1 (2005) (applying a feminist perspective to highlight the role of infringements on bodily integrity and dignity in discrimination law); Allan H. Macurdy, *Rights Respiration: Disability, Isolation, and a Constitutional Right of Interaction*, 13 TEX. WESLEYAN L. REV. 737 (2007) (emphasizing the role of respectful social interaction in the equal treatment and dignity of people with disabilities); Rory O’Connell, *The Role of Dignity in Equality Law: Lessons from Canada and South Africa*, 6 INT’L J. CONST. L. 267 (2008) (examining the role of dignity in substantive equality law and advocating for an articulation of underlying values in judicial decisions).
  6. I have changed some of the key details of this experience to preserve anonymity and to acknowledge that I saw no malice in these encounters, just misunderstanding.

me to cast aside my scooter in the elements of Cambridge in January. The ADA coordinator moved the class to another building with an automated door, and during the first class, the professor went on for a few minutes about why the class had been relocated. He could not understand what happened because his “class was always in that other room,” and he suggested that the registrar may have made a mistake. I went up to him after class and explained my situation. The next day, he was waiting at the door to the classroom building to hold it open for me. Our paths had not crossed without some serious intervention on his part; he had obviously been waiting a long time to hold the door—minutes, an hour?

I understood (and still understand) the delicacy of dealing with people’s reactions to my disability, and I was not one to punish anyone for what was certainly intended to be a helpful and kind gesture.<sup>7</sup> I thanked him and explained that the door had an automatic button and he did not have to wait for me. For the next few days, he continued to do what he had done on the second day. I even switched doors and times to test my hypothesis that this behavior was for my benefit, and he always managed to get to the door in time. Rather than discussing the class content or law school in general, his remarks always steered toward my “handicap” and “equipment.” As he was an older man and a practitioner, I silently acknowledged that his courtesies might have been from another era.<sup>8</sup>

However, in the classroom, I was also a delicate object to praise and pat on the head.<sup>9</sup> I would get the easy questions, and he would gush publicly about how well I had done. When I decided not to show up at a few class social events, he went out of his way to see what had happened to me, as if I would not speak up if there were an access issue. At the one or two events to which I went, our conversations revolved around “what was wrong with me” (my body, not my attitude, I suppose) and he would ask me to respond to problems with feminism.<sup>10</sup> He made frequent references in his questions during, before, and

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7. In the context of disability rights, kind gestures toward people with disabilities can be based on goodwill, charity, or pity, among a range of emotions and motivations. *See, e.g.*, Spencer E. Cahill & Robin Eggleston, *Reconsidering the Stigma of Physical Disability: Wheelchair Use and Public Kindness*, 36 SOC. Q. 681 (1995) (calling for increased study of the treatment of people with physical disabilities in public spaces).
  8. Volumes about the history of the disability rights movement and disabled people, in general, have only reached shelves in the last twenty or so years. Readers interested in these topics should begin their search with *THE NEW DISABILITY HISTORY: AMERICAN PERSPECTIVES (HISTORY OF DISABILITY)* (Paul Longmore & Lauri Umansky eds., 2001).
  9. Law schools can gain richer understandings of the place of minorities on their campuses by studying these kinds of classroom dynamics. *See, e.g.*, Susan Grover, *Personal Integration and Outsider Status as Factors in Law Student Well-Being*, 47 WASHBURN L.J. 419, 433 (2008) (finding women and students of color feel less articulate and prepared for law school after spending time there than non-minority men).
  10. Women and minorities continue to be put on the spot to speak up for “their” issues in law school classrooms. *See generally* Lani Guinier et al., *Becoming Gentlemen: Women’s Experiences at One Ivy League School*, 143 U. PA. L. REV. 1 (1994); *see also* Soraya Fata & Amy Schumacher, *Current Event, Grutter v. Bollinger*, 123 S. Ct. 2325 (2003), 11 AM. U. J. GENDER SOC. POL’Y & L. 1215, 1224 (2003) (highlighting that minority students could be expected to speak on minority issues because of their backgrounds).

after class to my “situation.” Red-faced with discomfort, I would try to recover—until I could no longer formulate a response to his behavior.

That moment came on the last day of class. As he provided the customary adieus, he deviated from norms of any kind when he began to talk about a “special person” in class who would go far, “serve on the Supreme Court,” and “has helped so many unfortunate handicapped people.”<sup>11</sup> That person was me. And he had kept our class several minutes over to tell them how special I was and how proud they should be of me. Of course, everyone fled when discharged and said nothing to me. If I had not been the target of that speech, I would not have known what to say to a peer either.

I do not blame my peers for leaving me alone or even the professor for highlighting me as a heroine of sorts. I understand the incredible discomfort surrounding disability—people tripping over themselves to say the right thing, parents pulling their staring children back into the grocery line, classmates treating the “asexual” female classmate with a disability as more an object of study than a potential friend or partner.<sup>12</sup> I sound disenchanting, but at that moment, it was resignation to being terribly alone in a way that I had never experienced in other mainstream settings. Granted, the social element was one detail of law school that may not work for many people, but being singled out in the classroom for being different and being treated as less than my peers—in being heralded as more than them—created this divide that had reduced my entire being to two words: disabled and woman.<sup>13</sup>

My professor still had a paper to grade, and I did not have the shield of anonymity.<sup>14</sup> Should I say something to him or just let it go? I thought carefully about my options, and I decided to send him a note and explain that through my

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11. People with disabilities are often portrayed in mainstream media as “special” or heroes. *See, e.g.,* Nancy Henderson Wurst & David Morris, *ABLE: HOW ONE COMPANY’S DISABLED WORKFORCE BECAME THE KEY TO THEIR EXTRAORDINARY SUCCESS* (2005); Keith Landry et al., *ENABLED IN WORDS: THE REAL LIVES, REAL VICTORIES OF PEOPLE WITH DISABILITIES* (2005).
  12. For more information on the sociocultural experiences of people with disabilities, see, for example, JAMES I. CHARLTON, *NOTHING ABOUT US WITHOUT US: DISABILITY OPPRESSION AND EMPOWERMENT* (1998) (placing the international disability rights movement into its context with other civil and human rights movements); LENNARD J. DAVIS, *THE DISABILITY STUDIES READER* (2d ed. 2006) (bringing together interdisciplinary perspectives on disability rights).
  13. Historically, feminism has disregarded or forgotten about disability as a form of identity and minority status. Feminist disability scholars have moved into that space to show the nuanced interplay of being a woman and being disabled. An excellent example of feminism with a disability conscience (or disability studies with a feminist conscience) is Rosemarie Garland Thomson, *Integrating Disability, Transforming Feminist Theory*, 14 *NAT’L WOMEN’S STUD. ASSOC. J.* 1 (2002) (laying the foundation for feminist disability theory).
  14. Even with the shield of anonymity, many women—white and of color—in legal education find themselves falling short of grades assigned to men. *See, e.g.,* Jerry Kang & Mahzarin R. Banaji, *Fair Measures: A Behavioral Realist Revision of “Affirmative Action”*, 94 *CAL. L. REV.* 1063, 1070-73 (2006) (describing roles of stereotypes and bias in education and testing); Ian Weinstein, *Testing Multiple Intelligences: Comparing Evaluation by Simulation and Written Exam*, 8 *CLINICAL L. REV.* 247, 280-84 (2001) (describing how existing pedagogy and testing fails women and minorities).

work with other people with disabilities, I was trying to create a society where the accomplishments of people with disabilities would not be extraordinary on the basis of disability, but would be just as mundane or magnificent as anyone else's.<sup>15</sup> I saw it as an opportunity for education, but I understood the risk. I tried to talk to other professors and administrators about my experience, but after the first couple attempts, I realized that unlike my professor, I was merely a student, just passing through, and did not share his position of power.

I knew and know now, too, that he meant no harm; he was trying to be of assistance and show me that he noticed my hard work and obstacles. Nevertheless, that situation, along with the low-grade daily alienations from the "normal" experience of classmates, made me feel emotionally isolated and intellectually segregated.<sup>16</sup>

Its significance may have been a function of timing. Only months earlier, I had done the on-campus recruiting process for summer jobs. Hiring partners reacted negatively to seeing me totter into the room with a cane and an unsteady (and at that time painful) gait.<sup>17</sup> Unlike my peers, the questions that I received were about Casey Martin, the disabled golfer, and the comfort of my chair—"just fine, thanks." Fifteen minutes were routinely wasted on asking me if I could "keep up with the work" and understood "what it entailed." Yes, I know law firm work takes energy, stamina, intellect, perseverance, and a general

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15. The full integration of people with disabilities will come when they are treated as one of the crowd. See Cass R. Sunstein, *Cost-Benefit Analysis Without Analyzing Costs or Benefits: Reasonable Accommodation, Balancing, and Stigmatic Harms*, 74 U. CHI. L. REV. 1895, 1896 (2007) (mere cost-benefit analysis of reasonable accommodation requests and issues relating to the integration of people with disabilities "can operate as a vessel for unreliable intuitions rather than a way of disciplining them, and it can fail to take account of an important aspect of discrimination, consisting of the daily humiliations of exclusion and stigmatization").
  16. Many students with disabilities end up feeling isolated and segregated. Meaningful work can alleviate some of this sense of alienation. "Work contributes to self-esteem by conferring a sense of mastery over the environment and reaffirming to the worker that he or she is making a contribution to society." Mark C. Weber, *Beyond the Americans with Disabilities Act: A National Employment Policy for People with Disabilities*, 46 BUFF. L. REV. 123, 129 (1998); see also Barbara M. Altman, *Studies of Attitudes toward the Handicapped: The Need for a New Direction*, 3 SOC. PROBLEMS 322, 326-27 (1981).
  17. In the last ten years, legal scholars have started to take note of the experiences of law students with disabilities. See, e.g., Dylan Gallagher, *Wong v. Regents of the University of California: The ADA, Learning Disabled Students, and the Spirit of Icarus*, 16 GEO. MASON U. CIV. RTS. L.J. 153, 154 (2005) (arguing that academic success should not preclude ADA coverage for students with disabilities); Adam J. Shapiro, *Defining the Rights of Law Students with Mental Disabilities*, 58 U. MIAMI L. REV. 923, 940 (2004) (traditional teaching methods of law schools may not provide mentally disabled students with a "chance to compete"); Scott Weiss, *Contemplating Greatness: Learning Disabilities and the Practice of Law*, 6 SCHOLAR 219, 259-60 (2004) (emphasizing the important role of state Bars and mentoring programs in the development of law students and attorneys with learning disabilities); see also Roundtable Discussion, *Lawyers with Disabilities: Ready, Willing, and Able*, 39 AZ ATT'Y 10, 12 (2002) ("Because the ADA is so individualistic, you still have to be careful and look for an environment that is not only accepting of the person with a disability but welcomes him or her.").

ability to put up with a caste system.<sup>18</sup> When I smiled and reassured them that I was capable, they nodded and suggested that I go into disability law.<sup>19</sup> In their minds, that was a helpful suggestion. They had steered me toward a station where I was likely to be hired and, in doing so, they had avoided the awkwardness of calling me for a second interview. At the time, I wanted a firm job. Why else would I be interviewing? And the more I thought about these “helpful suggestions,” the more I realized how offensive they were. In a time when no sensible hiring partner would tell a woman to go practice gender discrimination law or family law, or a black candidate to do civil rights law, why was I being told to be a disability lawyer?

These questions and experiences remained with me throughout law school, and in my third year, I decided to form an online network of lawyers and law students with disabilities. Career Services and other staff on campus had few suggestions for how I could approach the recruitment process as a candidate with a disability. The alumni office refused to acknowledge the utility of tracking graduates with disabilities, even though they did so for other criteria, such as undergraduate institution, school activities, sexual orientation, race and ethnicity, and hometown. I needed some support, and I decided to harness what I found missing at law school on the Internet.

The Disabled Lawyering Network was a success for several years. Online mentoring relationships grew. I made contact with many lawyers who had never met another person with a disability, let alone someone in the profession. These relationships, while largely rooted in the virtual world and based on personal outreach, did have transformative effects.<sup>20</sup> Lawyers and law students shared information about workplaces, career paths, and personal hurdles.

Over time, I began to see that women with disabilities were having more

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18. Scholars, students, and practitioners have criticized that caste system. See Gillian K. Hadfield, *Barriers to Innovation: The Growing Economic Cost of Professional Control Over Corporate Legal Markets*, 60 STAN. L. REV. 1689 (2008); Symposium, *A Hard Day's Night: Hierarchy, History, and Happiness in Legal Education*, 58 SYR. L. REV. 261 (2008).
  19. Disabled lawyers tend to work for the government rather than be in private law practice. AM. BAR ASS'N, THE NATIONAL CONFERENCE ON THE EMPLOYMENT OF LAWYERS WITH DISABILITIES (2005), [http://www.abanet.org/disability/docs/conf\\_report\\_final.pdf](http://www.abanet.org/disability/docs/conf_report_final.pdf). These findings resonate with research on minorities and women (and minority women) in law practice. See, e.g., Angela Onwuachi-Willig & Mario L. Barnes, *By Any Other Name?: On Being “Regarded As” Black, and Why Title VII Should Apply Even if Lakisha and Jamal Are White*, 2005 WIS. L. REV. 1283, 1315 (2005) (Minorities are steered toward social policy jobs.); Vicki Schultz, *Telling Stories about Women and Work: Judicial Interpretations of Sex Segregation in the Workplace in Title VII Cases Raising Lack of Interest Arguments*, 103 HARV. L. REV. 1749, 1825 (1990) (Women are also steered into public interest jobs.).
  20. The ABA has started online mentoring programs for law students with disabilities and law schools are becoming more cognizant of these efforts. ABA Subcommittee on Lawyers with Disabilities Mentor Program, <http://www.abanet.org/disability/subcommittee/mentor.shtml> (last visited Aug. 1, 2008); see also Conference, *Assisting Law Students with Disabilities in the 21<sup>st</sup> Century: Brass Tacks: Panel 4: Career & Professional Development*, 15 AM. U. J. GENDER SOC. POL'Y & L. 881, 884-888 (2007) (Mentoring can be particularly beneficial for students with learning disabilities that feel like outsiders and are being steered toward government jobs.).

difficult times establishing themselves in the field, and they were largely outnumbered by men with disabilities.<sup>21</sup> As I informally tracked where people were working, I also noticed that most attorneys with disabilities were working in disability rights and in legal aid settings, but not in firms regarded as highly selective.<sup>22</sup> Had well-intentioned firms steered them in that direction and away from their doors, or had the experience of discrimination based on disability left them committed to the disability rights fight? Unfortunately, not much information existed to clarify these anecdotal observations and collecting that data would have to be delayed to another day.

Those experiences in law school and in the early years of my career grew into this current project—a qualitative, ethnographic study of thirty-eight women lawyers with disabilities. I have drawn from the fields of cultural studies, anthropology, feminist theory, and the sociology of work to gather data about their experiences in law school, work, and their communities. From the volumes of information gathered, I have chosen to focus on one aspect of these women's experiences: self-accommodating their impairments in the workplace rather than pressing for reasonable accommodation under the Americans with Disabilities Act of 1990 (ADA).<sup>23</sup> Title I of the ADA provides protection to people with disabilities to be free from discrimination in their workplaces. Under the ADA and the 2008 Amendments to the Americans with Disabilities Act (ADAAA), a person with a disability is an individual who:

- Has a physical or mental impairment that substantially limits one or more major life activities,
- Has a record of such an impairment, or
- Is regarded as having such an impairment.<sup>24</sup>

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21. No official statistical analysis has been done to estimate the number of women with disabilities in the legal profession. NALP's numbers are so low that any extrapolation is merely a guess. See *NALP Form Reporting of Disabled and Openly Gay Attorneys*, NALP BULL., Jan. 2003, <http://www.nalp.org/2003jannalpformreporting>. If the American Community Survey estimates that about six percent of all attorneys have disabilities and if about thirty to thirty-three percent of those attorneys are women, then the figure would be somewhere around two percent of all attorneys or one in fifty. See AMERICAN COMMUNITY SURVEY (on file with author).

22. According to the NALP Survey, only ten percent of all firms reported having one or more disabled lawyer; no significant change in employment figures was reported between the 2003 and 2007 surveys. See *Although Most Firms Collect GLBT Lawyer Information, Overall Numbers Remain Low*, NALP BULL., Dec. 2007, <http://www.nalp.org/2007decglbtlawyerinformation> [hereinafter *NALP Disabled Statistics*]; *NALP Form Reporting of Disabled and Openly Gay Attorneys*, *supra* note 21. For information on where women work in the law in general, see ABA, *A CURRENT GLANCE AT WOMEN IN THE LAW* (2007), available at <http://www.abanet.org/women/CurrentGlanceStatistics2007.pdf>, and the 2008 Census figures on minority and women lawyers, BUREAU OF LABOR STATISTICS, *CURRENT POPULATION SURVEY* (2008), available at <http://www.bls.gov/cps/cpsaat11.pdf>.

23. See Americans with Disabilities Act (ADA), 42 U.S.C. §§12101-12213 (2006), amended by ADA Amendments Act of 2008 (ADAAA), Pub. L. No. 110-325, 122 Stat. 3553.

24. 42 U.S.C. § 12102; Pub. L. No. 110-325, § 4, 122 Stat. 3553, 3555-56.

To be a qualified employee or applicant with a disability, that individual must be able to perform the essential functions of a job with or without reasonable accommodation.<sup>25</sup> This civil rights mandate moves toward accomplishing its goal of fair workplaces by requiring employers to make these accommodations, including:

- Making existing facilities used by employees readily accessible to and usable by persons with disabilities.
- Job restructuring, modifying work schedules, reassignment to a vacant position.
- Acquiring or modifying equipment or devices; adjusting or modifying examinations, training materials, or policies; and providing qualified readers or interpreters.<sup>26</sup>

Many disabled women attorneys in this study chose to forego using the ADA's reasonable accommodation process. Self-accommodation occurs when women with disabilities opt or are pressured to provide their own reasonable accommodations rather than rely on their employers to arrange them. Although equipped with the acumen to assert their ADA rights, the women attorneys in this study show a clear trend of adapting to the workplace, rather than expecting or waiting for it to conform to their needs. In cases where they have not been able to adapt or have found uncooperative employers, many of them have chosen to become entrepreneurs. They may do so because of a desire to control the reasonable accommodations or to avoid drawing attention to themselves. "Covering" among disabled women is akin to the experiences of racial minorities and gay and lesbian attorneys passing or downplaying their differences.<sup>27</sup> I explore these issues in the context of gender, disability, race, and the legal profession, highlighting each identity and the demands and influences of sexism and ableism (prejudices, biases, animus, and stereotypes based on categorical simplifications of disability).<sup>28</sup>

In the final sections of the essay, I offer approaches to tackling discrimination against disabled women attorneys by discussing steps that can be taken on the institutional and legal levels, including litigation, mentoring, networking, and coalition-building. These posed actions are grounded in the

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25. 29 C.F.R. § 1630.2(m) (2006) (regulations to implement equal employment provisions of the ADA).

26. *Id.* at § 1630.2(0)(2)(i-ii).

27. See Kenji Yoshino, *Covering*, 111 YALE L.J. 769 (2002); discussion *infra* Part III.B.

28. Understanding the phenomenon of ableism is critical to combating the marginalization of disabled people. Ableism can be understood as a form of discrimination similar to racism, sexism, or ageism, yet based on impairments and perceived disabilities. See IRIS MARION YOUNG, *JUSTICE AND THE POLITICS OF DIFFERENCE* (1990); G. Chezia Carraway, *Violence Against Women of Color*, 43 STAN. L. REV. 1301, 1308 (1991); Sherene Razack, *From Consent to Responsibility, from Pity to Respect: Subtexts in Cases of Sexual Violence Involving Girls and Women with Developmental Disabilities*, 19 LAW & SOC. INQUIRY 891, 899, 903 (1994).



women's narratives.<sup>29</sup> A national, funded study of women with disabilities in law is in order, but this first effort provides a foundation for identifying and addressing discrimination in the legal profession as experienced by these women and minorities in general.<sup>30</sup>

## I. STRUCTURE OF THE STUDY

### A. How the Research Began

It's hard enough aiming for credibility in a male-dominated profession; the last thing I want to do is draw attention to my shortcomings and appear old and disabled with hearing issues. — Mary<sup>31</sup>

From my life story and upon noticing the dearth of information on the experiences of lawyers with disabilities, I decided to conduct independent, original research on the experiences of disabled attorneys in top law firms. In spring 2007, I elected to send a confidential survey of hiring and employment practices to the Vault Top 100 Law Firms (2007) in the United States.<sup>32</sup> I created a brief, mainly quantitative survey with a mix of closed answer choices and write-in portions and posted it to a private area on SurveyMonkey.com, a free online tool for survey research.<sup>33</sup> Using NALP information and updates from the firm websites, I contacted the known directors of human resources and hiring partners and asked them to participate in the survey anonymously.<sup>34</sup> Out of one hundred firms, only eleven responded to my inquiry. Five completed parts of the survey, while six firms refused to participate, citing such factors as the issues

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29. *But see* RENATO ROSALDO, CULTURE & TRUTH: THE REMAKING OF SOCIAL ANALYSIS 169 (1993) (describing the “myth of detachment” in ethnography and arguing that “if distance has certain arguable advantages, so too does closeness . . . . Yet classic social science has endowed the former with excessive virtue, and the latter with excessive vice.”).
  30. While I encourage NALP, the ABA, and other entities to do such a study, the current sample size is fine, as other ethnographies and qualitative studies have successfully included far fewer participants. *See* Susan Peters & Robert Chimedza, *Conscientization and the Cultural Politics of Education: A Radical Minority Perspective*, 44 COMPAR. EDUC. REV. 245, 248 (2000) (linking effective qualitative research to reflection on and review of data collected); *see also, e.g.*, RUTH BEHAR, THE VULNERABLE OBSERVER: ANTHROPOLOGY THAT BREAKS YOUR HEART (1997) (blurring the line between observer and subject and basing ethnographic research on personal experience); MARY GRIMLEY MASON, WORKING AGAINST ODDS: STORIES OF DISABLED WOMEN'S WORK LIVES (2004) (including eighteen women with disabilities). *But see* Anne M. Coughlin, *Regulating the Self: Autobiographical Performances in Outsider Scholarship*, 81 VA. L. REV. 1229, 1231 (2005) (warning that narratives in the law may be self-serving, resulting in financial or career gains).
  31. Response of Mary, Survey of Disabled Women Attorneys (on file with author).
  32. VAULT, INC., VAULT GUIDE TO THE TOP 100 LAW FIRMS (2007 ed.).
  33. I have attached a copy of the survey in the appendix to this article. Law firms are beginning to use SurveyMonkey to collect client data and feedback. *See* Catherine Sanders Reach, *Using Technology to Achieve Superlative Client Communications*, 34 ABA L. PRAC. 40, 42 (2008) (advocating the use of SurveyMonkey and Zoomerang to evaluate whether clients' needs were met); Lee S. Rosen, *Survey Your Clients Online*, 25 FAM. ADVOC. 4 (2003) (calling tools such as SurveyMonkey “prompt” and “cost-effective”).
  34. NALP, DIRECTORY OF LEGAL EMPLOYERS, <http://www.nalpdirectory.com> (last visited Feb. 20, 2010).

being “under review” or having “no firm policy.” Both responses could be viewed as answers in themselves about the importance and urgency of considering the position of disabled attorneys in law firm settings and, moreover, the profession. Interwoven with these questions about the recruitment and retention of professionals with disabilities at all levels and functions in the firm were more general questions about diversity initiatives for racial minorities and women.<sup>35</sup>

### B. Revised Goals of the Study

Refusing to be stymied by this initial attempt to examine top firms’ approaches to disability in the workplace, I decided to go to the consumers themselves—attorneys with disabilities. They did not have to practice in a particular area, but merely had to hold a J.D. and be employed or searching for a law-related job, such as in teaching, corporate law, litigation, public interest law, or practice in a nonprofit setting. Recent law school graduates were eligible to participate, even if they were still in the process of taking the Bar. With that particular group, the employment questions would have different results than with more established attorneys, but I was interested in capturing the range of experiences.<sup>36</sup> One woman from the United Kingdom participated, finding the survey through word-of-mouth, but my goal was to focus on the experiences of American women.<sup>37</sup>

While the ABA maintains a committee on physical and mental disability law, no one group provides a comprehensive membership and organizational structure for networking attorneys with disabilities.<sup>38</sup> As such, I had to turn to listservs, word-of-mouth, and general disability organizations. I was less concerned with controlling the reach of my survey than actually reaching thirty to forty women attorneys with disabilities. I contacted the following organizations: the Society for Disability Studies, the American Association of People with Disabilities, the Disability Studies and Humanities listserv, the Department of Justice Disability Rights Section, and the original Disabled Lawyering Alliance listserv. I also contacted colleagues in government, the nonprofit sector, firms (of all sizes), solo practice, legal aid, education, consulting, disability-specific organizations (e.g., blindness, deafness, learning

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35. See NALP BULLETIN, A CLOSER LOOK AT WOMEN AND MINORITIES IN LAW FIRMS – BY RACE AND ETHNICITY (2008), <http://www.nalp.org/2008febcbloserlook> (finding 5.40% of partners and 18.97% of associates were minorities, but just 1.67% of partners and 10.07% of associates were minority women; results differed by specialty and geographic area).

36. For an analysis of employment trends among recent law graduates, see NALP, AFTER THE JD STUDY MONOGRAPHS, <http://www.nalp.org/afterjdmonographs>.

37. A cross-cultural study of lawyers with disabilities and their treatment by law schools, the ABA, and clients is in order. After exhaustive searching, I could not find one.

38. The ABA has started to host conferences focused on the employment of lawyers with disabilities, and it has greatly expanded its outreach to this group. However, there is no stand-alone organization for lawyers with disabilities, and many of them may not be aware of the disabled lawyer subcommittee under the physical and mental disability law commission.

disabilities, autism), and business. In total, I reached approximately fifty contacts through my initial email, and I had no control over where the request went from there. Because my study focused on the experiences of the women and their narratives, the scientific or empirical aspect of outreach was not as important as it would have been in a quantitative project.<sup>39</sup>

In order to accommodate the attorneys' preferred and most disability-accessible ways of responding to the request, I offered participants the opportunity to respond by completing a written open-ended survey or participating in a phone interview.<sup>40</sup> Most of the thirty-eight women participated by completing the written survey. I conducted some follow-up with the participants when their answers were confusing, ambiguous, or incomplete. For phone participants, the average time of an interview was ninety minutes. I then asked a faculty support assistant to transcribe the interview so that I could add it to my collection of surveys. I treated the phone interview as a real-time survey, asking the same questions posed to participants deciding to take it in that format.<sup>41</sup> I deviated from the established prompts when I had already received information out-of-turn or I needed clarification. I wanted to be responsive to the interaction's potential for new information and even better questions, but I did not want to deviate so far from the original guide as to miss information that I had collected from other women.

Overall, I interviewed and surveyed thirty-eight women during the spring and summer of 2007. Similar to my experiences with the Disabled Lawyering Alliance, many of these women had never spoken to another attorney with a disability.<sup>42</sup> They were largely excited to know what the results of the survey

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39. The field of cultural studies has challenged the notion that research must be quantifiable, detached, and epidemiological in nature. As Renato Rosaldo writes in *CULTURE & TRUTH*:

Such terms as *objectivity, neutrality, and impartiality* refer to subject positions once endowed with great institutional authority, but they are arguably neither more nor less valid than those of more engaged, yet equally perceptive, knowledgeable social actors. Social analysis must now grapple with the realization that its objects of analysis are also analyzing subjects who critically interrogate ethnographers—their writings, their ethics, and their politics.

ROSALDO, *supra* note 29, at 21.

40. See generally Anne-Marie Ambert et al., *Understanding and Evaluating Qualitative Research*, 57 J. MARRIAGE & FAM. 879 (1995) (encouraging more qualitative research, particularly in understanding complex interpersonal dynamics); Alan Peshkin, *Understanding Complexity: A Gift of Qualitative Inquiry*, 19 ANTHROPOLOGY & EDUC. Q. 416 (arguing that qualitative research is superior to quantitative approaches because it leaves room for flexible findings and new lines of inquiry).

41. I deviated from the survey questions when they had already been answered or did not fit with the flow of conversation. The interviews yielded tremendous depth of results, but they were also difficult to navigate. As the researcher and a woman attorney with a disability, I did not want to lead my participants. For more on the difficulties (and opportunities) encountered in the interview process, see, for example, Karen E. Rosenblum, *The In-Depth Interview: Between Science and Sociability*, 2 SOC. F. 388, 388 (1987) (“Conducted in the name of social science, the interview is both a distinctive social setting and an activity accomplished through an amalgam of linguistic strategies.”).

42. For examples of the kinds of isolation, segregation, and stigma people with disabilities face, see Nora E. Groce, *HIV/AIDS and Individuals with Disability*, 8 HEALTH & HUM. RTS. 215,

were and to find ways of connecting with one another in the future. More than one woman joked that she was surprised by my stated goal of reaching forty or more female attorneys with disabilities. As one woman put it, “Are you sure there are that many of us out there?” and then she paused and was able to count several women she had heard about but had never met.<sup>43</sup>

Having no existing available data and scholarship about disabled women attorneys upon which I could rely, I decided to make this first pass fairly general, asking a series of questions that documented personal background, experiences in law school, efforts at finding employment, status and success in the workplace, and acceptance in their professional and personal communities.<sup>44</sup> Protected by a promise of anonymity, the women were willing to speak or write candidly about their experiences. Several participants expressed concern that their experiences were so unique that even just a few identifying details could leave them facing repercussions in employment, the Bar, and at their alma maters.<sup>45</sup> The power of sharing their stories had resounding appeal, though, and many of them elected to share details that could lead to identification. The opportunity to provide a forum for the women simply to be heard and understood was both my motivation for beginning the project and their impetuses to contribute to it. I weave the women’s stories throughout the article to connect readers to a personal experience of disability and share multiple perspectives while suggesting policy goals.<sup>46</sup> Many of these women were silenced by their

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215 (2005) (considering the stigmatized status of people with HIV/AIDS and concluding that “the greatest problems facing individuals with disability are social inequality, poverty, and lack of human rights protection—not simply lack of access to medical care”), and Harlan D. Hahn & Todd L. Belt, *Disability Identity and Attitudes Toward Cure in a Sample of Disabled Activists*, 45 J. HEALTH & SOC. BEHAV. 453, 453 (2004) (finding that disabled activists would not choose to have their disabilities cured or removed).

43. See *NALP Disabled Statistics*, *supra* note 22.

Of the approximately 124,000 lawyers for whom disability information was reported in the 2007-2008 *NALP Directory of Legal Employers (NDLE)*, just 211, or 0.17% were identified as disabled . . . About 7% of offices chose to report “not collected” or “unknown” for disabled counts. Among the offices collecting the information, about 10% reported at least one disabled lawyer, but only a handful reported at least one disabled summer associate. In fact, out of more than 11,000 summer associates, only eight were reported as disabled.

If NALP’s statistics are accurate, I have reached almost twenty percent of the overall attorneys they reached just through my qualitative study.

44. This effort was similar to projects such as NALP’s *AFTER THE JD STUDY MONOGRAPHS*, *supra* note 36, and Lani Guinier’s study of women in the law, *supra* note 10.

45. As I have explored elsewhere, when people with disabilities resist existing institutions and attitudes, they can cause discomfort because of the normative shift. See Carrie Griffin Basas, *Back Rooms, Board Rooms—Reasonable Accommodation and Resistance Under the ADA*, 29 BERKELEY J. EMP. & LAB. L. 59, 107-08 (2008).

