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A Call to Action for the Legal Academy

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Commission on
Mental and Physical
Disability Law

2ND ABA NATIONAL CONFERENCE ON THE EMPLOYMENT OF LAWYERS WITH DISABILITIES



Association of
Corporate Counsel

June 15-16, 2009

*Marriott Wardman Park Hotel
Washington, DC*



THE SECOND NATIONAL
CONFERENCE ON THE
EMPLOYMENT OF LAWYERS
WITH DISABILITIES:

A REPORT FROM THE
AMERICAN BAR ASSOCIATION
FOR THE LEGAL PROFESSION



AMERICAN BAR ASSOCIATION

Commission on
Mental and Physical
Disability Law

American Bar Association Commission on Mental and Physical Disability Law

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*To promote the ABA's commitment to justice and the rule of law
for persons with mental, physical, and sensory disabilities and to promote
their full and equal participation in the legal profession*

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FOR THE LEGAL PROFESSION

EDITED BY:
JOHN W. PARRY AND
WILLIAM J. PHELAN, IV

**A Publication of the American Bar Association's
Commission on Mental and Physical Disability Law**

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Vermont Law School

TABLE OF CONTENTS

Preface	viii
Moderator and Speaker Biographies	x
Chapter 1: Introduction to the Second ABA National Conference on the Employment of Lawyers with Disabilities	1
A Pledge for Change	
Welcome from the Conference Primary Sponsors	
The ABA's Commitment to Disability Diversity, by Michael S. Greco, ABA President (2005–2006)	
ABA's President's Message: Allowing Our Differences to Unite Us, by H. Thomas Wells, Jr., ABA President (2008–2009)	
Chapter 2: Personal Perspectives of Lawyers with Disabilities	6
Scott LaBarre, Former Chair, ABA Commission and President, National Association of Blind Lawyers	
Kareem A. Dale, Associate Director, White House Office of Public Engagement and Special Assistant to President Obama for Disability Policy	
Isaac J. Lidsky, Law Clerk, Supreme Court of the United States and President, Chairman, and Founder, Hope for Vision	
<i>Living in Dual Worlds: A White Man with Tourette's Syndrome</i> , by James A. Merklinger, Deputy General Counsel and Acting Vice President of Legal Resources, Association of Corporate Counsel	
Honorable Richard S. Brown, Chief Judge, Wisconsin Court of Appeals and Former Chair, ABA Commission on Mental and Physical Disability Law	
Christine M. Griffin, Former Vice-Chair, U.S. Equal Employment Opportunity Commission	
Andrew J. Imparato, President and CEO, American Association of People with Disabilities	
Chapter 3: Statistical and Other Information on Lawyers with Disabilities: A New Beginning Amidst Gaps and Unanswered Questions	16
National Association for Law Placement Perspective, by James G. Leipold, NALP Executive Director	
Minority Corporate Counsel Association Perspective, by Veta T. Richardson, MCCA Executive Director	
ABA Commission on Mental and Physical Disability Law Perspective, by William J. Phelan, IV, and John W. Parry, ABA Commission Staff	
Chapter 4: Transition from Law Student to Lawyer: Reasonable Accommodations in Law School and at Work	26
<i>Lawyers with Disabilities Add Critical Diversity to the Profession</i> , by Carrie G. Basas, Post-Graduate Research Fellow, Harvard Law School	
<i>Legal Limitations and Practical Implications: Discussing Disability During the Hiring Process</i> , by Mariyam A. Cementwala, Associate, Wilmer Cutler Pickering Hale and Dorr LLP	

A Call to Action for the Legal Academy, by Wendy F. Hensel, Associate Professor of Law, Georgia State University College of Law
The Transition from Law School to Employment, by Marianne S. Huger, Associate Director of Disability Services, Georgetown University Law Center

**Chapter 5: Employment of Lawyers with Disabilities:
 Rewards and Manageable Obligations for Employers 35**

Panel Discussion
 Questions and Comments

**Chapter 6: Best Practices for Mentoring, Retaining,
 and Promoting Lawyers with Disabilities 41**

Protecting the Back Door: Retention and Advancement of Lawyers with Disabilities, by Charles S. Brown, Director, Volunteer Lawyers for the Blind, American Action Fund for Blind Children and Adults
 Panel Discussion

Chapter 7: Creating the Most Inviting Workplace for Lawyers with Disabilities 47

Panel Roundtable
 Questions and Comments
So You've Hired a Lawyer with a Disability . . . Now What?, by Eve L. Hill, Senior Vice President, Burton Blatt Institute of Syracuse University
Invisible Disabilities in the Workplace: 10 Facts About Invisible Disability, by William H. Grignon, Esq.

Chapter 8: Best Accommodation Practices in the Legal Profession 56

Panel Roundtable
Roadblocks to Access in the Profession, by Emily S. Blumenthal, Partner, Jackson Lewis LLP

Chapter 9: Implementing the Pledge to Hire Lawyers with Disabilities 65

Panel Discussion
 Questions and Comments

Appendices 72

Appendix A: ABA, the Commission on Mental and Physical Disability Law, and Lawyers with Disabilities

- American Bar Association and Lawyers with Disabilities
- ABA Policies Pertaining to Lawyers with Disabilities
- Histories of 2006 and 2009 Conferences

Appendix B: ABA Commission Programs
 Appendix C: ABA Commission Publications and Services
 Appendix D: Other ABA Programs and Committees
 Appendix E: State and Local Bar Association Services and Programs for Lawyers with Disabilities
 Appendix F: National Disability Legal Organizations
 Appendix G: Scholarships for Law Students with Disabilities
 Appendix H: *Disability Diversity in the Legal Profession: A Pledge for Change*

PREFACE

Employment is the most fundamental necessity for almost all individuals and families in the United States. All other necessities—including housing, food, clothing, health care, and transportation—depend on having money to purchase them. Moreover, the self-worth of most people and families is largely defined by the employment of themselves or others in their family. For people with disabilities, more often than not, employment is even more critical because of the additional medical and other related costs of managing their impairments. Also, persons with disabilities tend to have significantly less wealth and income to begin with. In today's world, the American dream depends on employment, whether one has a G.E.D. or a J.D.

This is why the American Bar Association (ABA), its Commission on Mental and Physical Disability Law (Commission), the Association of Corporate Counsel (ACC), and the Minority Corporate Counsel Association (MCCA) have joined together with other legal employers (such as the federal government and disability groups) to promote disability diversity within the legal profession, particularly related to hiring, retaining, and promoting lawyers with disabilities. This effort is particularly important now that Congress has enacted the historic 2008 amendments to the Americans with Disabilities Act to broaden protections for all persons with disabilities and the Equal Employment Opportunity Commission will be issuing regulations to enforce those protections in the workplace.

This report is a summary of the Second Conference on the Employment of Lawyers with Disabilities, held June 2009, and sponsored by the ABA Office of the President, the ABA Commission on Mental and Physical Disability Law, the ACC, and the MCCA. The

main focus of the conference was to encourage legal employers to sign a pledge to promote disability diversity within their firms, companies, agencies, and organizations as a commitment to change the status quo, which to date has been the underemployment of lawyers with disabilities. While proponents of the Pledge say it is not crucial how the pledge is formalized into a written document by individual legal employers, they emphasize that it is important that a written disability diversity pledge be made and recorded either as part of a larger diversity effort, or by itself. *Disability Diversity in the Legal Profession: A Pledge for Change* appears at the end of this report for your convenience. The ABA Commission on Mental and Physical Disability Law will publish the names of all legal employers who sign this—or any similar—pledge on its website, www.abanet.org/disability/pledge. (The website also includes an electronic version of the Pledge and much more related information.)

Conference attendees were encouraged to implement their Pledges in good faith based on their own resources as well as the materials, insights, and resources provided in this report from the Second ABA National Employment Conference. Among other things, these materials provide advice and best practices for legal employers and their employees to follow in (1) hiring, retaining, and promoting lawyers with disabilities, and (2) making their workplaces accessible to persons with disabilities in ways that will improve the morale and productivity of all their employees.

We encourage you to take the time to read this report, including the Pledge. It was the hope of the Conference attendees that all legal employers would make a formal commitment to diversity based on disability.



H. Thomas Wells, Jr.
President (2008–2009)
American Bar
Association (ABA)



Alex J. Hurder
Chair
ABA Commission on
Mental and Physical
Disability Law



Frederick J. Krebs
President
Association of
Corporate Counsel
(ACC)



Veta T. Richardson
Executive Director
Minority Corporate
Counsel Association
(MCCA)

**2nd ABA National Conference
 on the Employment of
 Lawyers with Disabilities**

June 15-16, 2009
 Washington, DC



BIOGRAPHIES

Moderator Biographies

Carrie G. Basas, Esq. is a Post-Graduate Research Fellow at Harvard Law School. Previously, she was assistant law professor at the University of Tulsa. In 2002, the American Association of People with Disabilities named her as an emerging leader in disability rights. She is a member of the ABA Commission on Mental and Physical Disability Law.

Joan M. Durocher, Esq. is a Senior Attorney/Advisor at the National Council on Disability, an independent federal agency charged with advising the President and Congress about the broad spectrum of issues of importance to people with disabilities. She is a member of the ABA Commission on Mental and Physical Disability Law.

William H. Grignon, Esq. is a blind lawyer now practicing in St. Petersburg, Florida. Prior, he worked as an associate for Kirkland & Ellis LLP. He is an Advisory Member of the National Association of Law Students with Disabilities, a Diplomat for the ABA Business Section, and a member of the ABA Commission on Mental and Physical Disability Law.

Alex J. Hurder, Esq. is a clinical professor of law at Vanderbilt Law School and Chair of the ABA Commission on Mental and Physical Disability Law. He directs a clinic that represents clients in special education and Social Security disability cases and is an expert on the ADA (Americans with Disabilities Act). He is co-chair of the Committee on Rights of Persons with Disabilities of the ABA Section of Individual Rights and Responsibilities.

Noel Nightingale, Esq., first practicing environmental law with Heller Ehrman, now practices civil rights law

with the U.S. Department of Education, Office for Civil Rights. Noel is serving her second term on the ABA Commission on Mental and Physical Disability Law and is a member of the Board of Directors of the National Association of Blind Lawyers.

Mildred A. Rivera-Rau, Esq. is an Attorney Advisor for the U.S. Equal Employment Opportunity Commission, Office of Federal Operations, working on affirmative employment programs for protected groups, including people with disabilities. She is a Board Member of the National Association of Blind Lawyers and was honored by the National Federation of the Blind of Maryland with its highest award, the Kenneth Jernigan Award. She is a member of the ABA Commission on Mental and Physical Disability Law.

Michael A. Stein, Ph.D., Esq. is the Cabell Research Professor at William & Mary School of Law and Executive Director of the Harvard Project on Disability. He is an internationally recognized disability rights expert and participated in the drafting of the U.N. Convention on the Rights of Persons with Disabilities. He is a member of the ABA Commission on Mental and Physical Disability Law.

Speaker Biographies

Michael E. Baillif, Esq. is a Principal in Ernst & Young LLP, currently serving as an Associate General Counsel. Before joining Ernst & Young, he practiced in the area of tax litigation at Davis Polk & Wardwell, and Miller & Chevalier. He taught at Georgetown University Law Center as an adjunct professor for a number of years.

Linda Carter Batiste, Esq. is a Principal Consultant with the Job Accommodation Network (JAN). She serves on JAN's motor team and specializes in the ADA

and accommodations for individuals with mobility impairments, addictions, cancer, and multiple sclerosis.

Emily S. Blumenthal, Esq. is a Partner at Jackson Lewis LLP as a member of the firm's Disability, Leave and Health Management Practice Group, specializing in labor and employment litigation on behalf of management. She has presented before and assisted numerous businesses concerning labor and employment issues and compliance with workplace laws.

Charles S. Brown, Esq. is Director of Volunteer Lawyers for the Blind, American Action Fund (AAF) for Blind Children and Adults and is First Vice President of the National Association of Blind Lawyers. Before joining the AAF, he was the Ethics Official for the National Science Foundation.

Mariyam A. Cementwala, Esq. joined WilmerHale's Litigation/Controversy Department as an associate in 2008, with particular interests in investigations and criminal litigation. She was a legal research consultant and United Nations delegate for Rehabilitation International (RI) since 2003, representing RI at the U.N. on Disability Treaty negotiations. She was an active leader in the National Federation of the Blind between 1997 and 2004.

Michele L. Crawford, Esq. is an Attorney-Adviser on the Equal Employment Opportunity (EEO) Staff of the U.S. Department of Justice's Executive Office for U.S. Attorneys. She has performed EEO counseling, engaged in informal resolution of claims, conducted EEO investigations, and also serves as the Special Emphasis Program Manager for the Native American/Alaskan Native Program. Ms. Crawford's son is an aspiring lawyer and was born 21 years ago with Spina Bifida.

Kareem A. Dale, Esq. is Associate Director, White House Office of Public Engagement and Special Assistant to President Barack Obama for Disability Policy. He coordinates the Administration's efforts to see that people with disabilities are on a level playing field with all Americans and previously served as the National Disability Director for the Obama for America campaign. He also served on the Arts Policy Committee and the Disability Policy Committee for then-Senator Obama.

J. Daniel Fitz, Esq., Solicitor (Eng. & Wales), is Chair of the Association of Corporate Counsel and former

Vice President, General Counsel & Company Secretary of Misy plc in the United Kingdom. Prior, he was General Counsel at Cable & Wireless plc, a major global communications provider.

Michael S. Greco, Esq. is past president of the American Bar Association (2005–2006) and partner at K&L Gates LLP. He is a trial lawyer, arbitrator, and mediator with more than 35 years of litigation and arbitration experience throughout the United States and internationally in complex business cases and other disputes.

Lucy Lee Helm, Esq. is Senior Vice President and Deputy General Counsel of Starbucks Coffee Company. She is on the Board of Directors of Disability Rights Advocates and is an active volunteer with Seattle's Parkview Services, which provides housing and services to persons with disabilities. She served one term on the ABA Commission on Mental and Physical Disability Law.

Wendy F. Hensel, Esq. practiced labor and employment law with Alston & Bird, where she litigated disability discrimination cases and counseled Fortune 500 companies on ADA compliance. Currently, she is an Associate Professor at Georgia State University College of Law, teaching and writing on disability discrimination in American society, specifically regarding the legal treatment of disability under the ADA and the IDEA.

Eve L. Hill, Esq. is Senior Vice President of the Burton Blatt Institute of Syracuse University, where she is responsible for the Institute's work on the ADA, disability civil rights, and communications issues. She was the District of Columbia's first Director of the Office of Disability Rights and Executive Director of the Disability Rights Legal Center. She is co-author of *Disability Civil Rights Law and Policy*, a case book and a treatise.

Marianne S. Huger, Ed.D. is the Associate Director of Disability Services at Georgetown University Law Center. She coordinates accommodations for the more than 80 students with disabilities. She has presented on current issues that affect disability service provision, focusing on best practices for Web accessibility, fostering inclusive campus environments, and the utilization of Universal Design principles in institutional planning.

Frederick J. Krebs, Esq. is President of the Association of Corporate Counsel (ACC). He joined ACC as the Executive Director in 1991 and, during his time, it has

tripled in size from 7,800 members in 1991 to now more than 24,000 members. He serves as an adjunct professor at Georgetown University Law Center and is on the Corporate Directors Institute Advisory Board for the National Association of Corporate Directors.

Christopher J. Kuczynski, Esq., since 1997, has overseen development of regulations and other agency policy interpreting Title I of the ADA at the U.S. Equal Employment Opportunity Commission (EEOC). He has worked on a detail for the White House Domestic Policy Council, served as Special Assistant to former EEOC Chair Cari Dominguez, and was a trial attorney in the U.S. Department of Justice's Civil Rights Division.

Scott C. LaBarre, Esq. is Principal of LaBarre Law Offices, P.C. and President of the National Association of Blind Lawyers. His practice focuses on employment law, disability rights, Social Security appeals, and Randolph-Shepard Act cases. He served as Chair of the ABA Commission on Mental and Physical Disability Law (2004–2007).

James G. Leipold, Esq. is the Executive Director of the National Association for Law Placement (NALP). Prior to joining NALP, he worked at the Law School Admission Council as the assistant director for education and prelaw programs. He was also the Director of Admissions and an instructor in legal writing and research at Temple University School of Law.

Andrew D. Levy, Esq. is a founding partner of Brown Goldstein Levy LLP. He handles both civil and criminal cases, and is listed in Best Lawyers in America in both the "Criminal Defense" and "Commercial Litigation" categories. He is an adjunct professor at the University of Maryland School of Law and a former member of the ABA Commission on Mental and Physical Disability Law (2005–2007).

Isaac J. Lidsky, Esq. was previously Law Clerk to the Honorable Sandra Day O'Connor (Retired) and the Honorable Ruth Bader Ginsburg, Associate Justices, Supreme Court of the United States. He is also Founder, Chairman, and President of Hope for Vision, a non-profit dedicated to funding the development of treatments and cures for blinding diseases.

Walter H. Lohmann, Jr., Esq. has served as Co-Chair of Kirkland & Ellis' firm-wide Diversity Committee since 2006. He personally serves as a mentor to diverse law students, associates, and partners at the firm and has represented Kirkland at a number of diversity-related conferences and events across the country, including the annual IMPACT Career Fair. He leads the firm's Environmental Transactional and Restructuring Practice Group.

Veta T. Richardson, Esq. is the Executive Director of the Minority Corporate Counsel Association (MCCA). Prior, she was Vice President and Deputy General Counsel of the Association of Corporate Counsel and in-house counsel to Sunoco, Inc. MCCA has emerged as a knowledgeable leader on diversity issues in the legal profession, and its expanded platform addresses diversity management issues involving, among other groups, lawyers of color and lawyers with disabilities.

Walter J. Smith, Esq. is the Managing Partner of Baker Botts, having practiced corporate and securities law for 27 years at the firm before his election as Managing Partner in 2002. Under his advocacy and leadership, Baker Botts has instituted a nationally recognized program for the employment of individuals with disabilities.

H. Thomas Wells, Jr., Esq. is Immediate Past President of the ABA and a partner and founding member at Maynard, Cooper & Gale, P.C., where he has a litigation practice with emphasis on complex environmental, toxic tort law, and products liability cases. He has served on numerous committees and in leadership roles in the Alabama State Bar, the Birmingham Bar Association, and the ABA.

David B. Wilkins, Esq. is the Lester Kissel Professor of Law and Director for the Program on the Legal Profession at Harvard Law School.

John L. Wodatch, Esq. is Acting Deputy Assistant Attorney General for the U.S. Department of Justice (DOJ), Civil Rights Division and Chief of its Disability Rights Section. He plays a key role in enforcing Titles I, II, and III of the ADA, developing federal policy on the ADA, and is the chief author of DOJ's ADA regulations and of the federal regulations implementing Section 504 of the Rehabilitation Act of 1973.

CHAPTER ONE

Disability Diversity in the Legal Profession: A Pledge for Change

Introduction to the Second ABA National Conference on the Employment of Lawyers with Disabilities

A Pledge for Change

One of the primary purposes of the 2009 Second National Conference on the Employment of Lawyers with Disabilities was to encourage legal employers, including law firms and corporate counsels, to sign the “Pledge for Change” (Pledge) in order to implement and promote disability diversity in the legal profession. Thus, the Pledge is a major component of the Conference and is referenced throughout this Conference Report. Although legal employers may demonstrate a commitment to disability diversity in a variety of ways, including the signing of other similar pledges that include disability, this particular pledge was the one that the ABA’s Board of Governors approved to be distributed for this purpose and was endorsed by the Conference sponsors and attendees. Ultimately, it is most important that legal employers make a concerted effort to promote disability diversity with the same level of commitment and resources that they do for diversity based on race, ethnicity, and gender. Signing this pledge, or a similar one, is the first essential step in making and implementing such a commitment.

A copy of the Pledge for employers to sign and send back to the American Bar Association may be found in print at the back of this report and as an electronic document on the website of the ABA Commission on Mental and Physical Disability Law at www.abanet.org/disability/pledge. Please take time now to sign this Pledge, so we may formally record your support on our website and encourage others to do the same.