46. Lifting the cloak of invisibility is key to the political and personal successes of people with disabilities. Visibility should begin to erode their institutionalized and cultural segregation. See generally Samuel R. Bagenstos, *Subordination, Stigma, and “Disability”*, 86 VA. L. REV. 397, 401 (2000) (“‘Disability’ is a condition in which people—because of present, past, or perceived ‘impairments’—are viewed as somehow outside of the ‘norm’ for which society’s institutions are designed and therefore are likely to have systematically less opportunity to participate in important areas of public and private life.”).

law schools and employers for far too many years:

I was discouraged from disclosing my disability the second I walked through the door at Humphrey [“elite” law school’s name excised by author] and for good reason. — Dria (recent law school graduate)<sup>47</sup>

This project was grounded in qualitative empirical methods for several reasons. First, I was concerned with capturing an ethnography of sorts of women lawyers with disabilities.<sup>48</sup> I also wanted to ensure that their stories were the prominent vehicle of communicating the findings. Rather than taking the chance that nuanced experiences would get lost in spreadsheets of numbers or my summary of their statements, I constructed the survey with the intention of prompting their narratives to take a dominant position. The goal was not to generate statistics for government reports nor bar journals,<sup>49</sup> but to use the vehicle of narrative to capture the barriers experienced and the successes earned by these women.<sup>50</sup> My larger project is in tracing connections between this minority experience and others, as well as generating hypotheses about discrimination and alienation in the legal profession, but the women’s stories guide this article and inform any future activism and advocacy in this area.

Qualitative projects are not without their shortcomings.<sup>51</sup> While I vetted my survey with a focus group consisting of an anthropology professor, a psychology professor,<sup>52</sup> a disability rights attorney, and several women with disabilities in law, I could not have presented all of the questions that would have significance for this group. Phrasing of questions can lead to certain answers from respondents as well.<sup>53</sup> And, finally, qualitative surveys, especially

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47. Response of Dria, Survey of Disabled Women Attorneys (on file with author).

48. Ethnography, qualitative methods, and narrative all contribute greatly to legal inquiry. Perhaps one of the most powerful influences of narrative is its ability to foster empathy for victims. While I hesitate to characterize disabled women attorneys as victims of any kind, they do share the experience of discrimination and marginalization. See, e.g., Susan Bandes, *Empathy, Narrative, and Victim Impact Statements*, 63 U. CHI. L. REV. 361, 365 (1996) (charting the influence of emotion and narrative on legal scholarship and emphasizing the importance of outsider narratives); Patrick Ewick & Susan S. Silbey, *Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative*, 29 LAW & SOC’Y REV. 197, 197-98 (1995) (explaining the relative absence of narrative in legal scholarship as a “self-conscious” move).

49. Though this information must find its way into those vehicles of dissemination as well, and many State Bars are in prime positions to conduct this kind of research.

50. See Elinor Ochs & Lisa Capps, *Narrating the Self*, 25 ANN. REV. ANTHROPOLOGY 19, 21 (1996) (“At any point in time, our sense of entities, including ourselves, is an outcome of our subjective involvement in the world. Narrative mediates this involvement. . . . Narratives are versions of reality. They are embodiments of one or more points of view rather than objective, omniscient accounts.” (citation omitted)).

51. *But see* ROSALDO, *supra* note 29, at 147 (noting the subversive characteristics of narratives and qualitative research).

52. I would like to thank Professors Jeanne Marecek and Steven Piker of Swarthmore College. All shortcomings of the survey remain my own, but I benefited tremendously from their feedback and critique.

53. *Cf.* Robert Bogdan, *Participant Observation*, 50 PEABODY J. EDUC. 302, 307 (1973)

when conducted as interviews for preference or disability accommodation reasons, can take a lot of time to complete and process, deterring both participants and researchers from undertaking them.<sup>54</sup>

Once I had the surveys and transcripts assembled and cleansed of identifying names and contact information, I read them several times as a whole and began to make notes on them, coding information as I found it.<sup>55</sup> This kind of analysis was greatly aided by having the surveys in electronic form and using “find” features of commonly available software.<sup>56</sup> I then shared the data with two research assistants (one man and one woman with a disability) to read independently and identify patterns and trends. One research assistant took the overall demographic data, quantifying it and collecting it in a spreadsheet so that we could examine the larger profile of the group and see if our coverage matched our desires to reach women of different disabilities, races, sexual orientations, and careers.<sup>57</sup> While one woman’s experience cannot stand in for an entire group, together, the surveys provided a clearer picture of some of the issues faced by women with disabilities in law, as well as their responses to these challenges.<sup>58</sup> In doing so, they have revealed a rich picture of discrimination, isolation, and also resolve even in the face of discrimination by established lawyers, supervisors, and professors with derisive visions of the Americans with Disabilities Act:

I will never forget my employment professor saying about the ADA to the class: “Can you believe it? They even give a break for people who have a fake

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(advising that asking leading questions can be an investigative technique as well, whereby the interviewer or participant observer tests her hypotheses).

54. E.g., Lillia Cortina et al., *What’s Gender Got to Do With It? Incivility in the Federal Courts*, 27 LAW & SOC. INQUIRY 235, 243 n.3 (2002) (positing that one explanation of why attorneys did not respond at the same rates to qualitative questions in a mixed qualitative-quantitative survey was the length of time required to complete them).
55. See generally HOWARD S. BECKER, TRICKS OF THE TRADE: HOW TO THINK ABOUT YOUR RESEARCH WHILE YOU’RE DOING IT (1998) (suggesting approaches to working with qualitative data, such as coding and sampling).
56. Thanks to Professor Wende Marshall of the University of Virginia’s anthropology and public health programs for suggesting using software as readily available as Microsoft Office to search for themes and patterns in the results. More sophisticated and costly programs exist, but for my purposes, Word and Excel were sufficient.
57. For other examples of studies successfully quantifying qualitative data, see Michelene T. H. Chi, *Quantifying Qualitative Analyses of Verbal Data: A Practical Guide*, 6 J. LEARNING SCI. 271 (1997) (outlining an eight-step approach) and Susmita Dasgupta & Kajal Lahiri, *A Comparative Study of Alternative Methods of Quantifying Qualitative Survey Responses Using NAPM Data*, 10 J. BUS. & ECON. STATISTICS 391 (1992) (converting qualitative data into figures in a business context).
58. Feminist research with a disability rights approach has incorporated qualitative data with policy and advocacy proposals. Compare Jenny Morris, *Creating a Space for Absent Voices: Disabled Women’s Experiences of Receiving Assistance with Daily Living Activities*, 51 FEMINIST REV. 68 (1995) (refusing to allow a feminist analysis to divorce the daily life implications of the issue from a theoretical understanding) with Tim Hall et al., *Fieldwork and Disabled Students: Discourses of Exclusion and Inclusion*, 27 TRANSACTIONS INST. BRIT. GEOGRAPHERS 213 (2002) (emphasizing the importance of including students with disabilities in fieldwork and making them the sources of research and knowledge).

disability.” — Ruth (now an advocate for people with disabilities)<sup>59</sup>

### C. Importance of the Confluence of Gender<sup>60</sup> and Disability

My focus on mental health issues and working with mentally ill clients has been characterized by others as “too touchy feely,” which feels like a gendered critique as well. Sharing details of my disability feels like I’m putting myself in a “hysterical woman” role sometimes—or perceived by others that way. That makes me feel doubly marginalized. — Carrie<sup>61</sup>

One of the recurring questions about this project has been why I chose to study *women* attorneys with disabilities in the United States.<sup>62</sup> I began with American attorneys with disabilities because they were readily accessible to me and yet they had not been studied in any great detail.<sup>63</sup> Beyond personal experiences with discrimination, the rest of the answer poses two questions of its own: Why study women and not men too? And why study lawyers and not other legal professionals?

First to the gender question—while both men and women with disabilities experience disability-based oppression and stigma, lowered rates of employment, and social isolation in their communities, women with disabilities seem to be more likely to be unemployed, paid less, live below or at the poverty line, and lack social support.<sup>64</sup> For far too long, researchers have focused on the disability

59. Response of Ruth, Survey of Disabled Women Attorneys (on file with author).

60. I define gender in accordance with the World Health Organization: “Gender refers to the socially constructed roles, behaviour, activities and attributes that a particular society considers appropriate for men and women. The distinct roles and behaviour may give rise to gender inequalities, i.e. differences between men and women that systematically favour one group.” World Health Organization, Gender, <http://www.who.int/topics/gender/en/> (last visited Feb. 19, 2010).

61. Response of Carrie, Survey of Disabled Women Attorneys (on file with author). I did not participate in this survey. Carrie is another attorney who chose that name as her pseudonym.

62. After an exhaustive literature search, I could not find a law review article or study examining the issues facing women with disabilities as lawyers. For example, NALP’s AFTER THE JD study does not raise this issue, even though it treats racial and ethnic minorities and women as topics of study. See AFTER THE JD STUDY MONOGRAPHS, *supra* note 36. NALP also has statistics on its website about LGBT attorneys and disabled lawyers, placing them in the same monograph for study, but NALP fails to break out the different experiences of disabled attorneys, perhaps because its researchers think so few of them exist or are self-reporting. See NALP *Disabled Statistics*, *supra* note 22.

63. E.g., Robin A. Boyle, *Law Students with Attention Deficit Disorder: How to Reach Them, How to Teach Them*, 39 J. MARSHALL L. REV. 349, 373 (2006) (advocating for the use of learning styles assessments with students with ADD); Matthew W. Dietz, *Reasonable Accommodations for Attorneys with Disabilities*, FLA. B.J., Apr. 2007, at 66 (arguing that because twenty percent of consumers of legal services have disabilities, more attorneys with disabilities should be represented in the profession); Scott Lemond & David Mizgala, *Identifying and Accommodating the Learning-Disabled Lawyer*, 42 S. TEX. L. REV. 69, 75 (2000) (describing career decisions of learning-disabled lawyers with regard to needed accommodations).

64. LITA JANS & SUSAN STODDARD, CHARTBOOK ON WOMEN AND DISABILITY IN THE UNITED STATES (1999); see Adrienne Asch & Michelle Fine, *Introduction: Beyond Pedestals*, in

aspect of women with disabilities, assuming disability's primacy over race, gender, sexual orientation, and other forms of identity. This "unitary" approach has denied the different life experiences of women with disabilities.<sup>65</sup> Women with disabilities experience dual oppression (and triple oppression if they are minorities of other kinds) based on gender and physical or mental difference. If people with disabilities are devalued and subjugated in the workplace, women with disabilities bear both the "inferiority" of the "weaker sex" and the largest label of weakness imaginable—disability.<sup>66</sup>

I am very careful not to connect my illnesses with being a woman. Although being a women litigator places me in the bottom anyway, I must be careful not to talk about it so that I am not further disconnected. Lawyers must be strong, especially litigators; the disability must not affect that vision to clients or the opposing counsel. — Sarah<sup>67</sup>

People with disabilities are seen as weak, feminine not only in what they cannot do, but also not living up to a standard of beauty and attractiveness:

As a woman already burdened by that perception, adding a disability makes me perceived as even weaker. This is why I often do not share that I have disabilities with people until after I've made a first impression. — Cat<sup>68</sup>

Studies of female attorneys have been the life's work of many scholars.<sup>69</sup>

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WOMEN WITH DISABILITIES: ESSAYS IN PSYCHOLOGY, CULTURE, AND POLITICS 1, 4 (Michelle Fine & Adrienne Asch eds., 1989) (relaying how one feminist academic questioned the need for a volume about women with disabilities, saying "Why study women with disabilities? They reinforce traditional stereotypes of women being dependent, passive, and needy."); M. A. Nosek et al., *National Study of Women with Physical Disabilities: Final Report*, 19 SEXUALITY & DISABILITY 5, 6-9 (2001) (explaining the discrimination and disadvantage faced by women with disabilities); see also Ilene Durst, *The Lawyer's Image, the Writer's Imagination: Professionalism and the Storyteller's Art in Nadine Gordimer's The House Gun*, 13 CARDOZO STUD. L. & LIT. 299, 304 (2001) (raising the trope of "the weaker sex" in law-related literature); Peter Goodrich, *Gynaetopia: Feminine Genealogies of Common Law*, 20 J.L. & SOC'Y 276, 281 (1993) (explicating the tension between women as objects of law and women as critics of law; "the representation of the feminine right was necessarily a polemical activity and closer in style to myth than to constitutional doctrine").

65. Cf. Michelle Fine & Susan Merle Gordon, *Feminist Transformations of/despite Psychology*, in DISRUPTIVE VOICES 14 (Michelle Fine ed., 1992) (arguing that feminist psychology is restricted to a monolithic and individualized analysis of the position of woman in society).
66. See, e.g., Pamela Block, *Sexuality, Fertility, and Danger: Twentieth-Century Images of Women with Cognitive Disabilities*, 18 SEXUALITY & DISABILITY 239, 241 (2000) (arguing that women with cognitive disabilities are viewed as both weak and dangerous—bearing the "risk" of reproducing more people like themselves); Mary Ann Curry et al., *Abuse of Women with Disabilities: An Ecological Model and Review*, 7 VIOLENCE AGAINST WOMEN 60, 61 (2001) (finding women with disabilities were at increased risk for all forms of abuse); Razack, *supra* note 28, at 892 (arguing that feminist scholarship so far has treated disability as canceling out gender, avoiding the "difference impasse" of "how we are implicated in other women's lives").
67. Response of Sarah, Survey of Disabled Women Attorneys (on file with author).
68. Response of Cat, Survey of Disabled Women Attorneys (on file with author).
69. See HOLLY ENGLISH, GENDER ON TRIAL: SEXUAL STEREOTYPES AND WORK/LIFE



Disability, curiously, only appears as a word in a list of other forms of oppression and hardly ever gets separate attention among feminist legal scholars.

“Disabled man” is a self-contradiction, because men are stereotypically supposed to be “able,” strong, and powerful. Hence, society is less concerned with helping disabled women to achieve competence and autonomy—as women, they aren’t supposed to want them, much less get them. “Disabled woman,” on the other hand, is redundant. She is a superwoman in an ironic sense: superchildlike, dependent, incompetent, even beyond the stereotypical ideal female. The women’s movement and the disability rights movement have many common aims. Both are dedicated to extending opportunities and increasing options for everyone. What women have struggled to achieve over the last century—equality of education, access to employment, economic equity, opening of the professions, reproductive autonomy—the disabled have also historically been denied, often with the same excuses.<sup>70</sup>

It is important to remember that women *without* disabilities are still relative newcomers to the practice of law. While Harvard, for example, may have admitted its first female student in 1950, schools and the profession are still engaged in the work of responding to these changes in the profession.<sup>71</sup> Issues of equal pay, respect, and opportunities have not quietly faded, even after fifty or more years of progress.<sup>72</sup> And as others have noted, a profession so dominated by paternalistic power hierarchies, incentives, and social (dis)order takes some

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BALANCE IN THE LEGAL WORKPLACE 296 (2003) (arguing that the legal workplace is governed by traditional stereotypes making it challenging to “stray out of accepted territory”); DEBORAH RHODE, WHAT’S SEX GOT TO DO WITH IT?: DIVERSITY IN THE LEGAL PROFESSION 17 (2006) (highlighting that many clients and managers still view women lawyers as lacking the competence and capabilities of their male counterparts); DEBORAH RHODE, ABA REPORT: THE UNFINISHED AGENDA: A REPORT ON THE STATUS OF WOMEN IN THE LEGAL PROFESSION 31 (2001) (“Race, class, ethnicity, age, disability, and sexual orientation can be as important as gender in defining professional opportunities and concerns”); LAUREN STILLER RIKLEEN, ENDING THE GAUNTLET: REMOVING BARRIERS TO WOMEN’S SUCCESS IN THE LAW 126 (2006) (describing the dichotomy between the working father-lawyer praised for coaching his children’s sports team and the working mother-lawyer viewed as an unreliable employee for staying home with her sick children).

70. Robin Tolmach Lakoff, Review, *Women and Disability*, 15 FEMINIST STUD. 365, 368 (1989).
71. Margaret A. Leary, *Michigan’s First Woman Lawyer*, 48 UNIV. MICH. L. QUADRANGLE NOTES 8, 10 (2006); see *Women in Law*, TIME, Dec. 8, 1924, available at <http://www.time.com/time/magazine/article/0,9171,719607,00.html> (“Harvard, Columbia, and Virginia have steadfastly refused to admit women to their law schools. . . . At Harvard, some professors give private instruction to women. These classes are largely made up of the wives of students at Harvard Law School.”); see also Nina A. Kohn, *Cambridge Law School for Women: The Evolution and Legacy of the Nation’s First Graduate Law School Exclusively for Women*, 12 MICH. J. GENDER & L. 119, 120 (2005) (arguing that in 1915, the women’s suffrage movement and the “elite model of legal education” prompted the founding of the first and only law school exclusively for women).
72. In fall 2008, Harvard Law School celebrated fifty-five years of women graduates by holding a conference to reflect on the status of alumnae in the legal profession. CELEBRATION 55: THE SURVEY, <http://www.law.harvard.edu/alumni/celebration55/survey.htm> (last visited Feb. 18, 2010).

time to reach the actualization of the values it espouses—fairness, respect, and justice—in its own professional culture.<sup>73</sup>

Over time, the perspectives of minority women have received increased recognition in these studies.<sup>74</sup> While that area of progress is far from complete, these studies have consistently ignored one cultural minority experience—that of women with disabilities in the law. Disability cannot always be disaggregated from other minority experiences and identities, including race and gender, but an effort to study it is better than no analysis at all.<sup>75</sup> Resistance to studying the experiences of people with disabilities in the law, let alone women with disabilities, has been rationalized as being too difficult because disability is contentious to define and people with disabilities are often geographically and professionally scattered. Difficulty, however, should not be justification for ignoring a set of experiences entirely. It is even more reason to track disability and to combat the societal isolation and dismissal to which people with disabilities are subjected.<sup>76</sup>

What we know about disability in the legal profession would fill a woeful solitary paragraph and so it shall.<sup>77</sup> The percentage of disabled attorneys in the U.S. ranges from NALP's fraction of one-percent to the Census 2000's estimate

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73. See Judith Resnik, *Ambivalence: The Resiliency of Legal Culture in the United States*, 45 STAN. L. REV. 1525, 1528 (1993) (“The resiliency of legal culture to critical attack—and the fact that it is hard even to hear the criticism—is evident not only in the classrooms of law schools. One also finds such resiliency in courthouses around the nation.”); see also Andrew Goldsmith, *Is There Any Backbone in This Fish? Interpretive Communities, Social Criticism, and Transgressive Legal Practice*, 23 LAW & SOC. INQUIRY 373, 374 (1998) (encouraging lawyers to “reflect deeply upon their profession, its methods and objects”).

74. See generally Ian Ayres & Fredrick E. Vars, *Determinants of Citations to Articles in Elite Law Reviews*, 29 J. LEGAL STUD. 427 (2000); Jo Dixon & Carroll Seron, *Stratification in the Legal Profession: Sex, Sector, and Salary*, 29 LAW & SOC'Y REV. 381 (1995); Patricia Yancey Martin et al., *Gender Bias and Feminist Consciousness Among Judges and Attorneys: A Standpoint Theory Analysis*, 27 SIGNS 665 (2002); L. Amede Obiora, *Neither Here nor There: Of the Female in American Legal Education*, 21 LAW & SOC. INQUIRY 355 (1996); David B. Wilkins, Commentary, *Rollin' on the River: Race, Elite Schools, and the Equality Paradox*, 25 LAW & SOC. INQUIRY 527 (2000).

75. More scholars than ever before are looking at the intersections and interplays of these identities both in the United States and abroad. See, e.g., Anita Ghai, *Disabled Women: An Excluded Agenda of Indian Feminism*, 17 HYPATIA 49 (2002); Jenny Morris, *Impairment and Disability: Constructing an Ethics of Care That Promotes Human Rights*, 16 HYPATIA 1 (2001); Ranjani K. Murthy, *Organisational Strategy in India and Diverse Identities of Women: Bridging the Gap*, 12 GENDER & DEV. 10 (2004); Barbara J. Risman, *Gender As a Social Structure: Theory Wrestling with Activism*, 18 GENDER & SOC'Y 429, 442-43 (2004) (cautioning that the intersections of identities and the relative importance of each may be in flux at any time and according to context).

76. See Carraway, *supra* note 28.

77. Even a recent effort to aggregate data on this experience left conference organizers disappointed. Several prominent attorneys with disabilities in the San Francisco area organized an event for disabled lawyers in July 2007. In preparation for that conference, Claudia Center of the Legal Aid Society-Employment Law Center and one of the conference's organizers contacted major legal profession organizations and government agencies to find out what statistics they had collected on disability. Her findings were disappointing. Most organizations did not track disability and had no statistics to share (research on file with author).

of about ten percent.<sup>78</sup> NALP's figures measured only attorneys in NALP firms, while the Census captured all legal professionals, not just lawyers. Complicate those figures with anecdotal evidence that many attorneys with disabilities do not meet traditional definitions of practicing law. The American Community Survey's estimates of about six percent of all legal professionals having a disability may be a compromise between NALP and the Census.<sup>79</sup> If we assume that about thirty-percent of all attorneys are women, the number of disabled women attorneys is between a fraction of a fraction (NALP) to three percent of all attorneys. Gender, however, has not been studied previously in conjunction with disability in the legal profession.

As for studying attorneys and not paralegals nor other legal professionals, there are two reasons. I was interested in attorneys' experiences personally because of my own professional path. Intellectually, I was also fascinated by the interaction of a high-status profession, such as being a lawyer, and a low-status, second- or even third-class position, such as being a woman with a disability.<sup>80</sup> While being a paralegal or a legal assistant may overlap with being an attorney and working in law settings generally, attorneys occupy positions of privilege in communities that other people employed in law do not.<sup>81</sup> They not only earn more, giving them increased social capital, but they form their own work communities (e.g., Bar associations, pro bono teams, alumni groups) and vocational culture. The rules of this culture are different for lawyers than they are for paralegals or other legal assistants.<sup>82</sup> Lawyers, for example, may have

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78. See *NALP Disabled Statistics*, *supra* note 22. The Census data was derived from datasets available from the U.S. Census Bureau. Disability—Microdata, U.S. Census Bureau, <http://www.census.gov/hhes/www/disability/microdata.html>.

79. The American Community Survey figure was derived from American Community Survey datasets available from the U.S. Census Bureau. ACS PUMS, U.S. Census Bureau, [http://factfinder.census.gov/home/en/acs\\_pums\\_2005.html](http://factfinder.census.gov/home/en/acs_pums_2005.html).

80. See generally Asch & Fine, *supra* note 64; e.g., Jennifer L. Pierce, *Emotional Labor Among Paralegals*, 561 ANNALS AM. ACAD. POLI. & SOC. SCI. 127 (1999) (emphasizing the role that paralegals—largely female—have in providing emotional support for lawyers in firms—largely male—and demonstrating the reinforcement of sex segregation in the workforce).

81. Lawyers wield tremendous power and influence over clients, communities, and one another. See, e.g., John Hagan et al., *Class Structure and Legal Practice: Inequality and Mobility among Toronto Lawyers*, 22 LAW & SOC'Y REV. 9, 51 (1988) (arguing for the potential of a "professional proletariat" to exploit and be exploited); John P. Heinz et al., *Lawyers for Conservative Causes: Clients, Ideology, and Social Distance*, 37 LAW & SOC'Y REV. 5 (2003) (demonstrating the various roles that attorneys can play in advancing political interests); John P. Heinz et al., *The Constituencies of Elite Urban Lawyers*, 31 LAW & SOC'Y REV. 441 (1997) (examining elite lawyer communities in Chicago).

82. See CATHERINE ASTL, BEHIND THE BAR: INSIDE THE LEGAL PROFESSION 88 (2004) (describing her experience with burnout as a paralegal). Portions of the paralegal community are calling for increased regulation of the profession because of ambiguous roles vis-à-vis attorneys, inhumane work conditions, and precarious ethics. E.g., Mark Workman, *Paralegals Want Regulation; The Only Way is Through Legislation*, <http://www.paralegalgateway.com/FloridaRegulation.html> (last visited Feb. 18, 2010). For a comparative perspective on the treatment of paralegals in Great Britain, see Press Release, Young Legal Aid Lawyers, YLAL Survey on Paralegals in Legal Aid: A Growing and Unhealthy Dependency? (Mar. 5 2008), *available at* [http://www.younglegalaidlawyers.org/files/Releases\\_Responses/Paralegals\\_news\\_release\\_M](http://www.younglegalaidlawyers.org/files/Releases_Responses/Paralegals_news_release_M)

more workplace flexibility than paralegals and be able to set their own hours, choose their projects, and affiliate with work teams they prefer.<sup>83</sup> On the other hand, lawyers may also be subject to more pressure to work beyond a nine-to-five schedule and bill 2,500 hours each year or more.<sup>84</sup> A thorough analysis of how these sets of experiences differ is beyond this project, but I recognized enough divergence to limit participation to lawyers only.

Similarly, I was neither interested nor able to do a comprehensive cross cultural project at this time, so this data collection focused on lawyers in the United States. However, I sought out geographic diversity in my collection practices. My goal was to provide insights about what was happening in the American legal profession as a structure and as an institution.

The double bind<sup>85</sup> of being a woman with a disability in the law was also at the core of this study. The same discrimination that drew many of these women into the practice of law is what keeps them at the bottom of their workplaces. I always thought that a Harvard Law degree would erase some of the doubt that people had about my abilities, but I discovered through the socialization of becoming a law student and a lawyer that I would only grow to see more of this discrimination and examine its contours on a daily basis.<sup>86</sup>

The importance of this kind of study and the narratives collected should be underscored. This project was built on the intersection of personal identities and social statuses, and in that morass, lawyers, academics, and others can learn much about the overall health of the profession. By health, I refer to how law is doing as a career option that should be open to and represent the greater diversity of society. Diversity is reflected increasingly in the clients served but not at the same pace in the demographics of the lawyers providing that representation.<sup>87</sup> I

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83. See *Selected Findings from the NALP Workplace Questionnaire*, NALP BULL., Sept. 2004, <http://www.nalp.org/2004sepsselectedfindings?s=nalp%20workplace%20questionnaire%202004>.
84. Groups such as Building a Better Legal Profession (BBLP), founded by two 3Ls at Stanford, have targeted the booming billable hour expectations and are creating alternative rankings of selective U.S. firms. See Michael Rappaport, *Stanford Law Students Issue Law Firm Report Cards*, THE LAWYERS WEEKLY, May 9, 2008, <http://www.lawyersweekly.ca/index.php?section=article&articleid=679>.
85. Women with disabilities and minority women are not the only members of the legal profession to experience a double-bind. Recently, scholars have given increased attention to the expectations placed upon professional men as well. See, e.g., Keith Cunningham, *Father Time: Flexible Work Arrangements and the Law Firm's Failure of the Family*, 53 STAN. L. REV. 967 (2001); Deborah L. Rhode, *Balanced Lives*, 102 COLUM. L. REV. 834 (2002).
86. Cf. DEBRA J. SCHLEEF, *MANAGING ELITES: PROFESSIONAL SOCIALIZATION IN LAW AND BUSINESS SCHOOLS* (2006) (using participant observation and fieldwork techniques to document the professional socialization of law students but not focusing on disability).
87. See ANDREA GUERRERO, *SILENCE AT BOALT HALL: THE DISMANTLING OF AFFIRMATIVE ACTION* (2002) (describing the fallout from the end of affirmative action at Boalt Hall and the corresponding decline in minority admissions); Alex M. Johnson, Jr., *The Underrepresentation of Minorities in the Legal Profession: A Critical Race Theorist's Perspective*, 95 MICH. L. REV. 1005 (1997) (elucidating the tension between lawyers "so idealistically" supporting "liberal social issues, while at the same time maintaining a system of self-selection" that excludes minorities from the profession).

am concerned with a larger feminist project of what can be done to advance the profession's integration and recognition of women attorneys with disabilities. Confronting this inequality will dismantle minorities-of-one<sup>88</sup> and provide a model for the profession's self-examination of other diversity issues.<sup>89</sup>

Having a disability makes it easier to identify with people of color and other disenfranchised groups, which is really important. . . . The disadvantage is that there needs to be more education in the legal profession about disabilities the same way that people have been educated about ethnic and racial diversity. In particular, that people with disabilities are capable of achieving the same levels of success as everyone else and that we're also an important part of diversity.  
— Dria<sup>90</sup>

The exclusion of disability from law schools' and legal employers' diversity agendas is an unfortunate artifact of the stigmatized social positions of women with disabilities—a topic that shall reoccur in this study.

## II. RESULTS OF THE STUDY

### A. Overview of the Respondents—Women Reached

Folks don't always see a person, so they don't think of me as having the same rights to participate in things that they would accord another person. — Tami<sup>91</sup>

Thirty-eight women participated in the study. The attorneys came from across the United States, representing different racial and ethnic groups, sexual orientations, socioeconomic standings, and career interests. When taken as a whole, more of the women were in public interest jobs than in the private sector, but when analyzed by specific practice settings, the largest group of women was in private small practice (solo or at a small firm). An overview of this group follows:

#### Table 1. Profile of Participants

Note: The numbers represented below do not always add up to the total number of survey participants. Not every question was explicitly asked nor

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88. See *A Minority of One: The Single Black First-Year Student at Berkeley's Boalt Hall*, 21 J. BLACKS HIGHER EDUC. 102 (1998); see also Victor Essien, *Visible and Invisible Barriers to the Incorporation of Faculty of Color in Predominantly White Law Schools*, 34 J. BLACK STUD. 63, 64 (2003) (documenting the experiences of lone law faculty members of color).

89. See Brenda Jo Brueggemann et al., *Becoming Visible: Lessons in Disability*, 52 C. COMPOSITION & COMM. 368 (2001) (leveraging exercises on disability in college writing classes to consider broader issues of diversity); Rachel A. Rosenfeld, *What Do We Learn about Difference from the Scholarship on Gender?*, 81 SOC. FORCES 1 (2002) (using gender scholarship to suggest broader lessons about diversity and inequality in the classroom and communities).

90. Response of Dria, Survey of Disabled Women Attorneys (on file with author).

91. Response of Tami, Survey of Disabled Women Attorneys (on file with author).

## THE NEW BOYS

53

answered by the women attorneys. As this survey was conceived of as a qualitative research instrument, the quantification of that data can be incomplete. The project of summarizing these trends, however, became more important as the study continued and the narratives overlapped.

<b>Profile Factor</b>	<b>Represented</b>
<b>Demographics</b>	
Age range	26 to 63
Range of time since graduation from law school	2 months to 36 years
<b>Employment</b>	
Kinds of employers (list all)	Government, Non-Profit, Private Practice (Solo, Small), Legal Services
Most common employment setting	Private Practice
Least common employment setting	Medium and large firms, judiciary, District Attorney's Office
Number of entrepreneurs or self-employed women	10
Number of unemployed women	4
Number of women working part time	3
Number of women working full time	26
Number of women working in disability rights	15
Number of women in private for-profit practice	9
Number of women in non-governmental public interest law or nonprofit settings	7
Number of women in teaching and academia (e.g., administrators, professors)	5
Number of women in government (e.g., local, state, federal)	7
<b>Multiple Identities</b>	
Women of color (total number)	6
- Racial and ethnic backgrounds (list all)	Cuban, Latina, African American, Native American, Puerto Rican, multiracial
- Most common minority background	Latina
- Least common minority background	African American
- Minority backgrounds not captured by the study	Asian, Pacific Islanders, Middle Eastern
Number of self-identified lesbian and bisexual women	9
<b>Disabilities and Accommodations</b>	
Disabilities represented (list all)	Blindness, vision impairments, hearing impairments, deafness, Attention Deficit Disorder, Attention Deficit-Hyperactivity Disorder, diabetes, paraplegia, quadriplegia, traumatic brain injuries, Celiac's disease, fibro myalgia, arthritis (multiple types), epilepsy, bipolar disorder, depression, cerebral palsy, spina bifida, addictions, amputations, knee replacements, multiple sclerosis, Osteogenesis Imperfecta, learning disabilities, mood disorders, stroke, polio, Ehler's-Danholo syndrome, repetitive motion injuries, macular degeneration, chemical sensitivities, migraines, neck problems, neutrally mediated hypotension, psychiatric disabilities, multiple disabilities
Most common disability	Blindness
Least common disabilities	Multiple sclerosis, bipolar disorder, Osteogenesis Imperfecta, spina bifida, cerebral palsy, addictions
Some disabilities <u>not</u> captured by the study	Speech disorders, dwarfism, HIV/AIDS
Kinds of accommodations requested or used at work (list all)	Speech-based computer programs (e.g., Dragon, MacSpeech), speaker phones, Braille printers, zoom text type programs, magnification, readers, assistants, flexible schedules, drivers, extra breaks, time off for treatment and appointments, special rooms or offices, telecommuting/work from home, wheelchair accessibility, non-florescent lights, handicapped parking, specially-built desks, relay phones, telephone amplification, on-site nurses
Most common accommodation	Flexible schedules
Least common accommodation	Non-florescent lit office, on-site nurse, Braille printer
Number of women self-accommodating at work	17
<b>Adverse Attitudes in the Workplace</b>	
Number of respondents reporting perceived stigma and/or discrimination at work related to disability	17
Number of respondents reporting perceived stigma and/or discrimination at work related to gender	3
Number of respondents reporting perceived stigma and/or discrimination at work related to being a woman with a disability	7
Kinds of adverse attitudes and responses from employers and coworkers experienced by the attorneys (list all)	No accommodation or reluctant accommodation, lack of understanding by employers, excessive limitations by employers, refusal to comply with ADA, asked by

Profile Factor	Represented
	employer to leave as result of disability, unwillingness to interview or hire, unwillingness to allow upward movement in career, not allowed to go to court, employers and coworkers view people with disabilities as less competent or incompetent, coworkers and employers view accommodations as "perks," coworkers see accommodations as signs of laziness or disability a reason not to work
Most common attitudinal barriers faced	Lack of willingness to accommodate
Least common attitudinal barriers faced	Boss not allowing disabled attorney in court
Kinds of barriers faced to finding work (list all)	Getting interviews, lack of funds to get to interviews, discrimination in hiring, lack of accessibility in workplace, transportation, exclusion of people with disabilities from workplace, dead-end jobs, no advancement, attitudinal barriers of employers toward disability, lower pay
Most common barrier to finding work	Pushing past discrimination at interview, dead-end jobs (more difficult for those with visible disabilities)
Least common barrier to finding work	Funding issues

### B. Missing Voices—Who is Absent?

I was concerned about discrimination during my job-search process. There was absolutely no one to talk to about this, although there were women's groups and minority law school groups. — Jade<sup>92</sup>

The preceding profile of study participants presents a particular picture of disability—more white than minority, more straight than gay, more "conventional" disabilities (e.g., blindness, physical impairments) than learning or psychiatric disabilities. This article will focus on one part of the larger experience of disabled women attorneys—self-accommodation. Before reaching that analysis, I would like to explore who is missing from this profile, in terms of women in particular job opportunities. I am interested, initially, in what those gaps may say about the experiences of disabled women in law and barriers to entering the profession.

Noticeably absent from the study are judges and attorneys at large law firms. One possibility is that the survey request did not reach these groups, even though it managed to reach several attorneys in solo practice, lesbian attorneys, and women of color.<sup>93</sup> These groups may be scattered or difficult to reach for other reasons. They may be outside disability rights networks and professional networking organizations.<sup>94</sup> Or they may simply be too busy—perhaps the case with judges and firm attorneys.<sup>95</sup>

92. Response of Jade, Survey of Disabled Women Attorneys (on file with author).

93. For further details about the status of LGBT attorneys, see NALP, GLBT Resources, <http://www.nalp.org/glbtrresources?s=glbt%20resources> (last visited Feb. 18, 2010).

94. Some of the participants received the survey because they were already working in the disability rights field. However, according to one, albeit dated, study, elite attorneys seem to be better advocates for issues that are not as personal. See Jeffrey S. Slovak, *Influence and Issues in the Legal Community: The Role of a Legal Elite*, 6 AM. B. FOUND. RES. J. 141 (1981). The implications of this study for attorneys with disabilities working on disability issues would be enough to occupy a separate article.

95. See, e.g., Isaiah M. Zimmerman, *Helping Judges in Distress*, 90 JUDICATURE 10 (2006) (discussing the work-life balances and challenges of being a judge).

If the survey's reach does not account for all of these absences, what does? The issue of reaching successful attorneys in large law firms is the most worrisome of the absences. A full exploration of this question would be the work of a subsequent article and a larger study; those are the issues that the failed original survey intended to probe. If the accounts of the attorneys are taken as a whole, high prestige and income (and workload) positions such as becoming a large law firm partner or federal judge are some of the last corners of the profession to be touched by diversity initiatives.<sup>96</sup> If placing, or at least providing the opportunity for, more qualified women with disabilities into high-paying, high-profile law jobs is a goal of inclusion, it remains unfulfilled in the law.<sup>97</sup> Management, coworkers, and even law school career offices are to blame, and over time, disabled women attorneys internalize these low expectations.<sup>98</sup>

As one of the participants, a blind attorney with a successful career in government, pointed out, she and many others left private practice at large firms before the ultimate partner decision was made.<sup>99</sup> She knew four or five years into the experience that she was not going to make partner; several attorneys in the office ignored her altogether and refused to give her work. Without wider support, she was left to devise a new career path.

Another woman remembers when her career choices were made for her:

I left employment with the legal services organization due to lack of accommodations and the need to focus on parental responsibilities. When I returned to full-time employment, I pursued non-legal employment due to the need for a higher salary. — Charlotte<sup>100</sup>

From my days in nonprofit disability rights work and organizing, I know only a couple women who have made partner at medium or large law firms. In both cases, the women had other attorney colleagues with disabilities. Men with

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96. Compare with the NALP minority studies showing Black and Hispanic attorneys are more likely than whites to be in government jobs. GITA Z. WILDER, RACE AND ETHNICITY IN THE LEGAL PROFESSION: FINDINGS FROM THE FIRST WAVE OF AFTER THE JD STUDY—AN AFTER THE JD MONOGRAPH 15 (2008), available at [http://www.nalp.org/assets/1064\\_ajdraceethnicitymonograph.pdf](http://www.nalp.org/assets/1064_ajdraceethnicitymonograph.pdf); see also *Keeping Current: Diversity*, 06-2 PARTNER'S REP. 8 (finding that lawyers with disabilities are not hired by big firms and they fail to receive accommodations and offers of partnership).

97. See Table 1 *supra* pp. 53-54.

98. "[L]ow expectations of achievement frequently become self-fulfilling prophecies." Deborah L. Rhode, *Perspectives on Professional Women*, 40 STAN. L. REV. 1163, 1189 (1988); see also Adrienne Colella, *Coworker Distributive Fairness Judgments of the Workplace Accommodation of Employees with Disabilities*, 26 ACAD. MGMT REV. 100 (2001) (analyzing factors influencing coworkers' perceptions of workplace accommodations for employees with disabilities).

99. Minority women attorneys are also unhappy with their jobs in the legal profession and express concerns about workplace discrimination. See GITA Z. WILDER, ARE MINORITY WOMEN LAWYERS LEAVING THEIR JOBS? FINDINGS FROM THE FIRST WAVE OF AFTER THE JD STUDY—AN AFTER THE JD MONOGRAPH 27 (2008), available at [http://www.nalp.org/assets/1280\\_ajdminoritywomenmonograph.pdf](http://www.nalp.org/assets/1280_ajdminoritywomenmonograph.pdf).

100. Response of Charlotte, Survey of Disabled Women Attorneys (on file with author).



disabilities in the office had made partner years earlier or had directed some of the firm's paid work toward disability initiatives. They may have established a culture more accepting of disability than most U.S. workplaces, and they served as internal allies while holding management positions.<sup>101</sup> This kind of adoption of the old boys' network for nobler purposes is what could ultimately drive the inclusion of more people with disabilities, particularly women and people of color, in the workplace.<sup>102</sup>

Perhaps women with disabilities are already working in prestigious positions. Many women with undisclosed disabilities may be working at some of the top national firms or in the nation's courts, but choosing or being pressured to remain in the shadows. Perhaps they feel the stigma of identifying as disabled at work or they realize that admitting their disabilities might put them in precarious employment situations.<sup>103</sup> Maybe they are simply too busy to participate in a survey, or are even unconnected to the disability community and its communication channels.<sup>104</sup>

As I will explore in a later section of this essay, the pressures to pass and to cover are intensely felt and tangible for disabled women attorneys. The problem is self-perpetuating, though, in the sense that cultures of shame and fear around disability cause fewer people to identify with the label, and therefore,

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101. Employers who have hired disabled workers are more likely to be open to hiring them again than employers without any experience with disability. See K.A. Dixon et al., *Restricted Access: A Survey of Employers About People with Disabilities and Lowering Barriers to Work*, WORK TRENDS 17 (2003) (noting that employers with experience with workers with disabilities are more likely hire them again and revisit their attitudes about them as employees); see also Fiona M. Kay & John Hagan, *Cultivating Clients in the Competition for Partnership: Gender and the Organizational Restructuring of Law Firms in the 1990s*, 33 LAW & SOC'Y REV. 517, 530 (1999) (examining the influence of networking and social capital on the professional success of women attorneys); Susan Sturm, *Second Generation Employment Discrimination: A Structural Approach*, 101 COLUM. L. REV. 458, 527-528 (2001) (suggesting role that lawyers can have in reshaping workplace environments).
  102. Other areas of the law, such as in policing and investigating, suffer from similar old boys networks. See, e.g., Mary Thierry Texeira, "Who Protects and Serves Me?": A Case Study of Sexual Harassment of African American Women in One U.S. Law Enforcement Agency, 16 GENDER & SOC'Y 524, 525 (2002) ("According to the women I interviewed, the most difficult force for them to overcome is not work, the community, nor their families but the antagonism and harassment of their peers and supervisors who are a part of what at least one informant called 'the old boys network.'").
  103. As the number of learning-disabled students continues to rise, stigma could be ebbed through awareness and training of law schools and employers. See Lisa Eichhorn, *Reasonable Accommodations and Awkward Compromises: Issues Concerning Learning Disabled Students and Professional Schools in the Law School Context*, 26 J. L. & EDUC. 31, 31 (1997); see also Bruce G. Link & Jo C. Phelan, *Conceptualizing Stigma*, 27 ANN. REV. SOC. 363, 363 (2001) (conceptualizing stigma as the "co-occurrence of its components—labeling, stereotyping, separation, status loss, and discrimination" and linking stigma to decreased employment success).
  104. Some people with disabilities have worked to assimilate into the modern American workplace and may be uncomfortable identifying with disability because of its erasure of an appearance of "normalcy." A new disability politics has arisen where activists and academics focus on disability pride and reclaim such words of disparagement and stigma as "cripples" (now "crips"), "gimps," "retards," and "speds." See generally DISABILITY STUDIES READER (LENNARD J. DAVIS ed., 2d ed. 2006).

opportunities are missed to make disability commonplace, familiar, and comfortable to nondisabled people.<sup>105</sup> No one woman should have to be an ambassador of disability, but if she chooses to be out, she can have a tremendous effect on attitudes in the workforce.<sup>106</sup> At the same time, as the women participants have noted, the daily struggle of managing other people's reactions to and stereotypes about disability can become a job in itself.<sup>107</sup>

The only role I feel my disability has in my disappointing situation is that I have fewer choices to go where I can earn more. Big firms don't hire middle of the class, middle-aged, one-handed women. It doesn't fit the image. — Julie<sup>108</sup>

With more limited energy and demands placed by disability, these women must choose which fights are theirs.<sup>109</sup> As many of the participants demonstrate, disability has a central consideration in their daily work environments and in trying to address and balance the social and psychological demands of them. In this sense, feminism's realization of the personal as the political is thriving among women attorneys with disabilities.<sup>110</sup> Yet, these jobs also place them in lower socioeconomic standing than they would have as large firm partners or judges.<sup>111</sup> If professional power is envisioned as a hierarchy, positions in service to others have largely been feminized and devalued, even beyond law.<sup>112</sup>

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105. E.g., Lennard J. Davis, *Crips Strike Back: The Rise of Disability Studies*, 11 AM. LIT. HIST. 500 (1999) (emphasizing the proactive role that disabled people can have in shaping perceptions and dismantling the hegemony of normalcy).
106. Coworker and employer attitudes toward disability are generally more positive and accommodating toward someone who becomes injured after having served on the job for a period of time than they are to unfamiliar people with disabilities. See Michele Campolieti, *The Correlates of Accommodations for Permanently Disabled Workers*, 43 INDUS. REL. 546 (2004) (studying recently disabled Canadian workers seeking reasonable accommodation from their old employers and from new employers).
107. See Richard Jenkins, *Disability and Social Stratification*, 42 BRIT. J. SOC. 557 (1991) (arguing for the place of disability in considering issues of social stratification).
108. Response of Julie, Survey of Disabled Women Attorneys (on file with author).
109. See Bernice Fisher & Roberta Galler, *Friendship and Fairness: How Disability Affects Friendship Between Women*, in WOMEN WITH DISABILITIES: ESSAYS IN PSYCHOLOGY, CULTURE, AND POLITICS, *supra* note 64, at 173, 181 (conveying stories of women hiding their disabilities or the physical tolls of them to have greater social acceptance in their communities and workplaces).
110. But see Mary Bernstein, *Nothing Ventured, Nothing Gained? Conceptualizing Social Movement "Success" in the Lesbian and Gay Movement*, 46 SOC. PERSP. 353, 356 (2003) (personal activism and policy goals may not always "line up" in a "simple one-to-one fashion").
111. Compare Press Release, NALP, NALP Publishes New Report on Salaries for Public Sector and Public Interest Attorneys (Sept. 1, 2006), available at <http://www.nalp.org/2006nalpnewreportonsalaries> (median salaries for entry-level public interest attorneys are \$36,000, and \$55,000 with 11-15 years of experience) with Press Release, NALP, Salaries up at Largest Firms for First Time Since 2000 (Aug. 1, 2006), available at <http://www.nalp.org/2006salariesupatlargestfirms> (median salaries of \$135,000 for entry-level associates at private firms of 501+ attorneys).
112. See, e.g., Tracey L. Adams, *Feminization of Professions: The Case of Women in Dentistry*, 30 CAN. J. SOC. 71 (2005); Evelyn N. Glenn, *Cleaning Up/Kept Down: A Historical Perspective of Racial Inequality in "Women's Work"*, 43 STAN. L. REV. 1333 (1991); Paula

The goal, then, as this is a feminist project, is for disabled women attorneys to have increased choices about their careers—to not feel pressured to take positions of secondary interest because they are more stable or flexible. They should have the same kinds of choices as every other law school graduate. And these choices would encompass a full array of income potentials, interests, locations, sectors, and tasks. For example, even where disabled women have gotten footholds in more conventional positions, such as law teaching, they often occupy positions with administrative duties or adjunct contracts rather than tenured or tenure track titles:<sup>113</sup>

I took a job teaching legal research and writing here, and after a few years moved into my current position (Director of Academic Support Program).  
— Janet<sup>114</sup>

My law school asked me to come back and teach as an adjunct and develop an Academic Support program. So, I gave up practice and worked there for five years until my present positions. I have a five-minute commute. I work for the college's legal counsel. — Mary<sup>115</sup>

A Canadian colleague once remarked to me, on hearing of my search for a tenure track position in the United States, that being hired to teach disability rights law would make me the first tenure track female professor with a visible disability in the country. While I know of at least one disabled woman professor with tenure, the idea that I would be one among a couple, perhaps even a handful, is an indictment of the progress that needs to be made in the employment and accommodation of women with disabilities in law. Taking the example of professorship and proportionality—not only should women with disabilities be in tenure track positions at law schools, but also at the most highly ranked schools, teaching challenging and respected subjects (for me, it is disability law, but it is not for others), and in leadership positions on the

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D. Nesbitt, *Clergy Feminization: Controlled Labor or Transformative Change?*, 36 J. SCI. STUD. RELIGION 585 (1997) (perspectives on the feminization of other traditional professions). See generally Charlotte Chiu & Kevin Leicht, *When Does Feminization Increase Equality? The Case of Lawyers*, 33 LAW & SOC'Y REV. 557 (1999); Carrie Menkel-Meadow, *Exploring a Research Agenda of the Feminization of the Legal Profession: Theories of Gender and Social Change*, 14 LAW & SOC. INQUIRY 289 (1989); Mary C. Noonan & Mary E. Corcoran, *The Mommy Track and Partnership: Temporary Delay or Dead End?*, 596 ANNALS. AM. ACAD. POL. & SOC. SCI. 130 (2004).

113. See HERMA HILL KAY, U.S. WOMEN LAW PROFESSORS, 1900-2000: A PROGRESS REPORT, available at <http://www.aals.org/profdev/women/kay.html>; Deborah Jones Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: The Truth About Affirmative Action*, 97 COLUM. L. REV. 199, 275 (1997) (finding law school teaching practices to be nuanced, with women more likely to teach lower status courses). But see Deborah Jones Merritt, *Scholarly Influence in a Diverse Legal Academy: Race, Sex, and Citation Counts*, 29 J. LEGAL STUD. 345, 347 (2000) (after controlling for prestige factors, finding no significant differences between citation amounts among white men, white men and women, and minorities).

114. Response of Janet, Survey of Disabled Women Attorneys (on file with author).

115. Response of Mary, Survey of Disabled Women Attorneys (on file with author).

faculty.<sup>116</sup> Those are the choices that many nondisabled, white women in law increasingly have in the field and so they should be the same avenues open to disabled women. This article in many ways is an impassioned plea to employers, colleagues, and women with disabilities themselves to embrace disability at work and bring others along in the process.

### III. WHAT THE WOMEN ARE DOING

#### A. Working in a Way that Works: Self-Accommodation

I ended up working at the law school some years after graduation and saw the other side of the coin from the employer's perspective: Students felt other students with extra time were getting an unfair advantage. Despite ADA knowledge, some profs also thought extra time was undue advantage and thought it was unconscionable that a student would be given 4.5 hours to finish a 3 hour exam . . . . For others who have asked for accommodations, the subliminal perception is that they are trying to get out of doing work.  
— Mary<sup>117</sup>

Thus far, I have used the term “self-accommodation” to refer to the ways in which attorneys with disabilities implement strategies and create reasonable accommodations on their own to be able to work or to work more effectively.<sup>118</sup> The women in the study have self-accommodated in three primary ways: by doing the work of accommodation themselves by acquiring adaptive equipment or making physical space changes,<sup>119</sup> by selecting jobs that are disability-

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116. I know of no women with disabilities serving as the primary deans of law schools in the United States. *See also* Herma Hill Kay, *Women Law School Deans: A Different Breed, or Just One of the Boys?*, 14 YALE J. L. & FEM. 219 (2002).

117. Response of Mary, Survey of Disabled Women Attorneys (on file with author).

118. The phrase “self-accommodation” is found most in the *Bartlett* series of cases where a Bar applicant sued the New York Board of Bar Examiners for reasonable accommodations on her Bar exam. *Bartlett v. New York State Bd. of Law Exam'rs*, No. 93 CIV. 4986(SS), 2001 WL 930792 (S.D.N.Y. Aug. 15, 2001). “Self-accommodation” is also a word used by many bloggers about learning disabilities and school success strategies, but its application has greater relevance in disability law and for people with a variety of impairments. Reasonable accommodations are the second largest source of EEOC ADA complaints after discriminatory discharges. Thomas DeLeire, *The Wage and Employment Effects of the Americans with Disabilities Act*, 35 J. HUM. RESOURCES 693, 697 (2000).

119. Under 29 C.F.R. pt. 1630 app. (2009), an accommodation is “any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities.” The three main classes of accommodations are:

(i) Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or

(ii) Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or

(iii) Modifications or adjustments that enable a covered entity's employee with a

friendly and flexible enough to be molded to fit their needs,<sup>120</sup> and by becoming their own bosses through entrepreneurialism.<sup>121</sup> The tool or resource-oriented accommodations in the first category are less interesting and complex than the remaining strategies, as I will argue, because they are more at the individual level and impairment-specific. When considering policy and workforce implications and trends, these accommodations may not have the same kind of application as the flexibility-oriented strategies do for other workers and attorneys with disabilities. In contrast, the other three approaches demonstrate subtleties and nuances that employers, employees, and other disabled people may find more surprising and worrisome because they demonstrate circumventions of disability stereotypes and discrimination, and choices not to enforce rights provided under the ADA.

### 1. Adaptive Equipment, Physical Spaces

I have been very lucky. I have not experienced any barriers [to] finding a job and all of my employers have been amenable to any reasonable accommodations that I have requested. — Sheri<sup>122</sup>

When “reasonable accommodation” is bandied about, minds ultimately turn to a list of tangible tools, equipment, and changes in the physical environment such as large-screen monitors, curb cuts, automatic doors, tactile signage, amplified phones, disabled parking, and visual smoke alarms.<sup>123</sup> But these accommodations fail to account for the needs imposed by a range of impairments, including learning disabilities, mental illness, neurological

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disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.

29 C.F.R. § 1630.2(o)(1) (2009); EEOC, Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (2002), [hereinafter Enforcement Guidance]. Some examples of reasonable accommodations set forth in the enforcement guidance include acquiring or modifying equipment. *See also* 42 U.S.C. § 12111(9) (2006); 29 C.F.R. § 1630.2(o)(2)(i-ii) (2009).

120. The Americans with Disabilities Act requires employers to consider flexible schedules, job sharing, and job restructuring wherever reasonable. *See* 42 U.S.C. § 12111(9)(B) (2006); Enforcement Guidance, *supra* note 119; *e.g.*, *Ralph v. Lucent Technologies, Inc.*, 135 F.3d 166, 172 (1st Cir. 1998) (reasonable accommodations may include modified schedules).

121. Entrepreneurs with disabilities have captured the attention of state and federal government agencies, scholars, and foundations alike. *See, e.g.*, Small Business Notes, Disabled Entrepreneurs, <http://www.smallbusinessnotes.com/interests/disabled.html> (last visited Feb. 20, 2010); U.S. Department of Labor, Entrepreneurship: A Flexible Route to Economic Independence for People with Disabilities, Aug. 2005, <http://www.dol.gov/odep/pubs/misc/entrepre.htm>; *see also* Peter Blanck et al., *The Emerging Workforce of Entrepreneurs with Disabilities: Preliminary Study of Entrepreneurship in Iowa*, 85 IOWA L. REV. 1583 (2000).

122. Response of Sheri, Survey of Disabled Women Attorneys (on file with author).

123. The EEOC takes many of these accommodations into consideration in its guidance regarding accommodations for attorneys with disabilities. EEOC, Reasonable Accommodations for Attorneys with Disabilities (2006), available at <http://www.eeoc.gov/facts/accommodations-attorneys.html> (listing accommodations such as “flashing emergency lights” and “special office supplies”) [hereinafter EEOC Disabled Attorneys Facts].

conditions, and autoimmune disorders. And they also focus with laser accuracy on one or a few impairments, seeing them as diseases of the mind or body, without considering the combined effects of impairments, the cultural weight of disability, and the long-term impact of societal inaccessibility.<sup>124</sup> Will a large monitor solve all problems related to getting a job or remaining in work for someone who has a vision impairment? Or will the other factors of discrimination and marginalization in that person's community and workplace dictate a different way of approaching work and other obligations?<sup>125</sup> Perhaps, if the only thing that was wrong with most workplaces was the failure to have a large monitor stowed away, a task-oriented approach to accommodations would suffice. When one recognizes the social experience of disability, however, one needs to acknowledge how many obstacles (physical, psychological, social) exist in getting to work, maintaining personal needs, and balancing work and family.<sup>126</sup>

In this study, equipment and task-oriented accommodations in law school and in legal employment included taped lectures, extended exam and assignment time, interpreters, audio books, readers, storage space for assistive technology, note-takers, ramps, extra books, enlarged print, and wheelchair-accessible workspaces. Even with these relatively straightforward accommodation requests, law students and lawyers faced obstinacy from schools and employers that violated the ADA.<sup>127</sup> Several women shared stories of law schools pulling accommodations after they were granted.<sup>128</sup> The schools were "testing" the

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124. Reacting to deficiencies of the "reasonable accommodation" approach, proponents of "universal design" call for a society in which infrastructure and activities are structured with the idea of including everyone. For example, rather than placing steps at the front door of a bank building, universal designers would integrate an attractive gradual ramp that would serve as an entrance for non-disabled and disabled people. Universal design, at its core, challenges ableist societies that serve the needs of a select group of people by calling for recognition that the existing approaches, not disabled people's impairments, are what keep them from being able to move freely in communities. See Tobin Siebers, *What Can Disability Studies Learn from the Culture Wars?*, 55 CULTURAL CRITIQUE 182, 183 (2003) (suggesting that an understanding of disability aesthetics reveals obstacles to creating environments accessible to people with disabilities); Irving Kenneth Zola, *Toward the Necessary Universalizing of a Disability Policy*, 67 MILBANK Q. 401, 421-22 (1989) (arguing that universal policies that recognize that anyone can suffer from chronic illness or disability are superior to special needs approaches to disability).

125. Attitudinal barriers have larger impacts than structural or technological barriers, and attitudinal barriers help keep those tangible blockades in place. See Table 1 *supra* pp. 53-54 (exploring attitudinal barriers faced by people with disabilities); see also Samuel R. Bagenstos, *Subordination, Stigma, and "Disability"*, 86 VA. L. REV. 397, 440-42 (2000) (discussing the role of attitudinal barriers in discrimination against disabled people); Pamela S. Karlan & George Rutherglen, *Disabilities, Discrimination, and Reasonable Accommodation*, 46 DUKE L.J. 1, 5 (1996) (suggesting that finding tools to eradicate the attitudinal barriers of disability can have application in other discrimination contexts).

126. See generally Basas, *supra* note 45, at 98-99 (advancing a disability studies-grounded model of approaching the disability and unemployment dilemma).

127. See sources cited *supra* note 17 (examining law students and reasonable accommodations).

128. See, e.g., Suzanne E. Rowe, *Reasonable Accommodations for Unreasonable Requests: The Americans with Disabilities Act in Legal Writing Courses*, 12 J. LEGAL WRITING INST. 3, 7 (2006) (supporting accommodation of learning disabled students but warning that "excessive

women to see if they actually needed the accommodations and could function without them:<sup>129</sup>

The university decided at one point to “punish” me by paying all the interpreters and captionists to stay home for two weeks . . . My peers complained because they thought it was unfair I had transcripts. — Tami<sup>130</sup>

Schools and employers often made comparisons between the needs of these women attorneys and other people with disabilities they knew anecdotally:<sup>131</sup>

A few years later [after law school], I met a woman with a learning disability who was attending the same law school. She reported having a much more difficult time with accommodations because the staff kept pointing to the fact that I had not sought X or Y. Not exactly the kind of legacy I should have left those who were sure to follow. — Jo<sup>132</sup>

The assumption, it seems, was that one woman did not need the voice-recognition software to complete an assignment, therefore someone else with a disability in the same general category, such as blindness, did not need it either.

These women could not alter concrete curbs nor widen doorways, but they found ways around the physical space challenges, too.

I have a screen reading software program but most websites are still not accessible. I have always been visually impaired, but within the past seven years my sight has deteriorated, and still I have to remind staff of my impairment. I work much slower and in a very different way from others. I rely on speech software and magnification devices. I will eventually lose my sight, so I am in process of learning to rely solely on speech programs. — Virginia<sup>133</sup>

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accommodations” may injure law students’ skill development).

129. In many ADA cases, accommodations are given and then later taken away. *E.g.*, *Mobley v. Allstate Ins. Co.*, 531 F.3d 539 (7th Cir. 2008) (Employer gave plaintiff accommodations and then withdrew them. This pattern was repeated until plaintiff was fired.); *Rodal v. Anesthesia Group of Onondaga*, 369 F. 3d 113 (2d Cir. 2004) (Plaintiff received accommodations, got well and did not need to use it, but when it was needed again, that request was denied.).
130. Response of Tami, Survey of Disabled Women Attorneys (on file with author).
131. These kinds of comparisons of people with disabilities are prohibited by the ADA case law, such as *Bragdon v. Abbott*, 524 U.S. 624 (1998) (using a case-by-case inquiry) and EEOC regulations. The Job Accommodation Network (JAN), a free service of the Department of Labor’s Office of Disability Employment Policy, makes suggestions about potential accommodations to address certain disabilities, but recognizes that it must offer these suggestions without finality. Although JAN maintains a database of potential accommodations, the entity does not suggest anything but a case-by-case analysis. JAN Accommodation Database, <http://www.jan.wvu.edu/soar/> (last visited Feb. 20, 2010). See generally Sarah Shaw, *Why Courts Cannot Deny ADA Protection to Plaintiffs Who Do Not Use Available Mitigating Measures for Their Impairments*, 90 CAL. L. REV. 1981 (2002) (arguing for the protection of non-mitigating ADA plaintiffs and emphasizing individual inquiry in the ADA accommodation process).
132. Response of Jo, Survey of Disabled Women Attorneys (on file with author).
133. Response of Virginia, Survey of Disabled Women Attorneys (on file with author).

The modern workplace establishes an amazingly level playing field for professionals with disabilities. Computers have allowed me to conduct my own research, draft my own documents, communicate with others via e-mail, and otherwise operate fairly self-sufficiently. Modern speaker phones make dialing, answering telephone calls, and teleconferencing easy as well. — Jo<sup>134</sup>

Other women shared stories about construction at their law schools and in their work environments, but most of them had success adapting to the environment or gaining assistance with navigating it. Their workplaces may not have met all ADA requirements for physical access, but the attorneys were skilled at making a go of them. Many of the women who attended law school before the ADA cited examples of how they had worked with the school, peers, and other supporters to devise strategies for attending law school and making the transition to work.

## 2. Disability-Friendly and Flexible Workplaces

I was afraid to go to an interview where they were clueless that I'd arrive short one appendage, so I retraced familiar contacts. — Julie (missing a hand)<sup>135</sup>

The women in the study often recounted struggling to identify disability-friendly workplaces where they could be respected as equals and have their accommodation needs met; they were in search of dignified flexibility.<sup>136</sup> As Tyler put it, "Job hunting is impacted by disability because you look at 'want ads' and say to yourself I can do all that but not that one."<sup>137</sup> Tyler notes that the job that she found eventually works because, "I run the project so I design it my way to avoid problems."<sup>138</sup>

Cat, another participant, agrees that control is key: "As an interpreter [before coming to and during law school], I have to be careful about how long I can work in any one sitting. I am always thinking how long a job might go when I accept or decline it."<sup>139</sup>

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134. Response of Jo, Survey of Disabled Women Attorneys (on file with author).

135. Response of Julie, Survey of Disabled Women Attorneys (on file with author).

136. This kind of flexibility is also anticipated by the EEOC. In its Disabled Attorneys Facts, the agency suggests accommodations such as extended leave, telecommuting, and flexible work hours. See EEOC Disabled Attorneys Facts, *supra* note 123; see also Leah Bensen Lipskar, Comment, *Learning Disabilities and the ADA: A Guide for Successful Learning Disabled Students Considering a Career in Law*, 3 U. PA. J. LAB. & EMP. L. 647, 668 (2001) (emphasizing that the ADA provides for adjusting a forty-plus hour week for disabled attorneys).

137. Response of Tyler, Survey of Disabled Women Attorneys (on file with author).

138. *Id.*

139. Response of Cat, Survey of Disabled Women Attorneys (on file with author). For more discussion of the factors different groups of people with disabilities consider in choosing and retaining employment, see, for example, John Bound & Timothy Waidmann, *Accounting for Recent Declines in Employment Rates among Working-Aged Men and Women with Disabilities*, 37 J. HUM. RESOURCES 231 (2002) (discussing the impact of disability insurance on individuals' employment rates); Lisa Schur et. al., *Can I Make a Difference?*



Crystal, a government attorney, thought that she had made the right choice when it came to flexibility. At one point, she needed to take time off for counseling and mental health care:

If I hadn't been working for the government, I seriously doubt that I would still have a job with the same employer for so long because of the likely discrimination against people who require that level of medical attention. If it would have been for diabetes or something else, I don't think that would be a problem.<sup>140</sup>

Capturing the general sentiment of the surveys, one woman, Alice, remarked: "I find that workplaces that are very rigid or require many hours are difficult for me."<sup>141</sup> Many of the respondents expressed interest in finding work that could be shaped by the attorney and that is flexible to health demands or fluctuating energy levels as they arose. Other women felt like these health demands limited them in significant ways:

I skipped courtroom trial work due to age and hearing issues. Instead I worked in appellate law, doing criminal appeals for the state. I would quietly write research in a cubicle or at home, then have my fifteen-minute argument with three appellate judges in a quiet courtroom with no interference, no noise, few people. It worked very well with my hearing issues. — Mary<sup>142</sup>

Another concern found in the surveys was for jobs with reliable health insurance. As Jade put it, "I need good health insurance due to my illness, so other than two years at a non-profit, I have worked for the government in order to maintain decent insurance."<sup>143</sup>

Because of a lack of informal and formal networking and information-sharing, many of these women made initial employment decisions without critical information about how their employers would respond to their impairments.<sup>144</sup> The obstacles presented themselves, however, before many of the women even had job offers in hand. Almost all of the women shared a story

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*Efficacy, Employment, and Disability*, 24 POL. PSYCHOL. 119 (2003).