“As Legal Employers, Chief Legal Officers, Hiring Partners, and Hiring Personnel, we hereby affirm our commitment to diversity, including diversity regarding individuals with mental, physical, and sensory disabili-

ties, in the legal profession. Our Pledge for Change is based on the need to enhance opportunity in the legal profession and our recognition that the legal and business interests of our clients require legal representation that reflects the diversity of our employees, customers, and the communities where we do business. In furtherance of this commitment, this is intended to be a pledge for the profession generally and in particular for our law departments, firms, agencies, and organizations. We further pledge that we will encourage those law departments, firms, agencies, and organizations that we do business with to make a similar diversity commitment.”

Welcome from the Conference Primary Sponsors

The primary sponsors of the Conference and this Conference Report are the American Bar Association (ABA), the ABA Commission on Mental and Physical Disability Law (ABA Commission), the Association of Corporate Counsel (ACC), and the Minority Corporate Counsel Association (MCCA). Highlights of their welcoming remarks are presented below.



**Carolyn B. Lamm, ABA President (2009–2010)
and Alex J. Hurder.**

**H. Thomas (Tommy) Wells, Jr., President
American Bar Association (2008–2009)**

Diversity in the legal profession is a core value of the organized bar. It's clear that people with mental and physical disabilities are as much a part of the diversity fabric of our profession and of our nation as anyone. As such, this Conference is a crown jewel in the ABA's efforts to promote diversity and full participation in the legal profession for all.

When women and men of diverse backgrounds, including persons with disabilities, face systemic barriers to either entering law school, graduating law school, passing the bar exam, or rising in the ranks of our profession, it's more than just a lack of opportunity for those individuals. It is a lost opportunity for the legal profession.

One of the things I'm trying to emphasize this year, in my year as president, are the core values of the profession, and diversity is one of them. I look forward to participating in this Conference and for doing what I can do as president of the American Bar Association to shine a spotlight on the important issues that we'll be discussing today.

**Alex J. Hurder, Chair
ABA Commission on Mental and Physical
Disability Law**

The purpose of this conference is to ask you, to persuade you, and to convince you—if you are in a position to hire lawyers—to pledge to recruit and hire lawyers with disabilities. Beyond that, we want to talk about the best ways to retain lawyers with disabilities, to mentor them, to promote them, and to reward them for making your law firm or business more successful.

Our panels today bring together a unique combination of experience and knowledge that you will not find anywhere else. Corporate counsel, law firm partners, and lawyers with disabilities will give you their perspectives on how to create an inviting workplace and to make reasonable accommodations that will attract and retain talented lawyers. The moderator of each panel will be a member of the ABA Commission on Mental and Physical Disability Law.

This Conference is an expression of the American Bar Association's commitment to diversity in the legal profession. Last year the ABA decided that four goals are essential to its overall mission. One of those goals, Goal III, is to "Eliminate Bias and Enhance Diversity."

The Objectives of Goal III are to:

Promote full and equal participation in the association, our profession, and the justice system by all persons.

And to:

Eliminate bias in the legal profession and the justice system.

The ABA is committed to full and equal participation of all persons who have faced unfair treatment by the legal profession and the justice system in the past, including persons with physical, mental, and sensory disabilities, as well as women, African-American, Hispanic, Asian, and Native American people, and persons who have faced discrimination because of sexual orientation or gender identity.

Sometimes promoting the participation of individuals with disabilities requires employers and institutions to make reasonable accommodations. The concept of providing reasonable accommodations recognizes that qualified people can be excluded from employment opportunities unintentionally because of arbitrary ways that society has constructed the physical environment and the social environment.

The steps up to the courthouse, for example, and the heavy doors of the courtroom are not necessary elements of law or the legal system. If they deprive individuals of access to the justice system, it is right to change them so that everyone can gain access. You will hear today about unexamined habits and practices that have blocked access to the legal profession for persons with mental, physical, and sensory disabilities. If practices that exclude qualified people from employment are not necessary elements of a job, it is right to change them. Each of us has a responsibility to construct a legal profession and a justice system that is fair to all.

At the First ABA Conference on Employment of Lawyers with Disabilities two years ago, [then-Commission Chair] Scott LaBarre said something that has stuck with me:

Even though you might not believe that you could practice law if you were blind, if you were deaf, or if you used a wheelchair, you must begin the process of considering how you might in fact do so. If you don't open your mind to the possibility, it is likely that you will never give a lawyer with a disability a meaningful chance.

Today's Conference is a chance for each of us to begin the process of considering how to create a law office, a legal profession, and a justice system that eliminates the barriers to full and equal participation. We are a profession of problem-solvers, and lawyers with disabilities have unique experience with solving problems. Today,

our country has problems, our businesses have problems, and people have problems. When you are building a team to solve problems, diversity is not only the right thing to do; it is the best way to do it.

**Frederick (Fred) J. Krebs, President
Association of Corporate Counsel**

It's a great privilege for me as President of the Association of Corporate Counsel to welcome you, and for us to be part of this program. We have 24,000 members, and over 10,000 private sector organizations around the world. The fact is that our members have a tremendous opportunity to advance the cause of opportunity and the cause of hiring attorneys with disabilities.

We strongly support this effort. We also strongly support the Pledge, and we want to do our best to expand the horizons. I had the privilege, 20 years ago, of being at the signing ceremony for the ADA, the Americans with Disabilities Act. That was a tremendously moving event. That law opened many doors, and it's clear that much progress has been made since the signing and enactment of the ADA. It's also clear that much more remains to be done. That's why we, the Association of Corporate Counsel, support this Conference and look forward to working with all of you.



**From left to right: H. Thomas Wells, Jr.;
Fredrick J. Krebs; Kareem A. Dale;
Veta T. Richardson; and J. Daniel Fitz**

**Veta T. Richardson, Executive Director
Minority Corporate Counsel Association**

On behalf of the Minority Corporate Counsel Association, I want to congratulate the ABA in taking the step of hosting this Conference and say we're delighted to partner with the Association of Corporate Counsel. MCCA exists with one mission: We seek to advance diversity in the legal profession. So when we were invited to join and lend our name in support to this event, we were just delighted to be able to do so.

MCCA is an organization that relies upon research

to identify what the challenges are for a variety of different demographic groups. Our research agenda is broad, covering people of minority, race, ethnicity, gender, and LGBT (Lesbian, Gay, Bisexual and Transgender) sexual orientation. We also cover issues involving people with disabilities, and we're also starting to look increasingly at issues involving generational diversity.

The ABA's Commitment to Disability Diversity

**By Michal S. Greco, ABA President
(2005–2006) and Host of the First ABA
National Conference on the Employment
of Lawyers with Disabilities (2006)**

I am pleased to be participating in this, the Second National Conference on the Employment of Lawyers with Disabilities. The First National Conference, co-sponsored by the American Bar Association (ABA) and the Equal Employment Opportunity Commission (EEOC) and which I hosted, took place in May 2006, here in Washington. How quickly three years can pass by.

The First Conference had two purposes: (1) to facilitate the hiring of lawyers with disabilities; and (2) to help implement Goal IX, now Goal III, of the ABA—promoting the full participation of lawyers with disabilities in the legal profession. The intention was for the Conference to provide opportunities for law students and lawyers with disabilities, and disability organizations, to develop relationships with law firms, corporations, government agencies, and other legal employers who, by attending the Conference, would demonstrate their commitment to hiring lawyers with disabilities.

We learned a number of things from that Conference and its important final report, which can be accessed on the ABA website at www.abanet.org/disability.

We learned, for example, that despite the large number of persons with disabilities in the U.S. general population, estimated to be as many as 54 million, there is a paucity of lawyers with disabilities, and that the reasons for this phenomenon are varied and complex.

We learned—more accurately, we confirmed what we already knew—that lack of opportunity is an overriding reason for such paucity, that because reasonable accommodations are often unavailable or inadequate, and because having a disability creates economic hardship, high school students with disabilities are deterred from attending college, and fewer still are able to complete graduate school.

We learned that those who do make it through law

school encounter further obstacles: discrimination in hiring, salary disparities, and inadequate accommodations in law offices and courthouses.

What progress has been made since the First National Conference in making more legal employment opportunities available to persons with disabilities? The answer is “some, but not nearly enough progress.” And that is why we are all here today, attending this important Second National Conference.

One outcome of the First National Conference was adoption by the ABA House of Delegates at the 2007 Annual Meeting of a resolution urging that:

[W]ebsites provided by lawyers, judges, law students, and other individuals or entities associated with the legal profession . . . be created and maintained in an accessible manner which is compatible with reasonable technologies that permit individuals with visual, hearing, manual and other disabilities to gain meaningful access to those websites.

In today’s technology-driven world, it is clear that making legal websites and the information on them fully accessible is one of the most important aspects of disability integration.

The ABA Commission has made good progress with its mentor program. There are now more than 200 mentors and mentees participating, and more than 75 successful mentor-mentee relationships. This program needs to be expanded significantly. The Commission’s “Disability Discussion Docket,” which began with mentor program participants, has grown to nearly 400 participants, from fewer than 200 a year ago.

One of the main obstacles lawyers with disabilities face is that there is no effective, comprehensive effort being made to identify lawyers with disabilities, an effort further complicated by the fact that many lawyers with non-apparent disabilities do not yet feel comfortable in revealing their status. The ABA Commission over the years has tried, but the resources needed to accomplish this important task are substantial. Those resources must be found.

This Conference has three stated objectives: (1) encouraging law firms and corporations to take a pledge to promote diversity and inclusion within the workplace, with an emphasis on hiring and retaining lawyers with disabilities; (2) developing best practices for promoting disability diversity and inclusion; and (3) identifying legal employers and work settings that can serve as models for the legal profession.

We have a lot of ground to cover today—and a great deal of work to do following this Conference. The subject of this first panel, “Making the Pledge to Hire Lawyers with Disabilities,” is a good place to start.

I close by repeating something I said in a short article entitled *Forgotten Colleagues* that I wrote following the First National Conference, and which is included in your materials:

No qualified lawyer—or member of any profession—should be denied an opportunity to work solely because of a disability. “Equal Opportunity for All” is a cherished principle in America. But effort is needed to make that eloquent promise a reality. If the legal profession is to reflect the true diversity of our nation—and benefit from the entire pool of available talent—we must include lawyers with disabilities in the same way that the profession has included women and persons of color. Our profession truly will be diverse, and lawyers with and without disabilities will be considered equal before the Bar, only when you and I, and our hiring colleagues across the land, make the commitment to hire and retain lawyers with disabilities.

It is past time for us to make that commitment.

ABA’s President’s Message: Allowing Our Differences to Unite Us

By H. Thomas Wells, Jr. (from *ABA Journal*, November 2008)

Every lawyer, every person contributes to a diverse profession and society by offering unique perspectives and life experiences. That said, the bar’s work on diversity focuses on people from groups with persistent, documented challenges to full participation in the legal profession and to rights as citizens. This is why the ABA devotes considerable resources to our Center for Racial and Ethnic Diversity, Commission on Women in the Profession, Commission on Mental and Physical Disability Law, and Commission on Sexual Orientation and Gender Identity. It is why we have representation from, and collaborate with, the Hispanic National Bar Association, National Asian Pacific American Bar Association, National Bar Association, and National Native American Bar Association. We value similar relationships with the National Association of Women Judges, National Association of Women Lawyers, National Conference of Women’s Bar Associations,

and National Lesbian, Gay, Bisexual and Transgender Bar Association.

Branches of Diversity

The Center for Racial and ethnic diversity has roots in our association's unpleasant past. Before 1943, lawyers of color were barred from ABA membership. Though we've made progress in diversity, the legal profession is still nearly 90 percent white, while minorities represent only about 20 percent of law school enrollment, and that percentage is dropping. The work of the ABA Presidential Advisory Council on Diversity in the Profession is therefore very important. The council offers programs and services to improve diversity in the legal profession, starting with grade school and consummating with bar passage. The ABA Legal Opportunity Scholarship Fund provides law school scholarships primarily for students of color. Once students enter the legal profession, we must encourage their fulfillment and advancement. The ABA Commission on Racial and Ethnic Diversity in the Profession helps create leadership and economic opportunities for racially and ethnically diverse lawyers within the ABA and the legal profession. The commission, along with the ABA Council on Racial and Ethnic Justice, also addresses issues of discrimination and bigotry within the profession and throughout society.

An equally important priority for a diverse bar is the status of women. Despite hard-won achievements, many female lawyers still face barriers such as sexual harassment and inequities in pay and advancement. The problems are exacerbated for women of color who may experience insecurities in a predominantly white, male world. Individual female lawyers can feel discouraged and isolated in their professional development. The ABA Commission on Women in the Profession draws upon the expertise and diverse backgrounds of its mem-

ber volunteers to develop programs, policies and publications to advance women in public and private practice, the judiciary and academia.

Also part of the diversity equation are people with disabilities. The ABA Commission on Mental and Physical Disability Law promotes justice and the rule of law for the mentally and physically disabled, and encourages their participation in the legal profession. The commission works on disability law issues, as well as the professional needs of lawyers and law students with disabilities.

The most recent addition to the ABA's diversity groups is the Commission on Sexual Orientation and Gender Identity, which secures for lesbian, gay, bisexual and transgender individuals full access to the ABA, the legal profession and the justice system.

To advance our awareness of diversity issues and develop strategies to resolve them, the ABA this month [June 2009] will bring together bar leaders at a national Diversity Summit in Washington, D.C. The commission planning the summit is led by co-chairs Eduardo Rodriguez and Judge James Wynn Jr. Our goal is the open and honest exchange of experience and ideas to inform the direction of the ABA and legal profession for years to come.

To learn more about and obtain benefits from the ABA's diversity groups, please visit these websites:

- Center for Racial and Ethnic Diversity, abanet.org/diversity.
- Commission on Women in the Profession, abanet.org/women.
- Commission on Mental and Physical Disability Law, abanet.org/disability.
- Commission on Sexual Orientation and Gender Identity, abanet.org/sogi.

CHAPTER TWO

Personal Perspectives of Lawyers with Disabilities

The personal perspectives of lawyers with disabilities are a key element to understanding disability bias in the legal profession and the need to have places of legal employment embrace disability diversity attitudinally, organizationally, and practically. Here are the stories of eight lawyers with disabilities. They include eminently successful attorneys with blindness, Tourette's syndrome, a hearing impairment, a mobility impairment, bipolar disorder, and cerebral palsy. All of them overcame challenges posed by their disabilities and, more importantly, posed by society.

Scott C. LaBarre, Chair, ABA Commission on Mental and Physical Disability Law (2004–2007) and President, National Association of Blind Lawyers

"I would have to get reasonable accommodations to be able-bodied."

I think it's fair to say that all of us gathered in this room are committed to the same thing—at least we say that we are committed to this same thing. We say we are committed to employing lawyers with disabilities. We say that we are committed to diversity, and that fabric includes lawyers and people with disabilities. We say these things quite often. But where we have been lacking is in the doing. We must step forward and really make a difference.

The fact that we are gathered here at the Second Conference makes me extremely pleased and proud because it is confirmation that our profession is taking this topic seriously. It would be one thing if we made our splash three years ago and there was no corresponding effort, no follow-up, no Second Conference. That would mean that our work was not successful in 2006. But the fact that we are here today at the Second Conference, and the fact that we have more attendees this time around, and the fact that this is at a very high profile within the American Bar Association, within our

profession, within our nation, means that indeed we were successful.

It was around 1992 when I first joined the ABA. I was a member of the Law Student Division, not real active, but I did join the ABA. And believe me, at that time, disability issues were nowhere on anyone's radar screen within the ABA. After I graduated law school in 1993, I started to get involved within the American Bar Association, first on a local level within the Denver Bar Association.



Scott C. LaBarre and H. Thomas Wells, Jr.

However, I'll never forget the first major conference I attended of the ABA's Young Lawyers Division in Vancouver, British Columbia. I went into the room where the first session was to be held, and somebody came running up to me and grabbed my arm and started dragging me out of the door and said, "Sir! Sir! You're in the wrong place! This is not your meeting!" I said, "Well, isn't this the meeting of the Young Lawyers Division?" The person said, "Well, yeah." "Well, then I am in the right place." "But, but, but you're blind! How do you do that? You're so amazing!"

I don't know about the rest of you, but I'm tired of being told I'm amazing. Just because I can put one foot in front of the other and walk into a room. That's not why I'm amazing. If I am amazing, it's because of the talent,

commitment and energy I bring to this profession, not because I'm blind and can wake up in the morning and put my own clothes on!

But this is the kind of stereotyping, the kind of discrimination we face, and it is what I faced in large measure when I first got involved in the ABA. Now, after many events, many meetings, many late nights at bars, many social events, by hook or crook, I finally started convincing people within the Young Lawyers Division that I belonged and that I could play a useful role, and that lawyers with disabilities ought to be given a fair shake. And we started to turn the trend around. But it didn't happen overnight.

In 1999, the ABA House of Delegates amended its diversity goal to include lawyers with disabilities. So in 2001, of course, this concept was still pretty fresh and new within the ABA. I wanted to do a session on diversity as it pertains to lawyers with disabilities for the spring meeting of the ABA's Young Lawyers Division. Well, at first my proposal to do this program was turned down! And this person in authority said, "Well, there just aren't many lawyers with disabilities. Therefore, this just isn't important."

Yet, this is precisely what African-American lawyers faced 35 years ago when the rooms of these meetings were filled with white male faces. They too were confronted with the argument that they were small in number and thus insignificant. Fortunately, later on a conference call, where we were hashing this out, I made a speech and the members voted to hold the program.

Every year in the bar association, I see more and more lawyers with disabilities. I see more and more graduates of law schools who have disabilities. We're nowhere near where we need to be. But the numbers are growing, and the involvement of lawyers with disabilities is also growing. And we cannot be dissuaded by the argument: well, there's only a few of you; your issues aren't important. We've got to "bust" down the doors and barriers in front of us and allow opportunity for lawyers with disabilities.

So from that point forward, I continued to advocate for a conference like this. What is so outstanding to me is that disability is going to be a part of every aspect of the program. And that points to the fact that we really have come to a new day within the American Bar Association, and within our profession. The fact that disability is recognized on such a premiere level is wonderful, because it allows us to engage freely in the discussion, to talk openly about what we need to do.

Yet there is a great deal more we must do, because

there are lots of individuals with disabilities—lots of graduates from law schools who don't have jobs—who don't have good jobs, who are able to get sort of entry level attorney job, but not able to climb the ladder and access more opportunity. There are still many, many barriers that we face, but at least we're on the stage now. At least we're on the platform where we're talking about these issues. And that was really the purpose of the first Conference on the Employment of Lawyers with Disabilities—to make a splash, to get this issue firmly on radar screens.

One of my favorite speeches from the 2006 conference came from a commissioner of the Equal Employment Opportunity Commission, Christine Griffin. She talked about how disability was not some sort of freak of nature, it wasn't a medical problem, it was just a different way of experiencing the world. She also spoke about how she was denied jobs from legal employers because they didn't understand how she would get the law books off the shelf for herself, and if you couldn't do that, then obviously you couldn't do the research.

In addition, she talked very convincingly about the fact that what we need to start doing is just opening up doors, and we need to put aside our fears and put aside our misconceptions about disability and just do it! Just hire lawyers with disabilities. Her very simple, yet profound, advice to us all was **just do it!** And that's the call that must go out to legal employers. Put aside your fears. Put aside your misconceptions and just do it! As Isaac Lidsky said last night, "We are ignoring a vast pool of talented people."

Nobody has really studied this in a scientific way, but I think those of us with disabilities know that one of the great assets we have is that we are problem solvers, because our world is constructed, largely speaking, for the "able-bodied." There are many artificial barriers we face. And in order to get around, through, and over those barriers—whether they're physical barriers, attitudinal barriers, barriers of any sort—we have to solve problems!

Well, what is the chief job of a lawyer? To solve problems. So when we speak about disability issues, sure, there are medical aspects of it. Each disability results in some sort of physical or mental limitation. But that's not the big deal! That's not the issue.

The issue is our attitudes. What is our attitude toward the disability? What is our attitude toward getting around whatever issue the physical limitation or mental limitation presents? That is the key.

Our society predominantly thinks of people with disabilities as a group of people we have to somehow fix, that somehow there is a cure. They say to me, for

example, “Don’t you hope that someday you might get your vision back? They’re doing real cool things with artificial vision, and don’t you hope someday that you’ll have false eyes that let you see through little cameras? Isn’t that great? Aren’t you just waiting and hoping and praying that that day comes soon?”

Well, no, I’m not! I’m not worried about it, because I’m living now. I want a job now. Not tomorrow. Not in a decade. We can solve these problems now. Of course, if I could miraculously someday have vision again, that would be cool. You know, it would be nice. But I can’t hang up my life while waiting for that day.