140. Response of Crystal, Survey of Disabled Women Attorneys (on file with author).

141. Response of Alice, Survey of Disabled Women Attorneys (on file with author).

142. Response of Mary, Survey of Disabled Women Attorneys (on file with author).

143. Response of Jade, Survey of Disabled Women Attorneys (on file with author).

144. In response to this obstacle, the ABA Commission on Mental and Physical Disability Law has established a mentoring network for disabled law students and recent graduates. The Commission and its Subcommittee on the Employment of Lawyers with Disabilities have also supported the development of a student organization focused on disability. Recently, the Commission sent a survey of disability issues to all ABA-accredited law schools. Disabled students can use the Commission's website to locate resources on individual campuses. ABA Commission on Mental and Physical Disability Law, Law School Disability Programs Directory, <http://www.abanet.org/disability/lawschools/home.shtml> (last visited Feb. 20, 2010). For more information on the Commission, see the ABA Commission on Mental and Physical Disability Law, <http://www.abanet.org/disability/about/subcommittees.shtml> (last visited Feb. 20, 2010).

about negative reactions or inaccessibility of job interviews and campus-sponsored screenings:

I expected to find another job fairly quickly although I had been looking without success while still employed. When employment opportunities began drying up (I was told by an acquaintance that there was a fear that I “might” sue), I began to consider what I wanted to do for the rest of my career. — Jo<sup>145</sup>

I started in a large law firm in San Francisco where I worked for about a year and a half before I was terminated for allegedly poor performance. This law firm was not aware of my disability when it hired me and the law partner in my department didn’t like the fact that I did not disclose my disability when I was interviewing for the job. My work was average but certainly not enough to get me terminated. — Crystal<sup>146</sup>

[In] all jobs I have applied for [there has] been some element of discrimination when turned down-based on fluorescents. When I applied for magistrate judge and was one of the top two candidates before the interview. The moment I walked in the door with my dark glasses on, the Clerk of Court who had hiring power said “Oh, I see” in a negative voice. My discussions with the head magistrate judge and the head district judge were quite positive. The other male candidate received the job. — Ruth<sup>147</sup>

Many of the women continued to experience negative reactions to their disability-related needs even after finding a position and holding it for several years:

I have asked that consideration be given to the types of teaching allocated to me. . . . Responses have changed from outright denial of the problem and implication that this is a convenient way of avoiding types of work, to the more common now assumption that it can all be resolved through technology. — Anna<sup>148</sup>

Frequently, I am viewed as incompetent because I use a wheelchair. There have been a few occasions where having a disability perspective was actually viewed as an asset. — Mary<sup>149</sup>

Most participants were employed in public interest jobs, either with government<sup>150</sup> or nonprofits, such as legal aid clinics and disability rights

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145. Response of Jo, Survey of Disabled Women Attorneys (on file with author).

146. Response of Crystal, Survey of Disabled Women Attorneys (on file with author).

147. Response of Ruth, Survey of Disabled Women Attorneys (on file with author).

148. Response of Anna, Survey of Disabled Women Attorneys (on file with author).

149. Response of Mary, Survey of Disabled Women Attorneys (on file with author).

150. While lawyers with disabilities, particularly women, may be funneled to government jobs, employees with disabilities represent less than one percent of the federal workforce. Alyssa Rosenberg, *Disabled Employees Make Up Less Than 1 Percent of the Federal Workforce*,

groups.<sup>151</sup> Consistently, they cited several factors for selecting their employers: “fit,” willingness to accommodate their needs, flexible work schedules, low-stress environments, telecommuting, and disability-supportive attitudes. The emphases were on where their accommodation needs and work styles could be supported and respected.<sup>152</sup> When that respect was missing, the employment became more of an obstacle than an opportunity.

While several of the women worked at large firms for several years, they ultimately chose (or the workplace chose them) to switch to public interest, government, or disability law jobs. In many of these workplaces, they found peers with disabilities or coworkers with some familiarity with disability because of working with disabled clients.<sup>153</sup>

I am colleagues and friends with other lawyers with disabilities and with other disability rights lawyers (some of whom are the same people). — Alice Carter<sup>154</sup>

Schools and other attorneys were also quick to reinforce that the public interest sector might be more accommodating of disabled attorneys’ needs than private, selective, large firms. In recalling how one professor mentored the women’s group in law school, Jade shared how that woman’s advice was different for her:

She told the other women in the group to push forward and encouraged them to go for it and demand what was theirs. When I sat down with her to discuss how to address my disability, she told me to just work for the government.<sup>155</sup>

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GOVERNMENTEXECUTIVE.COM, July 25, 2008, [http://www.governmentexecutive.com/story\\_page\\_pf.cfm?articleid=40547&printerfriendlyvers=1](http://www.governmentexecutive.com/story_page_pf.cfm?articleid=40547&printerfriendlyvers=1).

151. See Table 1 *supra* pp. 53-54. These realities are very similar to those experienced by non-disabled minority and women attorneys. See WILDER, *supra* note 96; GITA Z. WILDER, WOMEN IN THE PROFESSION: FINDINGS FROM THE FIRST WAVE OF THE AFTER THE JD STUDY—AN AFTER THE JD MONOGRAPH (2008) [hereinafter WILDER, WOMEN IN THE PROFESSION].
152. E.g., David C. Baldrige & John F. Veiga, *Toward a Greater Understanding of the Willingness to Request an Accommodation: Can Requesters’ Beliefs Disable the Americans with Disabilities Act?*, 26 ACAD. MGMT. REV. 85, 91 (2001) (indicating disabled workers are more likely to make accommodations requests if they perceive that their supervisors will be open to those requests); Joseph W. Madaus et al., *Attributes Contributing to the Employment Satisfaction of University Graduates with Learning Disabilities*, 26 LEARNING DISABILITY Q. 159, 160-61 (2003) (indicating disabled graduates’ perceptions of self-efficacy and their self-accommodations correlated to employment satisfaction).
153. For an introduction to the literature on working with legal clients with disabilities, see, for example, Stanley S. Herr, *Representation of Clients with Disabilities: Issues of Ethics and Control*, 17 N.Y.U. REV. L. & SOC. CHANGE 609, 640 (1991) (specifying techniques for effectively working with clients with disabilities) and Andrea D. Lyon, *But He Doesn’t Look Retarded: Capital Jury Selection for the Mentally Retarded Client Not Excluded after Atkins v. Virginia*, 57 DEPAUL L. REV. 701, 711-12 (2008) (discussing the challenges of defending disabled clients with criminal charges).
154. Response of Alice Carter, Survey of Disabled Women Attorneys (on file with author).
155. Response of Jade, Survey of Disabled Women Attorneys (on file with author).

In some situations, mentors, such as professors, summer internship supervisors, and other attorneys encouraged students to give up hope of practicing altogether. Their disabilities were viewed as liabilities for clients:

One professor (who was sued by a deaf student) told me I should quit law school and think of the “clients not myself.” — Mary<sup>156</sup>

### 3. Entrepreneurialism as Accommodation

I have not found work in the legal profession, which resulted in my opening my own practice. — Susan<sup>157</sup>

Out of fear about what workplaces would be like or previous experiences with employers’ refusals to accommodate their disabilities, several of the women in the study chose to become their own bosses by founding small firms, solo practices, or other business ventures.<sup>158</sup> Judith recalls having discouraging experiences as an entry-level lawyer applicant:

I went out on my own after that (not planned, just no good jobs) . . . I had clients . . . One day [I] woke up and realize[d] that I had a practice.<sup>159</sup>

By falling into or opting for workplaces of their own design, these attorneys could build in the needed flexibility, responsiveness, and comfort around disability.<sup>160</sup> In choosing to be the bosses, they were undertaking leadership positions that may have been refused to them elsewhere or by prospective employers.<sup>161</sup> They could implement a vision of work that would be

156. Response of Mary, Survey of Disabled Women Attorneys (on file with author).

157. Response of Susan, Survey of Disabled Women Attorneys (on file with author).

158. Non-disabled attorneys may share similar core motivations of autonomy, flexibility, and choice in deciding to become their own bosses. Their “choices” may also be shaped by the social stratification of the legal profession along race, economic, gender, and other minority lines. Ronit Dinovitzer, *Social Capital and Constraints on Legal Careers*, 40 LAW & SOC’Y REV. 445, 464-65 (2006) (finding Jewish lawyers more likely than non-Jews to be working in solo practice and that the kinds of cases handled in solo practice are perceived as less prestigious and desirable by other members of the legal community). *But see* Rebecca L. Sandefur, *Staying Power: The Persistence of Social Inequality in Shaping Lawyer Stratification and Lawyers’ Persistence in the Profession*, 36 S.W. U. L. REV. 539, 547 (2007) (showing men are more likely to be working as solo practitioners than women).

159. Response of Judith, Survey of Disabled Women Attorneys (on file with author).

160. See *supra* note 121 for a list of studies on entrepreneurs with disabilities.

161. Disabled law firm attorneys, for example, make up only 0.1% of all attorneys at law firms involved in the New York City Bar’s diversity efforts. According to that report:

Attorneys with disabilities continue to be the forgotten diversity group. In part, it may reflect a lack of common definition on disabilities. Signatory firms report that attorneys with disabilities represent only one-tenth of one percent of their overall ranks, or only fifteen attorneys with disabilities in New York area law offices. These numbers are actually a slight decrease from last year (17) despite the presence of additional signatory firms. The NALP figures are similarly disappointing at 0.1 percent of attorneys reported nationwide.

NEW YORK CITY BAR, LAW FIRM DIVERSITY BENCHMARKING REPORT (2006),

meaningful, flexible, and adaptive, and they did not have to wait for others to assist them with accommodations.

I chose not to proceed with the career I had hoped due to the additional diagnosis of RA [rheumatoid arthritis]. I could not perform in a[n] atmosphere [that demanded] . . . billing [a] high number [of hours] and producing large work quantities. I have been lucky that I can manage my own schedule and workload depending on my health at any given time. I created a strong administrative support team. — Sarah (working in private practice)<sup>162</sup>

Entrepreneurialism can be the highest form of self-accommodation for those with the required financial resources and business planning skills because it steps outside traditional work structures.<sup>163</sup> If a nine-to-six work schedule is too confining, those hours can be adjusted by the solo practitioner or manager with little or no consultation with others.<sup>164</sup> This claim is not to minimize the demands of solo or small firm practice. In fact, men are more likely to begin their careers in solo or small- or medium-size firms and women are more likely to start their careers in government and the public interest.<sup>165</sup> Disabled women attorneys, therefore, occupy a role outside the typical gender structure thought of in practice settings. While being available to clients and completing work according to deadlines remain constant forces in the workplace, setting one's own course had widespread appeal to many of these women. Sometimes that took them outside law-related employment, too:

I'm actually planning to make my own non-profit organization . . . I want to have my own structure to be able to get financial support and things like that without having to be just a part of a larger organization. — Laura<sup>166</sup>

One issue with this approach, however, was the assumption of costs by the woman attorney with a disability.<sup>167</sup> If she became her own employer, she was

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<http://www.nycbar.org/Diversity/FirmBenchmarking06.pdf>.

162. Response of Sarah, Survey of Disabled Women Attorneys (on file with author).

163. See *infra* note 165.

164. Approximately four percent of all adults undertake entrepreneurial activities across professional sectors, and they cite flexibility, challenge, and creativity as some of the reasons they are drawn to being their own bosses. See PAUL D. REYNOLDS & SAMMIS B. WHITE, *THE ENTREPRENEURIAL PROCESS: ECONOMIC GROWTH, MEN, WOMEN, AND MINORITIES* (1997).

165. Kathleen E. Hull & Robert L. Nelson, *Assimilation, Choice, or Constraint? Testing Theories of Gender Differences in the Careers of Lawyers*, 79 SOC. FORCES 229, 245 (2000). Women also have decreased odds of making partner at firms of all sizes. *Id.* at 250.

166. Response of Laura, Survey of Disabled Women Attorneys (on file with author).

167. As I explore in this article, many of the participants took on the costs of their accommodations. Some scholars have suggested this may be an economically viable and efficient way of approaching employers' resistance to reasonably accommodating disabled employees. *E.g.*, J.H. Verkerke, *Is the ADA Efficient?*, 50 UCLA L. REV. 903, 941-952 (2003) (establishing an analytical framework for looking at the efficiency of ADA accommodations, including those provided by the disabled employees). However, I worry

agreeing to pay for her own accommodations, which could be costly, especially when measured against a solo practitioner or nonprofit director's income.<sup>168</sup>

All of these more flexible jobs, whether within the legal sector or not, can be precarious as well. Self-employment can slip into unintended unemployment, particularly in difficult economic times.<sup>169</sup> For some of the participants, the idea of becoming one's own boss and setting the course of work was enticing, but the process was daunting and required a considerable amount of foresight and planning.<sup>170</sup> Many of the attorneys stated they had chosen government or legal aid practice because they would get necessary health and prescription benefits, long-term disability insurance, and retirement contributions.<sup>171</sup> The stability of working for someone else was one benefit to a more rote environment.<sup>172</sup> The women then had to weigh the financial costs of accommodation with the social pressures to cover or minimize their disabilities before electing to work for particular employers.<sup>173</sup>

## B. Covering

I was scared I'd be pegged as 'difficult' or as not having the ability to practice

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that these kinds of "solutions" will only negate the intended civil rights focus of the ADA.

168. In its AFTER THE JD study, NALP found that minority attorneys were more likely than white attorneys to be solo practitioners. WILDER, *supra* note 96, at 15. Women, however, were significantly less likely to be solo practitioners. WILDER, *WOMEN IN THE PROFESSION*, *supra* note 151, at 7.
169. People with disabilities are more likely than non-disabled individuals to be employed part-time rather than full-time and to be in uncertain job situations where low growth and low wages are present. See JULIE HOTCHKISS, *THE LABOR MARKET EXPERIENCE OF WORKERS WITH DISABILITIES: THE ADA AND BEYOND 100* (2003).
170. See STATE BAR OF CALIFORNIA, *CHALLENGES TO EMPLOYMENT AND THE PRACTICE OF LAW CONTINUE TO FACE ATTORNEYS WITH DISABILITIES 13* (2004), [http://www.calbar.ca.gov/calbar/pdfs/reports/2004\\_Attorneys-with-Disabilities-Report-Exec-Sum.pdf](http://www.calbar.ca.gov/calbar/pdfs/reports/2004_Attorneys-with-Disabilities-Report-Exec-Sum.pdf) ("Most lawyers with disabilities were in solo practice (28%)").
171. See, e.g., Brenda Sapino Jeffreys, *Lawyers with Disabilities Say Obstacles, Stereotypes Persist*, LAW.COM, Jan. 22, 2007, <http://www.law.com/jsp/law/LawArticleFriendly.jsp?id=900005553100> (quoting a blind practitioner claiming that most lawyers with vision impairments work in government or solo practice).
172. While people with disabilities may seek secure and stable jobs, the occurrence of these kinds of positions is increasingly rare. Workers are expected to react to the possibility of perpetual change and be willing to take risks (and be the objects of companies' risk-taking). See Vicki Schultz, *Life's Work*, 100 COLUM. L. REV. 1881, 1924 (2000).
173. Accommodations end up costing employers very little, when compared to their revenue and other employee-investment expenses. A Sears Roebucks study found that the average cost of workplace accommodations for employees with disabilities was \$45. PETER BLANCK, ANNENBERG WASHINGTON PROGRAM, *COMMUNICATING THE AMERICANS WITH DISABILITIES ACT: TRANSCENDING COMPLIANCE: 1996 FOLLOW-UP REPORT ON SEARS, ROEBUCK AND CO.* 17 (1996), available at [http://disability.law.uiowa.edu/lhpdc/publications/documents/blanckdocs/annen\\_follow\\_up\\_96\\_sears.pdf](http://disability.law.uiowa.edu/lhpdc/publications/documents/blanckdocs/annen_follow_up_96_sears.pdf). Most accommodations cost nothing for the company and of those accommodations that did have a cost, a typical one-time expense was \$600. JOB ACCOMMODATION NETWORK, *WORKPLACE ACCOMMODATIONS: LOW COST, HIGH IMPACT* (2009), available at <http://www.jan.wvu.edu/media/LowCostHighImpact.doc>.

law because of disability-related barriers. I thought I'd experience discrimination, so I hid my disabilities. — Lynn<sup>174</sup>

As the surveys and interviews suggest, women with disabilities who are employed as lawyers face an interesting, shared dichotomy.<sup>175</sup> On the one hand, they are asked by employers and colleagues to compensate for or cover their disabilities, to act “normal” and unencumbered.<sup>176</sup> They are expected to act as if they are not affected at all by health conditions; they are asked to cover.<sup>177</sup> In this way, women with disabilities share a similar experience to such cultural minority groups as gays and lesbians and people of color.<sup>178</sup> As other scholars have noted, these latter groups are often asked to pretend that they are not affiliated with their minority identities.<sup>179</sup> People with disabilities in the law then share much with these other minority groups. In order to succeed, they are expected however quietly to be superhuman employees, not to struggle, not to

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174. Response of Lynn, Survey of Disabled Women Attorneys (on file with author).
175. As theorists interested in the overlap of feminism and disability studies note, the category of “disabled woman” carries with it conflicting messages about autonomy and dependence. In modern mainstream U.S. society, dependence on anyone for assistance connotes weakness and failure. This viewpoint is “based on the dichotomy between masculine independence and feminine dependence as if only the polarized extremes were possible or desirable. The dichotomy is strongly reinforced by the cult of the body that at least implies that adequate adults will be strong and fit.” Barbara Hillyer Davis, *Women, Disability, and Feminism: Notes Toward a New Theory*, 8 FRONTIERS 1, 1 (1984).
176. Rosemarie Garland Thomson’s work has focused on the issue of normalcy, as depicted in literature and social settings. She labels non-disabled people as “normates.” ROSEMARIE GARLAND THOMSON, EXTRAORDINARY BODIES 10 (1996) (“The rhetorical effect of representing disability derives from social relations between people who assume the normate position and those who are assigned the disabled position. . . . The disabled body is almost always a freakish spectacle”).
177. Within the disability community, normate wannabes are often referred to as “supercrips.” See generally Amit Kama, *Supercrips Versus the Pitiful Handicapped: Reception of Disabling Images by Disabled Audience Members*, 29 COMM. 447 (2004) (documenting the desire to see “triumphant” people who have overcome their disabilities). Interestingly, the supercrip in mass media depictions is usually a man struggling with a disability that requires him to rely on assistance from others. Women may be less appealing as the supercrip trope because they are already seen as dependent. Consider the film MY LEFT FOOT: THE STORY OF CHRISTY BROWN (Ferndale Films 1989) and its focus on writer Christy Brown working against the odds. See, e.g., Ellen Barton, *Discourses of Disability in the Digest*, 21 JAC 555, 558 (2001) (highlighting the audience’s characterization of Brown from pity to admiration).
178. See Yoshino, *supra* note 27; see also Elizabeth H. Gorman, *Gender Stereotypes, Same-Gender Preferences, and Organizational Variation in the Hiring of Women: Evidence from Law Firms*, 70 AMER. SOC. REV. 702 (2005) (examining sex stereotypes and the reinforcement of traditional work structures in law firms); Tristin K. Green, *Discomfort at Work: Workplace Assimilation Demands and the Contact Hypothesis*, 86 N.C. L. REV. 379 (2008).
179. See PAUL M. BARRETT, THE GOOD BLACK: A TRUE STORY OF RACE IN AMERICA (1999) (describing the harassment and eventual dismissal of an attorney at a law firm because of race); David B. Wilkins, *From “Separate is Inherently Unequal” to “Diversity is Good for Business”: The Rise of Market-Based Diversity Arguments and the Fate of the Black Corporate Bar*, 117 HARV. L. REV. 1548, 1589-90 (2004) (“Moreover, even when they are hired, minorities face strong pressure to demonstrate that they ‘fit’ into the firm’s culture by carefully managing those aspects of their identities that are—or are likely to be perceived as—different from those of partners and coworkers.”).

need “special” accommodations nor assistance, and to fade gently into the background when any manifestation of their disability causes discomfort or awkwardness for their coworkers or supervisors:<sup>180</sup>

My experience has been excellent in this regard and I soon forge close friendships with many coworkers. There have been two incidents (including this last experience) in which new bosses who have “inherited” me are clearly uncomfortable with the arrangement. One worked out; the other did not.  
— Jo<sup>181</sup>

Lawyers with disabilities then are implored wordlessly in many ways by their peers, supervisors, and communities to forget about their disabilities, even if their employers cannot and become obsessed with their disabilities as a means of distinguishing those attorneys from able-bodied coworkers.<sup>182</sup> A primer for the incoming attorney with a disability could read:

*Do not make an issue of your disability. Do not draw attention to yourself, unless it is for staying later than everyone, working faster, and billing more hours. Remember to always be positive and chipper. Do not admit to weakness or struggle or difficulty. And above all, do not make disability part of your identity politics.*

Or as two of the participants relayed:

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180. Some disability scholars argue increased exposure to workers with disabilities dispels myths—positive or negative—about them. “Exposure to persons with disabilities in the workplace may also dispel myths about the reasonability of expecting persons with disabilities to have superhuman abilities to compensate for physical or mental impairments.” Mark C. Weber, *Beyond the Americans with Disabilities Act: A National Employment Policy for People with Disabilities*, 46 BUFF. L. REV. 123, 130 n.31 (1998); see also Martha T. McCluskey, Note, *Rethinking Equality and Difference: Disability Discrimination in Public Transportation*, 97 YALE L.J. 863, 870 n.49 (1988) (“Famous people with disabilities, such as Helen Keller, are often portrayed in an unrealistic way that suggests that all people with disabilities are superhuman beings who are expected to ‘overcome’ their disabilities.” (citation omitted)).

181. Response of Jo, Survey of Disabled Women Attorneys (on file with author).

182. Employers may become preoccupied with prospective or current employees’ disabilities. This interest may be prompted by fears about the unpredictability of disabilities and their effects, but the most plausible explanation is that stereotypes about disability are at work. Compare this behavior with the treatment of fat employees. See Anna Kirkland, *Representations of Fatness and Personhood: Pro-Fat Advocacy and the Limits and Uses of Law*, 82 REPRESENTATIONS 24, 32-33 (2003). When these stereotypes get out of hand, they can result in disability-based harassment and even hate crimes. See MARK C. WEBER, *DISABILITY HARASSMENT* (2007). For more information about hate crimes against people with disabilities, see Ryken Grattet & Valerie Jenness, *Examining the Boundaries of Hate Crime Law: Disabilities and the “Dilemma of Difference,”* 91 J. CRIM. L. & CRIMINOLOGY 653, 677-78 (2001) (suggesting that hate crimes against people with disabilities are not tracked well nor reported fully), and Troy A. Scotting, Comment, *Hate Crimes and the Need for Stronger Federal Legislation*, 34 AKRON L. REV. 853, 891 (2001) (“Hate crimes against people with disabilities may take such forms as beatings, torture, rape, and even murder. Such crimes typically take the form of neglect and institutional abuse.”).



I did not tell anyone [about my disability and accommodations] because I did not want to hear debates about whether or not that gave me an advantage.

— Julie<sup>183</sup>

As long as people don't know about the seizure disorder, no problem, but once it is revealed, I am treated differently, with kid gloves, which I resent.

— Susie<sup>184</sup>

These tensions are even more pronounced for *women* attorneys with disabilities. On the one hand, they face some of the same obstacles as other female attorneys—striving to be treated as equals in an unequal workforce, balancing work and family, understanding the role of gender in the workplace, and seeing very few of themselves in leadership positions.<sup>185</sup> Just thirty years ago, the legal profession could be criticized for asking so many of its women to be more like men.<sup>186</sup> But women with disabilities often wear their weaknesses (not a very masculine trait in this gender discourse) on their surfaces, shining brightly, when they have visible or disclosed disabilities.<sup>187</sup> They are exposed in many ways and cannot hide behind bravado veneers.

Women can also be the subjects of reverse covering—meaning that they are often asked in the workplace to be more feminine if they are masculine, such as in the *Price Waterhouse* case.<sup>188</sup> There is no reason to believe that women with disabilities are excluded from these expectations; if anything, expectations about women with disabilities are in conflict. In *Price Waterhouse*, Ann Hopkins, an employee of the company was up for promotion to partner. However, management decided not to make Hopkins partner because they felt that she did not fit into the work environment due to her refusal to behave and appear more feminine. When Hopkins sued, she emphasized the manner in which she was subject to sex stereotyping. Here, Hopkins experienced discrimination by her employer based on management's ideas of how Hopkins *should* appear as a *female* partner candidate—rather than on any objective reality of her performance as an *employee*. As Kenji Yoshino pronounced in his seminal

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183. Response of Julie, Survey of Disabled Women Attorneys (on file with author).

184. Response of Susie, Survey of Disabled Women Attorneys (on file with author).

185. See CLARA CARSON, THE LAWYER STATISTICAL REPORT: THE US LEGAL PROFESSION IN 2000 (2004); Ida O. Abbott, *Women in Law Firms: Redefining Success*, 30 ABA L. PRACTICE 25 (2004); WILDER, WOMEN IN THE PROFESSION, *supra* note 151.

186. See generally JUDITH RICHARDS HOPE, PINSTRIPES AND PEARLS: THE WOMEN OF THE HARVARD LAW CLASS OF '64 WHO FORGED AN OLD-GIRL NETWORK AND PAVED THE WAY FOR FUTURE GENERATIONS (2003); JENNIFER L. PIERCE, GENDER TRIALS: EMOTIONAL LIVES IN CONTEMPORARY LAW FIRMS (1995).

187. Women with disabilities report higher levels of victimization when it comes to crime, violence, and abuse. See Patricia Paulsen Hughes et al., *Perceptions of Dangerous Situations and Victimization of Women with and without Impairments*, in NEW RESEARCH ON SOCIAL PERCEPTION 95, 104 (John A. Zebrowski ed., 2007).

188. *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989); see also Joel W. Friedman, *Gender Nonconformity and the Unfulfilled Promise of Price Waterhouse v. Hopkins*, 14 DUKE J. GENDER L. & POL'Y 205 (2007).

piece on covering, Hopkins “bore all of the burdens of covering without reaping any of its benefits.”<sup>189</sup>

This is what happens to women with disabilities when they are simultaneously asked to be more feminine, yet not vulnerable and weak, and stronger, yet not aggressive and combative. Women with disabilities are asked to act more “normal”:

Coworkers are okay. It’s the people that have to pay for the interpreters that get upset. However, full time interpreters are ending so the coworkers are going to have to e-mail or write. They will resist that and make me try to lip read—that is normally what happens. — Teri<sup>190</sup>

Women with disabilities are presented with similar predicaments as non-disabled women. Disabled women have two choices. They might either struggle to be accepted as “full women,” complete and intact within themselves and in the world, or they may mute their sex and become asexual.<sup>191</sup> I would argue that unlike women without disabilities, women with disabilities have a more difficult time implementing a third plan—becoming perceived as male in the workplace.<sup>192</sup> More than anything, women with disabilities in mainstream American society often represent to others the perceived culmination of weaknesses, shortcomings, and inadequacies. They fail to meet gender ideals of beauty and perfection.<sup>193</sup> They often emphasize the interdependence that is a reality for all people, however much in play bootstrap American individualism is at work.<sup>194</sup> And they remind societies and the profession of how they have failed

189. Yoshino, *supra* note 27, at 906.

190. Response of Teri, Survey of Disabled Women Attorneys (on file with author).

191. Here, I use “become” to describe how these women are perceived, not to imply an immutable physical transformation. See SHAUN BEST, UNDERSTANDING SOCIAL DIVISIONS 113 (2005) (“[W]omen with disabilities were unlikely to be in a relationship, again reflecting the assumption that sexuality is inappropriate for the disabled body.”); THE READER’S COMPANION TO U.S. WOMEN’S HISTORY 567-68 (Wilma P. Mankiller et al. eds., 1999) (indicating attitudes toward women with disabilities are negative, especially with regard to sexuality, parenting, and attractiveness).

192. Women with disabilities are often excluded from stereotypically feminine jobs, as well as stereotypically masculine jobs because of society’s perception of them as weak, dependent, and asexual. See DAVID M. ENGEL & FRANK W. MUNGER, RIGHTS OF INCLUSION: LAW AND IDENTITY IN THE LIFE STORIES OF AMERICANS WITH DISABILITIES 216 (2003); Margaret A. Nosek & Rosemary B. Hughes, *Psychosocial Issues of Women with Physical Disabilities: The Continuing Gender Debate*, in THE PSYCHOLOGICAL AND SOCIAL IMPACT OF ILLNESS AND DISABILITY 156, 165 (Arthur E. Dell Orto & Paul W. Power eds., 5th ed. 2007) (indicating that women with disabilities are perceived as “ill, ignorant, without emotion, asexual, pitiful, and incapable of employment” (citation omitted)).

193. See generally William John Hanna & Betsy Rogovsky, *Women with Disabilities: Two Handicaps Plus*, 6 DISABILITY & SOC’Y 49 (1991) (explaining that disabled women’s exclusion from the workplace is linked to attractiveness conceptions and self-image). See also M.A. Nosek et al., *National Study of Women with Physical Disabilities: Final Report*, 19 SEXUALITY & DISABILITY 5, 8 (2001) (indicating that working women with disabilities had high self-esteem); Margaret A. Nosek & Rosemary B. Hughes, *Psychospiritual Aspects of Sense of Self in Women with Physical Disabilities*, 67 J. REHABILITATION 20 (2001).

194. A picking-yourself-up-by-your-own-bootstraps approach in American workplaces affects

to incorporate so many cultural minority groups. Women with disabilities, particularly disabilities that are immediately perceptible, evoke psychic tension and fear on the part of non-disabled workers about their own mortality and vulnerabilities.<sup>195</sup> By their very acts of failing to cover, these women challenge the terms of work and the profession—our collective yet unwritten job description calling for unflinching stamina, unflappability, and speed.<sup>196</sup>

I have to deal with others' assumptions about me and feelings about my disability. Also, organizations that are looking to hire people with disabilities will try to hire me regardless of whether the job is a good fit for me.  
— Vanessa<sup>197</sup>

The message is that people with disabilities belong in disability law, if they belong in law at all.<sup>198</sup> Having disabled people in mainstream occupations comes with the imposed expectation that the “chosen few” employed disabled women will make others feel comfortable about disability.<sup>199</sup> Creating environments where law students and lawyers with disabilities can be “out” and have equal opportunities seems like a low priority. Joyce, for example, remembers the response she received from her law school when she tried to broach the subject

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different groups of people with disabilities differently. See F. Chan et al., *Drivers of Workplace Discrimination Against People with Disabilities: The Utility of Attribution Theory*, 25 WORK 77, 77 (2005) (finding that while more people with “uncontrollable but stable” disabilities reported employment discrimination to the EEOC, more verifiable instances of employment discrimination occurred among people perceived by coworkers and supervisors to have “controllable” disabilities, such as depression, schizophrenia, and substance abuse).

195. See Gilad Hirschberger et al., *Fear and Compassion: A Terror Management Analysis of Emotional Reactions to Physical Disability*, 50 REHABILITATION PSYCHOL. 246, 255 (finding that fear and anxiety surrounding death spark negative reactions in response to people with disabilities).
196. What is the job of a lawyer? The myth of perfection only serves to stymie the development of lawyers as people and practitioners. See, e.g., David Bernstein, *A Friend in Need*, 21 UTAH B.J. 8 (2008) (demonstrating the tremendous pressures that lawyers experience and the resulting health fallout); Stephen L. Braun, *What You Need to Know: Lawyers and Mental Health in a Nutshell*, 35 HOUS. LAW. 36 (1998) (coaching attorneys to get the help they need and fight perfectionism).
197. Response of Vanessa, Survey of Disabled Women Attorneys (on file with author).
198. In response to some of the dead ends faced by lawyers with disabilities, and the overall barriers to practicing disability law, Emory Law School held a conference in Fall 2007 on disability and the legal profession. See Anita Bernstein, *Lawyers with Disabilities: L'Handicape C'est Nous*, 69 U. PITT. L. REV. 389 (2008).
199. Cf. Green, *supra* note 178 (arguing for support in the workplace for women and people of color to express their identities and group memberships in order to confront coworkers' discomfort and workplace inequality); Robert Loo, *Attitudes Toward Employing Persons with Disabilities: A Test of the Sympathy-Discomfort Categories*, 34 J. APPLIED SOC. PSYCHOL. 2200 (2004) (suggesting, in a study of Canadian management students' views on disability, that having persons with disabilities participate in trainings at organizations and schools “would help ensure that students and employees have some positive contacts with people with disabilities in the belief that such contact promotes positive attitudes. Such contacts should help reduce discomfort about interacting with people with disabilities and help foster more sympathetic attitudes toward people with disabilities”).

of discrimination based on her blindness: “I was told the school doesn’t discriminate because, ‘[w]e admitted you, didn’t we?’ Another small incident was when the head of the career office asked me if I could read.”<sup>200</sup>

In firms’, schools’, and supervisors’ pursuits of perfection, or the surface qualities of it, women with disabilities tend to fail. Crystal, one of the participants, conducted her own experiment of sorts. As she recounts,

I went to some interviews with my white cane and some without. I don’t believe I got any call-backs from the interviews with canes but I did get a number from the interviewers that did not know I was disabled.<sup>201</sup>

Ironically, this pressure to cover may mask strengths that disabled women attorneys have. Viewed by others ignorant about disability as unsettling qualities, disabilities can make individuals excellent, empathic attorneys capable of escorting clients through extreme adversity.<sup>202</sup> This is not to make women lawyers with disabilities into heroes, but it is to argue for their essential roles within the profession. While many attorneys with disabilities have been relegated to positions involving disability law, legal aid, and Social Security, they are often drawn to these areas of practice because of the impact they can make on the lived experiences of people with disabilities.<sup>203</sup> People with disabilities, however, need a greater array of professional choices, and this is no more evident than with women with disabilities in the law.<sup>204</sup>

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200. Response of Joyce, Survey of Disabled Women Attorneys (on file with author).

201. Response of Crystal, Survey of Disabled Women Attorneys (on file with author).

202. The discriminatory assaillment of women with disabilities in law has spillover effects in their personal lives as well, thereby slowly eroding their desires and energies surrounding advocacy. See Minna J. Kotkin, *Diversity and Discrimination: A Look at Complex Bias*, 50 WM. & MARY L. REV. 1439 (2009) (emphasizing the “nuanced stereotypes faced by complex claimants” filing charges of employment discrimination based on more than one minority identity). Cf. Zachary A. Kramer, *After Work*, 95 CAL. L. REV. 627 (2007) (describing myriad ways in which an employee “exports” workplace discrimination to other spheres of his or her life). At the same time, these attorneys may be able to relate to clients on more than one basis and understand complex discrimination.

203. For a more in-depth discussion of the influences of environmental, cultural, and discriminatory factors on career choices by women with disabilities, see, for example, Lauren E. Lindstrom et al., *Expanding Career Options for Young Women with Learning Disabilities*, 27 CAREER DEV. EXCEPTIONAL INDIVIDUALS 43 (2004), and Lauren E. Lindstrom & Michael R. Benz, *Phases of Career Development: Case Studies of Young Women with Learning Disabilities*, 69 EXCEPTIONAL CHILDREN 67 (2002).

204. See Joanne Slappo & Lynda J. Katz, *A Survey of Women with Disabilities in Nontraditional Careers*, 55 J. REHABILITATION 1 (1989); Audrey A. Trainor et al., *From Marginalized to Maximized Opportunities for Diverse Youths With Disabilities: A Position Paper of the Division on Career Development and Transition*, 31 CAREER DEV. EXCEPTIONAL INDIVIDUALS 56 (2008). See generally Bonnie Doren & Michael Benz, *Gender Equity Issues in the Vocational and Transition Services and Employment Outcomes Experienced by Young Women with Disabilities*, in *DOUBLE JEOPARDY: ADDRESSING GENDER EQUITY IN SPECIAL EDUCATION* 289, 293 (Harilyn Rousso & Michael L. Wehmeyer eds., 2001) (indicating twenty-eight percent more disabled women college graduates than disabled male college graduates are in lower-skill occupations, and fifty-two percent fewer women than men are in higher-skilled jobs, such as lawyering).

The pressure placed on disabled women to alleviate social discomfort and to exceed standards is substantial. People within the disability community who have held professional positions and risen to the top of their fields are sometimes accused of being “supercrips” (crips, the shortened form of cripples) by other disabled people.<sup>205</sup> The tendency to excel and exceed expectations may be a form of survival in the legal profession, rather than any jockeying for elevated status:

My very obvious disability compels me to make an excellent first impression and set just the right note to make those coming in contact with me comfortable. Similarly, I feel that any work must be above standard and promptly completed in order to assuage any uncertainties about my ability to compete with other attorneys. One has to demonstrate that disability is irrelevant to competence and thereby cultivate confidence in clients, employers and coworkers in order to succeed. — Jo<sup>206</sup>

Jo and others face the dilemma of making others feel comfortable while they are not yet fully accepted members of the profession. In addition to these pressures to cover and succeed, they must also manage the real demands of their disabilities and any investments of material resources and personal energy to self-accommodate at work.

#### IV. UNDERSTANDING COVERING AND SELF-ACCOMMODATION

##### A. The Consequences of Self-Accommodation

###### 1. Professional and Social Effects

In not “making an issue” of disability, many women in the study were assured by their employers, coworkers, and schools that they would receive increased social acceptance.<sup>207</sup> Rather than pushing ADA rights or legal requirements of accommodation, the women often felt more comfortable in law school and at work by ignoring their health demands, postponing them, or exercising forms of self-help:<sup>208</sup>

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205. See Kama, *supra* note 177 (exploring the role of the supercrip).

206. Response of Jo, Survey of Disabled Women Attorneys (on file with author).

207. The self-esteem of women with disabilities is significantly related to being employed. According to one study, education was not significantly related to self-esteem, however, even though younger, more educated women with less severe disabilities were more likely to be employed. See Margaret A. Nosek et al., *Self-Esteem and Women with Disabilities*, 56 SOC. SCI. & MED. 1737, 1743-46 (2003).

208. Women with psychiatric disabilities are more likely than women with physical disabilities to be daunted by the process of disclosing their disabilities at work. One’s self of disability identity and the appropriate match between skills and the job are often good indicators of whether a person with a disability will disclose the disability to an employer. See, e.g., Rebecca Spirito Dalgin & Dennis Gilbride, *Perspectives of People with Psychiatric Disabilities on Employment Disclosure*, 26 PSYCHIATRIC REHAB. J. 306 (2003).

No one admitted depression before they were safely past the bar screening process and certainly no one admitted to getting counseling in school. I didn't even consider getting counseling then, although I needed it desperately. — Kathy<sup>209</sup>

I was too intimidated to actually ask for any accommodations in law school. I was scared I'd be pegged as 'difficult' or as not having the ability to practice law because of disability-related barriers. — Lynn<sup>210</sup>

One of my professors found about my disability because she couldn't find my final exam [because of separate testing accommodations]. When she found I got one of a few A's in her class, she was very surprised to say the least. — Dria<sup>211</sup>

Some of them switched jobs to find the right fit in terms of inclusion and acceptance.<sup>212</sup>

Since it became clear that I was not going to be made an associate with that firm (women never were), I left to become General Counsel for a local community mental health center. — Susie<sup>213</sup>

I lost salary by giving up my state job and going to the state disability law center, but they hired me at the five-year lawyer level, which they definitely would not have had to do. They bought me a computer right away. They bought me speech software and a Braille printer. — Kathy<sup>214</sup>

I've always worked for government or nonprofit because these entities tend to be less hostile to accommodation requests, although they are not immune. — Jade<sup>215</sup>

However, even in these searches, the women confronted attitudinal barriers across workplaces. No amount of self-accommodation seemed to overcome the perception of disability as a significant difference, and sometimes, a sign of inferiority.<sup>216</sup>

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209. Response of Kathy, Survey of Disabled Women Attorneys (on file with author).

210. Response of Lynn, Survey of Disabled Women Attorneys (on file with author).

211. Response of Dria, Survey of Disabled Women Attorneys (on file with author).

212. Cf. J.H. Verkerke, *An Economic Defense of Disability Discrimination Law* 24, (Univ. of Va. Sch. of Law, Legal Studies, Working Paper No. 99-14, 1999), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=170014](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=170014) (arguing for the avoidance of "job churning," where people with disabilities move from job-to-job, causing economic inefficiencies).

213. Response of Susie, Survey of Disabled Women Attorneys (on file with author).

214. Response of Kathy, Survey of Disabled Women Attorneys (on file with author).

215. Response of Jade, Survey of Disabled Women Attorneys (on file with author).

216. The perception that women with disabilities are inferior beings and employees extends past the United States' borders. In Canada, working-age women with disabilities are twice as likely to be living below the poverty line as women without disabilities. CANADIAN COUNCIL ON SOCIAL DEVELOPMENT, BRINGING DOWN THE BARRIERS: THE LABOUR

Blindness for me is a nuisance, the worst part of which has to do with others' assumptions and stereotypes. — Joyce<sup>217</sup>

The irony, therefore, is that even though many of these women took every step possible to become part of their work environments, they were still not accepted as equals. And even though these steps included self-accommodating in ways that would not visibly burden employers and coworkers, the women did not exchange their *accommodations of others* for psychological, physical, and social supports at work and professional inclusion.<sup>218</sup> They were making it easier for others to work with them, but the non-disabled attorneys and staff did not return the favor:

Probably the response from the clients has been better than the response from attorneys. Attorneys are more apt to say something than the clients. — Marta<sup>219</sup>

I need to teach in the classroom nearest to my office. The staff have gladly accommodated me; however, some other faculty have been irritated by my 'reserved' space. — Rita<sup>220</sup>

In effect, the women with disabilities in law accepted more difficult times at work in providing their own accommodations only to be met with continued rejection and isolation.<sup>221</sup> By moving closer to compromise and downplaying any legal rights, these attorneys could not win.<sup>222</sup> No amount of reassurance and pressure from peers could change the realities of their professional existences.

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MARKET AND WOMEN WITH DISABILITIES IN ONTARIO 6 (2000).

217. Response of Joyce, Survey of Disabled Women Attorneys (on file with author).
218. See David C. Baldrige & John F. Veoga, *Toward a Greater Understanding of the Willingness to Request an Accommodation: Can Requesters' Beliefs Disable the Americans with Disabilities Act?*, 26 ACAD. MGMT. REV. 85 (2001) (exploring how people with disabilities accommodate non-disabled people at work—particularly their attitudes, biases, and discomfort with regard to disability—by not requesting accommodations).
219. Response of Marta, Survey of Disabled Women Attorneys (on file with author).
220. Response of Rita, Survey of Disabled Women Attorneys (on file with author).
221. Self-accommodation does not always result in the desired outcomes. Employees with learning disabilities, for example, may self-accommodate to the point of reducing their employers' willingness to accommodate in the future. See Sara N. Barker, *A False Sense of Security: Is Protection for Employees with Learning Disabilities Under the Americans with Disabilities Act Merely an Illusion?*, 9 U. PA. J. LAB. & EMP. L. 325 (2007). But lawyers with learning disabilities are not the only employees potentially affected by self-accommodation or mitigation. See Elizabeth Fordyce, *The Elusive Protected Class - Who is Worthy Under the Americans with Disabilities Act?*, 51 VILL. L. REV. 1031 (2006) (discussing how mitigation may erode ability to meet disability definition and be deemed "worthy" of the protections of the Act).
222. People with disabilities may feel pressure by their employers, families, or colleagues not to exercise their rights under the ADA. A few years ago, *Ragged Edge Magazine*, a disability-positive publication, sought stories about reasonable accommodation, analyzed them, and shared them with readers. In these stories, many disabled people received excuses for something less than full accommodation, rather than actions to remove barriers. John Jay Frank, *ADA Accommodation Stories: The Categories*, RAGGED EDGE ONLINE, Nov. 17, 2004, <http://www.raggededgemagazine.com/focus/ADAaccores1104.html>.

They were working harder, sometimes with little or no support, and while they may have allowed disability and accommodation requests to become muted in the background, their coworkers and partners could not stop focusing on disability. As Vanessa put it, “Sometimes, being female subjects you to a double whammy of assumptions and prejudices.”<sup>223</sup> Jade echoes this experience: “I feel as though I have two strikes against me because I am a woman AND I have a disability.”<sup>224</sup>

Only the entrepreneurs seemed to identify a workplace that met many, if not most, of their needs. They did so because they created it for themselves or partnered with others in business in ways that retained their control over daily operations, scheduling, and projects.

## 2. Legal Effects of Self-Accommodation

We accommodate clients, and we are constantly addressing these needs. However, when it comes to [the firm’s] own staff, the situation is a bit different. I usually have to remind them. — Virginia (reflecting on the differences between accommodating clients with disabilities and disabled attorneys in the office)<sup>225</sup>

But the problem with self-accommodation issues lies not only in cultural and professional barriers to the full integration of lawyers with disabilities in the legal profession, but also in the legal ramifications. When lawyers with disabilities self-accommodate, they do more than mitigate the particular disabilities. In effect, they move one step farther away from testing and enforcing the protections of the Americans with Disabilities Act.<sup>226</sup> By not triggering the Act and its rights at work and in the courtroom, they generate no useful precedent, no legal clarifications of the boundaries of those civil rights. In turn, the professional culture of lawyering can remain unchanged and inhospitable to lawyers with disabilities. While the tradeoff of litigation is job loss, professional banishment, and financial distress, the lack of litigation or even informal invocation of a civil rights statute can be a tacit recognition of the law’s impotence.

I do not mean to minimize the tangible risks of legal action when lawyers with disabilities already occupy precarious positions in the profession. But as I discuss in this essay, changes for this population can be useful to other groups as well and to professional reform, generally. As the interviews and surveys demonstrate, lawyers with disabilities, particularly women, struggle with meeting the expectations of the workplace focused on near superhuman

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223. Response of Vanessa, Survey of Disabled Women Attorneys (on file with author).

224. Response of Jade, Survey of Disabled Women Attorneys (on file with author).

225. Response of Virginia, Survey of Disabled Women Attorneys (on file with author).

226. See discussion *supra* Part III.A.



power.<sup>227</sup> While almost any lawyer, with or without a disability, could use a more flexible and responsive workplace, legal employers and firms in particular seemed hesitant to recognize any weaknesses on the parts of their employees.<sup>228</sup> To work in the law is to negate an admission of anything one cannot do and to embark on a performance of professional infallibility. Sometimes, this process is partially motivated by fear:

I know what my (disability) limitations are, and I avoid positions where hearing issues would expose me to ridicule or embarrassment, or would compromise my work effectiveness. — Mary<sup>229</sup>

Some accommodations that lawyers with disabilities could use include: flexible work hours, assistance with transportation, a modification of the billable-hour structure, increased administrative support, readers for people with vision-related or learning disabilities, telecommuting, and responsive promotion structures.<sup>230</sup> While many of the lawyers interviewed did not first choose to self-accommodate, but were rather pressured—either in law school or at work—to do so, once they self-accommodated, they may have reduced their visibility and legal standing as people with *disabilities*.<sup>231</sup>

Reduced visibility has several ramifications beyond stymieing raised awareness in the workforce. A “can do” attitude and a creative approach to problem solving can leave the ADA untested in the courts and, therefore, unrefined.<sup>232</sup> At the same time, however, should lawyers with disabilities be expected as individuals to champion the ADA and be test cases for a statute that

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227. The lawyer as a superhuman is such a popular trope that it has found its way into comic books. *See, e.g.*, Dan Slott & Juan Bobillo, SHE-HULK VOL.2: SUPERHUMAN LAW (2005) (using the vehicle of a superwoman attorney to exercise intellectual fearlessness, practice universal law, and rid the planet of evil).

228. Consider the legal profession’s response to drug and alcohol abuse. While State Bars have established intervention networks for lawyers with addictions, peers and judges are not apt to report them consistently. This form of self-policing falls to the wayside, perhaps because of discomfort with acknowledging any problems on the parts of attorneys. *See, e.g.*, Connie J.A. Beck et al., *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers*, 10 J.L. & HEALTH 1 (1995); Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & L. 261 (2004).

229. Response of Mary, Survey of Disabled Women Attorneys (on file with author).

230. EEOC Disabled Attorneys Facts, *supra* note 123.

231. But the self-accommodations expected of women with disabilities are present in other forms for all minorities. On a diversity-oriented website for minority job seekers, several posts concern “fitting in,” and one in particular, directed at situations where the employee is “one of the only diversity employees” in the office, emphasizes the “need to find ways to fit in because” not doing so can result in “failure.” *Tips to Fitting in When You Are One of the Only Diversity Employees in the Office*, DIVERSITYJOBS.COM, Mar. 24, 2008, <http://blog.diversityjobs.com/tips-to-fitting-in-when-you-are-one-of-the-only-diversity-employees-in-the-office>.

232. *See generally* Michael E. Waterstone, *A New Vision of Public Enforcement*, 92 MINN. L. REV. 434 (2007) (arguing for the revamping of public enforcement strategies surrounding the ADA).

has not been working historically?<sup>233</sup> Absolutely not—when faced with the possibility of unemployment or even underemployment and self-accommodating, almost anyone would choose financial pragmatism and autonomy.<sup>234</sup> In this study, the most successful attorneys with disabilities were self-accommodating by working at organizations accepting of disability (largely because they had disabled clients or a mission of disability rights), starting their own firms or businesses, and identifying workplaces that were flexible.

### B. The Rationale of Self-Accommodation

In order to understand why women lawyers with disabilities are self-accommodating, we must disentangle the layers of identity to analyze the social and professional forces. They then can be reassembled to form an integrated hypothesis. The labels of “disabled,” “woman,” and “attorney” can stand alone, but the combination of all three is what provides unique insights into their separate functions and the state of the legal profession.<sup>235</sup> These identities, however, do not merely have an additive effect. Their intersection and interaction is complex and worthy of further study. As some feminist and critical race theorists warn, separating people into neat categories is not representative of lived experience.<sup>236</sup> But to understand any of these identities in the legal

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233. Retaliation against people exercising their ADA rights is one severe form of discouragement. See 29 C.F.R. § 1630.12 (2009) (prohibiting coercion, retaliation, intimidation, and interference). Disabled employees worry about losing accommodations and their jobs entirely. Government agencies, historically the favored employers of lawyers with disabilities, are not immune from allegations of retaliation and many states are taking actions at that level to educate their employees about the ADA. In Maryland, for example, the Department of Transportation created and distributed a flyer focused on ADA accommodations and employer “coercion, intimidation, or retaliation against individuals exercising their ADA rights.” EEOC, FINAL REPORT ON BEST PRACTICES FOR THE EMPLOYMENT OF PEOPLE WITH DISABILITIES IN STATE GOVERNMENT 24 (2005), available at [http://www.eeoc.gov/facts/final\\_states\\_best\\_practices\\_report.pdf](http://www.eeoc.gov/facts/final_states_best_practices_report.pdf).

234. Employers and grassroots disability organizations may tackle disability issues at work from pragmatic perspectives, too, in searching for best practices approaches and in focusing on the larger national employment picture. See Stanley Herr, *Reforming Disability Nondiscrimination Laws: A Comparative Perspective*, 35 U. MICH. J.L. REFORM 305, 354, 374 (2001) (emphasizing a pragmatic best practices approach in the United States and abroad).

235. One example of that approach is the repetition of “women and minorities,” as if women cannot be minority women as well. See Jocelyn A. Hollander, *Resisting Vulnerability: The Social Reconstruction of Gender in Interaction*, 49 SOC. PROBS. 474, 475 (2002) (depicting gender and other categories of identity as dynamic social performances, which can break with normative conceptions and shift understandings of minority experiences).

236. See James Overboe, *‘Difference in Itself’: Validating Disabled People’s Lived Experience*, 5 BODY & SOC’Y 17 (1999) (warning that perceptions based on the body may devalue disabled people’s lived experiences); Gill Valentine, *Theorizing and Researching Intersectionality: A Challenge for Feminist Geography*, 59 PROF. GEOGRAPHER 10 (2007) (recognizing the importance of multiple identities, space, and geographic location in the creation of lived experience). But see Linda H. Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 STAN. L. REV. 1161, 1189 (1995). Cognitive categories can result in painful, pervasive stereotyping and discrimination, but some social theorists have argued that cognitive tendencies toward

profession, we must first let them stand alone to see the distinctions and overlaps for the women in the study.

### 1. Disability

At the level of disability, these women may be self-accommodating for a number of reasons—both pragmatic and personal.<sup>237</sup> Fundamentally, employers have been resistant to accommodate, and this is no less true in the practice of law.<sup>238</sup> At the same time, employees with disabilities may perceive or be told of this resistance to fully accommodate their disabilities and decide to forego the stigma of asking for assistance.<sup>239</sup> Finally, after years of interacting with an insufficient disability rights law or the lack of one altogether, women with disabilities in law may find that taking on their own accommodations guarantees that they will be satisfied and in control.<sup>240</sup> Control can be especially important when a person is uniquely situated to understand her needs and the best approach to addressing them.<sup>241</sup> I will examine each of these reasons in turn and explain why I find the marriage of all three to be a compelling explanation of how these women—and other professionals with disabilities—have adapted to a workplace that is not yet ready, attitudinally or legally, to accommodate them.

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categorization are attempts to address overwhelming amounts of information and to serve as “guardians against complexity.” Krieger argues that what might look like discrimination is unintentionally so and more a byproduct of processing data. *Id.*

237. Women and employees with disabilities may accommodate their employers more than men and non-disabled individuals because they are responding to their employers’ perceived accommodations of them—the idea that hiring a woman or a disabled person is already more costly because of *that person’s* potential needs. Just as it is not true, however, that all employees with disabilities will need accommodations, so is it not true that all women will cost more in the workplace. See Monica Diggs Mange, *The Formal Equality Theory in Practice: The Inability of Current Antidiscrimination to Protect Conventional and Unconventional Persons*, 16 COLUM. J. GENDER & L. 1, 12 (2007); Michelle A. Travis, *Equality in the Virtual Workplace*, 24 BERKELEY J. EMP. & LAB. L. 283, 324-26 (2003).
238. See Sharon Hartman & Pamela M. Robert, *The Social Construction of Disability in Organizations: Why Employers Resist Reasonable Accommodation*, 25 WORK & OCCUPATIONS 397 (1998). Compare this approach to employers’ resistance to accommodate immigrants and their language needs. Cf. Brietta R. Clark, *The Immigrant Health Narrative and What It Tells Us About the U.S. Health Care System*, 17 ANNALS HEALTH L. 229, 243 (2008).
239. See Bagenstos, *supra* note 46.
240. See Morris, *supra* note 75, at 13 (explaining that women with disabilities might want to retain control over their accommodations process to ensure that the provider is “reliable and competent” and that the disabled women are “treated with respect”); see, e.g., Seth D. Harris, *Disabilities Accommodations, Transaction Costs, and Mediation: Evidence from the EEOC’s Mediation Program*, 13 HARV. NEGOT. L. REV. 1, 9 (2008) (noting that employees with disabilities can also control access to medical information in reasonable accommodations negotiations).
241. See generally Sue A. Krenek, *Beyond Reasonable Accommodation*, 72 TEX. L. REV. 1969, 2004-13 (1994) (discussing employee-provided and government-subsidized reasonable accommodation schemes).

### a. Employers' Reactions

The largest force behind self-accommodation may be the denial of accommodations by employers.<sup>242</sup> Rather than face unemployment, workers with disabilities are pushed to be resourceful and creative by relying on whatever supports and assistance they can gather to address the accommodation issues themselves.<sup>243</sup> Employers deny accommodations for myriad reasons—perceived costs, resistance to people with disabilities, lack of awareness, tight resources, disdain for the ADA, and because of what I shall refer to as the “principle of excess.”<sup>244</sup> This principle of excess operates on several levels, but is essentially a gut reaction to the request for accommodation as being too much—too much to ask for, too much to pay for, too much to do for any one individual with a disability, and too much flexibility to grant. The worry on the part of employers can be that accommodating this request will open the floodgates to other demands by current and prospective disabled employees or other employees in the workforce.<sup>245</sup> Being perceived as a disability friendly workplace is a mixed fate if the business attracts more costly employees; at least, this is how the reasoning, if it is even rational, unfolds for the principle of excess.<sup>246</sup>

242. See Melissa M. Chureau, *The Barnett Paradox: Icarus's Wings*, 6 J. SMALL & EMERGING BUS. L. 395, 412 (2002) (recognizing that the process of asking and being rejected for accommodations is most difficult for employees with mental and psychiatric disabilities); Melissa Cole, *Beyond Sex Discrimination: Why Employers Discriminate Against Women with Disabilities When Their Employee Health Plans Exclude Contraceptives from Prescription Coverage*, 43 ARIZ. L. REV. 501, 507 (2001) (questioning the backlash against “creative uses of the ADA to impose liability” on disability-discriminating employers); S. Elizabeth Willborn Malloy, *Something Borrowed, Something Blue: Why Disability Law Claims Are Different*, 33 CONN. L. REV. 603, 642 (2001) (using the *McDonnell Douglas* test to show that denial of reasonable accommodations to disabled employee was pretextual).

243. Employees with disabilities may be accustomed to channeling creativity and resourcefulness in the workplace in order to make accommodations feasible. This kind of brainstorming can have applications in other areas of disability law, such as education. See, e.g., Martin W. Bates, *Free Appropriate Public Education Under the Individuals with Disabilities in Education Act: Requirements, Issues, and Suggestions*, 1994 B.Y.U. EDUC. & L.J. 215, 221-22 (arguing for the establishment of “creative FAPes” [free and appropriate public education] to “serve the best interests of everyone”).

244. Merely requesting accommodations may significantly lower employees' perceived job suitability. See John T. Hazer & Karen V. Bedell, *Effects of Seeking Accommodation and Disability on Preemployment Evaluations*, 30 J. APPLIED SOC. PSYCHOL. 1201 (2006) (noting that even when qualifications remained the same or better, accommodations requests made by disabled candidates negatively affected their perceived suitability for jobs).

245. See Pamela Robert, *Disability Oppression in the Contemporary U.S. Capitalist Workplace*, 67 SCI. & SOC'Y 136 (2003) (noting isolation, harassment, and marginalization of disabled employees in large public-sector organizations).

246. Disability ghettos can exist in otherwise coveted employment positions, such as academia. In *Understanding Disability*, Michael Oliver writes:

As the disabled sociologist, I found myself in the ‘academic disability ghetto’ but determined to render an accurate, undistorted and wholly subjective account of disability. I have no regrets about being in the disability ghetto. It has enabled me to teach about disability issues to students.

MICHAEL OLIVER, *UNDERSTANDING DISABILITY: FROM THEORY TO PRACTICE* 9 (1996); see also Sarah F. Rose, *Disabilities and the Academic Job Market*, 28 DISABILITY STUD. Q. 3 (2008) (describing her experience in the academic job market as a person with an

As I have explored elsewhere, reasonable accommodations are not only subject to gut-reaction tests by employers.<sup>247</sup> Many courts are adopting the same approach in handling reasonable accommodation disputes. The difficulty legally is not just ever winnowed rights, but rather that the core elements of ADA provisions are not being honored. Reasonable accommodations are intended to make it possible for disabled workers to compete “on a level playing field” with non-disabled workers.<sup>248</sup> The accommodation process was intended by the ADA’s drafters and supporters to be an interactive one, a dialogue between employer and employee about what each could do to ensure productivity, inclusion, and respect.<sup>249</sup> There is no set list of accommodations that should be denied all of the time, just as there is no guidebook to accommodations that should always be granted.<sup>250</sup> The inquiry, as outlined earlier in this article, is largely based on the resources and individuals involved. The accommodations process is far from a dry calculation of costs versus benefits, though it is conceived of in this way by such judges as Posner and Calabresi.<sup>251</sup> Rather, it is a dismantling of the attitudes and reactions behind the principle of excess in order to expose the actual hurdles that keep people with disabilities from meaningful work. These barriers are overwhelmingly attitudinal and cultural, and not simply matters of costs of accommodations or the construction of ramps.<sup>252</sup> Legal solutions are not often effective tools for dismantling attitudinal

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“invisible” disability). Cf. David Gaines, *Geographical Perspectives on Disability: A Socio-Spatial Analysis of the Mentally Disabled Population in Russia*, 37 MIDDLE ST. GEOGRAPHER 80, 86-7 (2004) (describing the disability ghettos of Russia where people with disabilities are isolated in urban areas).

247. See Basas, *supra* note 45.

248. See *Fink v. New York City Dep’t of Personnel*, 855 F. Supp. 68, 71-72 (S.D.N.Y. 1994) (“Section 504 imposed an obligation on defendants to make such reasonable accommodations of plaintiffs’ disability as would allow plaintiffs to compete, to the maximum extent reasonably possible, on a level playing field with other test-takers.”). Both the ADA and the statute it was modeled after, Section 504 of the Rehabilitation Act, use this language of reasonable accommodation.

249. The EEOC’s regulations are clear about the need for an interactive process to resolve reasonable accommodation requests. “To determine the appropriate reasonable accommodation it may be necessary for the [employer] to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation.” 29 C.F.R. § 1630.2(o)(3) (2009).

250. The EEOC regulations provide a list of potential accommodations, but this list is intended to be illustrative and not exhaustive. 29 C.F.R. § 1630.2(o)(1)-(2) (2009).

251. In *Van Zande v. Wisconsin Department of Administration*, 44 F.3d 538, 542 (7th Cir. 1995), Judge Posner held that “reasonable . . . requires something less than the maximum possible care” to the employee and advanced a cost-benefit analysis for resolving disputes between employees and employers over accommodation. Judge Calabresi, in *Borkowski v. Valley Central School District*, 63 F.3d 131, 138 (2d Cir. 1995), also adopted cost-benefit analysis in defining reasonable accommodation, deciding that an accommodation was only reasonable where “its costs are not clearly disproportionate to the benefits that it will produce.”

252. See Michael Selmi, *Interpreting the Americans with Disabilities Act: Why the Supreme Court Rewrote the Statute, and Why Congress Did Not Care*, 76 GEO. WASH. L. REV. 522, 528 (2008) (noting a “long and complex history” of “social attitudes” toward people with disabilities that have complicated interpretation and enforcement of the Americans with Disabilities Act).

barriers. The barriers confronting disabled women attorneys send messages of what is expected of them:

I believe that women with disabilities in some ways have a much harder time [than men with disabilities]. It seemed to me that I had to work harder to seem appealing [to employers]. — Kathy<sup>253</sup>

### b. Stigma of Asking

Intimately tied to the issue of employer refusal to accommodate is the stigma of asking for accommodations. This stigma is perhaps most strongly felt by employees with disabilities in the practice of law, where attorneys are rewarded for erecting a façade of impenetrability and repose. Stepping back from a specific focus on the legal profession, however, we can begin to analyze the stigma faced by anyone asking for accommodation—lawyers, janitors, and actors alike.<sup>254</sup>

Stigma operates in two ways in the accommodation request. First is the stigma of asking. When an employee with a disability has to request assistance, she may feel as if she is admitting to a flaw or shortcoming.<sup>255</sup> With stigma comes the shame of difference. Much work has been done through the disability-rights movement and the field of disability studies (similar to black studies and queer studies) to mitigate the effects of cultural isolation and alienation and to build pride and a celebration of disability as diversity. These efforts, however, must battle years of powerful social stigma about disability as undesirable, discomfiting, and revolting.<sup>256</sup> Some employees with disabilities would rather struggle with obstacles in the workplace that could be removed with reasonable accommodation rather than “out” themselves as having disabilities.<sup>257</sup> And if the

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253. Response of Kathy, Survey of Disabled Women Attorneys (on file with author).