In fact, if I somehow miraculously became sighted, I think I’d be quite disabled for a while, because I’m not used to functioning as a sighted person. I read Braille. My computer talks to me in a funny way. I do things differently. And I do them efficiently in that different fashion. So if I all of a sudden were flooded with sight, I think I’d be swimming upriver for quite a while trying to make an adjustment. I would have to get reasonable accommodations to be able-bodied.

What we’re talking about is changing attitudes. That is our primary mission. And yes, there are practical issues that we need to address, and we will address them, but those are only the minor details. The first thing we have to do, and we all must do it and this pledge is a terrific tool to do so, is just change our attitude. Change our approach. Open our hearts and minds and get the job done.

I hope that, by the time I’m ready to retire from this great profession, a conference like this will be unnecessary. Because it will just be assumed that lawyers with disabilities ought to be hired and given the same opportunity as anyone else. Now, maybe I hope too big. I don’t know. But I’m not going to stop doing it, because that’s where we need to be. That is the end goal. Let’s just go out there and do it.

**Kareem A. Dale, Associate Director,
White House Office of Public Engagement
and Special Assistant to President Obama
for Disability Policy**

“We need to challenge ourselves [with regard to disability diversity], because as lawyers we know the law, and we know better.”

This is an area that is near and dear to my heart, because it is focusing on two primary areas that have been an integral part of my life: disability and law. But today I

will focus on the employment of lawyers with disabilities. The overarching message that I would like to deliver to everyone here today is that we need to challenge ourselves, because as lawyers we know the law, and we know better.

The American Bar Association is to be commended for its efforts and this Second Conference and for focusing on diversity and employment of lawyers with disabilities. This mirrors the President’s message for people with disabilities, which is inclusion of people with disabilities into the entire fabric of our society. This means including and integrating people with disabilities into what we are doing on a daily basis, whether it be healthcare, whether it be education, whether it be justice, or whether it be civil rights. Whatever it is lawyers and other people with disabilities need to be included and integrated.

For me, the employment of lawyers with disabilities is very personal. My experience in the legal profession has taught me that, no matter how good intentions may be and right-minded somebody is supposed to be, we must stay vigilant on this critical issue of employing people with disabilities, particularly lawyers.



**Kareem A. Dale delivers the luncheon
keynote address.**

I started my legal career in 1999 at a large Chicago law firm. I practiced in the litigation department for seven years, where there were some great attorneys, who gave me an opportunity as a person with a disability when many others would not give me that opportunity. People there mentored me on a daily basis, and without their mentoring, I probably would never have made it through. For all of those things, I am immensely grateful.

However, what I came to learn is that a few good people do not necessarily dictate what the institution itself is doing in employing lawyers with disability. What happens a lot of times, as many of you all know, whether you

are employers of lawyers or whether you are attorneys yourselves, is that the law firm is a unique structure. You have partners who run their own business; they have their own little company within the law firm itself. If partners have a great deal of business, they can dictate which lawyers are going to be on their cases. So you have these mini law firms throughout the individual firms.

As I stayed at the firm, I came to learn is that it was extraordinarily difficult, being a person with a disability, trying to grow with the rest of my mates who had started when I started. There still exists in our society a systemic discrimination against people with disabilities, and it's not necessarily from bad intent. As we all know, it has a lot to do with pure lack of knowledge or a lack of understanding about how a lawyer with a disability can get the job done. "I don't know how Kareem can view 10,000 documents, so I won't staff him on my case, because I know the person down the hall can read that many documents."

Despite the fact that I got good reviews, it became a challenge on a daily basis to excel at a law firm because of that lack of knowledge, and it became a struggle, as I'm sure many of the blind attorneys in this room can attest. Most partners don't know that you can have a screen reader to read your e-mail or a screen reader so that you can read your memos and make sure they're formatted correctly, or if you do a document review, your reader will be there and you'll be able to talk to your reader about what is there. Or you can scan the documents and read them off Adobe or any number of mechanisms to get the work done.

But as I always said to the partners in my firm, you need not worry about how I get it done. You only need to worry about is it getting done, because the buck always stops with the attorney. As people with disabilities, we know that that's the way we want it. We want the buck to stop with us. And we want people to know that we will get the job done, no matter what. That is the ultimate bottom line.

So as I matriculated through my firm, I came to understand it was time to do something different, and the struggle became so much that I decided it's a great time to realize my dream, which was to go out and start my own law practice. In starting my own firm, I thought, well, I can control my own destiny. Moreover, if nobody else is going to employ people with disabilities, surely we, as lawyers with disabilities, can be a model for employing people with disabilities. We know the law. Anytime we as lawyers are not holding ourselves to a standard that is above that that is required by law, then

we should be ashamed of ourselves.

What is then the mechanism for success? Well, I can tell you what the administration is doing. We have decided that, for the employment of people with disabilities, the first step is to be a model example. So the President has led the charge in ensuring we employ people with disabilities, starting with the White House, and starting with senior levels at the White House, and not just junior levels for people who are not in the room when decisions are made. During the campaign, the President promised to appoint a special assistant to the president for disability policy. He kept that promise by appointing me.

But he also understood that he needed to do more if we were going to ensure that people with disabilities are integrated into society. We need more people with disabilities in the room making the decisions or when the decisions are made, so they have a voice at the table. So he put two more people at the White House working on disability issues. Paul Miller, a special assistant to the president working in the White House Office of Personnel, is in charge of disability employment appointments and more generally on issues concerning the Department of Education and the Department of Justice.

It's great if you have the appointment in Office of Special Education and Research, but it's also great if you have non-disability appointments, such as Christine Griffin at the Office of Personnel and Management. She has the number two position there. Then he appointed Jeff Crowley as the national AIDS director and a senior advisor on disability policy. I can tell you there's nothing more empowering than having two people with disabilities on the domestic policy council bringing a disability focus to those meetings. Where you would never have had an individual with a disability on the domestic policy council, you now have two.

So that's the first part of the example that the President has set, bringing people with disability and also other people without disabilities with an exclusive focus on disability issues. That's critical. It's also critical to have people with disabilities working in non-disability areas. So whether you are talking about corporation counsel, in-house counsel, or law firms, we need to be making sure that people with disabilities—lawyers with disabilities—are matriculating through the law firm and that they are given the opportunity to excel at the highest levels of partnership.

While we still need to focus on hiring, retention is critical. Retention is critical. I'll say it one more time. Retention is critical, which means providing the supports

and services and environment in the law firm so that a person with a disability can excel; letting other partners know that this is important to the firm, and not just lip service—that it's important. One way to do this is to ensure that people with disabilities are assigned to certain cases. It's critical for the client to say to the law firms, we want people with disabilities working on some of our cases.

If you have people with disabilities at your firm, assign them to some of our cases. If you don't have people with disabilities, go out and hire them. Participate in diversity career fairs. It is incumbent upon us to set the example. That is what President Obama is doing. We also are taking steps to help increase the employment of people and attorneys with disabilities by beefing up the civil rights department at the Department of Justice, such as by appointing Tom Perez to head that department, who is a strong advocate for people with disabilities.

The challenge that we all have today is to work together. Let's show the rest of the country that as lawyers who help to enforce the law, we are going to be bound by the law ourselves. I am here to support everybody here in the employment of attorneys with disabilities. I look forward to continuing to work with the ABA and this ABA Commission on the employment of lawyers with disabilities.

Isaac J. Lidsky, Law Clerk to the Honorable Sandra Day O'Connor (Retired) and the Honorable Ruth Bader Ginsburg, Associate Justice, Supreme Court of the United States; President, Chairman, and Founder, Hope for Vision

"It's actually a lot easier to be a blind clerk working for a sighted justice than to be a sighted clerk working for a blind justice."

I think employers should hire persons with disabilities because they represent a largely untapped pool of phenomenal talent. This talent remains untapped for at least three compelling reasons. First, people underestimate the abilities of persons with disabilities. Second, employers continue to overestimate the supposed burden associated with integrating persons with disabilities into the workforce. Third, and most importantly, I think employers systematically ignore the great business opportunities to be captured by integrating persons with disabilities into the workforce.

Also, I'm fairly confident that for the most part, persons with disabilities don't want to be hired in order to

bring diversity to a workforce. Speaking for myself, I want to be hired because I'm a good lawyer. And if I'm not a good lawyer, I don't think I should be hired. Now, certainly I'm diverse in the sense that I have the experience of losing vision, and I'm now blind. That's an experience that most people don't have. That makes me different. It also has led me to acquire a handful of skills, and those skills are valuable to employers and make me a greater asset. I want to be hired as a talented lawyer who has additional skills in light of my disability. I don't want to be hired as a person with a disability who happens to be a lawyer. It's important to hire folks for who they are as individuals.



Isaac J. Lidsky delivers the evening reception keynote address.

Eric Winemeyer climbed Mount Everest. He reached the highest peak in each of the seven continents. He also happens to be blind. Blind people, myself included, enjoy the sport of alpine skiing. Obviously folks with various disabilities excel in sport. Yet there are people who can't imagine that the disabled can excel in sports. Jim Abbott was a phenomenal pitcher who happens to have only one hand. In high school, some coaches and scouts told Jim he had done a heck of a job in high school, but would not be able to pitch at any serious level. Jim went on to be a major league baseball player and won over 100 games. He pitched a no-hitter. He pitched in the playoffs. His explanation is very simple: "My employers hired me for my left hand, not my right."

These sports examples translate well in the professional world as well where people with disabilities succeed admirably. Eighty percent of those people surveyed said that their colleagues who have disabilities perform as well or better than their non-disabled colleagues. On average, the disabled secure better performance reviews. They also exhibit greater job satisfaction and produce a much lower turnover rate—a significant cost saving for

an employer. Let's look at the legal community.

The Supreme Court has heard advocacy of the highest caliber from disabled advocates. In 1982, for example, Michael Abbott became the first deaf lawyer to appear before the court. He used a video screen, a computerized monitor that presented the text of the Justices' questions in real-time. He was able to present oral argument. Also, I'm sure many of you know of Judge David Tatel, who is on the U.S. Court of Appeals for the D.C. Circuit and happens to be blind. He also is a mentor of mine and a friend, which makes me very lucky.

Nevertheless, many studies show that overall the market undervalues or underestimates what people with disabilities have to offer. I'm going to cite one statistic that to me is really powerful, and unfortunate: 45 percent of college graduates with a disability will not find work. That's 45 percent of college-educated folks with a disability. These are college graduates who have done just as well as their peers in college and have the same skills.

Currently, there are some 40 million folks with one or more disabilities in the United States. One of them is Neil Malone, who is responsible for many of the ideas and examples in my speech tonight. I'm a great admirer of his work. Neil has dyslexia, which is a learning disability. Some of his teachers and his guidance counselor were convinced that college was unattainable. They encouraged his parents not to waste their money on applications. Neil went to college, had a string of businesses. Many of those were involved in missions related to finding employment for those with disabilities. Most recently, he served as Assistant Secretary in the Labor Department.

In my own case, I was told by a lot of folks around me, as I lost my vision, folks who were well meaning, that law was no longer a good aspiration for me. Being a lawyer requires reading thousands of pages, appearing in court or in meetings or before a jury requires ready access to all sorts of exhibits and written materials and the ability to perceive facial expressions. As it turned out, I served as a lawyer for the Justice Department and argued 13 cases in the federal courts of appeal and presented oral arguments without vision. I went undefeated, although I must also admit that they gave the new guys the easy cases.

This year, I was one of five law clerks for Justice Ginsburg and the only law clerk for former Justice O'Connor, who sits on the Circuit Court of Appeals. Neil and I are two of a zillion examples of folks who maybe were underestimated and nonetheless were able to succeed admirably, despite having a disability.

Not only are the talents of individuals with disabili-

ties underestimated, but the costs and burdens of integrating them into the workplace are overestimated. More importantly, the potential business opportunities that can be garnered are systematically ignored. A great example of how disability can spur innovation exists outside of the employment context: as a result of lobbying on behalf of persons who use wheelchairs, curb cuts have become commonplace. By doing this, we have removed the profound obstacle that a six-inch curb can represent to someone in a wheelchair, but this change has been a benefit to everyone in our society. When was the last time you were dragging a heavy suitcase on a city street to get a cab? Did you appreciate the curb cut for sparing you the jarring clunk that results from dragging luggage off of the precipice? They also help those brave souls who use bicycles in urban areas.

Another example occurred at IBM, when it hired a brilliant Russian mathematician who happened to be deaf. His lack of English skills, coupled with his deafness, led him to set about to develop a program to communicate more effectively with his colleagues. He figured maybe he'd come up with a program to translate their speech into written text on the computer screen. That eventually became Dragon Dictate, which earns IBM millions of dollars. More importantly, the patents underlying Dragon earn IBM billions of additional dollars every year. Those patents underlie the gizmos in your car that let you talk to your cell phone.

As a more personal example, I use a screen-reading software called JAWS, Job Access With Speech, which lets me do everything I need to on a computer. It narrates what is on the screen. There's one limitation, however. If a document is not accessible on my computer, I can't use JAWS to read the file. When I came to work at the Supreme Court, the IT (Information Technology) staff jumped that hurdle. Using scanners, optical character recognition software, and programs available off the shelf and some programs that were designed and implemented by the court's IT staff, I now am able to access all the content that I need to analyze a case and write memos. New tools were developed, such as software that enables me to scan through a brief or any document, extract all the citations, automatically download the resources cited, and store them in a logical file system where I can access them digitally.

Great business practices were implemented as a result of my particular need for information and now any of my colleagues can use these tools to capture those efficiencies. In fact, the Supreme Court has already begun to deploy those tools more broadly.

Moreover, I intend to bring these innovations with me to my next employer, which will be a law firm. I'm certain that that my firm will benefit from these tools and practices specifically, and also more generally in the sense that the firm will be more efficient in terms of information storage and retrieval.

Because I'm blind, I also have developed certain skills that other lawyers do not have. In particular, I know my future employer and colleagues will appreciate the fact that I am able to "read" significantly faster than the average sighted person. I definitely read much faster now than I used to when I still had vision. I have done this by developing my sense of hearing. I basically jack up the rate of output of my JAWS software to a rate of speed that is quite literally incomprehensible to the untrained ear.

In any event, I'd like to think that all of the skills that I've acquired and these tools and practices that I've developed represent great progress brought about because Justice O'Connor hired a great lawyer who happens to be blind.

My concluding point is a simple one: I think failing to hire persons with disabilities is bad business. Pure and simple, persons with disabilities represent a great untapped pool of talent. Moreover, integrating them into the workforce will result in capturing all sorts of great business opportunities, known and unpredictable.

James A. Merklinger, Deputy General Counsel and Acting Vice President of Legal Resources, Association of Corporate Counsel

"In sixth grade they put me in a 'special class' that was nothing more than a storage closet with a desk."

For both personal and professional reasons, my legal career centers around opening the world to people for whom it may seem closed. Through my efforts as an advocate, I have supported the rights of people considered disabled, lobbied for legislation to assist children challenged with illnesses, and helped people from around the world gain lawful entry into the United States. At the same time, my own personal situation allows me to face firsthand the discrimination my clients often endure. It is through all of these experiences that my view of diversity has been developed, shaped, and molded to make me the person I am today.

I am a white male born to educated parents and brought up in an upper-middle class home, who also

has Tourette's syndrome. Tourette's is a neurological disorder that manifests itself in the form of tics—involuntary movements of the body as well as vocalizations. It can be as subtle as a twitch of the mouth and a throat clearing to as outrageously debilitating as flailing arms and outbursts of profanity. The severity of the condition varies with each sufferer.

Generally, the greatest challenge for people with Tourette's is dealing with a society that discriminates before seeking understanding. My symptoms vary slightly. At times, I experience a head twitch and occasional eye movement to the left, and at other times, it is swearing and unintelligible noises (that are an attempt at masking inappropriate vocabulary). Like most sufferers of Tourette's, my tics become worse with fatigue, stress, or excitement. There is no specific treatment for Tourette's and many of the medications used are powerful neuroleptic drugs that can cause side effects, including weight gain, depression, lethargy, and others, depending on each sufferer's unique reaction.

Living with Tourette's as a white male has afforded me the dual experience of growing up in white society while at the same time being subjected to the discrimination and prejudice that is suffered by many minorities. I have been ostracized, ridiculed, threatened, screamed at, and terminated from jobs for having Tourette's. Not a day goes by that I am not placed in a threatening situation because I have Tourette's syndrome. And that's just riding the Metro to work!

However, I have also developed meaningful friendships, earned a college football scholarship, attended law school, and now actively advocate on behalf of other people who desperately need help. This "dual life" showed me two important things: that ignorance can hold a person back, and to never allow other people the opportunity to determine what I am capable of accomplishing.

Having Tourette's inspired my interest in law as well as my personal desire to assist people with disabilities. As a child, I never accepted the mistreatment and discrimination I experienced as being normal. Oftentimes, my teachers were not sure what to do with me, so in sixth grade they put me in a "special class" that was nothing more than a storage closet with a desk. After a few months, I was brought back into the classroom and given reading assignments to work on by myself—away from the other students. This experience made me identify with minorities who endure the same or worse. Fortunately, I excelled and finished the workbook weeks ahead of the class. Later in college, I earned a degree in English.

I learned to advocate before I was a lawyer. Attempting to understand the issues surrounding Tourette's taught me about the law and how to assist other people in similar circumstances. As I attended law school, I knew my legal education was just another required step to improve my ability to assist others.

Over the years, I've been contacted by lawyers to assist them in representing clients with Tourette's—some with outrageous cases of discrimination that, even with my own personal experience, I did not think was possible today. For example, there was an African-American man traveling home for Thanksgiving through Kentucky, who was taken off the bus because his tics startled the driver. He was thrown in jail through the holidays without having the opportunity to contact his family. Another incident involved a man who had his license taken away without due process because an individual from the Department of Motor Vehicles witnessed him having a tic while in his car.

Even at a young age, I knew there was a lot more in the world than the discrimination I had endured. However, I wanted to experience this for myself. As a fascinated 12-year-old, I traveled to New York City with my grandmother. By the age of 18, I had traveled through Europe on my own, and a couple of months after graduating college, I moved to Japan for a year. During my travels abroad, I witnessed firsthand that the world was filled with interesting people whose body and skin color had absolutely nothing to do with their skills, interests, and desires.

I recently spoke with an architect about building my house. In addition to the plans, I needed land samples, foundation experts, and energy engineers involved. Each person approached the building of the house using a different perspective, but each idea was irreplaceable. Individually, they would build it differently, but together, we came up with a plan that worked for everyone. In that sense, America is like my house. All these different perspectives are necessary for it to stand.

**The Honorable Judge Richard S. Brown,
Chief Judge, Wisconsin Court of Appeals
and Former Chair (1995–1998), ABA
Commission on Mental and Physical
Disability Law**

“When law firms are considering whether to hire a lawyer with a disability, they should consider what . . . my father told me: ‘There’s always room for a good lawyer.’”

Mahatma Gandhi said discipline is learned in the school of adversity. The same can be said about the discipline of law and how we apply our experiences as persons with disabilities to the discipline of law. People with disabilities adapt and they learn and they apply those experiences to every-day life, which is what law firms, universities, and public interest firms want.

First, people with disabilities often have developed the core skills needed to become competent lawyers. A competent lawyer must possess good problem-solving, good communication, and good task organization and management skills. Lawyers with disabilities have been forced to overcome adversity by problem-solving throughout their educational careers. Lawyers with disabilities have learned to self-advocate and communicate to others about their disabilities, and have paid particular attention to organizational tasks and the use of technology.

Second, lawyers with disabilities can more easily empathize with the client's problems because of the problems they have faced becoming lawyers. Also, a lawyer with a disability is more likely to be successful in educating clients about the law and dispelling misconceptions in a clear and concise manner. They have had to do this many times over at each level of their education, dealing with their disabilities and what accommodations they have needed. As part of this process, they have had to face difficult audiences and learn to persuade these audiences. These skills translate well into the practice of law.

Third, most students with disabilities have worked very hard to get where they are. They have likely worked harder and faced more doubters about their abilities than other lawyers. Thus, they most likely possess abilities to advocate and negotiate.

Fourth, new lawyers with disabilities most likely have developed and used learning strategies and incorporated technology into their lives to maximize academic potential. This technology includes computer technology, organizational software, voice synthesizers, and voice recognition software. Much of this technology increases the efficiency of the law office, such as the use of electronic organizers and the use and understanding of real-time technology in the courtroom. I use real-time and am able to take that technology and apply it in my work. I now have trial judges who come to me to learn how to use it. I know real-time because of my disability, so it translates well into the practice of law.

Fifth, people with disabilities think out of the box. Lawyers with disabilities have to generate the same amount of work product by alternate routes in the competitive

world of academics. Different approaches to problem solving are more of an everyday happening for them.

Sixth, lawyers with disabilities have a special sense of justice. Every community has disability-related issues, including those involving the Americans with Disabilities Act. Law firms who have lawyers with disabilities can offer a unique perspective in these types of cases.

In addition, lawyers with disabilities can develop special niches that take advantage of their conditions. I was a litigator, for example. My best friend and I were frequently in court against each other. I would always tell the jury beforehand about my hearing disability, and noticed that jurors would pay particular attention. I think they were kind of pulling for me. Finally, my friend got wind of that. After he lost five jury trials in a row, the sixth time he told the jury, “Now, you know Mr. Brown has this hearing disability. You aren’t going to feel any bias or prejudice because of his disability, right?” What this says to me is that because people don’t often see people with disabilities functioning in normal ways, they become fascinated by a litigator with a disability. That attention-seeking attribute can be an advantage.

In closing, when law firms are considering whether to hire a lawyer with a disability, they should consider what another lawyer—my father—told me: “There’s always room for a good lawyer.”

**Christine M. Griffin, Former Vice-Chair,
U.S. Equal Employment Opportunity
Commission**

“Disability is just another characteristic that lends dimension to the human experience.”

Just as having an attorney who is diverse in terms of gender, race, color, or age enriches a firm or an organization, so do lawyers with disabilities add value to that mix. However, too many of today’s law firms still promote a cookie-cutter culture. Twenty years ago, being a lady lawyer was somewhat a rarity, but that has changed dramatically in recent years. Unfortunately, lawyers with disabilities have not fared as well. Firms inadvertently send signals that lawyers with disabilities are unwelcome.

As recently as 10 years ago, diversity was the buzzword. Advocacy organizations made the case in business and law circles that employers should do the right thing by hiring quality minority and women candidates. Now we say, “Well of course every firm should have a diverse workforce.” It goes without saying that every staff should include female attorneys, and that they’re equally suited

for partnership. We also feel firms should include lawyers of color. Logic dictates the same principle regarding lawyers with disabilities. Yet, relatively few, even those with stellar credentials, land positions in law firms. Most often lawyers with disabilities find jobs in government or in public service positions. And now we’re seeing that the overall number of people with disabilities employed in the federal government has been declining.

America is home to an estimated 54 million people with disabilities. According to the National Organization on Disability, nearly one-fifth of the American population is an untapped market worth billions of dollars in spending power, which is further enlarged by families, friends, and service providers of people with disabilities. Smart companies that realize the spending potential of the largest minority should want to hire employees who look like their customers. Similarly, more and more clients are looking for lawyers that they can relate to and can relate to them. Consciously or not, people gauge comfort level based on whether they see themselves, their loved ones, and their values reflected in an organization.

Statistics also suggest that almost every family has or will have at least one member with a disability. The baby boomer attorneys don’t intend to retire, but want to keep working. Thus, it is likely that many of them will apply for disability and require accommodation. Frankly, everyone is at risk of joining the disability community at some time, whether because of illness or injury. They represent an enormous consumer market.

By the time I attended Boston College Law School, I already had a disability. While my life had changed in many ways, it never occurred to me that anyone would question my ability to pursue a legal career, or that I would have a hard time getting a job. Like my fellow graduates, I attended a string of interviews prepared to respond to thought-provoking questions. I did not anticipate the one question that I was asked at almost every interview: “How would you get a book on the shelf at the library?” Years later, I learned from three other lawyers who use wheelchairs for mobility that they too were asked the very same question at most of their interviews.

Also, after one interview, one of the partners actually called me at home to say that several partners were wondering what would happen if there was a fire in the building and the elevator shut down. I’m sure it never dawned on those partners that I was thinking that they weren’t very bright and that ultimately I’d forge a career not in a private practice, but in public service where most of the most famous lawyers with disabilities wind up.

Firms that truly want the best attorneys cannot afford to overlook the candidates with disabilities. The fact that hiring lawyers with disabilities is a priority of the ABA is a great beginning. For those who have the opportunity to influence the hiring of lawyers at law firms, hire us. Stop ruminating about all the problems, the cost, and the accommodations. Just do it. You also were ruminating when you were talking about hiring African Americans and women. Just hire us. Hold us to the standards that you hold everyone else to and you will be rewarded in the end.

**Andrew J. Imparato, President and CEO,
American Association of People with
Disabilities**

“It’s important that we cultivate and publicize examples of attorneys with disabilities.... For example, Judge Learned Hand had bipolar disorder.”

I have bipolar disorder. I go about six months out of the year where I have a lot of energy and self confidence, followed by six months where my energy and self-confidence level goes down. For me, it’s very predictable. There are a lot of people with my diagnosis where it’s not as predictable. That’s true of a lot of disabilities. You don’t necessarily know from the label how the disability is going to manifest itself for the individual.

I want to echo what somebody said on the last panel about the importance of mentors to help create a path for people with disabilities in the legal profession. I’ve had high quality mentors who helped keep my expectations of myself high. One of the ways to build a career is to think of mentors like a deck of cards: You need to be able to pull out the mentor that you need for

the situation that you’re in.

I think there are a lot of people with disabilities that fall into a dichotomy. You’re either not significant enough to matter—so get over it and stop talking about it, we don’t want to hear you—or your disability is so significant that you’re not qualified or desirable for that particular position. That’s one of our challenges. I think the ADA (Americans with Disabilities) in some ways sets us up to have that fight. I’m hoping that over time we can move away from categorical civil rights and talk about civil rights across the spectrum of abilities. From my perspective, that attitudinal barrier is hard to break through. The best way for me to break through is to expose people to individuals with a wide range of disabilities. I encourage those who work in law firms and other legal settings to participate in mentoring people with disabilities, and help expose your employees to this diverse population.

I think it’s really important that we have affirmative action for law students and lawyers with disabilities. We’re not anywhere near equal and not going to get there if we don’t take proactive steps to find qualified people to go to law school and to hire qualified people with disabilities. I would love to see the ABA push the profession to take these steps.

I also think it’s important that we cultivate and publicize examples of attorneys with disabilities, both historically and in the present. For example, Judge Learned Hand had bipolar disorder. I also want to encourage hiring disabled people to do training in your legal workplaces.

Finally, I think it’s really important for qualified disabled lawyers to represent the disability community before the Supreme Court. We have enough qualified people who should be representing us. Otherwise, we’re sending the wrong message to the Supreme Court justices.

CHAPTER THREE

Statistical and Other Information on Lawyers with Disabilities: A New Beginning Amidst Gaps and Unanswered Questions

In attempting to piece together what statistical and other relevant information exists about lawyers with disabilities, it became obvious that there are more gaps and unanswered questions than hard data. This is because, in most instances, federal and state governments, the American Bar Association, law firms, general counsels, other legal employers, and state and local bar associations do not collect information about lawyers with disabilities, even though such information is kept with far more frequency and comprehensiveness than race, ethnicity, and gender. Unfortunately, this is one of the major reasons efforts to eliminate bias and promote diversity on behalf of lawyers with disabilities have lagged behind anti-discrimination and diversity efforts more generally.

Thus, in order for meaningful progress to be made with regard to eliminating disability-based discrimination and to promoting disability diversity, and to be able to measure that progress, there must be a concerted effort by federal and state governments and the legal profession to collect, analyze, and disseminate meaningful statistics on lawyers with disabilities, particularly with regard to legal employment, but also in law schools, bar associations, and the many different organizations representing lawyers with disabilities. Any commitment to disability diversity by law firms, corporate counsels, state and local governments, and other legal employers should include the implementation of a plan to collect meaningful data about lawyers with disabilities.

This will not be easy. There are particular challenges posed by the collection of such data, which will require the use of methodologies to overcome the reticence of many law students and lawyers with disabilities to reveal their impairments, even when confidentiality is assured. Simply counting those who indicate that they have a mental or physical impairment or who request a reasonable accommodation will not accurately identify many lawyers with disabilities who decide not to self-identify. A methodology must be developed that will

allow those individuals to be counted, not only because such an omission substantially undercounts the overall number of lawyers with disabilities, but, perhaps more importantly, it distorts the information about lawyers with disabilities since those who are not counted are more likely to be those with mental and other non-apparent impairments that in many circumstances may be hidden.

What we do know about lawyers with disabilities is presented in three articles representing points of view of the National Association for Law Placement, the Minority Corporate Counsel Association, and the American Bar Association Commission on Mental and Physical Disability Law. The first and third articles emphasize statistical data, while the second one examines the attitudes of lawyers with disabilities based on a nation-wide questionnaire. The final article, in addition to discussing employer attitudes toward those with disabilities, explores the gaps and questions that remain to be filled and answered, and what needs to be done to provide meaningful statistics and other information in the near future about lawyers with disabilities.

National Association for Law Placement Perspective

James G. Leipold, Executive Director

"I think the public sector and public interest employment generally does a better job of collecting data, and a much better job of hiring lawyers with disabilities."

We really don't have enough information about law students and lawyers with disabilities, but I've been asked to explain what we do know. The National Association for Law Placement (NALP) is made up of many law schools and legal employers. We collect two sets of data on lawyers and law students with disabilities, which allow us to measure some things, but not others.

The data for law school grads covers more than 93 percent of all the graduates. The data on law firm lawyers with disabilities comes from our annual directory of legal employers. This is a much less rich data source. Public and private sector legal employers can list in this publicly searchable consumer database about law firms, and those law firms are encouraged to seek demographic information about their attorneys. When they do, we can report on that.

I want to turn first to law school graduates. We measure legal employment or outcomes nine months after graduation. That leaves time to take the bar, become licensed in your state, and obtain your first job. The class of 2007 is the last one from which we have complete data. The class of 2008 data will be out this summer, but it won't vary significantly.



**From left to right: James G. Leipold;
Joan M. Durocher; and Michael S. Greco**

For the class of 2007, 494 law students of a total of 37,000 graduates reported that they were disabled, which is just about 1.5 percent reporting a disability. We know that disabled graduates were less likely to be employed nine months after graduation from law school than members of the class as a whole. The employment rate for this class was a 20-year high: 92 percent were employed nine months after graduation. For students with disabilities, the employment rate was 86 percent.

Students with disabilities also were somewhat less likely to obtain jobs in private practice. For the class as a whole, 55.5 percent entered law firm practice, while for graduates with disabilities that rate was 49.4 percent. Law school graduates who reported disability were more likely to enter business or government jobs than were their nondisabled peers. A job in business or industry typically is not practicing as a lawyer. These are non-in-house jobs that you get right after law school. For the population as a whole, about 14 percent of the class entered directly into

business and industry, while it was 16.8 percent for law graduates with a disability. Similarly, those entering government from class as a whole was 11.7 percent and for graduates with disabilities, it was 13.4 percent.

It's important to know these disparities are very similar in scale to what we see when we look at the employment patterns for women and racial and ethnic minorities. In other words, white men compared to all the other subsets, including GLBT (Gay, Lesbian, Bisexual and Transgender) lawyers, tend to enter private practice at a higher rate and have higher salaries. When we look at these trends over time, the encouraging news is that these disparities across all diversity sectors have continued to shrink. For instance, in 2001, the nine-month employment rate for graduates with disabilities was 81 percent, while by 2007, it had risen to 86 percent. Another way to look at what happens when people enter the job market is to look at whether their first job required a J.D. Based on that criterion, in 2001, only 58 percent of graduates with disabilities obtained jobs that required a J.D., in 2007, that number had risen to 65 percent.

Graduates with disabilities, however, have lower starting salaries than non-disabled graduates. For the 2007 class, graduates with disabilities reported a median salary of \$57,000, which compared to a median salary of \$70,000 for all men, \$62,500 for all women, and \$65,750 for the class as a whole.

On the employer side, we have much less data. In fact, of the approximately 108,000 lawyers represented in our directory, we only had 219 lawyers with disabilities represented. That's just 0.2 percent of the population as a whole. Fully, 18 percent of the law firms in the directory indicated that they don't collect data on disabled attorneys at all in their workplace. I don't want to suggest that that represents in any way the number of disabled lawyers working in private practice, but it does represent an inability on the part of the industry to gather data about disabled attorneys in practice.

Among offices that collected information on lawyers with disabilities, about 13 percent reported having at least one such attorney working for them. When we can break out the law firm data by partner, associate, summer associate, of counsel, there are few significant patterns. Representation in these various law firm types was about the same in all the categories. The exception was summer associates, who were more substantially underrepresented. In terms of what was reported, only eight summer associates in the entire class of 11,000 reported having a disability. Typically, though, law firms know less about their incoming summer class than any

of the other employees.

In closing, I think the public sector and public interest employment generally does a better job of collecting data, and a much better job of hiring lawyers with disabilities. If you look at just the Department of Justice, and they have about 9,700 lawyers there, they reported 249 attorneys with disability, or 2.6 percent, more than the entire private sector reported collectively. Just a contrast, I think, in the culture both in terms of collecting that data and hiring.

Minority Corporate Counsel Association Perspective

Veta T. Richardson, Executive Director

“MCCA recommends that law firms audit their existing diversity efforts and initiatives with a view to making sure that they are broad and inclusive of the concerns and challenges faced by lawyers with disabilities.”

In 2009, the Minority Corporate Counsel Association (MCCA) released a ground-breaking research report on the professional experiences of attorneys at Top 200 law firms. The research study, the ninth one conducted by MCCA, is titled *Sustaining Pathways to Diversity: The Next Steps in Understanding and Increasing Diversity & Inclusion in Large Law Firms*.¹ Reporting on the views of more than 4,400 practicing attorneys from more than 120 of the nation's top 200 most profitable law firms, MCCA's research is the most comprehensive and credible study to date about the professional experiences of big law firm attorneys.

Reflecting a broad sector of the legal profession, the respondents were diverse in terms of gender, race/ethnicity, sexual orientation, disability status, age, experience, geographic location, and academic background. The research analyzed the experiences and comments of a diverse group of law firm attorneys from a variety of academic backgrounds and in various stages of their law careers and compared these responses across the different demographics of the lawyers. Of the more than 4,400 attorneys from AmLaw 200 law firms that responded to the MCCA survey, approximately 2 percent self-identified as a person with a disability. The survey did not request clarification about the nature of the disability.

1. This paper was prepared in supplement to the MCCA research report entitled: *Sustaining Pathways to Diversity: The Next Steps in Understanding and Increasing Diversity & Inclusion in Large Law Firms*. A free copy of the full report is available at www.mcca.com—“Research”.

Strategic Leadership and Commitment

Consistent with the views of all other respondents, attorneys with a disability gave their law firms high marks regarding the firms' strategic leadership and commitment to diversity. However in all cases, responses by women with disabilities suggest that law firms may need to focus more intently on making sure they strongly communicate their diversity values and work being done by the diversity committee. It appears that these messages may have been diluted or simply not communicated as strongly to the disabled women.

One area where firms appear to be falling short is the level of support that attorneys with disabilities have in place to discuss concerns or complaints they may have about the work environment. In addition, there was an underlying concern that, while the firm is making strides with respect to diversity, the firms are not doing as well as they could to include and address the concerns of attorneys with disabilities.

MCCA recommends that law firms audit their existing diversity efforts and initiatives with a view to making sure that they are broad and inclusive of the concerns and challenges faced by lawyers with disabilities. It also must be clearly communicated that, as with race/ethnicity, gender, and sexual orientation, the firm is equally committed to providing a workplace that is open and inclusive of attorneys with disabilities.

While overall leadership and commitment were viewed positively, the translation down to the day-to-day work lives of attorneys with disabilities showed room for improvement.

MCCA recommends that all law firms designate at least one person in each office to serve in the role of an “ombudsperson” and to widely communicate who that person is to all members of the firm. Not all attorneys, particularly young lawyers, may feel that they have a mentor or sponsor at the firm to whom to turn with questions or concerns. This ombudsperson should be a senior member of the firm who is well-regarded and well-informed and possesses the interpersonal skills and empathy required of someone to whom others will turn for guidance.

Inclusion and Work Environment

The only survey question to enjoy a 100 percent positive response concerned whether the women respondents preferred to work in a diverse and inclusive law firm. All of the women with disabilities said that they

did, with the majority strongly agreeing so. While none of the men with disabilities disagreed with the preference in favor of working in a diverse and inclusive law firm, only 88 percent agreed.

Women, however, were not as inclined as their male counterparts to support their firm's efforts to recruit and hire a diverse group of attorneys.² Nevertheless, men and women with disabilities responded virtually identically regarding whether they actively participate in the firm's diversity-related events and initiatives—only a little more than half do so.³ In addition, when asked if they would be comfortable voicing disapproval if they overheard a bigoted comment, a greater majority of men said they would be.

When asked whether they felt they were treated as equals by their law firm peers, the results for attorneys with disabilities were quite disappointing, particularly for the women. While 86 percent of the men reported positively (i.e., that they were treated as equals), only 55 percent of women with disabilities responded that they were treated equally by their law firm peers. Closer examination of this data reveals that the reason for this disparity most likely relates to a combination of disability status *and* gender.

Professional Development and Retention

Nearly all attorneys with disabilities reported confidence in their professional presentation, interpersonal skills, and substantive abilities, including possession of the necessary technical skills to succeed at their law firms. They further reported that they generally found the formal and informal feedback about their research/writing ability and technical lawyering skills to be accurate. But the women were more inclined to report that the feedback was not as timely as needed to understand what to do to improve.⁴

When it came to coaching and mentoring, again the men with disabilities reported a superior experience to the women. Ninety-three percent of the men reported that they had at least one mentor in the firm who supported their careers, but only 74 percent of the women did. Also, only 35 percent of the women said their mentors help them obtain key assignments, but 61 percent of the men

said their mentors were helping them with this.

Nevertheless, it was clear that, like most women attorneys, those with disabilities felt the pressure of the billable hour. Almost a quarter of them reported that they had received less than positive feedback about their time management skills (translation: their billable hours) and only about half of them reported receiving the assignments they needed in order to meet the firm's billing requirements. In contrast, a little more than two-thirds of the men with disabilities expressed no concern about sufficiency of assignments and billable hours. Male attorneys with disabilities reported a high degree of commitment to their careers and to the firm (94 percent), but this declined significantly for females with disabilities (76 percent).

However, only 79 percent of the men felt positive regarding the formal and informal feedback they had received regarding their client relationship skills. The percentage of women with disabilities who felt uncertainty about this was likewise fairly high (26 percent), however, the women felt even less positive about the accuracy of the informal and formal feedback they were receiving about their client relationship skills (33 percent not positive).

These findings underscore the need for law firms to focus more intently on providing appropriate training and mentoring in this area for attorneys with disabilities so that they are empowered to approach client relationships more confidently and skillfully. In addition, law firm managers should receive training to ensure that they have the ability to provide honest, constructive feedback and take the additional step of developing plans of action to address and fill any professional development gaps experienced by attorneys with disabilities.

By and large, most of the men felt that the training they were receiving was appropriate for the work that they do (71 percent). In contrast, less than half of all women with disabilities (only 46 percent) responded that they were receiving appropriate levels of training to do their work!

When queried about whether they understand the criteria for advancement at their law firms, the men with disabilities reported being much better clued in than their female counterparts. Almost three-quarters of the men with disabilities felt they had good knowledge of what it takes to advance and it is interesting to note that this number is roughly on par with the finding for men who are not disabled. Females with a disability share the same lack of knowledge about what it takes to get ahead as their fellow women who are not disabled. Only about

2. Eighty percent of males said they actively support their firms efforts to recruit and hire a more diverse group of attorneys, but only 71 percent of the women said that they did.

3. Fifty-two percent of men and 52 percent of women said that they do.

4. Sixty-one percent of the men with disabilities reported that their feedback was timely received and useful to understanding what they needed to do to improve.

half of women with disabilities responded that they understood the rules, while the other half either admitted they did not know the rules or they were not sure.

Women and men with disabilities have identical aspirations to advance into leadership positions in their law firms: 74 percent of men and 75 percent of women aspired to leadership. Similarly, the numbers for those who clearly did not so aspire were identical: 10 percent of men and 11 percent of women, and the numbers for those who were unsure were the same: 16 percent for men and 14 percent for women.