254. See Bagenstos, *supra* note 46; Laura L. Rovner, *Disability, Equality, and Identity*, 55 ALA. L. REV. 1043, 1044 (2004); see also Katharina Heyer, *A Disability Lens on Sociolegal Research: Reading Rights of Inclusion from a Disability Studies Perspective*, 32 LAW & SOC. INQUIRY 261, 271 (2007) (explaining that the stigma of reasonable accommodation rights comes from society viewing them as “special” and more than necessary).

255. See Claudia Center, *Libra Project Manual: Lifting Invisible Barriers through Reasonable Accommodations*, 730 PLI/LIT 259, 263-64 (2005) (elucidating that asking for reasonable accommodations may come with the stigma of having one’s disability disclosed, particularly for people with psychiatric disabilities).

256. Stigma and shame may fuel disabled employees’ decisions to not sue under the ADA, so as to avoid public disclosure in open court of their impairments. See Michael D. Reisman, Note, *Traveling “to the Farthest Reaches of the ADA,” or Taking Aim at Employment Discrimination on the Basis of Perceived Disability?*, 26 CARDOZO L. REV. 2121, 2136 (2005) (“On the one hand, by compelling them to proclaim in open court that they are disabled, it may serve to reinforce their sense of stigma and shame, in particular if they suffer from mental illness.”).

257. The pressure to remain closeted about one’s disability where possible is strong, yet it serves to undermine the ADA and erode potential connections with disability rights that the person could have. See, e.g., Candice M. Lee, *From ‘Passing’ to ‘Coming Out,’* RAGGED EDGE ONLINE, Sept./Oct. 2003, <http://www.ragged-edge-mag.com/0903/0903ft2.html>.

In most of the situations I encounter, I am the only person present with a disability.

disability is on the surface, such as it often is with mobility impairments, the employee may attempt to downplay the disability to avoid drawing attention to herself.

The stigma of asking can be tied to the stigma of being refused. Assuming that an employee is comfortable and confident enough at work to ask for accommodation, the individual may be facing a difficult situation when that accommodation will more likely than not be denied.<sup>258</sup> At that point, does the employee engage in a fight over disability rights with the same management team that sets salary, promotion, and even retention? Where does a denied accommodation leave an employee with a disability? She can choose to assert her ADA rights, involve human resources and eventually, the Equal Employment Opportunity Commission and attorneys (or even her own legal prowess), but she must also carve out ways to remain in and function in her workplace—one that is now possibly conflicted and adversarial.<sup>259</sup> As with other employment discrimination and civil rights claims, ADA cases can take years to resolve and are more likely to be resolved against the employee.<sup>260</sup> When confronted with the time and expense of litigation, some employees with disabilities may choose to simply endure the workplace conditions or redirect their energies to a new job search.

Self-accommodation can be criticized as the employee coping or seen as a survival strategy of the gifted<sup>261</sup> because not every potential or current employee

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All the key disability rights issues—work, housing, medical care—have left me unscathed, because of my fortunate ability to work full time, to put a roof over my own head, to purchase health insurance.

And yet, here are these braces. This limp. This ostomy appliance. These stares in the supermarket. All remind me that, while I live among the non-disabled, I remain on the margins. I remain *Other*.

*Id.*

258. For studies of how the EEOC processes reasonable accommodation discrimination claims, see, for example, Amy J. Armstrong et al., *Workplace Discrimination and Cumulative Trauma Disorders: The National EEOC ADA Research Project*, 25 WORK 49 (2005) (concentrating on EEOC claims made by people with trauma disorders), Liza Conyers et al., *Workplace Discrimination and HIV/AIDS: The National EEOC ADA Research Project*, 25 WORK 37 (2005) (studying EEOC claims made by people with HIV and AIDS) and Kathryn Moss et al., *Outcomes of Employment Discrimination Charges Filed Under the Americans With Disabilities Act*, 50 PSYCHIATRIC SERV. 1028 (1999) (focusing on EEOC claims made by people with psychiatric disabilities).
259. *But see* Donald E. Schrey & Norman C. Hursh, *Workplace Disability Management: International Trends and Perspectives*, 9 J. OCCUPATIONAL REHAB. 45, 49, 54 (1999) (analyzing adversarial workplace dynamics in the context of disability management systems).
260. The EEOC initiated an ADA mediation program to better resolve complaints. They cut their determination time by almost half. EEOC, HIGHLIGHTS OF EEOC ENFORCEMENT OF THE AMERICANS WITH DISABILITIES ACT 2 (2000) (“While ADA charges took an average of 286 days to reach a determination in EEOC’s administrative process in FY 1999, the processing time for mediated ADA charges to reach a final resolution of the matter was about 150 days or less.”). More than ninety percent of Title I ADA plaintiffs have lost their employment discrimination cases, however. *See* discussion *supra* note 343.
261. People with learning disabilities have been pressured, especially by their schools, counselors, and families to self-accommodate and keep their disabilities private. Such self-

with a disability can exercise self-accommodation. Given that many people with disabilities are employed at the lowest levels of the American workforce and receive commensurate wages, employees with disabilities are often not in positions to bear the costs of their own accommodations.<sup>262</sup> Yet, many disabled employees decide to pay for their own accommodations, and therefore, pay to work, in order to participate in a profession and the community.<sup>263</sup> These costs of accommodation should be borne by their employers, rather than being out-of-pocket expenses for employees with disabilities.

When examining the issue of lawyers with disabilities in particular, we find that self-accommodation can be common. These professionals are willing to receive reduced net income (when compared to non-disabled attorneys) if it results in meaningful employment:

I actually accepted a full-time job and in that position I am the compliance manager for the alternative media access center. I do some legal stuff but it is not really a “legal job.” My boss and I have agreed because of the income that I want to have he knows that he will never pay me as much as I need or want to make, my boss is an entrepreneur himself so he knows and understands that I will always have some cases. — Marta, (covering her accommodations—driver, reader, assistant—in solo practice)<sup>264</sup>

### c. Control and Efficiency

I will get to Z from A faster than most but need to go “my” way. I cannot do projects the way others would. I have my own method for success and

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accommodation may backfire, however, when the disabled person copes too well and the courts no longer see her as needing any accommodations. *See generally* Brian J. Winner, *Disability and the ADA: Learning Impairment as a Disability*, 28 J.L. MED. & ETHICS 410 (2000) (discussing *Gonzales v. Nat’l Bd. of Med. Exam’rs*, 225 F.3d 620, 630 (6th. Cir. 2000)).

262. *See* Ruth I. Freedman & Sheila Lynch Fesko, *The Meaning of Work in the Lives of People with Significant Disabilities: Consumer and Family Perspectives*, 62 J. REHABILITATION 49 (1996) (discussing the significant role of work in the lives of people with disabilities); Connie J. McReynolds, *The Meaning of Work in the Lives of People Living with HIV Disease and AIDS*, 44 REHABILITATION COUNSELING BULL. 104-15 (2001) (offering that work provides people with HIV health insurance a sense of contributing to society, increased wellness, and a meaningful distraction from the illness).
263. After inquiring with sources at the Department of Labor’s Office of Disability Employment Policy and its Job Accommodation Network, I discovered that no official study of self-accommodation has been conducted. Such a study would be difficult to conduct, but a patchwork of information could be pieced together from qualitative studies such as this one. Another possible explanation for self-accommodation is that many people became accustomed to providing their own accommodations before the ADA and continued to do so after the Act was passed. An individual’s willingness to provide her own accommodation at Time-1 does not relieve an employer from its duty of accommodating her at Time-2 should those needs change, if she can no longer provide the accommodation, or if she no longer wants to provide it. 29 C.F.R. Pt. 1630, App. § 1630.9 (2009).
264. Response of Marta Survey of Disabled Women Attorneys (on file with author).



accomplishing the task. — Tyler<sup>265</sup>

Individuals with disabilities may choose to self-accommodate in order to maintain a semblance of control over the accommodations themselves—to determine the provider or source and to configure the accommodation to meet their specific needs.<sup>266</sup> When others become responsible for providing accommodations to employees with disabilities, they may not understand the nuances of the request.<sup>267</sup> Accommodations should be arranged in a timely fashion and treated as necessary to work performance as having a desk, a computer, and an office chair is for a law professor.<sup>268</sup> Yet, the issue of the principle of excess rears again, as accommodations can be viewed by management and coworkers as extraneous to the core of operations.<sup>269</sup>

When employees with disabilities retain control over accommodations, they may also perceive themselves as taking the most efficient course available. If management does not have experience with providing accommodations, the employee might step in to fill the information void and hasten the process.<sup>270</sup> By the time that lawyers with disabilities, for example, reach practice, many of them have negotiated accommodations at school and summer jobs. They may not only have experience with locating the necessary equipment or assistance, but also may be more invested in seeing the accommodation realized promptly and cost-effectively.<sup>271</sup> The development of expert knowledge about one's needs is an

265. Response of Tyler, Survey of Disabled Women Attorneys (on file with author).

266. Control ties in closely to a sense of self-efficacy at work. See Richard Roessler & Phillip Rumrill, *Strategies for Enhancing Career Maintenance Self-Efficacy of People with Multiple Sclerosis*, 60 J. REHABILITATION 54 (1994); Phillip D. Rumrill, Jr., *Effects of Social Competence Effects of a Social Competence Training Program on Accommodation Request Activity, Situational Self-Efficacy, and Americans with Disabilities Act Knowledge Among Employed People with Visual Impairments and Blindness*, 12 J. VOCATIONAL REHABILITATION 1878 (1999).

267. Employers are not being charitable or generous when they provide reasonable accommodations; they are simply following the law. See Michael A. Stein, *Same Struggle, Different Difference: ADA Accommodation as Antidiscrimination*, 153 U. PA. L. REV. 579, 661 (2004) (noting that “the ADA’s remedies are intended as a correction of past injustice rather than as a charitable handout”).

268. The expectation of timeliness also falls on the employee. See EEOC Disabled Attorneys Facts, *supra* note 123, at 124 (“The ADA does not compel attorneys to ask for accommodations at a certain time. However, failure to request needed accommodation in a timely manner (or to accept a proffered accommodation) could affect job performance and result in discipline or termination based on poor performance or conduct.”).

269. See, e.g., Adrienne Colella, *Coworker Distributive Fairness Judgments of the Workplace Accommodation of Employees with Disabilities*, 26 ACAD. MGMT. REV. 100 (2001) (examining the roles of equity and fairness in coworker attitudes toward accommodation).

270. The ADA also encourages this kind of independence and efficiency. See Elizabeth F. Emens, *Integrating Accommodation*, 156 U. PA. L. REV. 839, 843 (2008) (“The findings of the ADA embrace multiple goals, including broad integrationist aims as well as efficiency aims, and courts have made clear that the benefits of accommodations need not exceed the costs.”).

271. The perspective of people with disabilities as stakeholders in the reasonable accommodation process is obvious yet underappreciated. See, e.g., Judith A. Cook & Jane Burke, *Public Policy and Employment of People with Disabilities: Exploring New Paradigms*, 20 BEHAV. SCI. & L. 541, 542 (2002) (advancing a “new paradigm” of disability policy, focused on “community inclusion, accommodation, and the protection of civil rights”).

outcome of years or a lifetime of navigating an able-bodied world and labor market.<sup>272</sup> As Virginia put it:

Once I notified my employer of my needs they have allowed me the time and cooperation. I made the contacts and was able to seek the services of some state and local agencies to assist me in figuring out what would work best for me at work.<sup>273</sup>

This discussion would be incomplete without recognition of the ways in which these factors—-independent choices or employer-imposed constraints— affect the experiences of employees with disabilities. No one factor should be privileged above another because at any one time, employees with disabilities are negotiating personal limitations and differences, as well as social influences from employers and peers.<sup>274</sup> Negative experiences in the workforce may heighten sensitivity to one factor above another, but they are best understood as a loop.<sup>275</sup> The prevalence of employers' refusal to accommodate workers with disabilities feeds stigma about disability in the workplace. In turn, employees with disabilities may take it upon themselves to self-accommodate wherever they can, rather than face discriminatory hiring or retention practices based on disability stigma.

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272. Rather than being viewed as experts about their needs and related accommodations, people with disabilities have been pushed to the corners of analyses of the ADA and courts and vocational "experts" have taken the floor. See generally RUTH O'BRIEN, *CRIPPLED JUSTICE: THE HISTORY OF MODERN DISABILITY POLICY IN THE WORKPLACE* (2001) (outlining a history of privileging rehabilitation specialists' views over consumers' perspectives in disability treatment).
273. Response of Virginia, Survey of Disabled Women Attorneys (emphasis in original) (on file with author).
274. David C. Stapleton & Richard V. Burkhauser, *A Review of the Evidence and Its Implication for Policy Change*, in *THE DECLINE IN EMPLOYMENT OF PEOPLE WITH DISABILITIES: A POLICY PUZZLE* 369, 399 (David C. Stapleton & Richard V. Burkhauser eds., 2003) (attributing the increased post-ADA unemployment of people with disabilities to "changes in the social environment—reductions in individuals' incentives to work and reduction in employer incentives to hire them"). Peers at work may also look down on people with disabilities or disability generally. These attitudes are reflected in society at large. A recent study on Disaboom.com, a disability social networking and health information website, reported that fifty-two percent of Americans would rather be dead than disabled. Press Release, Disaboom, *Disaboom Survey Reveals 52 Percent of Americans Would Rather Be Dead Than Disabled* (July 9, 2008), available at [http://www.prweb.com/prweb.php?prid=1082094](http://www.prweb.com/prweb.com/prweb.php?prid=1082094).
275. Employers that have experience with employees with disabilities have reported mostly positive interactions and productivity. See Barbara A. Lee & Karen A. Newman, *Employer Responses to Disability: Preliminary Evidence and a Research Agenda*, 8 *EMP. RESP. & RTS J.* 209 (1995). But see Richard V. Burkhauser, *Morality on the Cheap: The Americans with Disability Act*, *REG.*, Summer 1990, at 47, 52 (1990), available at <http://www.cato.org/pubs/regulation/regv13n2/v13n2-6.pdf> (claiming that employers are not likely to be irrational in their fears to accommodate but more guided by a knowledge of when it does not make financial sense to accommodate workers with disabilities).

## 2. Women

As we examine the experiences of women, both disabled and non-disabled, in self-accommodating, we see a great deal of overlap with employees with disabilities.<sup>276</sup> Self-accommodation may be a coping mechanism for women, as well.<sup>277</sup> That is to say, even if we were able to strip away disabilities from the study participants, they may continue to self-accommodate with regard to obstacles common among women (e.g., childcare, flexible hours, career advancement).<sup>278</sup> Rather than accommodating a physical or mental impairment, women are put in positions of adjusting their work-life balance and professional expectations in the face of the devaluation of women's work and rampant sexism.<sup>279</sup>

When women self-accommodate, they are not simply asking for a large-screen monitor or an automatic door, but for social and professional recognition as equals.<sup>280</sup> For example, once a particular vocation becomes perceived as

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276. Several legal scholars have explored the coping mechanisms that law students, lawyers, and other professionals with disabilities use to survive education and career. *See, e.g.*, Ann Hubbard, *The ADA, the Workplace, and the Myth of the "Dangerous Mentally Ill,"* 34 U.C. DAVIS L. REV. 849, 885-86 (2001) (pointing out that mentally ill employees may be better employees overall *because* of their coping mechanisms); Jennifer Jolly-Ryan, *The Fable of the Timed and Flagged LSAT: Do Law School Admissions Committees Want the Tortoise or the Hare?*, 38 CUMB. L. REV. 33, 65-66 (2007) (suggesting that law students with disabilities may find that their coping mechanisms from undergraduate work no longer serve them well in law school).

277. Of the coping mechanisms that women create in the workplace, those related to surviving discrimination and harassment are the most poignant. *See* Ann C. McGinley, *Harassing "Girls" at the Hard Rock: Masculinities in Sexualized Environments*, 2007 U. ILL. L. REV. 1229, 1260 (2007) (noting that women may be especially pressured and harassed to leave previously all-male workplaces, such as the law; they may turn to such coping mechanisms as "ignoring the behavior, avoiding the harasser, threatening to report the harassment, making a joke of the harassment, and going along with it"). *Cf.* Robbi L. Miller, *The Quiet Revolution: Japanese Women Working Around the Law*, 26 HARV. WOMEN'S L.J. 163, 182 (2003) (illuminating the pressures that Japanese working women have with regard to delaying marriage, having children, and cultivating "portable skills").

278. *See, e.g.*, David L. Chambers, *Accommodation and Satisfaction: Women and Men Lawyers and the Balance of Work and Family*, 14 LAW & SOC. INQUIRY 251 (1989) (finding that women lawyers continue to assume primary responsibility for family commitments); *see also* Catherine Albiston, *Institutional Perspectives on Law, Work, and Family*, 3 ANN. REV. L. SOC. SCI. 397, 418 (2007) (noting that "despite gender-neutral legal reforms, men are generally less likely to take leave than women").

279. *See* Ayelet Lichtash, *Earning Dignity: Indirect Discrimination Against Women at Part-Time Jobs, Comparative View*, 26 WOMEN'S RTS. L. REP. 13, 25 (2004-2005); *see also* Eric Shimamoto, *Comment: To Take Arms Against a Sea of Trouble: Legal Citation and the Reassertion of Hierarchy*, 73 UMKC L. REV. 443, 451-52 (2005) (describing the pink ghetto of legal research and writing professors):

The gender segregation of law school faculties serves to accentuate this hierarchy. As research and writing becomes more clearly identified as "women's work," it becomes "unclear 'whether women are steered into Legal Research and Writing because it is low status, or it is low status because it is done by women.'" Either way, the mechanism functions to maintain hierarchy by devaluing the work of faculty perceived to hold low-status positions.

280. Feminist theory in the workplace has ranged from recognizing women as equal to men (and downplaying differences) to recognizing women as different from men but equal. *See*

“women’s work”—even in a professional setting—that work and the people performing it can be devalued:

This devaluation of women’s work is part of the long history of paying women lower wages than men for the same work, relegating women to dead-end low-paying jobs, and devaluing work labeled as “female.” All are tied to the breadwinner/ dependent paradigm and to the resulting concepts about who the “real” workers are and what their needs and responsibilities are.<sup>281</sup>

In this way, non-disabled women share with employees with disabilities the ultimate desire of equal opportunity. Employees with disabilities, however, have the additional obstacle of making the workplace accessible first at the physical or health level before confronting barriers to social inclusion and integration.<sup>282</sup>

Women exercise self-help at work to avoid further discriminatory treatment by management that is largely male and masculine power structures and values.<sup>283</sup> While the modern American workplace has changed in the last fifty years, particularly under the influences of feminism and civil rights legislation, women battle perceptions of difference and sameness in the same ways as individuals with disabilities.<sup>284</sup> They experience pressure to conform to

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Katharine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829 (1990) (advancing positionality as a tool of feminist legal critique); Rosemary Hennessy, *Women’s Lives/Feminist Knowledge: Feminist Standpoint as Ideology Critique*, 8 HYPATIA 14 (1993) (arguing for an understanding of women’s positionality through the lens of Marx-grounded standpoint theory). In this latter shift, feminist scholars have argued that gender discrimination is the failure of the workplace to accommodate differences between the sexes. See Christine A. Littleton, *In Search of a Feminist Jurisprudence*, 10 HARV. WOMEN’S L.J. 1,6 (1987) (arguing for feminist theory grounded in the experiences of women and offering ways “to expand the repertoire of resistance”); Patricia Yancey Martin, “*Said and Done*” Versus “*Saying and Doing*,” *Gendering Practices, Practicing Gender at Work*, 17 GENDER & SOC’Y 342 (2003) (understanding gender as a performance by individuals and society). Current scholarship tends to focus on the role of stereotypes in fueling gender discrimination and treatment. See Carrie Menkel-Meadow, *Exploring a Research Agenda of the Feminization of the Legal Profession: Theories of Gender and Social Change*, 14 LAW & SOC. INQUIRY 289 (pointing in the direction of gender as a social construction and cautioning against perpetuating gender differences); Vicki Schultz, *supra* note 172.

281. Lichtash, *supra* note 279, at 25.

282. See generally Emens, *supra* note 270 (arguing for disability access as equivalent to civil rights).

283. See Rosalind Dixon, *Feminist Disagreement (Comparatively) Recast*, 31 HARV. J. L. & GENDER 277, 299 (2008) (offering a cultural feminist approach to complement the “masculine values” of “universalism, independence, and abstraction”); Pamela Laufer-Ukeles, *Recognition of Gender Difference in the Law: Revaluing the Caretaker Role*, 31 HARV. J. L. & GENDER 1, 26 (2008) (arguing that even if the legal system was built on “male values, a revamped system should look to do more than simply pursue female values”).

284. Much of this difference and the accompanying perceived inferiority is socially constructed rather than being a reflection of truth. See generally MARTHA MINOW, *MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW* (1990) (suggesting a shift from focusing difference within individuals and their circumstances to understanding and correcting how the legal system and public policy produces and then neglects and alienates people who are “different”).

masculine approaches in the legal workplace, yet they are still expected to account for and mitigate their differences.<sup>285</sup> For women, these differences can take pragmatic forms—primary responsibility for care-giving in the family, increased multiple demands on time, and lower luster educational and career paths.<sup>286</sup> Women may not attend the same law schools nor receive the same accolades (e.g., law review, circuit clerkships) and internships. Consequently, they may enter a particular legal job or the profession in general at a lower status to begin with than men with whom they should be similarly situated.<sup>287</sup>

Legal employers may perceive women's needs for flexibility at work as distractions from their chief responsibilities of producing at set rates and providing end results within traditional constraints.<sup>288</sup> Women can compete, but the pressing issue is if anyone *should* compete on these terms. In this sense, the principle of excess thrives in women's issues at work. The quiet costs of gender are as much a part of employers' thinking as the tangible costs of medical leave for depressed employees or health insurance for diabetic employees.<sup>289</sup> Yet,

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285. Assimilation can result in the proliferation of male legal and workplace norms, however. See Ann C. Scales, *The Emergence of Feminist Jurisprudence: An Essay*, 95 YALE L.J. 1373, 1383 (1986) (arguing that the push for women to assimilate to male workplace norms is the destructive reinforcement of patriarchy and that the "male standard" sees no "rationality but its own").
286. See ARLIE HOCHSCHILD, *THE SECOND SHIFT: WORKING PARENTS AND THE REVOLUTION* (1990); see also Deborah L. Rhode, *Occupational Inequality*, 1998 DUKE L.J. 1207, 1208 (emphasizing the need to focus on the "cumulative disadvantages" experienced by women at work, not just the "motivations of decisionmakers").
287. See Adam Neufeld, *Costs of An Outdated Pedagogy? Study on Gender at Harvard Law School*, 13 AM. U. J. GENDER SOC. POL'Y & L. 511, 515 (2005) (finding that women were underrepresented on the *Harvard Law Review* and in U.S. Supreme Court and Circuit Courts of Appeals clerkships; they were overrepresented in lower-valued public service positions, and had lower status and less pay). This dilemma with regard to access to credentials and power is true even (or especially) within the legal academy and employment. See, e.g., Paula A. Monopoli, *In A Different Voice: Lessons from Ledbetter*, 34 J.C. & U.L. 555, 577 (2008) ("Finally, much salary setting in academia is based on perception of status, and such perception-based behavior is discretionary and subject to unconscious gender schemas and bias.").
288. Employers have been threatened by their own assumptions about women being "distracted" from their work by family obligations. This kind of irrational and sexist fear of having only partially focused employees may be behind employers' resistance to such flexible arrangements as telecommuting. See, e.g., Lisa A. Torraco, *Chess Club Is Not Cool: An Essay on the Choices Women Make that Preclude Them from Higher Professional Levels*, 11 CARDOZO WOMEN'S L.J. 589, 591 (2005) (discussing the competing choices women must make between family and work). But employers have also viewed women as *distracting to men* in the workplace, particularly if they are "desirable." Harold P. Southerland, "Love for Sale"—*Sex and the Second American Revolution*, 15 DUKE J. GENDER L. & POL'Y 49, 115 (2008); see also Kimberly A. Yuracko, *Sameness, Subordination, and Perfectionism: Toward a More Complete Theory of Employment Discrimination Law*, 43 SAN DIEGO L. REV. 857, 881 (2006) (finding that the feminization of women in the workplace, even without overt sexualization, can be a distraction to male employees and cause them to devalue the talents of the women employees).
289. See Christine Jolls, *Antidiscrimination and Accommodation*, 115 Harv. L. Rev. 642 (2001) (drawing parallels between the kinds of accommodations for employees required under the Pregnancy Discrimination Act and Title VII as the kinds of accommodations envisioned by the ADA).

employees with disabilities also suffer from employers' silent and stereotype-fueled perceptions of decreased productivity.<sup>290</sup> The difference is that the women's movement has several decades on the disability-rights movement in exposing this discrimination calculus.

Women at work may go through the same self-assessment process as workers with disabilities—determining the likelihood of accommodations or workplace flexibility, confronting the stigma of asking, and ultimately taking control of whatever piece of the accommodation they can.<sup>291</sup> For women, this last piece has been the “second shift” (being expected to manage professional and work lives), reflectively documented by social scientists such as Arlie Hochschild.<sup>292</sup> And much in the same way as employees with disabilities, women must institute resource-mapping to determine how much of the accommodation they can achieve and what they must let go. They are more likely to work part-time, leave practice, make less than men, and not reach partnership at firms.<sup>293</sup> Giving up on the dreams of a responsive workplace is a shared disappointment for many employees, disabled or not, and it should not be the recommended course of professional development.

### 3. Attorneys and the Multiple Roles

Common to disabled, women, and minority workers in the labor market is this notion of downplaying difference—call it covering or passing.<sup>294</sup> Concurrently, they must also confront stereotypes about what these particular differences mean socially and professionally, with regard to productivity and personhood.<sup>295</sup> To be less-than at work is to know one's place and to experience

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290. Being disabled does not mean being less productive than normate workers. David Pfeiffer, *The Conceptualization of Disability*, in *EXPLORING THEORIES AND EXPANDING METHODOLOGIES: WHERE WE ARE AND WHERE WE NEED TO GO* 44 (Sharon N. Barnartt & Barbara M. Altman eds., 2001).

291. This scenario is not to be confused by claims that women “opt out” of work. I am more concerned with the experiences of women being pushed out or ruled out from the beginning. Opting out connotes choice and here, the choice is all with the employers. See Noonan & Corcoran, *supra* note 112, at 130-31, 144 (2004) (finding while forty percent of recent law graduates are women, women are more likely to leave private practice, make less than men, and not obtain partner status).

292. HOCHSCHILD, *supra* note 286.

293. See Noonan & Corcoran, *supra* note 112.

294. For more on how individuals downplay their difference, see Yoshino, *supra* note 27 (discussing the phenomenon of “covering,” a form of assimilation in which LGBT individuals downplay their sexual identity). See also Kenji Yoshino, *Assimilationist Bias In Equal Protection: The Visibility Presumption and the Case of “Don’t Ask, Don’t Tell,”* 108 *YALE L.J.* 485, 487 (concluding that courts are pressuring plaintiffs in race and sex discrimination cases to “assimilate by changing or hiding their defining characteristic” and hence betraying “an assimilationist bias in equal protection”).

295. Stereotypes about people with disabilities being inferior employees are rampant and internalized. The pressure to pass and the encouragement to “overcome” disability are strong social forces in the American workplace. See SIMI LINTON, *CLAIMING DISABILITY: KNOWLEDGE AND IDENTITY* 17-22 (1998) (highlighting the paradox of asking people with disabilities to overcome their disabilities and the social stigma associated with them).

the shame and stigma associated with it.<sup>296</sup> Simi Linton, a disability studies scholar, captures this conflict as it relates to people with disabilities:

Both passing and overcoming take their toll. The loss of community, the anxiety, and the self-doubt that inevitably accompany this ambiguous social position and the ambivalent personal state are the enormous cost of declaring disability unacceptable.<sup>297</sup>

“Womanhood,” “black,” or “minority status” could be substituted in the last line for disability. This kind of professional burden flourishes in the practice of law. As I argued earlier, social information forms a loop, reifying low expectations, fostering professional dissatisfaction, and stretching most employees beyond reasonable limits.<sup>298</sup>

Lawyers are career arbiters of reason. However, their workplaces can be just as discriminatory as what one might find in a machine shop or an emergency room.<sup>299</sup> Perhaps they can be more so because lawyers know the limits of the law and make careers of expanding and testing those limits. They know what little they have to do to pass legal muster and to survive EEOC inquiries.<sup>300</sup> I have painted a bleak picture of the lawyering profession, but I am only compelled to offer a half-apology. Once members of the profession do better by minority colleagues—and here I mean minority in terms of disenfranchisement, diminished power, and lower salaries—I will offer my recantation.<sup>301</sup>

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296. *See id.* at 20-21.

297. *Id.* at 21.

298. Only decades ago, the only expectations present for disabled people were to be institutionalized, to stay at home and keep their families company, or to die young. Simi Linton addresses the ways in which the glass ceiling for women and disabled people is not invisible at all, declaring that “redressing second-class citizenship, 66 percent unemployment, incarceration in institutions, and separate and unequal education will take more than these mechanical changes.” *Id.* at 36.

299. For a discussion of blue-collar workplace discrimination, see, for example, Allegra C. Wiles, Note, *More Than Just a Pretty Face: Preventing the Perpetuation of Sexual Stereotypes in the Workplace*, 57 SYRACUSE L. REV. 657, 658 (2007) (noting that women in blue collar jobs have been overlooked by discrimination researchers). For more on discrimination in the field of medicine, see, for example, Rene Bowser, *Medical Civil Rights: The Exclusion of Physicians of Color from Managed Care: Business or Bias?*, 4 HASTINGS RACE & POVERTY L.J. 1, 19-26 (2006) (documenting the history of discrimination against black physicians in the medical profession).

300. Lawyers may be experts at testing the limits of the letter of the law, often within ethical boundaries. For example, is hiring and promoting attractive people more often than others within the profession a problem? While employment practices should not be driven by appearances and conformity to conventional beauty standards, empirical data suggest that is what happens in legal hiring. See Jeff E. Biddle & Daniel S. Hamermesh, *Beauty, Productivity, and Discrimination: Lawyers' Looks and Lucre*, 16 J. LAB. ECON. 172 (1998) (finding that better-looking attorneys earned more money than others and that the more attractive attorneys worked in private firms versus public interest).

301. In the context of the legal profession, I would define a minority group member as someone who is not white, male, and from a position of economic privilege. Others have taken on this challenge of defining minority. One compelling approach is:

A group of citizens of a State, constituting a numerical minority and in a non-

The legal profession and its members are acculturated from the beginning of their legal educations to represent bravado, strength, stamina, courage, maneuvering, scruples, strategy, intractability, endurance, and wile.<sup>302</sup> Recall Julie's story about firms not wanting to hire a "one-handed woman" and Mary's concerns that she would go into a "male-dominated profession" and come up only with shortcomings, as someone who was older, female, and hearing impaired.<sup>303</sup> Above all, lawyers are socialized and self-policed to hide imperfections in themselves and their work.<sup>304</sup> It is no wonder that the legal profession has such high rates of untreated alcoholism, depression, and anxiety.<sup>305</sup> The pursuit of flawlessness is futile, but yet, as a profession, we continue to expect it, or perhaps the appearance of it, as a condition of membership. The very visibility of lawyers is what can exacerbate and, at the same time, hide, professional and personal problems and "weaknesses" common to all working adults.

The tension in the workforce for women and individuals with disabilities is

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dominant position in that State, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law.

Jules Deschênes, Proposal Concerning a Definition of the Term "Minority," U.N. ESCOR, Sub-Comm'n on Prevention of Discrimination and Protection of Minorities, U.N. Doc. E/CN.4/Sub.2/1985/31, P 181 (1985).

I would alter Deschênes's definition to include abilities and access needs that differ from those of the majority of the population.