Overall, MCCA's findings regarding the professional development that women with disabilities receive should sound an alarm bell for the profession. On all indicators, women with disabilities reported very serious concerns. Add to this a desire for greater flexibility and related concerns that, by seeking flexibility, one may damage her career, women with disabilities paint a bleak picture of their place in today's AmLaw 200 firm.

Special Findings Regarding Work/Life Balance Concerns of Attorneys with Disabilities

Attorneys with disabilities on issues of work/life balance are encountering challenges, with the women expressing a higher degree of concerns. A whopping 43 percent of all attorneys with disabilities responded that, if they chose to work a reduced hours schedule or telecommute, they believed the result would be negative career consequences.⁵ However, an overwhelming percentage of women with disabilities (85 percent) replied that, if their firm were to establish effective formal policies for reduced/alternative work arrangements, the impact on their careers would be significantly positive.⁶

Both men and women with disabilities reported that their firms' policies regarding alternative work arrangements/schedules were not as easy to access, understand, and utilize as ideally they should be. In fact, 41 percent of the women with disabilities said their firm's policies were inaccessible and unclear.

Finally, when asked what effect greater flexibility in order to accommodate their personal lives would have upon their careers, high numbers of men and women with disabilities responded that more flexibility would definitely be a positive benefit. In fact, 64 percent of men

and 76 percent of women appeared to crave greater flexibility to address the challenges of their personal lives.

The ABA Commission on Mental and Physical Disability Law Perspective

William J. Phelan, IV, Special Projects and Technology Coordinator and John W. Parry, Director

"There is a . . . lack of data on the status of lawyers with disabilities in the profession [pertaining] . . . to disability status, whether an individual has one or more disabilities, the type of disability, and the lawyer's employment status."

Introduction

A major obstacle facing disability diversity and the employment of lawyers with disabilities is the absence of statistics and other related information that would allow lawyers with disabilities to be identified and described, according to their disabilities and other essential employment-related categories. Today, the statistical information that is available on lawyers with disabilities is meager and incomplete. These statistics pale in comparison to what are available for lawyers of color and women lawyers. Yet, in order to move forward with diversity and employment efforts on behalf of lawyers with disabilities, comprehensive descriptive statistics are an essential first step.

Part of the problem is that many lawyers with non-apparent (or "hidden") disabilities are reluctant or absolutely refuse to disclose disability-related information about themselves out of legitimate concerns about confidentiality, stereotyping, bias, and how collected information might be misused. The greatest problem, however, is that the legal profession—including law firms; corporate counsels; federal, state, and local governments; the American Bar Association (ABA); other bar associations; law schools; and other entities—has not yet made much of an effort to compile disability statistics, particularly as compared to what has been done in collecting these statistics for other minority groups and women.

Moreover, even if a concerted effort is made, there are special problems related to statistics pertaining to lawyers with disabilities that would have to be overcome. First, as noted already, many lawyers with disabilities are reluctant to disclose their conditions. These lawyers would have to

5. It is interesting that exactly 43 percent of the men and 43 percent of the women reported this concern about negative career impact.

6. This was admittedly, less of a concern for the men with disabilities (only 64 percent replied affirmatively).

be convinced through an atmosphere of trust, confidentiality, and acceptance that disclosure would be worthwhile and pose a minimal risk to their careers. Second, since there likely would be a significant number of lawyers with disabilities who will choose not to disclose, certainly initially, survey research protocols would have to be established in order to make reasonably accurate estimates regarding the statistics for them. Third, most existing forms that are used to gather diversity information would have to be modified to include disability categories, because currently they do not account for such information. And finally, the comprehensive tracking of lawyers with disabilities would have to begin in law school and thereafter with bar admissions in order to ensure accuracy and completeness.

Admittedly, all of this is quite a challenge, but it is essential that this challenge be met if disability diversity in the legal profession is to have a fair chance of being successful enough to make a meaningful difference. Nevertheless, if the profession is to move forward with disability diversity and the employment of lawyers with disabilities today, it must compile and use the statistical information that exists now in the best way possible, while awaiting better statistical information in the future. What follows then, is a compilation, description, and analysis of the leading statistical information that this ABA Commission on Mental and Physical Disability Law (Commission) and other key law-related entities have produced to date that might shed light on the status of lawyers with disabilities in the legal profession. It will then be discussed why we need such statistics. Hopefully, by describing what exists now, it will become evident what the profession needs to find out and whether there is important existing statistical information that might have been overlooked that other groups and individuals will be willing to share.

Americans with Disabilities Generally

According to data from the U.S. Census Bureau for 2005, which was released in December 2008, 54.4 million Americans were reported as having a disability—nearly one in five (19 percent)—with 6.5 million reporting a severe disability. For 2007, Cornell University's Rehabilitation Research and Training Center on Disability Demographics and Statistics (Cornell University)—which uses the U.S. Census Bureau's American Community Survey (ACS) data (an interim report for the decennial census)—reported 14.9 percent of the U.S. population over the age of five as having a

disability, with the largest represented type of disability being a “physical disability” (9.4 percent).

Recent statistics regarding the employment of persons with disabilities in general help explain the small number of lawyers with disabilities who are employed. Based on the ACS numbers, Cornell University reported that, in 2007, there were 22,295,000 Americans with disabilities of working age (21 to 64). However, only 36.9 percent were working, compared to 79.7 percent for non-disabled persons. Accordingly, approximately 14 million persons with disabilities were not employed, an estimate that is consistent with the statistic that 14.5 million of those with disabilities and of working age are actively looking for work. The current poor economic climate further compounds the difficulties those with disabilities are having in attaining employment: for June 2009, the Department of Labor's Bureau of Labor Statistics (BLS) reports that, while the non-disabled employment rate for those 16 and older is at 9.5 percent, the rate for those with disabilities is at 14.3 percent.



Several lawyers at the Conference's evening reception

Cornell University also reports that for full-time/full-year jobs, 21.2 percent of working-age persons with disabilities were employed, compared to 56.7 percent for non-disabled persons. Median annual salaries for disabled workers were 16 percent less than those for non-disabled workers. The poverty rate for workers with disabilities was significantly higher (24.7 percent) than the rate for non-disabled workers (9 percent). Furthermore, only 12.5 percent of working-age persons with disabilities held a Bachelor's degree or higher, compared to 36.9 percent of non-disabled persons. This education disparity (1) helps explain why so few persons with disabilities become lawyers, and (2) shows that there is a “pipeline” problem for disability diversity.

Statistics regarding employer attitudes and activities are worth noting. The U.S. Department of Labor's Office

of Disability Employment Policy, in a November 2008 report, surveyed American companies in various industries and of various sizes. The survey found that 19.1 percent of the companies surveyed employed individuals with disabilities, and only 13.6 percent actively recruited people with disabilities. Recently, however, only 8.7 percent of the companies surveyed had hired someone with a disability within the past year. Moreover, a high percentage of companies (72.6 percent) cited the “nature of work being such that it cannot be effectively performed by a person with a disability,” as a hiring challenge.

Such attitudes also are revealed in psychological and sociological studies. For example, in 2007, Professor Eva Louvet of the University of Strasbourg noted that discriminatory hiring behaviors in France—based on subjective stereotypes that ignore the objective evaluation of job skills—led to negative ratings for job applicants with disabilities in jobs that involve public contact or are considered to be for men. Subsequently, in 2009, Professor Louvet and her colleagues found that employers view employees with disabilities as having a low level of competence, and rationalized this rating by viewing those with disabilities as having a high level of warmth. This and similar biases help explain why those without disabilities are given more work, and thus attain a higher economic status than those with disabilities.

Law Students with Disabilities

For 2008–2009, the ABA Office of Legal Education and Admissions to the Bar indicated that, of 152,005 law students in ABA-accredited law schools, 4,111 (2.7 percent) were provided accommodations—down from 4,229 (2.82 percent) for 2007–2008 and up from 3,803 (2.56 percent) for 2006–2007. In the past few years, overall, there have been increases in the number of law students who are given accommodations; however, the actual percentage of students who are given accommodations has decreased slightly in the past year.

NALP conducted a study, entitled *Jobs & J.D.'s: Employment and Salaries of New Law Graduates—Class of 2007*, of the employment rates of law graduates by gender, minority status, and disability status. Overall, 86.1 percent of 638 law graduates with disabilities were employed, compared to about 92.4 percent of 28,715 non-minority (men and women) law graduates and 90.3 percent of 8,548 minority law graduates. Also, 7.4 percent of disabled law graduates indicated that they were unemployed and seeking a job—almost a 3 per-

cent increase from 2007—compared to 3.8 percent for all non-minority law graduates and 5.3 percent for all minority law graduates. NALP also found that “disabled graduates were less likely to obtain jobs in private practice than the class as a whole—and more likely to obtain government and public interest positions.”

Lawyers with Disabilities

The ABA conducts an annual census of its lawyer-members. According to August 2008 figures, 39,505 of 407,776 ABA members completed the census questionnaire. Of the 30,400 respondents who answered the query “Do you have a disability?,” only 2,033, or 6.7 percent, answered affirmatively, compared to 7.2 percent in August 2007. This percentage is far lower than one would expect given the national statistics on the percentage of Americans with disabilities. Extrapolating this figure to the entire ABA membership, approximately 27,280 members would report having a disability for 2008, a decrease of 1,420 from 2007. Dr. Douglas Kruse of Rutgers University, using the 2007 ACS microdata, reports an even lower number citing, out of the 1.08 million Americans who are lawyers or judges, magistrates, and other judicial workers, only 3.8 percent have a reported disability. BLS has its own figure, reporting that for the second quarter of 2009 (April, May, and June), 2.9 percent of those employed in the legal occupation (e.g., lawyers, judges, magistrates, law clerks, court reporters, paralegals) had a disability.

The ABA's Market Research Department tried to collect relevant statistics on lawyers with disabilities for its National Lawyer Population Survey, but its meager results underscored the need for more comprehensive efforts by the ABA and state and local bar associations. According to the ABA, only 3 of 54 American jurisdictions that license attorneys collect information on lawyers with disabilities. Colorado estimates 0.15 percent, or approximately 29 lawyers, had a disability; Delaware estimates less than 1 percent, or 25 lawyers; and South Dakota estimates 1 percent, or 17 lawyers.

The Commission believes these numbers may be substantially less than the actual number of lawyers with disabilities in the ABA and the legal profession. Many may choose not to answer the question relating to disability status due to confidentiality or stigmatization concerns, while others do not consider themselves as having a disability. Nonetheless, this low figure reflects at least three trends: (1) relatively few college students with disabilities attend law school, and not everyone

who attends graduates or passes the bar; (2) due to socioeconomic factors, it appears that a lower percentage of lawyers with disabilities join the ABA than non-disabled lawyers; (3) a greater percentage of law school graduates with disabilities do not find employment as lawyers; and (4) the legal profession's current culture is counter-productive to enabling lawyers with disabilities to reveal their status. Additional obstacles that may explain these trends and the low number of lawyers with disabilities include discrimination in hiring, obvious salary disparities, and inadequate accommodations in law offices and courthouses.

Disability Diversity in the ABA

The American Bar Association has a notable history regarding the promotion of disability diversity. The Commission was created in 1973 and took on its current name in 1991. The ABA first included disability in its mission goals in 1999. Throughout the years, the ABA has passed several resolutions that advance the rights of individuals and lawyers with disabilities. A more detailed history of the Commission and the ABA can be found in Appendix A. More recently, past ABA President William H. Neukom, in his *ABA Journal's* President's Message of November 2007, recognized that, although it is difficult to determine the exact degree that the disabled community is underrepresented in the legal community, it is evident that "[l]awyers with disabilities, too, have greater difficulty getting a job after law school and have higher rates of unemployment than lawyers who do not have disabilities." He then called on the legal profession to embrace the objectives of what is now ABA Goal III—to eliminate bias and enhance diversity—in order to root out invidious discrimination.

Continuing the ABA's commitment to include lawyers with disabilities, Immediate Past ABA President H. Thomas Wells, Jr., hosted this Second ABA National Conference on the Employment of Lawyers with Disabilities on June 15 and 16, 2009. Later that week, he also hosted the *ABA National Presidential Summit, Diversity in the Legal Profession: The Next Steps?* with a followup conference at the ABA 2009 Annual Meeting. These events discussed the expansion of the ABA's diversity efforts and included disability.

Current ABA President Carolyn B. Lamm, who joined then-ABA President Wells at his diversity summit and the Commission's employment conference, began her term by creating a new diversity commission that will provide practical resources and guidance for

lawyers with disabilities to navigate the cultures and practices in law firms and corporations in order "to pierce the glass ceiling."

Since 2004, the ABA President's Office ensures that applications for presidential appointments include a question regarding disability status. For 2008–2009, 46 out of 693 presidential appointments went to persons identified as having a disability, compared to 13 out of 705 in 2007–2008. However, none of the 38 ABA members who serve on the Board of Governors, the executive arm of the ABA, are identified as having a disability. For 2008–2009, 554 ABA members serve in the House of Delegates, the ABA's policy-making body, but the ABA does not maintain statistics on the number of lawyers with disabilities who are members of the House of Delegates.

Concerning all ABA Division, Section, and Forum leadership positions, those held by lawyers with disabilities totaled 22 in 2007–2008 and 26 in 2008–2009. There are thousands of leadership posts within these entities. Additionally, the percentage of primary leadership positions (i.e., Section Officers or Forum Chairs, Chairs-Elect, Immediate Past Chairs, and Appointed Forum Leadership) held by lawyers with disabilities slightly increased from 3 in 2007–2008 to 4 in 2008–2009, as did the number of chairs with disabilities—8 in 2007–2008 to 10 in 2008–2009. Since 1998, the Commission has seen incremental increases and decreases in the number of ABA leadership positions held by lawyers with disabilities, ABA entities that proactively include lawyers with disabilities in leadership positions, and ABA entities that specifically include lawyers with disabilities in their diversity statements, goals, and action plans. A listing of programs by ABA entities for members with disabilities can be found in Appendix D. Additionally, an annual assessment of the status of lawyers with disabilities in ABA leadership positions is published by the Commission, the *Goal III Report*.

Gaps and Questions

What Is Lacking

There is a serious and concerning lack of data on the status of lawyers with disabilities in the profession. This dearth pertains to disability status; whether an individual has one or more disabilities; the type of disability; and the lawyer's employment status. The statistics provided above are a mere glimpse of the entire picture. Although helpful as a starting point, the information currently available consists of incomplete estimates and surveys that only reveal a lack of significant numbers for

lawyers with disabilities. For example, while the NALP statistics are useful in their own right, they only consider lawyers who work for large private firms, a small portion of the entire legal profession.

The ABA member census statistics, while more complete (because the information is from lawyers from different employment settings), are completed at the member's prerogative; and even though the ABA has over 400,000 members, its membership represents less than half of America's over one million lawyers. At the state level, statistics are near-nonexistent with less than 5 percent of bar associations recording how many of their lawyers have a disability. Finally, figures for lawyers with disabilities pale in comparison to other minority statistics. Many legal employers collect information regarding a lawyer's gender or particular racial/ethnic identity; however, they do not keep such records for disability status, let alone the type of disability.

Reasons for the Deficiency of Statistics

Reasons for this statistical deficiency are several and varied. Some of the reasons are related to self-identification and the lawyer's desire to reveal. As mentioned above, lawyers sometimes do not want to reveal their disability, usually a "hidden" or non-apparent disability, because of confidentiality or a fear of being stigmatized. The legal profession is cerebrally-centered and typically places importance on one's ability to present; therefore, lawyers with impairments, such as learning disabilities (e.g., dyslexia, attention-deficit hyperactivity disorder), speech impediments, and vision and hearing impairments, are sometimes looked at as inferior, despite the fact that they can perform their jobs just as well as (and sometimes even better than) lawyers with no disability. Such arcane views inhibit a voluntary disclosure of a disability. There is even a fear that if a disability is revealed, the disclosure can be used to bring a case against the lawyer for violating his (or her) ethical obligation to be competent and knowledgeable, an unfortunate and grossly inaccurate misconception.

If better statistics on the number of lawyers with disabilities come forth, and it is shown that lawyers with disabilities are not a rarity in the profession, hopefully these concerns will subside and reluctant lawyers will feel more comfortable with coming forward and identifying themselves as having a disability. Another reason why lawyers may not say they have a disability is because they do not consider themselves as having one. Because there is no clear definition of what is a disability, and the fact that

some lawyers don't consider themselves disabled due to conditions brought on by old age, there is a sizable portion of the legal profession that is not tallied.

There are other reasons that are not under the control of the lawyer. First, as just mentioned, there is no clear definition of what is a disability. Unlike gender and race, disability status does not easily fall into a pre-defined category. Even the American judicial system has had difficulty defining the term "disability." Under the Americans with Disabilities Act (ADA), the judiciary has gone in various directions when defining "disability." The ADA Amendments Act of 2008 overturned a U.S. Supreme Court case that narrowed the definition of disability, and directed the courts to respect Congress' original intent in the ADA, thus showing how arduous defining the word can be.

Even if there is a general consensus on what is a disability, the disability community is relatively new to the diversity movement, and therefore, comparatively speaking, has had less exposure than other minority groups. While the noble struggle to include women and individuals of differing racial and ethnic backgrounds in the legal profession has been going on for several decades, disability diversity was not included in this effort until after the enactment of the ADA in 1990. Disability's relatively recent inclusion into the diversity spectrum has often translated into the omission of disability in the diversity discussion. Thus, as previously mentioned, disability statistics are significantly more scarce and incomplete when compared to statistics on race/ethnicity or gender.

The Need for Statistics on Lawyers with Disabilities

Despite these barriers to collecting complete statistics on lawyers with disabilities, it is imperative that such information be compiled. Below are several important reasons why:

- **Knowledge is power.** Facts are usually the first implements used in the problem-solving process; they can set the stage and explain the status quo. In this case, statistics are needed to properly measure the number of lawyers with disabilities. With an improved idea of the number of disabled lawyers, and the types of disabilities they have, better suggestions and decisions can be made to welcome law students and lawyers with disabilities into the profession and keep them there. It is impossible to

know where the legal profession is lacking (or even strong) in disability diversity, specifically in what sectors or tracks (e.g., small firms, government, partners, young lawyers), unless a more accurate picture is portrayed.

- **Action and amelioration.** Once deficiencies are revealed from the proper statistics, employers can be alerted as to a lack of diversity, specifically to what extent they are lacking. With better statistics, those who hire and promote lawyers can be sure their workplace is properly diverse. Accurate statistics can prompt once unaware employers to act or enable employers already considerate of disability diversity to better tailor their employment policies and procedures. Here are some specific problems that can be addressed with proper statistics:

- **Discrimination.** The legal profession is looked upon to promote justice and prevent discrimination of those who may not be in the majority. Therefore, in order to make a reasonable assessment as to whether there is discrimination of those with disabilities, statistics are necessary to look for, and then address, disparaging treatment or trends in the hiring and retention of lawyers with disabilities.
- **Faith in the legal profession/justice system.** With accurate figures, it can be determined whether the legal profession properly reflects the percentage of Americans with disabilities. Currently, nearly one in every five Americans has a disability, but it is roughly estimated that two of every 25 lawyers has a disability. In order for the American people to have faith in its legal system, the profession must not be exclusive from, but rather representative of, the country's populace. If the profession does not properly represent those with disabilities within its ranks, then it is harder for those with disabilities to believe that the justice system has their interests in mind. Better data—that both shows there are more lawyers with disabilities than currently

estimated and encourages those with disabilities to join or remain in the profession—will hopefully assure Americans with disabilities that the legal system is representative of their numbers and thus working for them.

- **Wages.** As shown above by NALP's James Liepold, those lawyers identified as having a disability are paid significantly less than non-disabled lawyers. With more attention paid to lawyers with disabilities, hopefully wage disparities can be highlighted and eliminated.
- **Leading through example and encouragement.** Better statistics can promote diversity within the country's leadership as well as the legal profession.
 - **Pipeline for leadership.** The legal profession is unique in that most of the country's leaders were or are lawyers. For example, a good number of America's elected officials are attorneys with 25 of the 44 presidents having held a law degree. Lawyers also make up a sizable portion of the country's lawmakers with 56 of the current 100 U.S. senators holding a J.D. Therefore, if the nation's leadership is to reflect the diversity of those whom it serves, then it is imperative that the legal profession include lawyers with disabilities.
 - **Inclusion and retention.** If additional lawyers with disabilities step forward and are properly counted, more students with disabilities (whether in college, high school, or elementary school) may be encouraged by the increase in numbers and consider attending law school. Similarly, such an occurrence can encourage lawyers with disabilities to remain in the profession. Furthermore, if more lawyers with disabilities are identified, it would make it clear to employers that receipt of accommodations for a disability is not some oddity that deserves suspicion and scrutiny, but rather a standard employment procedure.

CHAPTER FOUR

Transition from Law Student to Lawyer: Reasonable Accommodations in Law School and at Work

One of the most challenging transitions for any aspiring lawyer is the leap from law school classes and clinical programs to the legal workplace, which normally includes—either shortly before or after one is hired—the dreaded bar examination, a rite of passage enjoyed by none who take it. For law students with disabilities, however, this leap is often fraught with many additional challenges, often not of their own making. This chapter explores this transition from four different view points.

ABA Commission member and former law professor Carrie Basas provides a broad overview as a woman with a disability, which encompasses: (1) general information about lawyers with disabilities; (2) discussions about stigma and reasonable accommodations; (3) the differences and similarities between unemployment and underemployment; and (4) what employers can do to help recent law graduates and young lawyers with disabilities become productive professionals.

Law firm associate Mariyam Cementwala explores the hiring process, recounting her personal experiences as a blind lawyer and discussing strategies for employers and clients who hire lawyers with disabilities.

Associate professor of Law Wendy Hensel examines the ways in which law schools assist and prepare law students to deal with diversity issues, including those dealing with disability. She calls on the “legal academy” to do more than it has done so far.

Finally, Marianne Huger, the Associate Director of Disability Services at Georgetown University Law Center, recounts the experiences of law students with disabilities when they are being interviewed and hired by a legal employer and they must decide if and how to initiate the conversation about accommodations. She also makes recommendations regarding what legal employers need to be concerned with in providing those accommodations.

Lawyers with Disabilities Add Critical Diversity to the Profession

By Carrie G. Basas, Post-Graduate Research Fellow, Harvard Law School

“Legal employers can benefit from proactively recruiting and hiring lawyers with disabilities.”

Lawyers with disabilities experience much of the same discrimination as lawyers from other cultural minority groups.¹ While the legal profession has shifted to greater recognition of the employment and transition obstacles for “traditional” minorities, disability awareness is lacking. Disabilities are still equated with diminished professional abilities, rather than seeing disabilities as mere physical or mental impairments that could have no negative effects on individuals’ abilities to be lawyers.

So far, professional groups have not fully incorporated disability in their diversity agendas. Even though they may have the power to conduct national surveys of attorneys with disabilities to better understand the obstacles that they face at work, they have not done so. While we know that people with serious disabilities experience some of the highest unemployment rates of any minority group in the United States, we are still not sure how many attorneys have disabilities and what their work successes or obstacles are.²

What We Know About Attorneys with Disabilities

No one has conducted a national survey of attorneys with disabilities. If we are to take ABA leadership surveys as

1. CRITICAL DISABILITY THEORY (Dianne Pothier and Richard F. Devlin eds., 2006) (“approach[ing] disability rights as group rights”).

2. In March 2009, only 22.8 percent of people with disabilities were employed, versus 70.8 percent of non-disabled people. Office of Disability Employment Policy, available at <http://www.dol.gov/odep/>.

accurate, then we find that a fraction of one percent of leadership positions are occupied by people with disabilities.³ The percentage is equally dismal if it is compared with NALP (National Association for Law Placement) studies of attorneys at firms. Given these numbers, one might assume that people with disabilities are rare in the general population.⁴ However, people with disabilities are 18 percent of the U.S. population (51.2 million people).⁵ Some studies of law students with disabilities have placed the percentage at 10 percent.⁶

In 2006, I began a study of women attorneys with disabilities.⁷ Through extensive outreach, I was able to survey and interview 40 women with disabilities. They came from diverse backgrounds, professional interests, law schools, career stages, and parts of the country. They shared a few common traits:

- Most of them dealt with the issue of reasonable accommodations by self-accommodating.
- They experienced pressure to “cover” their disabilities and differences; other attorneys, not clients, judged them to be “inferior.” Many of these non-disabled attorneys had no experience working with people with disabilities.
- The women did not turn to litigation as a solution for workplace barriers. They focused on developing strong, respectful work relationships.
- Many of the women experienced isolation at work, in bar associations, and in other professional organizations.
- Many of minority women participants expressed frustration and dismay with antiquated attitudes toward disability that at times were more stifling than existing race and gender bias.

Tackling Stigma

Practicing law is often an exercise in superhuman powers or at least the attempt to demonstrate them.⁸ Weaknesses and impairments are not appreciated in the law, even

though all employees—disabled or not—have them. People with easily identifiable disabilities are often viewed as liabilities.⁹ Employers sometimes fear that employees will not only exercise their rights under the Americans with Disabilities Act, but that they will cost a lot to retain because of reasonable accommodations and work productivity levels. Presented with this pressure to conform, attorneys with disabilities that are not readily apparent often keep silent about their differences. They fear retaliation, including dismissal or stagnancy, if they disclose.

Social science researchers have demonstrated consistently that employers’ fears are unfounded and mirror attitudinal barriers and fears about impairment in society. In this sense, the disabilities are not disabling, but employers and coworkers’ reactions to them are. Employers who hire people with disabilities are more likely—not less—to hire people with disabilities in the future.¹⁰ Additionally, people with disabilities of all kinds are dependable and valued employees, once let into the doors of the workplace.

The attorneys in my study cited professional “self-policing” in overdrive as one of the largest obstacles to their success and mobility as lawyers. Other attorneys seem to be more preoccupied with the differences that disability presents—and reading those differences as bad and undesirable—than clients do. Disability can be a non-issue for clients, while translating into refusals to hire by human resources and hiring partners.

Addressing Reasonable Accommodations

The drafters of the ADA (Americans with Disabilities Act) and its latest amendments, the Equal Opportunity Commission, and the Department of Justice-Disability Rights Section envisioned the issue of reasonable accommodations in the workplace to be an interactive dialogue.¹¹ This dialogue can be powerful not only in dismantling negative attitudes toward disability, but also in empowering employees with disabilities to develop communication with their employers. Barriers to work

3. See ABA’s 2009 Goal III Report, available at <http://www.abanet.org/disability/resources/statistics.shtml>.

4. See *Still Relatively Few Openly GLBT or Disabled Lawyers Reported*, NALP BULL. (Dec. 2005), available at <http://www.nalp.org/2005decfewopenlyglbtdisabled>. Disability is also not an area of focus for the “After the JD” study being conducted by NALP.

5. U.S. Census Bureau, *Facts for Features*, available at http://www.census.gov/PressRelease/www/releases/archives/facts_for_features_special_editions/010102.html.

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

7. Carrie Griffin Basas, *The New Boys: Women with Disabilities and the Legal Profession*, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1290739.

8. *Id.*

9. See Ronald Zimmet, *Managing Employees with Disabilities*, BEHAV. HEALTHCARE (Oct. 2007), available at <http://www.behavioral.net/ME2/dirmod.asp?sid=&nm=&type=Publishing&mod=Publications%3A%3AArticle&mid=64D490AC6A7D4FE1AEB453627F1A4A32&tier=4&rid=40422BF56C70447AAD4A63F87A7BCFAE>.

10. See John J. Heldrich Center for Workforce Development, *National Work Trends Survey on Barriers to Employment for People with Disabilities – “Restricted Access,”* available at http://www.heldrich.rutgers.edu/Knowledge_Centers/DisabilityAndWork.aspx.

11. See EEOC’s Enforcement Guidance: Reasonable Accommodation and Undue Hardship, available at <http://www.eeoc.gov/policy/docs/accommodation.html>.

are broken down when disability-related needs are recognized and both employer and employee (or job applicant) engage in the interactive process of figuring out how to make the workplace more accessible to that person. These dialogues break down when either side refuses to consider proposals on the table.

Out of shame, stigma, and fear, many employees with disabilities may choose not to disclose their disabilities or needs for accommodations.¹² This pressure is particularly acute in the legal profession where work-life balance issues often take a backseat to speed and volume. With the appropriate accommodations—and a work environment that is encouraging and inclusive—lawyers with disabilities meet the challenges of the profession just as well as any other employee. The most costly aspect of accommodations can be turning away an otherwise qualified disabled lawyer out of bias, prejudice, and fear. The profession's efforts toward diversity are undermined as that refusal happens.

Unemployment or Underemployment: Which Is Worse?

Many companies with plans in place for hiring people with disabilities still need to consider their diversity strategies at all levels of the company. People with disabilities should not be relegated to low-level positions with equally decreased pay.¹³ While there has been a shift toward hiring people with disabilities into service-oriented positions, the final shift will be embracing disability as a diversity concept that should be as universally represented in CEO-level positions as it is in positions requiring less education.

People with disabilities consistently cite underemployment as a problem. The rise of employment “ghettos,” where attorneys with disabilities are relegated to “appropriate” jobs on the basis of their disabilities alone, such as in disability law or government jobs, needs to be addressed by all lawyers and employers. Full recognition of the rights and dignities of attorneys with disabilities means choice in employment. Given that people with

disabilities are assets to companies and reflect the greater diversity of society and of the customer bases, they should be actively recruited into positions commensurate with their expertise, education, and qualifications.

What Employers Can Do

Legal employers can benefit from proactively recruiting and hiring lawyers with disabilities. These kinds of hires are not charitable acts and “special” efforts, but are necessary if the profession is to reflect the diversity of law school classrooms and clientele. The perception that lawyers with disabilities are lesser attorneys is altered when employers experience the realities of more disability-friendly workplaces.

Employers can make progress, both short- and long-term, to advance disability as part of their diversity agendas:

Disability-Aware Hiring Efforts

- Employers should work with law schools to make sure that they are interviewing and hiring candidates with disabilities.¹⁴
- They can encourage law schools to track students and graduates with disabilities.
- A person or group of people within a firm or company should be the “go to” representative for questions about disability and the hiring process.

Mentoring and Internship Programs

- Using their models for other minority hires, firms can develop mentoring and internship programs for law students and associates with disabilities.
- Mentoring programs should be ongoing to ensure that attorneys with disabilities have similar success as non-disabled attorneys in being promoted to senior associate, partner, and supervisor ranks.
- Attorneys can support and encourage mentoring efforts like the ones sponsored by the ABA's Commission on Mental and Physical Disability Law or the National Association of Law Students with Disabilities (NALSWD).
- Non-disabled attorneys can be important allies for attorneys with disabilities.

Self-Education and Alliance-Building

- Employers can work toward creating pipeline relationships with law schools and disability organizations having access to qualified attorneys with disabilities.
- Getting up to speed on accommodations should be

12. Even professors, seeming to have power in the professional world, may feel too stigmatized to “come out” about their disabilities. See Linda Kornasky, *Identity Politics and Invisible Disability in the Classroom*, INSIDE HIGHER ED (Mar. 17, 2009), available at <http://www.insidehighered.com/views/2009/03/17/kornasky>.

13. See Courtney S. Hunt & Brandon Hunt, *Changing Attitudes Toward People with Disabilities: Experimenting with Educational Intervention*, J. MANAGERIAL ISSUES (June 2004), available at http://goliath.ecnext.com/coms2/gi_0199-38075/Changing-attitudes-toward-people-with.html-page.html (citing the social and economic costs of unemployment and underemployment).

14. If employers want to interview candidates with disabilities, they send the message to law schools that it is important that they track those candidates. Organizations, such as NALSWD (<http://www.nalswd.org>), could be instrumental in assisting schools with setting up these programs.

a priority. Resources, such as the Job Accommodation Network and the Justice Department's ADA hotline, can be helpful with this process.¹⁵

- The employer can develop strategic partnerships with the ABA Commission and Bar committees focused on disability.

Removal of Workplace Barriers

• Attitudinal

- All employees should receive diversity and awareness training that incorporates disability issues.
- A culture of inclusion and respect should be fostered and reinforced.
- Employees must feel as if they can request accommodations confidentially and safely.
- Addressing negative reactions or fears about disability held by colleagues and subordinates is just as important as ensuring that partners and management understand disability rights.

• Communication

- The employer can work with technology consultants to ensure that it can accommodate attorneys with communication-related disabilities.
- The employer can use this same technology to address needs that might arise due to clients' disabilities.
- When designing firm or organization policies, the employer can take into consideration the best way to distribute information and seek responses from all people involved.

• Physical

- The workplace should be barrier-free with wide doorways, aisles, and bathroom stalls.
- Consultants can offer "ADA audits" and tips.
- The employer needs to have accessible parking available for clients and attorneys with disabilities.
- Requests for accommodation should be handled promptly.

Workplace Culture

- Work-life balance is important to disabled and non-disabled attorneys alike.
- Flexibility (e.g., schedules, telecommuting, sabbaticals) works for everyone.¹⁶

- Diversity of all kinds should be valued and encouraged.
- Employers can foster informal and formal communication channels so that every employee will be valued and heard.

The kind of work environment envisioned here is not a gain for one group and a loss for the other. Rather, this approach is intended to culminate in a workplace where every attorney is recognized for her talent and commitment, while also being respected as a whole person with an array of demands and responsibilities.

Employers striving to attract and retain talented attorneys with disabilities should consider that goal as part of a long-term diversity plan. Over time, they will be able to:

1. Become models for the successful employment of lawyers with disabilities;
2. Have their partnership and retention statistics reflect the diversity of their workplaces at the entry levels and in law school admissions;
3. Develop a reputation among lawyers with disabilities for being a disability-friendly employer;
4. Foster the transitions of college students with disabilities into law schools and the workforce; and
5. Integrate disability within their larger diversity efforts so that it receives the same attention and importance as other minority programs.

Legal Limitations and Practical Implications: Discussing Disability During the Hiring Process

By Mariyam A. Cementwala, Associate,
Wilmer Cutler Pickering Hale and Dorr LLP

"[O]penly raising [one's] disability during the... interview process 'is a personal choice which depends on you and your comfort level and the vibe you receive from the interviewer.'"

The law is touchy about how and whether employers can inquire about whether a prospective job applicant has a disability and as to its nature and severity.¹

15. The Job Accommodation Network, <http://www.jan.wvu.edu/>, is a free service that assists employees and employers with navigating the accommodations process. The Justice Department's disability hotline information is online, too: <http://www.ada.gov/infoline.htm>.

16. The Workplace Flexibility 2010 effort is a "consensus-based policy initiative on workplace flexibility." More information is online: <http://www.law.georgetown.edu/workplaceflexibility2010/>.

1. See Americans with Disabilities Act, 42 U.S.C.S. §12112(d)(2) (2009) (mandating that employers may not inquire about the nature or severity of an applicant's disability in the pre-employment process and allowing only for inquiries about an applicant's ability to perform job functions); see also Equal Employment Opportunity Commission, Enforcement Guidance: Reasonable Accommodation and Undue Hardship under Americans with Disabilities Act, available at <http://www.eeoc.gov/policy/docs/accommodation.html> (last visited Apr. 24, 2009).

Obvious disabilities such as blindness or other physical impairments often naturally elicit accommodations-related conversations because, for instance, an applicant may need a reasonable accommodation during the hiring process. However, in applying for legal jobs (particularly after having taken and passed the bar exam), there typically are no other pre-employment exams to endure. In this sense, both applicants with obvious and invisible disabilities are placed in the same dilemma: to raise or not to raise their disability in the pre-employment context.

Individuals with disabilities who provided me advice generically told me that openly raising my disability during the law school's on-campus interview process "is a personal choice which depends on you and your comfort level and the vibe you receive from the interviewer." Although I understand that my obvious disability may more easily facilitate the conversation, I believe that for people with obvious and invisible disabilities, the best professional move in the long-run is to be open about one's disability during the pre-employment process.

My own interview story may demonstrate how and why openness is the most effective approach in ultimately obtaining the job offer. When I walked into most on-campus interview rooms at the Hotel Durant, my interviewers were always just a little surprised to see me with a long, white stick. Their immediate thought was probably to figure out a smooth way to direct me to a chair. Fortunately, I had a sense of the layout and could find it myself—no big feat, by the way. None of my interviewers ever asked me about my blindness or how I work or read as a blind person. I was at a top 10 law school, and most either thought or wanted to think that there must be some way in which I figured out how to get the task at hand done.

But I knew that at the back of their minds, the interviewers were wondering how having a blind associate would work at their firm. What would the firm need to do to accommodate me? How is it that I read, and how would I do legal research, editing and writing, reviewing of documents, client contact, and the like?

At Wilmer-Hale, my interviewer, Ted Killory, asked me if I had come from class and what I had been reading. I made that my entrée and, after telling him about some case in one of my texts, I asked him if he'd like to see how I read. He immediately took me up on the offer with a delighted curiosity as I opened up my laptop, pulled up a document, and demonstrated how the text-to-speech software on my computer worked. I then told him that, while I used text-to-speech software frequently, I also relied on human readers during law school. The interview then turned to other topics—

e.g., how I had enjoyed my summer working for a Ninth Circuit judge in Hawaii, my research on Palestinian female political prisoners and detainees, etc. But I still believe that what made the difference in opening up the conversation to all the other topics so naturally was my initiative to put him at ease about my comfort in not only discussing my blindness but describing the accommodations I use and need. Although I acknowledge that my obvious disability prompted the disability/accommodations discussion that much more easily and naturally for me, I believe that, if brought up appropriately during the normal course of conversation, the discussion of how one performs a given task even with an invisible disability can prove to be beneficial in the long-term. In my own case, after securing a firm offer first as a summer associate and then as a first-year associate, my interviewing partner, Ted Killory, became one of my best advocates—telling me that should I have any accommodations-related issues, I should not hesitate to go to him for help in addressing them.

My interview scenario brings to light the juxtaposition between the legal prohibitions employers encounter when hiring a person with a disability and the practical implication of that prohibition—making the discussion of disability and accommodation a taboo topic. On the one hand, a frank and clear conversation about how an individual with a disability performs and what he or she needs from the employer to perform successfully would enable the employer to better appreciate the individual's skills and abilities; on the other hand, the ADA and EEOC (Equal Employment Opportunity Commission) guidelines suggest a prohibition of such a conversation in the pre-employment phase. The pragmatic reconciliation of these two sides is for the applicant with the disability to raise the topic, removing the legal barrier and the social taboo. It is incumbent upon those of us with disabilities seeking legal employment to express in clear terms what our needs are, keeping in mind their reasonableness, and to explain how accommodating these needs will better enable us to do our jobs as lawyers dedicated to client service. It is equally incumbent on each legal employer to maximize flexibility, keeping in mind that accommodating disability is an individualized and individual-centric process and that one-size-fits-all solutions are not the answer. Employers, for instance, cannot expect that if text-to-speech software and a Braille printer work for one blind lawyer, it must work for every other blind lawyer, or that if a human reader or interpreter is

required for one lawyer, that accommodation will be the best fit for every lawyer with a visual or hearing impairment. Accommodations must be tailored to the individual and devised through a collaborative process.

For my own part, I have found that this is a work in progress. But candor, clarity of expectations, and flexibility on both my part and on the part of my employer in acknowledging that addressing reasonable accommodations issues is a learning process has proved effective in facilitating my growth as a young lawyer. What I would recommend for potential employers and clients hiring lawyers with disabilities may be summarized as follows:

- ✓ Don't hesitate to ask how you may best facilitate an applicant's success in doing his/her job during the interview process.
- ✓ Introduce candidates with disabilities to lawyers with disabilities already employed at the law firm or legal organization; facilitate official mentoring.
- ✓ When approaching accommodations issues, do not adopt a one-size-fits-all solution; elicit specific requests for accommodations from the lawyer with the disability and work collaboratively to provide the accommodations.
- ✓ Maximize the disabled lawyer's flexibility and, to the extent possible, try not to alter his/her work style. The flexibility and privileges that are afforded to non-disabled attorneys should apply equally to attorneys with disabilities—e.g., ability to work remotely.
- ✓ During evaluation processes, ensure that attorneys with disabilities are held to the same standards and expectations as their non-disabled counterparts.
- ✓ For attorneys who require assistance, ensure that primary managerial authority rests with the disabled attorney who is managing his or her assistant on a day-to-day basis.
- ✓ To the extent possible, adopt technological approaches/programs/solutions with an eye on accessibility. Many vendors cater to accessible technology options, and an employer's IT (Information Technology) department can learn about and choose hardware and software solutions that may facilitate access for the disabled hiree.
- ✓ Realize that having a lawyer with a disability on your team may prove to be advantageous: beside bringing a diverse perspective to the table, lawyers with disabilities are often underestimated by the adversary, which can often be the positive wild card before a judge, jury, arbitrator, or mediator.