302. Legal jobs have "traditionally required not only an agile mind, but also a tireless one." Amy Stevens, *Boss's Brain Teaser: Accommodating Depressed Worker*, WALL ST. J., Sept. 11, 1995, at B1; see also Cynthia Fuchs Epstein, *Women in the Legal Profession at the Turn of the Twenty-First Century: Assessing Glass Ceilings and Open Doors*, 49 U. KAN. L. REV. 733, 750-51 (2001).

It is impossible to deal with all the residual problems women face, but one major issue is certainly the problem of time pressures within the profession and the normative standards of time priorities women are expected to adopt.

. . . [C]ommitment in the law is being measured by "billable hours" and at a time when the total yearly averages are reported to have risen. Due to globalization in the work world and the use of technology that permits constant availability and greater competition for clients, in law, as in many other high-status sectors of the workplace such as management and other professions, work is said to follow a 24/7 rule of thumb. That is, its practitioners ought to be on tap twenty-four hours a day, seven days a week.

*Id.*

303. See *supra* pp. 40 (quoting Mary), 57 (quoting Julie).
304. The dangers of the perfect lawyer are more than social. The perfect lawyer may not be apt to ask for assistance, ponder ethical problems, or collaborate with others to strengthen their work. See Diana E. Marshall, *A Profile in Professionalism*, 41 HOUS. LAWYER 39, 39 (2003) (emphasizing the role of imperfection in lawyer ethics—"We are the imperfect lawyers who accept professionalism as a religion grounded in honesty and respect").
305. See, e.g., Carol M. Langford, *Depression, Substance Abuse, and Intellectual Property Lawyers*, 53 U. KAN. L. REV. 875, 876-78 (2005) (reviewing the literature on lawyers and finding they are twice as likely as non-lawyers to have substance abuse issues and the most likely among other professionals to be depressed). According to the same source, lawyers have a higher probability of suicide than any other profession. *Id.* at 877.



also found in the competing realities of being visible, yet invisible, stared at and ignored. For these two groups, however, employers and colleagues may assume that they possess weaknesses from the beginning. To be female or disabled is to wear stereotypes, imperfections, and biases cast onto you by others, and to then have the challenge of becoming visible in positive ways. For example, women attorneys may feel as if they need to work harder than their male counterparts to overcome assumptions about competing demands at home and the office.<sup>306</sup> Disabled attorneys may be left out of office activities and professional mentoring (the invisibility), yet become the focal points when they request reasonable accommodations.<sup>307</sup>

The expectations placed on women and disabled attorneys without any concomitant support can lead to exhaustion, burn-out, and frustration.<sup>308</sup> Put on public display, yet focused on for their differences as deficiencies, women and individuals with disabilities in law are in the panopticon.<sup>309</sup> In hiring women attorneys, especially disabled ones, employers might as well begin with an orientation—“Now that we have decided that you cannot keep up, let us continue to implore you to try to, and we will promise to be diligent in our disappointment with your progress.”

Even with these realities, women and disabled attorneys are socialized and often feel grateful for work, let alone meaningful projects.<sup>310</sup> They are reminded, as a mechanism of social reinforcement, that they are the fortunate ones, the ones that made it into the club while the others sat outside and collected government benefits:

I have not had to experience unemployment at this time. However, it is my fear should I lose all my sight and will have to seek other employment. Will I be

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306. See Elizabeth S. Foster, *The Glass Ceiling in the Legal Profession: Why Do Law Firms Still Have So Few Female Partners?*, 42 UCLA L. REV. 1631, 1650 (1995) (“If you make the choice to try to have a family, you are going to have to work harder than anyone else”); Jacquelyn H. Slotkin, *Should I Have Learned to Cook? Interviews with Women Lawyers Juggling Multiple Roles*, 13 HASTINGS WOMEN’S L.J. 147, 154 (2002) (finding that women fear working part-time will damage their opportunities for promotion); Bill Winter, *Survey: Women Lawyers Work Harder, Are Paid Less, but They’re Happy*, 69 ABA J. 1384, 1385 (1983) (women attorneys may work harder to succeed in the profession).
307. EEOC Disabled Attorneys Facts, *supra* note 123.
308. Bar journals focus on burnout in the legal profession in many of their issues. See, e.g., David M. Bateson & Tim Hart, *Combating Attorney Burnout*, 64 BENCH & BAR MINN. 22 (2007); Brent Hale, *Why Are So Many Lawyers Depressed*, 21 UTAH BAR J. 16 (2008); Elizabeth Kelley, *Practice Points: Burnout: An Occupational Hazard for Lawyers*, 29 CHAMPION 59 (2005).
309. The panopticon was a prison design by Jeremy Bentham, where a single guard could watch over a large group of inmates. MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON 200* (Vintage Books 1995) (1975). Foucault used the term “panopticon” to refer to people becoming visible to society and then society being able to exercise power and control over them.
310. Immigrants and undocumented immigrants are also encouraged by the American public to be grateful for the work they receive, even if the working conditions are deplorable. See Leslie Espinoza & Angela Harris, *Embracing the Tar-Baby—LatCrit Theory and the Sticky Mess of Race*, 85 CAL. L. REV. 1585, 1611 (1997).

able to remain in legal services or in this field? — Virginia<sup>311</sup>

When disabled women see so very few others who look like themselves, this notion of being among the select few provides little fuel for the ego over time and many opportunities for isolation and alienation.<sup>312</sup> As attorneys of color have known for some time, being a minority of one loses its trailblazing appeal in a matter of weeks, assuming it had any to begin with.<sup>313</sup>

The legal profession, for the most part, does not want to hear about it.<sup>314</sup> The experiences of women with disabilities in law can be put to the side and chalked up to isolated incidents that do not reflect a larger reality for minorities in law. We have become masters of divorcing emotion from our professional experiences, let alone our self-critiques.<sup>315</sup> Given the professionally enforced focus on strength and perfection, hardly anyone is eager to be the first to out herself as having an issue with surviving in the workforce. Looking at one of the most marginalized groups in the field teaches lawyers about the kind of progress that still needs to be made.<sup>316</sup> Yet the entire experience and its accompanying exposure to painful stories, embarrassing peer behavior, and outright discrimination is still difficult to process for the women who experience it and the profession as a whole.

The explanation for the self-accommodation behaviors of women with

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311. Response of Virginia, Survey of Disabled Women Attorneys (on file with author).
312. Invisibility and isolation can mark the experiences of disabled people. Sociologist Erving Goffman argues that the visibility of stigma is what can create the isolation of its bearer. He attributes the alienation of people marked as “different” to the ways that stigma “interferes with the flow of interaction.” Over time, the stigma’s bearer becomes acutely aware of how others are perceiving her and may withdraw further from social interaction or develop coping mechanisms to survive the discomfort and mistreatment. ERVING GOFFMAN, *STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY* 48-49 (1963).
313. For studies of the experiences of attorneys of color, see, for example, Green, *supra* note 178, WILDER, *supra* note 96, at 4 (finding that non-Asian minority attorneys were more likely to have lower salaries and work in government than their white counterparts), and DORIE EVENSEN ET AL., *LAWYERS IN THE PIPELINE: A STUDY OF BLACK ATTORNEYS* (unpublished manuscript on file with author).
314. In all fairness to the profession and its members, the issue may not be that the legal profession does not want feedback on its weaknesses, but rather that different groups disagree about whether those forms of discrimination exist. See Russell K. Robinson, *Perceptual Segregation*, 108 COLUM. L. REV. 1093 (2008) (emphasizing the role of perception in deciding whether or not discrimination has occurred).
315. Emotions can be perceived as having a strained position in the study and practice of law. See Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1405 (1997). According to Daicoff:
- Pre-law students, law students, and lawyers are uniformly less interested in people, in emotions, and interpersonal concerns. In fact, evidence suggests that humanistic, people-oriented individuals do not fare well, psychologically or academically, in law school or in the legal profession.
- Id.*
316. In *Life’s Work*, Vicki Schultz suggests that improvements made for one oppressed group can have reverberations for other minorities and create a better professional culture for everyone. Schultz, *supra* note 172.

disabilities in the practice of law can be a controversial one—I see all aspects of sex, disability (and normativity), work, and for many of the women, race, discrimination, and stereotyping as colliding in the lived experiences of these individuals. They, therefore, can become voices for what *each* of these experiences is like, sometimes in their most extreme forms. I caution, however, that these differences, these identities, should not be simply and reflexively dissected, just as they should not be viewed as simply having additive effects.<sup>317</sup> Taken together, however, with their accompanying identities, roles, and stereotypes, gender and disability interact to bolster and advance the marginalization of the other.<sup>318</sup> Socio-cultural normative expectations of what it means to be a woman can be heightened by external messages of failure and ugliness as a person with a disability.<sup>319</sup> These messages are not merely aesthetic and appearance-oriented, though; they can strike at the definition of what it means to be an attorney, a citizen, and a person.

For example, several of the women in the study remarked that they felt like only “half a woman”<sup>320</sup> or that they were viewed as lesser attorneys, and then proceeded to explain why their disability set them up for failure to meet ideals and standards of beauty and success.

Disabled women . . . experience much the same oppression as non-disabled women, without receiving the ostensible rewards of the “pedestal” upon which some (white) women traditionally have been placed.<sup>321</sup>

The same is true when the professional role of lawyering is considered along with disability and sex. “Half-women” labeled as such by their communities can become or be regarded as half-attorneys by their profession.<sup>322</sup>

My law school experience was fairly negative in a lot of ways and . . . when I first got out of law school it took me forever to find a job. One of the problems was I wasn’t looking for legal jobs; my self-esteem was on the ground when I got out. I really didn’t feel confident that I could be a lawyer, that I would be a

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317. See sources cited *supra* notes 75 and 236 (intersection and interaction of identities).

318. *Id.* (interaction of identities).

319. Harilyn Rousso, *Daughters with Disabilities: Defective Women or Minority Women?*, in *WOMEN WITH DISABILITIES: ESSAYS IN PSYCHOLOGY, CULTURE, AND POLITICS*, *supra* note 64, at 139, 159 (describing factors leading to rejection of these negative messages).

320. Betsy recalls, “I missed sometimes having the experiences of ‘real women.’ I have always felt like I have been less than other women.” Response of Betsy, Survey of Disabled Women Attorneys (on file with author).

321. Asch & Fine, *supra* note 64, at 2.

322. “Half-woman” is a curious phrase. Powerful images of half-women half-beasts exist in mythology, including the stories of the sphinx, Oedipus, the sirens, and Ulysses. Oedipus’ sphinx posed a riddle he could not answer and Odysseus’ sirens lured sailors into dangerous waters. BERNARD EVSLIN, *GODS, DEMIGODS, AND DEMONS: A HANDBOOK OF GREEK MYTHOLOGY* 195 (2006). I am pleased with this idea of recapturing the “half-woman” phrase of subjugation and demoralization and turning it into the stories of dangerous disabled women.

good lawyer. — Marta<sup>323</sup>

When I began this study, I thought that many of the stories would revolve around negative reactions by clients to the women's disabilities. The narratives, to my surprise, focused more on discrimination by coworkers and hiring attorneys. As one participant with blindness explained, in her fifteen years of practice, only a few clients had expressed concern about her ability to compete with non-disabled attorneys and provide quality representation. And as she noted with a chuckle, one client going through a nasty divorce did not notice her disability until after the divorce was final and the representation ended. That story is a pithy reminder of how focused clients may be on the interpersonal conflicts surrounding litigation.<sup>324</sup> Her stories about judges and workers did not include similar themes of "overlooking" disability. When it came to other lawyers, they were more likely than others to bring up the issue of disability and question her ability to be a lawyer.

The legal profession's preoccupation with culling and avoiding difference is quite another gauntlet for women attorneys with disabilities.<sup>325</sup> On the one hand, disabled women attorneys know the law and are in a position to be self-advocates and assert their rights. Yet, when it comes to lawyers discriminating against lawyers, the social and professional pressures to forgive and forget discrimination are strong. Through the participants' stories, one can see that exclusion and marginalization have left hurtful, if not indelible, marks:

Sometimes I feel my disability strips me of my gender and I am somehow rendered an object. — Bethany<sup>326</sup>

We see another phenomenon through the interaction of disability, sex, and the legal profession, however, and that is adaptation.<sup>327</sup> Just as each layer of experience and identity informs how these individuals self-accommodate, each also informs the other. Many of these professionals may be better self-accommodators (and be further pressured into that role) because they have learned to cope based on discrimination as women or people with disabilities.<sup>328</sup>

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323. Response of Marta, Survey of Disabled Women Attorneys (on file with author).

324. See generally Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107 (1991) (highlighting the importance of recognizing and listening to client narratives in providing lawyering).

325. But see Trevor C.W. Farrow, *Sustainable Professionalism*, 46 OSGOODE HALL L.J. 51, 55 (2008) (rejecting homogenization of the legal profession); Stephen Lilley, *The Hard Work of "Hard Work": The Legal Elite's Rhetoric of Diligence and the Professionalization of the Law, 1850-1920*, 17 WIDENER L.J. 145, 151 (2007) ("Homogenization of the legal profession led to pushing out 'women and other 'deviants.'").

326. Response of Bethany, Survey of Disabled Women Attorneys (on file with author).

327. See, e.g., Note, "Trading Action for Access": *The Myth of Meritocracy and the Failure to Remedy Structural Discrimination*, 121 HARV. L. REV. 2156, 2172 (2008) (arguing that women and minority attorneys may adapt by "overlook[ing]" discrimination and instead blaming individuals for their failures to succeed at law firms).

328. See sources cited and accompanying text *supra* notes 276-77 (examining coping strategies).

Minority attorneys of any kind may be placed in situations where they are forced to be adaptive, even at great emotional harm, in order to excel. They can feel pressured to minimize, tolerate, or ignore oppressive behavior, such as racist, sexist, or ableist jokes in the lunchroom and minority-based intimidation in the courtroom.<sup>329</sup>

Discrimination is not generally an all-or-nothing experience.<sup>330</sup> Each stereotype or alienation may be based on disability *and* sex, or it may be focused on just one of those perceived differences. Rather than allowing oppressors to determine the full meaning of those differences, oppressed individuals can assign the appropriate value to each for themselves.<sup>331</sup> They can also draw upon their experiences as women or people with disabilities to select and implement strategies for coping in inhospitable professions or workplaces. These competing demands and the process of devaluation, based on sex or disability, can become catalysts for transformations at the individual and professional levels.

One of the most significant survival and success strategies is converting those labels of oppression into work and meaning—just as many of the women in the study chose to be disability rights or public interest attorneys.<sup>332</sup> Disabled attorneys in disability rights can be experiencing an employment ghetto or they can be reacting to societal needs they have seen through their own oppression.<sup>333</sup> For me, this project is an extension of that response to discrimination and oppression. Throughout all of the women's stories, I saw a similar wish resonating: to bring change to the profession and solidarity through shared experiences among themselves and in coalition with other minorities. The best chances for reform in the profession may be based on this spirit of hope.<sup>334</sup>

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329. Cf. W. Bradley Wendel, *Free Speech for Lawyers*, 28 HASTINGS CONST. L.Q. 305, 346 (2001) (emphasizing the presence of “pervasive gender and racial bias among lawyers and court personnel”).

330. The United Nations and other international policy-setting organizations have started to recognize the impact on minority individuals of multiple forms of discrimination. See Press Release, UN Office of the High Comm'r for Human Rights, Hidden Victims of Multiple-Discrimination: UN Expert on Minority Issues Calls for ‘Gender Lens’ To Focus on Minority Women (Mar. 7, 2006), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=6334&LangID=>.

331. Minority lawyers, and employees of any kind, can attempt to resist oppression stemming from stereotyped treatment and they can decide (with risks) what their various differences mean to them. See, e.g., Anita Silvers, *Reconciling Equality to Difference: Caring (F)or Justice for People with Disabilities*, 10 HYPATIA 30, 51 (1995) (focusing on eradicating the discriminatory practices that “legitimate practices that already prefer some sorts of differences to others”).

332. Segregating minorities in particular sectors of the law or with particular clients that look like them can have adverse consequences when it comes to diversity in the profession and the practice of law. But see James D. Montgomery, *The Black Lawyer and the Human and Civil Rights Struggle*, 22 HARV. L. SCH. BULL. 21, 22 (1971) (arguing that black attorneys understand black clients in ways that whites cannot).

333. See also Nadine Taub, *Thoughts on Living and Moving with the Recurring Divide*, 24 GA. L. REV. 965, 975 (1990) (describing the dynamics of women's employment ghettos and the reactions of male workers to ghettoized positions).

334. The groundswell may be happening at the local and state Bar levels and difficult to see as a collective. See Tim Eigo, *Interview: Inclusion, Bar-Style: Meeting the Bar's Diversity*

The participants wanted others to know their experiences and to recognize and acknowledge them. And they wanted to know one another. For several of these women, the struggle had always been a solo one, and they were heartened to hear others' stories and to know that while they had labored alone for so many years, a sister was somewhere else moving forward in the same ways.<sup>335</sup> At the core of the disability experience in the legal profession is isolation, and it takes both these women and other members of the profession, including firms, law schools, and public interest organizations, to overcome it.<sup>336</sup>

Through the example of women with disabilities as lawyers, we are confronted with an agenda for change, but the project is not small. It will entail the dismantling and reassembling of a profession's values and its promises for inclusion and integration.<sup>337</sup> Inclusion calls for people working side-by-side, but integration is the next level of transformation, where women with disabilities will be as valued by partners, clients, and coworkers as equals in the office.<sup>338</sup>

### C. How Do We Fix It?

Regardless of whether they have it or not, they know the mindset they are supposed to have about race so I really think people are always wondering how a person who is blind can do all the reading. I have judges and lawyers say that to me, "How can you do this or that?" so I definitely think disability is where people need a lot more education [than they do about race] . . . I do think

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*Director*, 44 ARIZ ATT'Y 10, 14 (2008) (responding to a question about the Bar's prospects for becoming more diverse: "We cannot stop the changes that are happening in our communities. We have to look at that and say, 'How do we align business practices to meet those changes?'" ).

335. See generally VIRGINIA DRACHMAN, *SISTERS IN LAW: WOMEN LAWYERS IN MODERN AMERICAN HISTORY* (1998) (discussing, within the context of the history of women lawyers, how female lawyers defined themselves as "sisters" within the profession).
336. At the most basic level, being a minority is about being outnumbered at first glance. Coalitions of different minority group members can assist in fighting and eventually overcoming discrimination. See Jon M. Garon, *Take Back the Night: Why an Association of Regional Law Schools Will Return Core Values to Legal Education and Provide an Alternative to Tiered Rankings*, 38 U. TOL. L. REV. 517 (2006) (advancing a National Association of Regional Law Schools to address, among other issues, "racial disparities threaten[ing] the credibility and stability of our legal system," noting that while the general population is expected to grow to 50% people of color, law schools are only projected to be at 20% minorities); Andrew P. Morriss, *The Market for Legal Education & Freedom of Association: Why the "Solomon Amendment" Is Constitutional and Law Schools Are Not Expressive Associations*, 14 WM. & MARY BILL RTS. J. 415, 448 n.154 (2005) (emphasizing that law schools are in denial about the failure of their diversity efforts); see also Ellen Y. Suni, *Academic Support at the Crossroads: From Minority Retention to Bar Prep and Beyond*, 73 UMKC L. REV. 497, 498 (2004) (describing coalition efforts of individuals at various law schools interested in creating academic support programs).
337. Goal III of the American Bar Association calls for "the full and equal participation in the association, our profession, and the justice system by all persons." GOAL III REPORT 2009, available at [http://www.abanet.org/disability/goaliii/about\\_goaliii.shtml](http://www.abanet.org/disability/goaliii/about_goaliii.shtml) (last visited Jan. 14, 2010).
338. Inclusion does not have to be assimilation, however. See generally Yoshino, *supra* note 27.

people have a lot of fear and that drives their attitudes. — Marta<sup>339</sup>

While this project and the accompanying analysis have been concerned with a small part of the employment picture for disabled women attorneys, it is a critical one. Reasonable accommodations and the fears and resistance to change surrounding them can keep many qualified, talented attorneys from working in meaningful, appropriately compensated jobs. The larger task of including and respecting attorneys with disabilities and women attorneys in the profession is ongoing, but manageable, if conceptualized as a collective strategy on two levels—that of the ADA and its function, and that of the culture of the profession.<sup>340</sup>

Respect for the interactive process of the ADA's reasonable accommodations provisions is fundamental for the survival and advancement of attorneys with disabilities, particularly women. As participant Lynn remembers:

Nineteen years ago, I don't know that I would have had the language to ask for an accommodation. Before the ADA, I wouldn't have even known that I had this option.<sup>341</sup>

In January 2009, new possibilities emerged for the Americans with Disabilities Act as amendments to it became effective.<sup>342</sup> The ADAAA clarified the definition of disability in the original ADA, a large source of employee defeat in decided cases.<sup>343</sup> Most significantly, the amendments direct courts to consider disability broadly and remove the courts' consideration of mitigating measures (e.g., eyeglasses, blood pressure medication, arm braces, text magnifiers, antidepressants) that temporarily ameliorate impairments.<sup>344</sup> The

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339. Response of Marta, Survey of Disabled Women Attorneys (on file with author).

340. See generally GOAL III REPORT 2009, *supra* note 337; see also Bruce G. Link & Jo C. Phelan, *Conceptualizing Stigma*, 27 ANN. REV. SOC. 363, 382 (2001) (“[S]tigma is likely to be a key determinant of many . . . life chances”). But see Ruth Collker, *The Mythic 43 Million Americans with Disabilities*, 49 WM. & MARY L. REV. 1, 2 (2007) (encouraging the Court to “correct its errors” concerning the ADA and “engage in a respectful relationship with Congress” rather than creating new legislation or amendments).

341. Response of Lynn, Survey of Disabled Women Attorneys (on file with author).

342. See generally EMILY BENFER, AM. CONST. SOC'Y, THE ADA AMENDMENTS ACT: AN OVERVIEW OF RECENT CHANGES TO THE AMERICANS WITH DISABILITIES ACT, (2009), available at [http://www.acslaw.org/files/Benfer%20ADAAA\\_0.pdf](http://www.acslaw.org/files/Benfer%20ADAAA_0.pdf) (providing the legislative history of the ADAAA, and emphasizing that it broadens the definition of disability and reasserts the original intent of the ADA to be a civil rights statute).

343. According to 2008 data, more than ninety-seven percent of plaintiffs in ADA employment cases lost them. ACLU, ADA Restoration Act, [http://www.aclu.org/images/asset\\_upload\\_file833\\_33633.pdf](http://www.aclu.org/images/asset_upload_file833_33633.pdf).

344. ADA Amendments Act, Pub. L. No. 10-325, § 4(a), 122 Stat. 3553, 3556 (2008) (“The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures . . .”). For a thorough discussion of the ramifications of the ADAAA, see generally, Allison Ara, Comment, *The ADA Amendments Act of 2008: Do the Amendments Cure the Interpretation Problems of Perceived Disabilities?*, 50 SANTA CLARA L. REV. 255 (2010) (identifying that some interpretative hurdles might still exist under the ADAAA when it comes to analyzing who meets the “regarded as” prong of the disability definition); Reagan S. Bissonnette, Note,

ADAAA shifted the courts' focus away from considering how disabled plaintiffs were mitigating their disability, or making themselves "less disabled," and focused instead on discrimination based on disability or the perception of it.<sup>345</sup> In this regard, the ADA Amendments Act does not penalize lawyers in this study who are self-accommodating already and preserves their right to ask for accommodations at any point in their careers. It also extends ADA protections by including an illustrative, but not limiting, list of major life activities—impairments that can constitute a disability.<sup>346</sup>

What the ADA Amendments Act means pragmatically for employees with disabilities, including attorneys, is that they will be able to better pass the first hurdle of any ADA case—proving that they are people with disabilities.<sup>347</sup> Courts may then focus on the facts of what happened and whether an accommodation is practical, feasible, and effective.

The danger is in viewing the ADAAA as an elixir for the current morass of disability rights law. Strengthening the ADA's reasonable accommodations provision should also happen through disabled people's willingness to litigate reasonable accommodation disputes and to use alternative dispute resolution where effective. Attorneys with disabilities may have an advantage with this route, but they are not immune to the kinds of pressures and demands that litigation can place on anyone wrongfully discriminated against. Litigation can be a game of attrition, where people with already limited resources and energies are pushed to the brink of surrendering rights that require acknowledgment and

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*Reasonably Accommodating Nonmitigating Plaintiffs After the ADA Amendments Act of 2008*, 50 B.C. L. REV. 859 (2009) (noting that the ADAAA will shift the courts' analysis from definitional hurdles to reasonable accommodation inquiries); Michelle A. Travis, *Lashing Back at the ADA Backlash: How the Americans with Disabilities Act Benefits Americans without Disabilities*, 76 TENN. L. REV. 311 (2009) (recognizing the potential of the ADAAA to blur the line between disabled and non-disabled workers).

345. § 4(a), 122 Stat. at 3555 ("An individual meets the requirement of 'being regarded as having such an impairment' if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity"); see Benfer, *supra* note 342, at 4 (highlighting that the courts are now to focus on discrimination on the "basis of disability" not "because of" disability).

346. § 4(a), 122 Stat. at 3555.

347. Professors Chai Feldblum (Georgetown Law Center) and Samuel Bagenstos (Washington University-Saint Louis) testified before Congress on the potential impact of the ADA Amendments Act. *Roundtable Discussion: Determining the Proper Scope of Coverage for the Americans with Disabilities Act Before the S. Comm. on Health, Education, Labor, and Pensions*, 110th Cong. 15-19 (2008) (statement of Samuel R. Bagenstos, Professor of Law, Washington University School of Law) (emphasizing that lower courts have used *Sutton* to "deny protection to people with muscular dystrophy, diabetes, epilepsy, and many other conditions that would have seemed clearly to fall within the heartland of the statute's coverage"); *Roundtable Discussion: Determining the Proper Scope of Coverage for the Americans with Disabilities Act Before the S. Comm. on Health, Education, Labor, and Pensions*, 110th Cong. 5-12 (2008) (statement of Chai Feldblum, Professor of Law, Director, Federal Legislation Clinic, Georgetown University Law Center) (highlighting that employers' obligations to provide reasonable accommodation do not change under the Amendments Act, that it only makes it clearer that they need not provide accommodations to individuals simply "regarded as" having a disability).



enforcement.<sup>348</sup> As I, and others, have argued elsewhere, ADA rights are civil rights.<sup>349</sup> Employer and peer pressure for relinquishment should not be the de facto practice.<sup>350</sup> As Tami, one of the participants, noted, “Folks don’t always see a person [when they see a person with a disability], so they don’t think of me as having the same rights to participate in things that they would accord another person.”

In order to use the law to correct and refine itself, disabled people will need the assistance of counsel. To this point, litigating ADA cases has not been a profitable or even a books-balancing task.<sup>351</sup> Without the participation of pro bono counsel and government attorneys in ADA cases, particularly with the opportunity to test the new language of the Amendments Act, this project of advancing the rights of people with disabilities will be midstream and ineffectual.<sup>352</sup> At the very basic level, most employees with disabilities need accommodations and have rights to such adjustments.<sup>353</sup> Granting or denying an accommodation can mean the difference between employment and unemployment.

This second part of a strategy to include (and notice that I do not use the words “integrate” or “assimilate”) women attorneys with disabilities should be directed at the profession and its institutional culture.<sup>354</sup> As many of the women suggested, the largest obstacles to their employment are other attorneys’ attitudes:

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348. See MARY ANN GLENDON, *A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY* 51 (1994) (describing litigation as the process of wearing down the other side and its representation).
349. See, e.g., Basas, *supra* note 45; Emens, *supra* note 270; Morris, *supra* note 75.
350. See generally Michael A. Stein, *Disability Human Rights*, 95 CAL. L. REV. 75 (2007) (broadening the concept of disability rights as civil rights to disability rights as human rights).
351. See sources cited *supra* note 343 (according to the ACLU, ADA cases are losers in the courts).
352. Other approaches, such as Michael Waterstone’s, have focused on the ramping up of public enforcement of these rights. See Waterstone, *supra* note 232.
353. Some attorneys with disabilities will not need accommodations, or they may need accommodations that cost very little to implement, such as providing an adjustable desk chair or a phone with large buttons. See Job Accommodation Network (FAQ-Funding), available at <http://www.jan.wvu.edu/portals/faqs.html#fund> (last visited Feb. 20, 2010).
354. The legal profession faces its own obstacles to including disabled women in its ranks, including the ones that it has not fully addressed—the isolation of minority attorneys and the sexualization of women in the workplace. See Kathleen Bergin, *Sexualized Advocacy: The Ascendant Backlash Against Female Lawyers*, 18 YALE J.L. & FEMINISM 191 (2006) (arguing that when women invoke sex appeal as a strategy in the workplace, it backfires and advances negative stereotypes about women as mere sexual objects); Robert W. Gordon, *Portrait of a Profession in Paralysis*, 54 STAN. L. REV. 1427, 1440 (2002) (problematizing the powerlessness that lawyers may feel in changing the norms of their profession); Rebecca L. Sandefur, *Staying Power: The Persistence of Social Inequality in Shaping Lawyer Stratification and Lawyers’ Persistence in the Profession*, 36 SW. U. L. REV. 539, 555 (2007) (encouraging the profession to consider the struggles not only of racial minorities and women, but also people from lower socioeconomic backgrounds with parents who did not work in professional fields).

. . . Just plain refusal to comply with the ADA. Usually, lawyers are smart enough to claim my résumé never arrived or to just refuse to respond to it. It literally has been hell. — Teri (on barriers in the workplace)<sup>355</sup>

This research began as an effort grounded in feminist ideals and my task as a scholar and advocate would be neglected if I failed to lay some groundwork for changing the daily experiences of disabled women lawyers. Small measures, however, may come with social and cultural changes that rattle existing power dynamics, hierarchies, and identities. This initial discomfort on the part of people previously entrenched in gate-keeping functions to success, power, and choice in the profession is a good thing.<sup>356</sup> I would like to suggest some readily achievable goals within the legal profession and its culture toward ameliorating these problems of exclusion and alienation: tracking, mentoring, networking, and coalition-building.

Before the profession and its organizations, such as the American Bar Association, can know how lawyers with disabilities are faring in the field, they must begin to track them comprehensively. That seems like a simple goal, but there has been an incredible amount of resistance to it that has only recently ebbed.<sup>357</sup> Only in the last decade has the ABA made concerted efforts toward gathering information about disabled lawyers; these efforts should be applauded.<sup>358</sup> The questions included in the ABA survey, however, should focus more on gender and barriers to different sectors of the legal profession. Women with disabilities and some of the specific obstacles they may be facing are left out. Overall, the other large problem with existing survey methods from the ABA is that they are targeted at section and commission leaders to determine who among them is disabled. Many lawyers with disabilities may not have readily apparent disabilities, self-identify with the disability rights movement, and the accompanying identity, or be “out.”

Efforts by the ABA and other organizations need to begin at their own front doors. Are the websites accessible? Are offices accessible? Are the organizations hiring disabled attorneys for selective, competitive positions?

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355. Response of Teri, Survey of Disabled Women Attorneys (on file with author).

356. Gate-keeping in the legal profession happens in other countries as well. In an international study of women in the legal profession, Ulrike Schultz and Gisela Shaw found:

Two forms of segregation persist: firstly, vertical segregation in a hierarchical order where women are pushed into the low ranks and male gate-keeping mechanisms force them either to conform or to create their own niches outside the traditional order; or secondly, horizontal segregation allocating men and women to different fields.

Ulrike Schultz, *Introduction to WOMEN IN THE WORLD'S LEGAL PROFESSIONS* xxv, *li* (Ulrike Schultz & Gisela Shaw eds., 2003) (citation omitted).

357. See GOAL III REPORT 2009, *supra* note 337.

358. ABA COMMISSION ON MENTAL AND PHYSICAL DISABILITY LAW, REPORT: 2ND ABA NATIONAL CONFERENCE ON THE EMPLOYMENT OF LAWYERS WITH DISABILITIES 74 (2009) (chronicling the Commission's history of addressing disability issues in the profession), available at <http://www.abanet.org/disability/conferences/reports.shtml> (last visited Jan. 10, 2010).