A Call to Action for the Legal Academy¹

By Wendy F. Hensel, Associate Professor of Law, Georgia State University College of Law

"The more law students are exposed to people with disabilities, the more likely they are to view disability as a normal part of the human continuum of ability rather than as a condition synonymous with failure and incapacity."

A centerpiece of this Conference is the "Pledge for Change," asking legal officers, hiring partners, and hiring personnel to commit to a vision of diversity in the workplace that includes attorneys with disabilities. There is no corresponding challenge posed to those of us who work in the legal academy. Since the work that we do today in law schools sets the stage for the future of the legal profession, law professors and administrators also should heed this call. Because "[l]aw school provides the single experience that virtually all legal professionals share,"² it is important to thoughtfully consider whether and how our teaching methodology may inadvertently reinforce a general skepticism toward disability in the profession.

As many critics recognize, the process of learning to "think like a lawyer" can make it difficult for students to see the social justice implications of issues. The Socratic method employed by many professors can teach students to distrust their innate sense of fairness and concern for others. All first year law students are trained to justify and defend each statement they make based on rational, legal argument. Students are encouraged to take a "value-neutral" approach, which separates out discussions of justice from legal doctrine and procedure. The moral consequences of a position are not only given secondary consideration, but often are treated as a hindrance to divining the legal doctrine. Divorced from the humanizing context of the law, students may find it challenging to take a holistic approach to exploring the moral and ethical considerations of legal questions like the dimensions of disability.

The intensely competitive, individualized experience of law school also encourages students to adopt a self-

1. Portions of this article were excerpted with permission from Wendy F. Hensel, *The Disability Dilemma: A Skeptical Bench and Bar*, 69 U. PITT. L. REV. 637 (2008).

2. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 2 (2007).

centered mentality that discounts the notion that an individual's success or failure can be significantly affected by discriminatory external, rather than internal, sources. Students are required on a daily basis to answer detailed questions from professors in a very public and competitive setting. Unlike other professional schools, little time is spent on collaborative group projects that focus on assisting clients or the needs of others.

The highly competitive nature of the legal job market, moreover, encourages students to be hyper-sensitized to class ranking and performance. Under such circumstances, it is easy for students to consider others' gains to come at their expense. The high degree of debt that most law students graduate with makes large firms look highly attractive. Because many such firms restrict their interviews to students in the top 10 percent of their class, particularly when hiring from law schools outside of the top tier, each individual in front of a student in class ranking can appear to diminish his or her job prospects markedly. Thus, even the slightest perception of unfair advantage during exams can create serious angst and resentment. In this environment, it is no surprise that students with disabilities who receive accommodations but nevertheless look and act like their typical peers are viewed as fakers seeking unjustified preferential treatment.

So what, if anything, should the academy do about these entrenched aspects of legal education? Changes in curriculum and methodology are notoriously slow to come about and are often the subject of faculty turf wars. Fortunately, however, there are a number of more immediate changes that professors can employ on an individual level that may help change student attitudes toward inclusiveness and ultimately facilitate the integration of attorneys with disabilities into the profession.

In classes which rely on the Socratic method and case review, professors can highlight the factual narrative of cases to emphasize their context within the larger social environment, particularly when cases touch in some way on issues of disability. Rather than forcing students to divorce social justice concerns from reasoned legal analysis, professors can acknowledge and endorse instinctual responses while simultaneously requiring a legal justification to back the "gut" feeling that precedes it. Emphasizing the human aspects of the law will facilitate students in challenging categorizations and seeing beyond the implicit assumptions that form the foundational legal rules.

The intense individualism that is the hallmark of legal education, moreover, could easily be modified by introducing more group oriented, problem-solving work

that fosters a community orientation. Following in the footsteps of other professional schools, law students collaboratively addressing hypothetical situations would be required both to negotiate solutions with their peers and to directly confront the real-world impact of the law. This more outward-looking focus would encourage students once again to connect with the social justice implications of the law and work for the benefit of others rather than solely for personal advancement. In taking this approach, law professors would be doing a service not only to people with disabilities, but to each student as well. As one legal critic has said, "Teamwork, listening skills, and creativity in problem solving may be equally important, and sometimes even more important than argumentativeness, aggressiveness, or individualism as we prepare to enter a new era."³

The more law students are exposed to people with disabilities, the more likely they are to view disability as a normal part of the human continuum of ability rather than as a condition synonymous with failure and incapacity. They may also begin to recognize and respect the significant challenges that face this population not only in the hard environment, but also in the institutional arrangements and implicit assumptions that form the invisible backdrop of social policies and organizations. As the ABA's "Pledge for Change" recognizes, the path toward change for attorneys with disabilities begins with an articulated commitment by the profession to diversity and inclusion for all of its members. The legal academy must play its part in this important struggle and thoughtfully reflect on ways legal education can evolve to meet this shared goal.

The Transition from Law School to Employment

By Marianne S. Huger, Associate Director
of Disability Services, Georgetown
University Law Center

"Employers should assist with the facilitation of an open dialogue that will enable employees with disabilities to obtain reasonable accommodations and to perform at high levels."

Students with disabilities are increasing in prevalence on law school campuses. As students with disabilities

3. LANI GUINIER ET AL., BECOMING GENTLEMEN: WOMEN, LAW SCHOOL AND INSTITUTIONAL CHANGE 7 (1997).

transition from law school to employment settings, reasonable accommodations may need to be made by employers. It is important to be aware that not all students with disabilities require accommodations. Students graduate from law school with a variety of disabilities. I have worked with very successful students who have mobility impairments, students who are blind, and students who are deaf or hard of hearing. In addition to physical disabilities, many students have invisible disabilities that may not be apparent in an interview setting, such as anxiety, depression, learning disabilities, and attention-deficit hyperactivity disorder.



Marianne S. Huger answers a question from an audience member.

The Conversation Concerning Accommodations

Employers should not address disability with recruits or employees until the individual begins a conversation concerning accommodations. The applicant or employee with a disability has the responsibility of disclosing to the employer and of suggesting reasonable accommodations. In my practice, I have noticed that students are anxious concerning disclosure of disability. They are worried that they might be viewed differently by coworkers or superiors, that they might not be given important or high-profile assignments, or that their disability might be disclosed to others who do not need to be aware of it. It is important the dialogue between employer and employee be as open and ongoing as possible and needed. Due to changes related to disability or job functions, an employee's need for accommodation may alter over time. Employers should be aware that an accommodation request that is granted at the start of employment may need to be modified throughout the course of employment.

Employers should assist with the facilitation of an open dialogue that will enable employees with disabili-

ties to obtain reasonable accommodations and to perform at high levels. Specifically, organizations should determine the process for handling accommodations. To whom should requests for accommodation be brought? What budget should pay for accommodations? Once a person discloses disability, how can confidentiality best be maintained?

Organizations should determine who is best equipped to engage in conversations concerning accommodation. Ideally, this person should not have hiring or firing power over the individual. The contact information for this person should be clearly displayed on websites or documents of the human resources department. This allows an applicant to discuss accommodations that might be needed for an interview, without compromising his or her interview experience. In terms of budgeting for accommodations, a central budget for providing accommodations when requested should be created. In doing so, the organization minimizes the consideration of expense of accommodation in the hiring process, allowing those on a hiring committee to truly select the best individual for the position. Disability should be disclosed only to those who need to know and confidentiality should be maintained when at all possible.

Although the responsibility for requesting accommodations and for beginning a dialogue falls on the employee or potential employee, employers can position themselves as environments open to hiring people with disabilities.

Reasonable Accommodations

Most law students with disabilities leave law school understanding the variety of accommodations available to meet their needs. The conversation about accommodations should begin with the applicant's or employee's experiences with accommodations that have proven effective in the past. When discussing disability and accommodation, the actual diagnosis need not be the focus of the conversation. Instead, a discussion of its impact on the individual will be far more effective. For example, a conversation addressing accommodations for an employee who is blind should center on how documents can be provided in accessible formats.

Examples of reasonable accommodations include: a private office, purchase of software or equipment, additional administrative support, alternate format documents, flexible scheduling, and materials provided prior to meetings. Generally speaking, providing accommodations is not an expensive undertaking. As a result of

advances in technology, individual assistance is largely not necessary. The cost of providing the majority of accommodations is minimal.

When providing a reasonable accommodation entails purchasing equipment or supplies, this conversation should happen as soon as possible. Orders should be expedited so that new employees may begin their positions at maximum efficiency. If a new employee must wait for an accommodation to be put in place, the employer should work with the individual to provide an interim accommodation. Additionally, flexibility in work schedules can greatly aid individuals with several disabilities. An employee may be capable of working a similar number of hours as other employees. However, due to the nature of some disabilities, an individual may request flexibility in scheduling.

Considerations when Hiring Individuals with Disabilities

Unfortunately, discrimination in hiring individuals with disabilities persists. Employers might be concerned about the cost of accommodating or may be anxious about working with people with disabilities due to unfamiliarity. Applicants with disabilities should be judged on their merit and ability to perform the job functions, not on their disability.

In the hiring process, it is best to center conversations

on an applicant's preparation for the position rather than assuming an individual's inability to perform the functions of the job due to disability. The benefits of employing people with disabilities include an increased level of organizational diversity. Students with disabilities who graduate from law school have often faced obstacles to their education, but have succeeded in their educational pursuits. Most law school students with disabilities benefit from their high degree of self-knowledge and the perspective that having a disability can bring to their worldview.

For various reasons, students with some disabilities may have experienced difficulty while in law school. Students might have taken leaves of absence in order to undergo surgery, enter a treatment program, or allow themselves to focus on health without the pressure of school. For many of these students, performance after a leave of absence improves. When assessing transcripts, hiring managers should attempt to understand the whole person and to determine their ability to perform the functions of the position at the time they are applying.

In order to combat this discrimination, hiring managers should aim to consider applicants according to their preparation for the specific position rather than according to disability. Employers who may be interested in increasing their recruitment efforts of lawyers with disabilities are encouraged to participate in the IMPACT Career Fair (<http://www.law.arizona.edu/impact/>), which is held annually in Washington, DC.

CHAPTER FIVE

Employment of Lawyers with Disabilities: Rewards and Manageable Obligations for Employers

The employment of lawyers with disabilities creates rewarding opportunities for law firms, corporate counsels, governments, and other legal employers. It also creates manageable obligations. This chapter is based on the edited presentations of three senior lawyers with management responsibilities with three different types of legal employers, and their responses to specific questions posed and comments made to them after their presentations.

John L. Wodatch, the Chief of the Disability Rights Section at the U.S. Department of Justice, briefly summarizes the legal obligations of employers under the Americans with Disabilities Act (ADA) and its 2008 amendments, particularly what is required by private employers with regard to making their workplaces accessible to clients and the public under ADA Title III (which governs public accommodations) and the Rehabilitation Act. He also explains in more detail the successes his office has had in hiring, accommodating, and promoting lawyers with disabilities.

Michael E. Baillif describes his personal experiences as a lawyer with a disability in the various legal positions he has held, including presently as Associate General Counsel at the accounting firm of Ernest & Young, a tax litigator at a major law firm, and a professor of law.

Walter Smith, as a Managing Partner at Baker Botts, recounts how his personal involvement as the father of a child with a disability led to his law firm instituting a nationally-recognized program for the employment of individuals with disabilities.

Panel Discussion

John Wodatch

"[W]e have in the Disability Rights Section at the Department of Justice: about 45 attorneys, and 25 percent of them have disabilities . . . I'm here to tell you that as an employer of that group of people, they are highly efficient, productive attorneys."



John L. Wodatch addresses the Conference.

Let me begin by noting that Title I of the Americans with Disabilities Act applies to employers, public and private, who have more than 15 employees, which would include most law firms. Thus, discriminating in your hiring practices, on the basis of disability, is a violation of federal law.

Title III of the ADA applies to public accommodations, which includes the office of a lawyer in its description of service establishments. If you are building a new building, making a renovation, or doing any kind of alteration to your physical plant, you have an obligation to do it in an accessible manner. This is important because, by following Title III, your worksite is going to be accessible. So when you have an applicant come to your law firm and you have either new construction or alterations, you would have already made a great deal of your physical plant accessible to them.

Moreover, the ADA requires public accommodations to remove existing barriers using readily achievable means. Title III doesn't apply to employment, but it does apply to your physical plant and how you treat customers who may be coming in, clients who may have disabilities. Whether or not you have clients with disabilities, the statutory obligation extends to you over time to make your physical plant accessible, so that you can receive clients with disabilities.

Also, if by some chance your firm receives federal financial assistance from a federal agency, you would be covered by Section 504. And there are some offices that

might have contracts with the federal government, and you would be covered by a program run by the Department of Labor under Section 503 of the Rehabilitation Act. That program would require you not only to not discriminate in the employment practices covered by that contract, but you would be required to practice affirmative action. That's the black letter law.

I think, however, why I'm here today maybe is not because I enforce some of those laws, but because I'm an employer, and we have in the Disability Rights Section at the Department of Justice about 45 attorneys, and 25 percent of them have disabilities. We have people who are blind, we have people who are deaf, people with learning disabilities, with diabetes, seizure disorders, people with cognitive disabilities.

I'm here to tell you that, as an employer of that group of people, they are highly efficient, productive attorneys. The Disability Rights Section is one of the most productive in the Civil Rights Division, and it is not, in spite of, but because of, those hiring practices.

Yes, we do provide reasonable accommodations, a wide range of them. Frankly, most of the accommodations we provide are not expensive. They may be alterations to work schedules, such as working at home. It may be provision of some accessible equipment: putting a desk up, raising a desk, or things of that nature. There are also accommodations that are more expensive: having interpreters for our deaf attorneys, having readers for people who are blind, or having more sophisticated technology for some of our employees.

Keep in mind the obligation to do reasonable accommodation is limited by the notion of undue hardship. For a federal agency, that's not much of a limitation because of resources of a large entity like the Department of Justice. For a law firm, it would vary. For a law firm with 1700 employees, it would be very different than a law firm with 20.

I'd like to talk a little bit about why this model isn't being replicated across the legal profession, and I think one of the issues, and something that is inherent in a number of the other civil rights laws that the Department of Justice enforces, is really attitudinal barriers. I have two approaches to attitudinal barriers. I'll give you the high road first, although the low road makes more sense.

Supreme Court Justice Anthony Kennedy in the *Garrett* decision said that prejudice rises not from malice or hostile animus: "It may result as well from simple want of careful rationale reflection or from some instinctive mechanism to guard against people who

appear to be different in some respects from ourselves. Quite apart from any historical documentation, knowledge of our own human instincts teaches that persons who find it difficult to perform routine functions by reason of some mental or physical impairment might at first seem unsettling to us, unless we're guided by the better angels of our nature."

The low road are sentiments maybe you've heard in your law firm or in discussions with friends. These basically are that we can't really hire an attorney with a disability. "You know, they can't travel; they can't do anything right in the courtroom; they'll make other people whom they work with uncomfortable; you never know when you're going to say something that's going to set them off or really be the wrong thing to say; and once they're here, we're never going to be able to fire them."

The low road response to this is something I can't say now. So I'll use a Victorian term of "stuff and nonsense." The high road response is that underlying a lot of the nature of discrimination against disabilities is false assumptions and stereotypes about what people can and can't do. I think a lot of it stems from being uncomfortable with people who are different than ourselves. The civil rights movement is a history of this, whether it's dealing with people of color, people whose language is other than English, or people who are gay. I think the history of our civil rights movement is coming to grips with the fact that these differences are not important differences.

I'm optimistic about getting rid of these attitudinal barriers. The real answer, in my experience, is integration. The more that we work and play and live side-by-side with people with disabilities across the whole range of people with disabilities, these attitudinal barriers will disappear, because the attitudinal barriers are based on fear and imagining. The basic assumptions that people have about people with disabilities vanish when working side-by-side with people with disabilities. In my experience, people with disabilities miss less work and have lower turnover rates than those with no disabilities, and that's borne out by studies. The uncomfortable-ness issue will go away with common work experiences and everyday communication skills, talking to people, and learning what they do and how they do it.

One of the benefits of this integration is that it will result in customer service improvements for your clients. For example, General Motors came to us and talked about the difference in their product line and their outreach for people with disabilities once they started having people with disabilities in management

and other positions. Verizon is another entity that changed its product line to meet the needs of people with disabilities once they had people with disabilities working for them. These are benefits that accrue way beyond the fact of having a productive employee who is working for you.

So where do we go from here? Frankly, I think it's about time we stop talking about this and do something, and I guess one thing I want to say to the employers in the room, the law firms, is you need to change your hiring practices. I'd like to talk about it from the point of view of attitudinal barriers. I think you have to examine the unexamined assumptions that you have when you're recruiting, how you are recruiting, where you go, what you think, then take that same rigor and apply it to the actual hiring process, the decision-making process that you have. How are you making those decisions? What are you thinking about those with disabilities? Are there hidden stereotypes that are being done by your managers, by people, by your policies? I think that is the first step in that process.

Finally, I would like to leave you with the thought that if, as employers, you are not considering people with disabilities, there's a whole range of talent in this society that you're not availing yourself of. It's time to start looking at your recruitment processes so that you will have access to the talent that is out there.

Michael Baillif

"My disability was not crippling, but the attitudinal barrier that was placed in my path was. The judge simply was not willing to challenge his . . . unintended prejudices, regardless of how uninformed and misplaced they might be."

I have a vivid memory of a small encounter that occurred some 20 summers ago just a few blocks from here. On that particular day, I was walking to the Metro after having just received a job offer from the law firm where I was a summer associate. I was wearing a pin stripe suit and a fancy tie and I was on top of the world. As I walked down the sidewalk, a man said, "Hey buddy, here" and tried to push some money into my hand. In different ways I tried to decline, but the man was insistent. Finally, not wanting to hurt his feelings or make him angry, I just took the money. Later, I remember shaking my head and thinking to myself, what a world, here I can be all dressed up, but a homeless man still thinks that I'm in such bad shape that he needs to

give me a hand-out.

During my first summer of law school, I interned with Judge Edward Becker on the Third Circuit Court of Appeals, and it was a wonderful experience. As a result, I applied for a number of judicial clerkships. The first judge with whom I interviewed said, "Well, this job requires a tremendous amount of reading, and I just don't think you'll be able to deal with all of the documents and the paper involved in functioning as a law clerk." I responded by saying, "As a matter of fact, I have already worked as a law clerk, just talk to Judge Becker and he will testify that I can do this job and can do it well." The judge responded, "No, I am just not convinced," and I realized that the interview and the opportunity were over before they could get started.

My disability was not crippling, but the attitudinal barrier that was placed in my path was. The judge simply was not willing to challenge his own notions and yes, unintended prejudices, regardless of how uninformed and misplaced they might be. As a result, my Yale law school education, my prior legal experience, and my abilities and capacities that I could have brought to the job, all were summarily rendered irrelevant.

Luckily, the next judge with whom I interviewed was willing to listen and to take a chance on something new. Ultimately, I clerked for that judge for about two years and things worked out very well for all concerned. Also, over the years, I have encountered on several occasions the judge who wanted no part of a blind law clerk, and we have become quite friendly, and, I truly believe that today, if presented with a similar situation, that same judge would make me, or someone like me, a job offer.

I am convinced that things have improved over the years, and that we are making real inroads toward expanding opportunities for the disabled in the legal profession. In fact, last year, I received a call from an executive of a very large company wanting to talk about how she could best assist a valued employee who was legally blind and was in the process of losing additional vision. The executive had no doubt whatsoever that a blind or disabled person could perform well in her department. She was actually taking affirmative steps to help the individual in question overcome some attitudinal barriers of his own and start developing the skills and techniques he would need to continue working at a high level.

I believe that there is a reservoir of great good will within most General Counsel's offices and other legal employers. Often the question is simply how do you do things and how can we help. The reason that this question

can be quite confusing to people is that the answer is at once prosaic and multifaceted. What I mean is that each disability group is fundamentally different in terms of the challenges they face and the accommodations they require.

I have no problem climbing stairs. Someone in a wheelchair has no problem with complex graphs. Someone who is deaf can readily climb stairs and read graphs, but will need accommodation in areas with which neither I nor someone in a wheelchair might have any issues. Each person within a disability group uses fundamentally different approaches, and, therefore, needs different types of accommodation depending upon his or her own particular experiences, abilities, and job functions.