Hiring people with disabilities for janitorial positions is not enough to convert a workplace into being disability-friendly. Recently, for example, the ABA launched a website with information provided by ABA-accredited law schools about their outreach and support services for students with disabilities; this website is inaccessible, as is the rest of the ABA website and its section on disability.<sup>359</sup>

Even with this slow awakening, previous directors of these ABA and law school efforts have cited the difficulty of knowing who is disabled as reasoning for the lack of extensive surveys and studies.<sup>360</sup> I remember approaching Harvard Law School's alumni office only six years ago to ask them why they did not track alumni with disabilities as they did for racial, ethnic, gender, and sexual orientation identities, and they did not see the importance of it, even after an explanation.

Within the upper echelons of the legal profession, small changes applied broadly would make tracking more accurate and inclusive. At the American Association of Law Schools' annual hiring conference, for example, people with disabilities are not given the option on their Faculty Appointments Register (FAR) form to identify as having a disability; there is no small session on disability and teaching, as there is for racial minorities, LGBT attorneys, and women.<sup>361</sup> If members of the profession wonder why attorneys with disabilities feel excluded, they need only look to their events and their overlooking of disability.

Elite schools and professional organizations are not the only ones in denial about the existence of students and alumni with disabilities, but they can be leaders in remedying this situation.<sup>362</sup> Rather than viewing students and alumni with disabilities with discomfort or neglect, they could capture them as partners in transforming law schools and the profession.<sup>363</sup> For these efforts to be

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359. The new online tool for students with disabilities can be found at <http://www.abanet.org/disability/lawschools/home.shtml> (last visited Jan. 10, 2010). For more information about the accessibility challenges faced by people with disabilities as they access the Internet, see generally Steven Mendelsohn & Martin Gould, *When the Americans with Disabilities Act Goes Online: Application of the ADA to the Internet and World Wide Web*, 7 COMP. L. REV. & TECH. J. 173, 175-78 (2004) (describing some of the online access hurdles experienced by people with different kinds of disabilities).

360. See Jolly-Ryan, *supra* note 276, at 48, 49 (suggesting law schools track statistics on law students with disabilities).

361. See the American Association of Law Schools' (AALS) materials on faculty recruitment and new law teachers—the Faculty Appointments Register form (“FAR”) and Faculty Recruitment Conference (“FRC”), available at [http://www.aals.org/services\\_recruitment.php](http://www.aals.org/services_recruitment.php) (last visited Feb. 12, 2010) and the New Law Teachers Workshop materials, available at [http://www.aals.org/events\\_nlt.php](http://www.aals.org/events_nlt.php) (last visited Feb. 12, 2010).

362. According to the Goal III Report, disabled attorneys in leadership positions in the ABA have increased since 2007 (after a decrease in 2006), but none of the members of the Board of Governors identified as having a disability. Overall, only one percent of ABA leaders identified as having a disability, while seven percent of ABA members did. GOAL III REPORT 2009, *supra* note 337, at 7, 11.

363. While much has been written about law students with disabilities, particularly learning disabilities, advocates have not fully exhausted the steps they might take in coalition with

successful, attorneys with disabilities, particularly women, need to be in leadership positions. According to the ABA's last Goal III report, the number of disabled leaders within the ABA is less than one percent, and they do not track the combination of disability and gender.<sup>364</sup> The best assets that these individuals can offer are their own sets of institutional knowledge and insights about hiring, retention, and advancement. Here, mentoring and networking are the primary tools of change.<sup>365</sup> Women with disabilities should not be forgotten in these efforts. Their positions at the bottom of the profession make them even more important to reach, track, mentor, and connect with other attorneys with disabilities and minority attorneys.

Mentoring can be formal or informal and still be powerful in changing the employment outcomes of attorneys with disabilities.<sup>366</sup> Attorneys with disabilities may mentor law students or graduates with disabilities to share information about finding employment, navigating accommodations, and assessing fit. Attorneys without disabilities can be excellent mentors, too, and they may have greater access to people who can advance their mentees' careers because of their relative statuses in the profession. Law professors, deans, and recent graduates should be involved in mentoring as well, as it helps them to raise their awareness about disability and to translate that new knowledge into more accessible and welcoming learning and working environments for others.<sup>367</sup> These forms of mentoring are critical for disabled women law students and attorneys because they may be forgotten by the old boys network or have

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others and to advance the profession as a whole. Individual Bars, such as Florida, the Bay Area (San Francisco), New York, and Arizona have taken steps to education their membership about disability as a diversity category to consider. *See* Arizona Bar Diversity, <http://www.azbar.org/diversity> (last visited Apr. 20, 2010); Florida Bar Disability Initiative, <http://www.floridabar.org> (follow "Inside the Bar" hyperlink; then follow "Sections & Divisions" hyperlink; then follow "Equal Opportunities Law" hyperlink) (last visited Apr. 20, 2010); New York State Bar Association, Committee on Diversity and Leadership Development, [http://www.nysba.org/AM/Template.cfm?Section=Committee\\_on\\_Diversity\\_and\\_Leadership\\_Development\\_Home](http://www.nysba.org/AM/Template.cfm?Section=Committee_on_Diversity_and_Leadership_Development_Home) (last visited Apr. 20, 2010); San Francisco Bar Disability Rights, [http://www.sfbar.org/diversity/disability\\_rights.aspx](http://www.sfbar.org/diversity/disability_rights.aspx) (last visited Feb. 18, 2010).

364. *See* GOAL III REPORT 2009, *supra* note 337.

365. Mentoring and institutional knowledge accompany one another in the profession. *See* Teresa Kennedy et al., *The Value of Mentoring Programs for Corporate Legal Departments*, 25 ASSOC. CORPORATE COUNSEL DOCKET 24, 26 (2007) (mentoring is "a sound business practice"); Lisa H. Nicholson, *Making In-Roads to Corporate General Counsel Positions: It's Only a Matter of Time?*, 65 MD. L. REV. 625, 664 (2006) ("The value in retaining employees with institutional knowledge will be realized if corporations work to address work-life, mentoring, and networking issues of its lawyers.").

366. *See* sources cited *supra* notes 17, 20, and 144.

367. Law professors may resist granting accommodations or not understand the legal duties they have, but delays or refusals to accommodate "can mean the difference between failure and success." M. Kay Runyan & Joseph F. Smith, Jr., *Identifying and Accommodating Learning Disabled Law School Students*, 41 J. LEGAL EDUC. 317, 317 (1991); *see also* Donald Stone, *The Impact of the Americans with Disabilities Act on Legal Education and Academic Modifications for Disabled Law Students: An Empirical Study*, 44 U. KAN. L. REV. 567, 568 (1996) (law schools may worry about accommodating students today only to graduate lawyers who cannot serve their clients).

questions and needs that are not addressed by male-led, disability-unaware professional mentoring and networking programs.

Mentoring quickly transitions into an exercise in networking, but with networking, disabled attorneys or job seekers with disabilities can also serve as strong supports for one another and draw in employers and businesses. Networking is goal-oriented rather than existentially explorative like mentoring. It is focused on finding particular jobs and touches attorneys most when they are recent graduates or returning to the market. They can build a community of information sharing and job posting.<sup>368</sup> To effectively combat senses of marginalization and isolation among disabled attorneys, they can also exchange ideas about career trajectories, attitudinal barriers in the workplace, and the negotiation of competing demands. Networking can also take the form of mock and informational interviews, the ubiquitous cocktail parties (in accessible locations, of course), round tables, and job fairs.<sup>369</sup> Both men and women need to be part of these networking efforts when they concern disabled women attorneys, just as non-disabled attorneys should be partners. People successfully employed or that have clout with private and public employers are the best networking contacts for disabled women attorneys to have.<sup>370</sup> Organizations, such as the ABA, law schools, and state and local Bars, can foster these kinds of structures and relationships without expending too many resources. The return, in comparison, is great.

Out of networking comes the potential for coalition-building. The more disabled attorneys are perceived by their classmates, colleagues, and supervisors as members of a cultural minority group, the better chances they have at connecting with other groups experiencing stigma and discrimination.<sup>371</sup> These kinds of ideological and activist bridges are untapped resources for changing workplaces for all groups involved. While identities may clash and be drawn into making claims about which forms of subjugation and oppression are worse,<sup>372</sup> if

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368. Networking is of critical importance to future and current lawyers, particularly those from underprivileged socioeconomic backgrounds. In the summer of 2009, the ABA held its second career fair for disabled attorneys and law students. This model is one adapted from other ABA minority efforts, including career fairs, workshops, and membership groups. *See, e.g., E. Tammy Kim, Radical Proposals to Reform Legal Pedagogy: Who's Learning What? Toward a Participatory Legal Pedagogy*, 43 HARV. C.R.-C.L. L. REV. 633 (2008) (emphasizing the importance of informal networking for minority and women law students).

369. *See Terry Carter, Silent No Longer: ABA Conference Gives Lawyers with Disabilities a Forum to Call for Responsive Hiring Practices*, 5 ABA J. E-REPORT 2 (2006).

370. *See Women Work! Tipsheet: Differences Between Mentoring and Networking*, <http://www.womenwork.org/resources/tipsheets/networkingandmentoring.htm> (last visited Feb. 20, 2010).

371. At the risk of oversimplifying the historical and current treatment of disabled people, I use the minority model to facilitate understandings of the oppression they face as a group. This approach is not to discredit other perspectives, such as those focused on human variation. *See, e.g., Richard K. Scotch & Kay Schriener, Disability as Human Variation: Implications for Policy*, 549 ANNALS AM. ACAD. POL. & SOC. SCI. 148 (1997) (going beyond the minority group model to demonstrate how an understanding of human variation can make workplaces more disability-friendly).

372. During my time as the director of a disability rights organization, I noticed factionalism

members can focus on common ground, they will ultimately benefit from working together.<sup>373</sup>

To perhaps a greater extent than with other movements, the aspirations of the disabled intersect with struggles against other forms of discrimination and for housing and veterans' rights, a ban on land mines, the democratization of technology and scientific knowledge, and the creation or preservation of workplace opportunities and social safety nets.<sup>374</sup>

Movements within the legal profession, especially those spurred by women's groups, LGBT members, African Americans, Latinos, and Asian Americans, also can be models for the disability rights community of what has worked and what can be adjusted. The experience of being a minority in a conservative and tradition-bound profession can transcend color lines and political boundaries.<sup>375</sup> As Dria, one of the women attorneys in the study suggested,

Having a disability makes it easier to identify with people of color and other disenfranchised groups, which is really important . . . The disadvantage is that there needs to be more education in the legal profession about disabilities the same way that people have been educated about ethnic and racial diversity—in particular, that people with disabilities are capable of achieving the same levels of success as everyone else and that we're also an important part of diversity.<sup>376</sup>

Several women echoed Dria's comparisons between ableism and racism. Two of the women from racial minority backgrounds characterized discrimination against disability as worse than discrimination based on race:

The Florida Bar has citizenship drives, sponsored by the Caribbean Bar

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within the disability community. When it came to unemployment issues, many people chose to play the game of "misery poker" to see who had it worse, and people frequently divided along disability (e.g., learning, blindness, deafness, mobility) lines. For further discussion of the role of factionalism in social movements and identity politics, see Marc Edelman, *Social Movements: Changing Paradigms and Forms of Politics*, 30 ANN. REV. ANTHROPOLOGY 285, 298 (2001).

373. Professionals with multiple bases of minority oppression often find it difficult to embrace all of those identities in one interest group. If they are with lesbian and gay attorneys, they may have to deny their identities as people of color. If they are disabled and female, they may be asked to overlook their disabilities while attempting to network within feminist channels. See, e.g., Nina A. Nabors et al., *Multiple Minority Group Oppression: Divided We Stand?*, 5 J. GAY & LESBIAN MED. ASSOC. 101 (2001) (studying this dilemma in the profession of psychology).

374. *Id.*

375. See generally Carrie Menkel-Meadow, *Excluded Voices: New Voices in the Legal Profession Making New Voices in the Law*, 42 U. MIAMI L. REV. 29, 44 (1987) ("[A]chieving a critical mass of previously excluded people [in the legal profession] may be essential to promoting . . . transformative practices.").

376. Response of Dria, Survey of Disabled Women Attorneys (on file with author).

Association I'm a member of. I pull people to me since I am outgoing. People don't come to me naturally. I think it's because of the wheelchair—when they think of lawyer, they think of person in a position of strength. The chair represents weakness . . . . Even though I'm Caribbean, I am not accepted by members of that Bar when I go to these events. I have never been part of a women with disabilities support group, but need one in my life now. [My experience of disability discrimination] is not something that can share with my mother and sister. — Betsy<sup>377</sup>

They attributed prevalent discrimination based on disability to lingering fears and discomfort in society surrounding disability and no positive training or messages that ableist attitudes are outdated and hurtful.

While the mentoring, networking, and coalition-building strategies can be equally directed at women or men in the profession, the issues of sex and gender, and the resulting stereotypes, should not be ignored. Male attorneys with disabilities may be able to better assimilate into the existing old boys' network of the law and are more readily perceived by community members and peers as "heroic," "brave," or "inspiring" because of their disabilities.<sup>378</sup> In contrast, women attorneys need to create networks of their own or build on those crafted by feminist movements in the profession; they are the "new boys."<sup>379</sup> And they are the new boys who have been largely forgotten by not only male attorneys with disabilities, but also by women's movements.<sup>380</sup>

To occupy this "betwixt and between" state and defy conventions of femininity situates disabled women attorneys at the margins of the profession. Marginalized status, however, provides opportunities for empathy, creativity, and shared experiences.<sup>381</sup> These suggestions are not women-specific, but they have tremendous impact on women because of their already stigmatized positions.<sup>382</sup> Being acknowledged as functioning, full members of a profession

377. Response of Betsy, Survey of Disabled Women Attorneys (on file with author).

378. See MICHELLE FINE, *DISRUPTIVE VOICES: THE POSSIBILITIES OF FEMINIST RESEARCH* 141 (1992) ("Certainly the social imperative seems to have been to study and rehabilitate the 'wounded male.'").

379. I use "new boys" to refer to women, but other scholars have used the term to refer to the next generation of the old boys network, men who have had more experience with women in school and in the workplace. See, e.g., Linda Everett et al., *Cognitive Moral Development and Attitudes Toward Women Executives*, 15 J. BUS. ETHICS 1227 (1996) (finding that women's attitudes toward women executives are largely positive, while men's attitudes toward women executives are largely negative).

380. See Thomson, *supra* note 13 (calling for a disability-aware approach to feminism).

381. Anthropologist Victor Turner referred to this "betwixt and between" state as a liminal position, being on the threshold of two worlds or experiences. VICTOR TURNER, *THE FOREST OF SYMBOLS: ASPECTS OF NDEMBU RITUAL* 93-111 (1967). People with disabilities occupy liminal positions in modern U.S. workplaces.

382. See Morris, *supra* note 75, at 10 (dismissing arguments that impairment is physical and not political):

Sexist and heterosexist values tell [disabled women] what kind of appearance we should aim for, what kind of behavior is acceptable. Society's reaction to impairment, to bodies which are very different from the norm, means that disabled

adds richness to lives and combats internalized messages about inferiority, difference, and failure. Women can use the same version of the old boys' network, albeit a modified and enlightened one, to advance themselves and the profession in the process.<sup>383</sup> The kind of adaptation of existing frameworks and structures for the benefit of the most marginalized members of the profession can be radical. Fortunately for this project, that threatening element of upheaval will only reveal itself when the results come.

Should these women move forward quietly sometimes, organizing themselves and building alliances? Perhaps stealth is an underutilized weapon in paradigm shifts in some settings, but silence has kept women with disabilities apart in the profession.<sup>384</sup> After laboring alone for so long to create accommodating environments where they do not exist and to process discrimination on a daily basis, disabled women have much to offer one another, and that kind of solidarity should be "loud and proud."<sup>385</sup> The penultimate form of legal and social change could come from organizing on the ground and bringing others along. As I have argued, too often disabled employees receive little support in the workplace and are not sure how to provide it to others coming after them.

Assistance and paternalism are critical to distinguish, however.<sup>386</sup> Every effort should be made to avoid a charitable model of including lawyers with

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women are either attractive in spite of their impairment or unattractive because of their impairment.

See also Susan Wendell, *Toward a Feminist Theory of Disability*, 4 HYPATIA 104, 105 (1989) (advocating for disability theory that is feminist because "more than half of disabled people are women and approximately 16% of women are disabled, and because feminist thinkers have raised the most radical issues about cultural attitudes to the body" (citation omitted)); Candace West, *Goffman in Feminist Perspective*, 39 SOC. PERSP. 353 (1996) (arguing that Goffman's work on interaction and stigma contributed greatly to feminism).

383. See G. Melton Mobley et al., *Mentoring, Job Satisfaction, Gender, and the Legal Profession*, 31 SEX ROLES 79 (1994) (discussing women's attempts to break into or dismantle the old boys network); Sharyn L. Roach, *Men and Women Lawyers in In-House Legal Departments: Recruitment and Career Patterns*, 4 GENDER & SOC'Y 207 (1990) (finding that the old boys network advances the positions and salaries of men in the legal profession).

384. For more about paradigm shifts in the legal profession, particularly those surrounding women, see Susan P. Sturm, *From Gladiators to Problem-Solvers: Connecting Conversations About Women, the Academy, and the Legal Profession*, 4 DUKE J. GENDER L. & POL'Y 119, 125 (1997) (emphasizing the tensions between "particularity and commonality" in reforming the law and the profession to move away from a model of lawyer-as-gladiator).

385. I am appropriating the slogan of the gay rights movement—to be "loud and proud." See M.J. Hornsey et al., *On Being Loud and Proud: Non-Conformity and Counter-Conformity to Group Norms*, 42 BRIT. J. SOC. PSYCHOL. 319 (2003) (studying non-conformity and moral bases of behavior in gay couples).

386. To understand the slipperiness of paternalism, consider decisions that an employer may make, ostensibly serving the "best interests" of the disabled employee. Paternalism may take the form of refusing to hire a person with a disability, if the employer can convince himself or herself that it is merely for safety reasons. See, e.g., Lisa J. Reed, *Paternalism May Excuse Disability Discrimination: When May an Employer Refuse to Employ a Disabled Individual Due to Concerns for the Individual's Safety?*, 108 BUS. & SOC'Y REV. 417 (2003) (outlining the Supreme Court's decision in *Chevron v. Echazabal* to allow employers to decide if people with disabilities should hold particular jobs, based on safety concerns).



disabilities in the profession. Disabled attorneys are not present to make others feel better about their own politics or their disability friendly attitudes. For real inclusion to occur, the profession's members must be open to recognizing the knowledge that disabled attorneys bring to the profession and not merely about their technical skills and specialties. How the profession treats disabled attorneys, especially as they request accommodations, is a litmus test for what its leadership believes about flexible workplaces and respect for colleagues. The current state of that issue reflects the failure of the workforce to respond to almost every employee as a complete person.<sup>387</sup> The same is true of other diversity efforts, and the more that minority attorneys, including disabled attorneys, are able to see the vitality of this outreach, the better they will be at assessing compatibility with potential employers and the legal profession, in general. The trick is not to banish all hope among disabled women attorneys before the profession has caught up with their civil rights under the ADA.

### CONCLUSION

While these data provide a start to understanding the processes that lead to career choice and stratification among women with disabilities, they deserve more attention and dedicated studies of their experiences. This is a place where the ABA, NALP, the U.S. Department of Labor, and law schools can step in to fund empirical, mixed qualitative-quantitative studies of these patterns. The move toward gathering data has not yet solved, and may not for some time, the problem of attorneys with disabilities, particularly women, clustering in certain sections of the profession where they perceive acceptance, choice, or stability. It serves to bolster an understanding of why these women self-accommodate, given the attitudinal barriers, stigmas, and risks present. Such lines of inquiry would also serve to strengthen an understanding of why some workplaces are serving disabled women attorneys well; not all of the women had negative experiences.<sup>388</sup>

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387. Compare this notion with how people with disabilities are treated by the criminal justice system and what those rights violations or under-protections means about social values. See Grattet & Jenness, *supra* note 182.

388. While I have chosen to focus on dilemmas and discrimination in the workplace, a number of women experienced positive and supportive environments and collegiality. Jo provides her story:

Once employed, I have rarely confronted barriers in the workplace. Those who hire me want it to succeed as much as I do so there is little visible resistance. I am a friendly, outgoing person and consider it my responsibility to make people comfortable with my disability. My experience has been excellent in this regard and I soon forge close friendships with many coworkers. There have been two incidents (including this last experience) in which new bosses who have "inherited" me are clearly uncomfortable with the arrangement. One worked out; the other did not. . . . Most of my needed accommodations are really just facts of life in the modern legal office. I require a computer, a speaker telephone, a desk that is of sufficient height (I've always supplied my own desk), administrative assistance for non-essential functions.

Response of Jo, Survey of Disabled Women Attorneys (on file with author).

The strategies that I have suggested focus largely on the law and being testers of it, as well as on building a community of equality. No one strategy in isolation will solve the problems of the legal profession when it comes to women attorneys with disabilities, but unlike previous framings of the issue, difficulty should not render the profession immobile.<sup>389</sup> Disability itself and self-identification around disability are admittedly difficult to define and capture with fail-proof accuracy. That hurdle is partly a function of refusing to engage in a concerted endeavor to track, mentor, and promote disabled women attorneys to their rightful, equal positions—positions based on skill, not perceived disability or discriminatory attitudes.

The legal profession and its members expect disabled women attorneys to put aside their disabilities, to function as normates without assistance or accommodations, and to do so with cheer and grace.<sup>390</sup> In this exchange, however, the profession offers very little in return, and it can start to compensate its members for decades of discrimination by fostering a support network for the new boys.<sup>391</sup> Progress will be evident when the new boys are allowed to develop as individuals and not saddled with expectations derived from a traditionally male and ableist professional culture.<sup>392</sup> Disabled women attorneys must reach a place professionally, through peers' and employers' acknowledgment of their situations and support for their progress, where they can exercise their rights to reasonable accommodation under the ADA without financial and professional losses.

I think it is important that those of us who have enjoyed some level of success

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389. I am tempted to use “paralyzed,” but that might be too much of a nod to the kind of archaic language about disability and weakness that is rampant in the law. See Liat Ben-Moshe, “Lame Idea:” *Disabling Language in the Classroom*, in BUILDING PEDAGOGICAL CURB CUTS: INCORPORATING DISABILITY IN THE UNIVERSITY CLASSROOM AND CURRICULUM 107 (2005), available at [http://gradschpdprograms.syr.edu/resources/publication\\_disability.pdf](http://gradschpdprograms.syr.edu/resources/publication_disability.pdf).

390. But even surface equality can fall short of functional equality. As Jenny Morris notes:  
 We have to recognize that disabled people will not get access to full human and civil rights by being treated the same as non-disabled people. We experience disabling barriers—unequal access to education and inaccessible housing . . . higher costs of daily living . . . higher demands on health services . . . Unless we have entitlements to action and resources to tackle these disabling barriers, we cannot achieve equality.

Morris, *supra* note 75, at 12.

391. Support networks are useful tools in the legal profession. See Laura R. Hammargren, *Servant Leadership and Women in the Law: A New Nexus of Women, Leadership and the Legal Profession*, 4 U. ST. THOMAS L.J. 624, 640-41 (2007) (noting that women in the law do not build these networks as quickly as they enter the profession, instead opting for self-reliance in many situations); Amy L. Meyerson, *Beyond Diversity 101: Navigating the New Opportunities, Career Management-Outline of Remarks*, 165 PLI/CORP 121 (2007) (noting the formation of a support network for in-house women lawyers of color). Interestingly, many of these support networks focus on women.

392. See ELIZABETH SHEEHY & SHEILA MCINTYRE, *CALLING FOR CHANGE: WOMEN, LAW, AND THE LEGAL PROFESSION* 9 (2006) (characterizing the legal profession as sexist, racist, and ableist).

work toward ensuring that the opportunities are open to others and that the travails are not as daunting. I also could have used a role model and mentor in my youth. If I can fill that role for another young woman, I would be happy to do so. — Jo<sup>393</sup>

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393. Response of Jo, Survey of Disabled Women Attorneys (on file with author).

**APPENDIX A****Survey of Top 100 Law Firms in the US****1. Introduction**

Thank you for agreeing to participate in this survey. The questionnaire should take less than ten minutes to complete; there are only ten questions.

Recruiters, HR professionals, and members of your firm's hiring committee are all fine candidates for responding to this survey. Please share it accordingly. Your accuracy and candor are appreciated.

Please submit only one copy of your responses to this survey. The results will be included in a journal article that I am writing, but your responses will be anonymous. If you have any questions about the survey, please do not hesitate to call me: [contact information].

\*\* Surveys should be completed by April 16, 2007. \*\*

Thanks,  
Carrie Griffin Basas, Harvard Law '02

**2. Firm Profile**

Please provide the following data, based on your current employment statistics. Approximations are fine.

1. Approximately how many employees do you have currently employed in the following categories—across all offices of your firm?

- \_\_\_\_\_ Firm partners
- \_\_\_\_\_ Firm associates and of counsel attorneys
- \_\_\_\_\_ Professional support staff—IT, HR, accounting, library/reference, administrative, paralegal, etc.
- \_\_\_\_\_ Other support staff (hourly or salaried)—mailroom, maintenance, housekeeping/janitorial workers, etc.

2. Which of the following categories of diversity do you actively seek as part of your firm's recruitment efforts for attorneys? Select all that apply.

- Racial and ethnic

- Linguistic (i.e., speakers of more than one language)
- Gender (male/female)
- Sexualities (e.g., lesbian, gay, bisexual, transgendered)
- Economic (e.g., first time college graduates, people with formerly limited means)
- Religious and spiritual
- Veterans
- People with disabilities

3. Of these categories of diversity, which one are you most actively working on at your firm?

### **3. Recruitment and Retention—People with Disabilities**

In this section, I would like to ask you about your current recruitment and retention efforts, as they concern people with disabilities. If you do not have any disability-focused efforts, please answer accordingly.

4. What kinds of activities do you engage in to recruit attorneys with disabilities? Please select all answers that apply.

- None, to my knowledge
- Contacting disability services at feeder law schools
- Internships targeted at law students with disabilities
- Asking current employees with disabilities to refer more people with disabilities
- Providing a TTY number on the firm's website
- Using a headhunter service with its own disability outreach efforts
- Participating in ABA or local Bar events targeted at students with disabilities and attorneys with disabilities
- Sponsoring mentoring relationships between the firm's attorneys and current law students with disabilities
- Holding recruitment events at accessible locations
- Hiring a sign language interpreter for recruitment events
- Providing recruitment materials in accessible formats, such as Braille, electronic files (accessible formats), disks/CDs, and tapes
- Other (please specify)



	None	1-2	3-5	6-9	10-15	16-20	21+	Not sure- don't track
<b>Psychological or emotional (mental health) disabilities</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Cognitive, intellectual or learning disabilities</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Neurological (e.g., epilepsy, migraines, multiple sclerosis)</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>HIV/AIDS</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Other chronic conditions</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

7. I would like to ask you to select how ready you or anyone from the firm's hiring committee would be to perform the following actions. Please assume that any candidates described below meet your achievement criteria for hiring (e.g., they have graduated from law school, written for law reviews, gained summer experience).

	Extremely ready	Ready	Almost or somewhat ready	Not ready at this time
<b>Add disability to your diversity recruitment efforts</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Track firm's information about employees with disabilities for internal use and outreach efforts</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Hire a partner with a terminal illness</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## THE NEW BOYS

119

	<b>Extremely ready</b>	<b>Ready</b>	<b>Almost or somewhat ready</b>	<b>Not ready at this time</b>
<b>Hire an associate with a terminal illness</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Hire a partner who uses a wheelchair</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Hire an associate who uses a wheelchair</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Hire a partner who uses a cane</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Hire an associate who uses a cane</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Hire a partner with no use of his/her arms or legs</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Hire an associate with no use of his/her arms or legs</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Hire a partner with a learning disability</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Hire an associate with a learning disability</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Hire a partner with an emotional/psychological disability</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Hire an associate with an emotional/psychological disability</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Hire a deaf partner</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Hire a deaf associate</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Hire a blind partner</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Hire a blind associate</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>



	<b>Extremely ready</b>	<b>Ready</b>	<b>Almost or somewhat ready</b>	<b>Not ready at this time</b>
<b>Hire a partner with a speech disorder/impediment</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Hire an associate with a speech disorder/impediment</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Hire an administrative assistant with a disability</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Hire a maintenance worker with a disability</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Hire a janitor/housekeeper with a disability</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Spend \$500 providing a reasonable accommodation to an employee</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Pay \$2000 to hold a disability awareness training for all employees</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Spend \$10,000 to improve physical accessibility in the office</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

8. What efforts do you have in place to retain employees with disabilities? Select all that apply.

- No targeted efforts at this time
- A designated contact/go-to person in human resources or elsewhere at the firm to act as a point of contact about accommodations, accessibility, and other disability concerns
- A mentoring program for current employees with disabilities
- Disability sensitivity/awareness training for firm employees
- Flexible hours
- Telecommuting
- Job sharing

THE NEW BOYS

121

- Comprehensive health and disability insurance
- Carpooling or transportation subsidies and programs
- Fully accessible office space
- Partially accessible office space
- Working relationships with disability service providers, such as sign language interpreters, personal care assistants, and readers
- Other (please specify):

#### 4. Future Directions for Your Firm

9.

A) How have you defined “disability” in considering your responses to these survey questions?

B) What plans, if any, do you have to recruit or retain employees with disabilities?

Note: If you would like to receive a final version of my results, please include your contact information here. Your contact and identifying information will not be shared with anyone.

10. At your firm, what priority, if any, would increasing the hiring committee or human resources department’s knowledge about the following topics have?

	Top Priority	Mid-Level Priority	Low Priority	No Priority
<b>Law firms’ responsibilities under the Americans with Disabilities Act</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Disability 101- What is a disability? What effects might disabilities have in the workplace?</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Costs of reasonable accommodations</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Disability as a diversity issue</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

	<b>Top Priority</b>	<b>Mid-Level Priority</b>	<b>Low Priority</b>	<b>No Priority</b>
<b>How to recruit and retain qualified candidates with disabilities</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## APPENDIX B

### SURVEY OF DISABLED WOMEN ATTORNEYS

#### 1) Biographical Information

- a. The name you would like to use as part of this study:
- b. Current occupation:
- c. Current employment setting (e.g., private practice, government, academia, nonprofit, unemployed):
- d. Number of years since you've graduated from law school:
- e. Optional- Other information you would like to share, such as your race, ethnicity, sexual orientation, or age:

#### 2) Disability Information (Optional, but helpful)

- a. Your disability/disabilities:
- b. Ways disability affects your work life:
- c. Ways disability affects you in the community:
- d. Ways disability affects you at home:

#### 3) Law School Experiences

- a. About how many people with disabilities (of any kind) did you know at your law school, including staff, faculty members, and peers? What were your interactions with them like?
- b. What were your interactions with non-disabled law school peers, teachers, or staff like?
- c. In a few sentences, please tell me about disability-related barriers, if any, you experienced in law school.
- d. If applicable: What reasonable accommodations (of any kind) did you require while you were in law school? How did peers, faculty members, school officials, or employers respond?

#### 4) Employment Experiences

- a. In a few sentences, please tell me about your career trajectory- where you started after law school to where you are now.
- b. What barriers, if any, have you experienced in finding work or being in the workplace itself?
- c. Have you required accommodations of any kind at work? What have they been, and how have employers and coworkers responded?
- d. To your knowledge, how many other people with disabilities (of any kind) work in your company or office, and what are their titles or roles?
- e. How is disability addressed in your workplace, if at all?
- f. What words would you use to describe your satisfaction level with your current employment?

#### 5) Identities and Relationships

- a. How do you define disability?
- b. What connections, if any, do you make between disability, as you have defined it, and your identity as a woman?
- c. What role does your disability play in your identity as an attorney or someone with a J.D.?
- d. Do you belong to any organizations for people with disabilities? Why or why not?
- e. In a few words or sentences, please tell me about your life outside of work, such as about your family, friends, and interests.