Here's a brief description of the approach I take toward my own work in the General Counsel's Office (GCO) at Ernst & Young. My responsibilities, which are standard fare for a GCO, involve a wide range of activities. During the course of any given day, I might be drafting an agreement, researching aspects of applicable state law, negotiating a settlement, or participating in various aspects of an arbitration proceeding. As a result, I find it most efficient, given the way I work and the diverse nature of my responsibilities, to have a full-time reader. This reader, who is employed by Ernst & Young, reads me everything I need to have read, takes dictation, and assists me in all aspects of my practice. Additionally, I use a small talking computer, where I keep my calendar, phone book, and case notes.

That's all there is to it, and it's not very exciting. With these accommodations, with these tools, I basically do the same things and function the same way as anyone else in a General Counsel's Office as I go about representing my client. Now, I know other blind attorneys who do things totally differently, but this is the approach that I have worked out over the years. I sometimes find myself feeling guilty about how brief and basic the description is when I am contacted by young blind attorneys to discuss such things. It seems to me that sometimes people are looking for the complex answer or the secret formula to success for the disabled in the workplace. In fact, it is just the opposite. The answer is simple, albeit not always easy. The key is for the disabled employee and the employer to team together to determine the accommodations necessary for the employee to function effectively in the workplace, to efficiently implement those accommodations, and then to allow the employee to utilize those accommodations to succeed to the extent of her own ambitions and abilities.

For her part, the disabled employee must accept the primary responsibility of guiding the employer regarding necessary accommodations and must be willing to accept the risk, as the price of equality, of flying or falling in a competitive marketplace without a safety net. For its part, the employer must be willing to provide reasonable accommodations and then to give the disabled employee the freedom to do things her own way, to proceed unhindered by disability-related micro-management, and to succeed to the extent of her performance. That is all that any disabled person can ask.

There is an issue lurking in the shadows, which is the cost of accommodations. In many cases, the accommodations needed to allow a disabled person to work efficiently and effectively are minimal, and that is great. In other cases, as with me and the salary of my reader, there is a meaningful expense that must be incurred. On the surface, I appear to be more expensive to my employer than would be my non-disabled alter ego.

Here's how I have changed that apparent reality. I generally recruit readers right out of college on a two-year term, who typically view the position as a stepping stone to law school or graduate school. They are very bright, highly motivated, have tremendous capacity, and I do my best to put all of that to use. I frequently participate in activities such as conference calls or meetings where I do not need my reader. During those periods, I have the reader performing tasks that enhance my job performance. For example, if I have a two-hour conference call, I might have the reader perform research that I can use when drafting my arbitration memo when I get off the phone. Let's assume that it takes the reader twice as long to do that research as it would for me. Even then, I have completed the equivalent of three hours of work during that two-hour conference call. By being not just an attorney, but a good manager, I can leverage the reader's skills and thereby accelerate and expand my work.

Additionally, I always keep an eye out for relevant administrative work that is being done within our department that I can move onto my own plate. For example, the individual who was responsible for maintaining various internal legal databases recently retired. I assumed that task and it is now performed by my reader during her downtime with appropriate input and oversight from me. This step meant that the department was spared the difficult decision of either assigning the task to an already busy administrative staffer or hiring another person.

By being a creative and effective manager, I use the reader in a way that not only accelerates and expands

my own job performance, but that helps my department. In this way, I am able to take the expense of accommodation, which at first glance appears to be substantial, and reduce its actual economic cost significantly. In fact, I believe that there is a good argument to be made that, if tomorrow, my department replaced me and my reader with my non-disabled alter ego, the firm actually wouldn't save money at all, but would actually suffer an economic detriment.

One thing that has occurred over time that has helped me personally, and that has gone hand in hand with the expansion of opportunities, has been the increasing realization that the disabled, like other minority groups, have a great deal to contribute to the bottom line of a company. You will be hearing shortly about the approaches and outlooks of other organizations, but, as an example, at Ernst & Young, one of our primary global priorities is diversity and inclusiveness. We have taken this step because it is the right thing to do, but also because we have a sincere hardheaded belief that it gives us a business advantage. Because of the flexible and inclusive working environment Ernst & Young creates, we are able to hire and retain the best people from across all aspects of society, including women, racial and ethnic minorities, and yes, the disabled. This realization that people represent a company's most important asset makes Ernst & Young a great place to work for everyone regardless of their particular circumstances and helps create an environment in which everyone can work to their highest capacity without attitudinal barriers and artificial restraints. For both Ernst & Young and its employees, including the disabled, this is a win-win situation that produces tremendous results.

Walter Smith

"Our staff [disability employment] program has become a core element of our diversity effort, one that is fundamentally rooted in the desire to give each individual in our organization the opportunity to succeed to the best of his or her abilities."

It started inauspiciously as a father's concern for one of his children. Eight years ago, my son Jeff, who is cognitively disabled, returned to Houston for the summer. I had arranged a job for him at my law firm, working in the conference center. It was his first job, designed to see how he would manage the challenge of employment. The experiment turned into a major success; he had a great summer.



From left to right: Michael E. Baillif; Noel Nightingale; Walter J. Smith; and John L. Wodatch

Much to my surprise, Jeff's experience proved invaluable to our firm as well. After he left to return to school, the people he worked with told me how they were so positively impacted by the spirit and attitude he brought to the office each day, by his obvious joy at a job well done and his caring nature. As one of his co-workers said: "Mr. Smith, we gave Jeffrey something that he needed, but he gave us something that we needed." It was a transforming moment for me. As a parent of an individual with special needs, I was acutely aware of the positive influence that he had had on my life. What I had not appreciated until then was how that "positive influence" could be experienced by his fellow employees as well.

Based on my son's experience—but even more importantly, based on our employees' response—I asked our staff to establish a program to bring individuals with disabilities into the firm. I asked each of our domestic offices, at a minimum, to hire one person with special needs for a staff position. In each of our offices, the same thing kept happening over . . . and over . . . and over again. We got as much or more out of this experiment as did our special needs employees.

The response from our lawyers and staff to my request has been tremendous. We now have individuals with disabilities filling essential staff positions in all of our offices in the United States, and we are beginning to reach out to other professional service firms to share our experience with them. It just so happens that professional service firms—law firms, accounting firms, consulting firms, and the like—are ideal places to work for individuals with cognitive or physical disabilities. We have a safe and quiet environment that lends itself to training and mentoring. We have a relatively well-educated and caring workforce. But most importantly, we have important work that needs to get done that they can master. And as I often like to say, we're not just helping them

make a living, we're helping them make a life.

Our staff program has become a core element of our diversity effort, one that is fundamentally rooted in the desire to give each individual in our organization the opportunity to succeed to the best of his or her abilities. A very positive consequence of our program has been an increased awareness and focus by our entire workforce, lawyers and staff alike, of an individual's *abilities*, not their *disabilities*. I believe this has contributed to a fundamental and very positive attitudinal change in our firm. We now take pride in how we respect, accept, and even celebrate differences.

Most interestingly, a natural consequence of our staff program has also been an increased awareness among our partners of the potential for hiring lawyers with disabilities, and an increased desire to see that they too have "every opportunity to succeed." I'm very proud that we now have several lawyers with disabilities in our offices throughout our firm, both domestic and international, and I expect their numbers will continue to grow.

Questions and Comments

Under Title III, in addition to removing barriers, there's an affirmative duty to provide auxiliary services. We get a lot of calls about lawyers discriminating by not providing interpreters to clients. It's surprising to us when law firms or the court system are not doing that. I think it's great that the ABA has put something out talking about law firms having accessible websites. That's a big barrier. Another thing to consider would be to have something affirmative about the obligation to provide interpreters for clients who are deaf.

John Wodatch

That's a very good point. I can tell you we have a number of complaints in our office that we are investigating against law firms, some small, some larger. Keep in mind that Title III does not have the 15 or more employees issue, so even a small law firm would be covered by the obligation to provide effective communication for people with disabilities, which could include sign language interpreters, but also could include effective means of communication for your clients who are blind or may have vision disabilities.

Walter Smith

Accommodation is not that big a deal, certainly not for a law firm of our size. I realize we're a big firm, but there are a lot of big firms. One of the speakers earlier today talked about the need to know, to express that an accommodation is necessary. I can't tell you how important that is. There's a lot going on in a big law firm, and a lot happens day to day, and if individuals with disabilities do not speak up, they're not going to get the accommodation that I think in virtually all instances would be made available without any significant problem.

On the question of the billable hour, which we were discussing earlier, I'm wondering if that is something that you've dealt with at Baker Botts yet?

Smith

It's not been an issue. Also, as we evolve on this journey, our goal is to give everybody an opportunity to succeed. We talk about that all the time in my law firm, regardless of position, staff lawyer, partner, whatever. But that doesn't mean everybody is going to succeed. And so dealing with those issues has presented new challenges to us, and we're working through them as we mature as an organization on this journey.

Michael Baillif

I was in a law firm, a couple of them. One in D.C., one in New York for about six years, before starting at Ernst & Young, and I had more billable hours than I care to remember. I think realistically, as much as we all maybe detest the idea, if you're going to go work in a law firm, you're going to be judged by your billable hours, because that's what determines your economic value to an employer.

If I were in an interview and somebody mentioned that to me, I actually would be very glad that they did, in a sense that if that's something on their mind, I would want them to bring it up so I can address it and assure them that my blindness has no impact whatsoever on my ability to bill time. In fact, in my prior law firm, I was the number one billing associate while I was there, which is part of the reason I left. I still think it's not an issue for blind people or disabled people of any sort.

CHAPTER SIX

Best Practices for Mentoring, Retaining, and Promoting Lawyers with Disabilities

Once lawyers with disabilities are hired, law firms, corporate counsels, and other legal employers are faced with the opportunity and challenge of properly incorporating them into the workplace culture. One of the best methods of doing this is replicating the best practices of other employers who already have developed the programs, protocols, and procedures that have worked out well for them. Three successful lawyers with disabilities and a Harvard Law Professor provide legal employers with advice and workplace strategies based on their own rich experiences.

Michael Stein, Professor of Law at William & Mary, Executive Director of Harvard Law School's Project on Disability, and a wheelchair user, presents overarching themes related to the mentoring, retention, and promotion of lawyers with disabilities.

Charles Brown is Director of Volunteer Lawyers for the Blind at the American Action Fund for Blind Children and Adults and is himself blind. He focuses on best practices in the retention and promotion of lawyers with disabilities.

Andrew Levy is the founding partner of a "boutique" law firm in Baltimore, who litigates criminal defense and commercial cases. He discusses his personal experiences as a student who suddenly lost the use of his legs in law school, and as a managing partner making decisions to hire, mentor, retain, and promote lawyers with disabilities.

David Wilkins, who is a professor at Harvard Law School and Director of its Program on the Legal Profession, provides insights based on his many years of studying, writing, and lecturing about diversity in the legal profession, particularly the mentoring, retention, and training of lawyers.

Protecting the Back Door: Retention and Advancement of Lawyers with Disabilities

By Charles S. Brown, Director, Volunteer Lawyers for the Blind, American Action Fund for Blind Children and Adults

"Too often discussions about lawyers with disabilities involve negative expectations and unproven assumptions about concerns like 'billable hours.'"

When it comes to diversity, it is often observed that most legal employers put more effort into hiring—the front door—than they put into retention—the back door. I am convinced that this is especially true for lawyers with disabilities. I cannot pretend to offer back door solutions based on scientific studies. Instead, my observations here are based on a lifetime of blindness, almost forty years of law practice, and conversations with a multitude of lawyers with disabilities.

It is safe to say that disability means different things to different people. Some see it as synonymous with deficit or inability, while others see it as merely a characteristic. An employing organization's concept of disability will make a huge difference in dealing with the back door question. Most folks still assume, at least subconsciously, that disability involves some form of inevitable inferiority, regardless of what the law may say. On the other hand, former EEOC (Equal Employment Opportunity Commission) Commissioner Christine Griffin views disability as "just another characteristic that lends dimension to the human experience."

I understand that my blindness helped make me the person I am. Yet, I am not defined by blindness any more than I am defined by numerous other characteristics. My disability does not make me "amazing" or "courageous"; nor does it make me inferior.

To the extent that we can internalize the concept of disability as a characteristic, we will be ready to take on the task of retaining and promoting lawyers with disabilities. It should help us put the back door focus squarely where it belongs, on integration. Integration is much more than the physical placement of people. In his landmark article *The Right to Live in the World: The Disabled and the Law of Torts*, Professor Jacobus tenBroek placed heavy emphasis on integration as the answer to

questions regarding disability rights. He defined integration as “a policy entitling the disabled to full participation in the life of the community and encouraging and enabling them to do so.”¹

Is your organization’s law office “community” truly “encouraging and enabling” the integration of your lawyers with disabilities fully into its life? In a 1987 speech, National Federation of the Blind President Marc Maurer described the early days of his legal career in a relatively large law office at the Civil Aeronautics Board:

My assignments were almost always routine. If there was a trip to London for an international negotiation, someone else was asked to go. If a hearing officer needed to take testimony in a small town to determine the feasibility of air service, I was never sent. These assignments . . . were highly prized Sometimes there was not enough routine work to fill my day. So I was left to occupy my time as I chose. My superiors would have been content if I had spent my time listening to the radio or reading . . . but I would not have been content. I did not want the rest of my life to be a sham and a deception Discrimination is not necessarily confined to the job interview or the entry level. It can also happen after employment is permanent and safe.”²

Too often discussions about lawyers with disabilities involve negative expectations and unproven assumptions about concerns like “billable hours.” Many automatically assume, without question and without proof, that disability means slow. Yet we know that no two lawyers billing at the same rate will perform exactly equally during a given hour—disabled or non-disabled. To contend otherwise would defy logic. It is my experience that disabled lawyers will fit within the established and accepted spectrum when it comes to speed. Some will be on one end, some on the other end, and most somewhere in the middle. A focus on integration should help employers avoid making invalid assumptions about disability and, instead, treat all of their lawyers as individuals.

To me, integration implies recognition that lawyers with disabilities have the same need and right to be challenged as their non-disabled colleagues. There is no real opportunity for success without the possibility of failure. Here, both the employer and the lawyer need

to know what the “job” really is, in specific terms, not vague generalities. What is expected? How will successful and unsuccessful performance be measured? Famous last words—“I did not realize they wanted me to” Make sure there is open, honest, and candid dialogue from the start.

One aspect of ensuring that disabled lawyers are challenged involves making sure to address any less than satisfactory performance issues sooner rather than later. For instance, if you would tell non-disabled lawyers that some aspect of their written work needs improvement, don’t be squeamish about taking similar corrective action in dealing with lawyers with disabilities. It is not helpful to succumb to the natural urge to coddle a lawyer, thereby accepting incomplete performance based on an assumption about the lawyer’s disability. Pity works at cross purposes with the integration process. It is almost always wrong to assume that disability is the cause for some mistake or other; and that the problem, therefore, cannot be solved. Problems that are not addressed do not go away, but lawyers with disabilities facing paternalism and inadequate feedback probably will go away.

A lawyer with a disability should have the same opportunity to stretch and develop as others. Guess what? Some will do better than others—just like non-disabled lawyers who are challenged on the job. For example, lawyers often work in teams on projects. We ought to recognize that a disabled lawyer may well prove capable of leading such a team.

Unlike the stock market, a lawyer’s past performance is usually thought to be a good predictor of future performance. Sadly, however, that is too often not the experience of many disabled lawyers working in large organizations. For example, at a recent conference, a well-known disabled lawyer said that he left a prominent big-city law firm because he was forced to re-prove himself every day. Even with excellent performance reviews and even though the partners for whom he had worked vouched for him, other partners remained skeptical. They were hesitant to assign him work, citing disability-related reasons—complexity, volume of work, or whatever. How could someone with his disability possibly handle this, that, or the other thing? His non-disabled colleagues with similar performance records did not have to face this constant skepticism based on negative assumptions. Some might call this discrimination; it was certainly not integration.

Earlier, I alluded to the importance of dialogue in the integration process. Dialogue can be promoted by good

1. 54 CAL. L. REV. 841, 843 (1966).

2. Marc Mavrer, *Back to Notre Dame*, 30 BRAILLE MONITOR 429, 432 (Oct.-Nov. 1987).

mentoring. However, a formal mentoring program is no magic bullet that will automatically eliminate back door issues. Successful mentoring is so relationship-dependent that it does not always work as intended. A mentoring program just for lawyers with disabilities also risks becoming stigmatic. If so, the program could actually work at cross purposes with the goal of integration.

Finally, I recommend encouraging lawyers with disabilities to become involved with groups of people with disabilities that share positive attitudes. This will allow lawyers with disabilities to network and exchange information and practical ideas with others facing similar issues. These organizations hold meetings, conventions, and other gatherings featuring exhibits and seminars on the latest and best technologies and methods. They also have active Internet resources.

Much of what I have learned about new technologies and alternate techniques I use in my work came as a result of my active participation in the National Federation of the Blind and the National Association of Blind Lawyers. This is, of course, a sort of mentoring, but it is the sort of mentoring that comes naturally when we all get together. Such involvement offers benefits both to the lawyer with disabilities and his or her employer. Yes, some will not want to join disability groups; and employers should not force the issue. To do so would probably be counterproductive. It is a free country; and, after all, we realize that some lawyers don't choose to join the American Bar Association. Go figure.

Panel Discussion

Michael Stein

"[W]hen firms promote and retain persons with disabilities, the people in power are saying those individuals are equal to us, they belong in the club, they are valued."

I have a very clear recollection of when the ADA was passed and I was working in a Wall Street law firm and all the national and New York legal magazines, which addressed the ADA, spoke about what you should know about the ADA. In other words, how you can defend your clients. Not a single one of those legal newspapers thought about the ADA as a vehicle for hiring lawyers with disabilities, thought about it as a vehicle for having clients with disabilities and accessible work environment. Thus, it's really a pleasure that not so many years later here we are, not at the first but at the second conference on hiring lawyers with disabilities.

So we've made progress. Perhaps not fast enough but we've made progress, and the issue of mentoring, retaining, and promoting lawyers with disabilities is even more difficult in some ways than the issue of hiring lawyers with disabilities because we know from the context of race, gender, sexual orientation that as wonderful and terrific as it is to get people through the door, it's even harder to keep them within the house and to promote them.

It's one thing to hire people with disabilities, because if you're a firm and you're going to hire multiple individuals, the fact that one of them happens to have a disability, although it is significant, is not the same as promoting and retaining them, because when firms promote and retain persons with disabilities, the people in power are saying those individuals are equal to us, they belong in the club, they are valued. And that's a much more difficult thing to achieve. Also, the issue of mentoring, retaining, and promoting, as many panelists pointed out earlier today, also raise issues that are slightly different than pure prejudice or attitude changes.



From left to right: David B. Wilkins; Andrew D. Levy; Charles S. Brown; and Michael A. Stein

The issue of having someone retained and promoted also raises much deeper issues of workplace culture. The five years when I was lucky enough to practice on Wall Street, it wasn't so much what you looked like in terms of skin color or sex or orientation or disability, but rather it was did you look like them in the sense of did you wear French collars and cufflinks? Did you go out drinking on Friday night? Did you contribute to the same types of charities as they did? Did you absolutely, positively never complain about the hours that you worked? That was the work ethic. You just did it and you didn't complain. So there are much deeper issues which can only be raised to people with disabilities with strong mentoring.

Andrew Levy

"I was blessed with a number of excellent mentors who treated me, as near as I could tell, like they treated everyone else."

There is an unstated premise that the mentoring and promotion of young lawyers with disabilities somehow presents issues that are fundamentally different from the mentoring of any other young lawyer. I'm not sure that I buy into that. Yes, there are issues associated with having a disability, and I would not pretend to anyone here that that's not the case.

When I first began using a wheelchair at age—I think I was 21 or 22—I was at a family function and was speaking to a couple of my elderly aunts and they asked what kind of law I wanted to practice. I proudly responded that I wanted to be a litigator. And I could sort of see the disproving glances that they exchanged, as though I had just said to them I want to be a circus acrobat. I thought "Why should someone who is a wheelchair user not be a litigator? What is it that a litigator does that is inconsistent with that?" And yet it was obvious to them that it was an oxymoron: this disability and that vocation.

At the end of my first semester of law school during exams, I developed a central nervous system infection. So I spent eight months in the hospital. I was discharged in August right before what was the beginning of my second-year, having missed a semester of law school. Immediately upon return to school, I was faced with the second-year interview process for the following summer's associate program. I didn't know any better, so I put my resume into whatever firms were yet to interview. I got some interviews.

I ended up getting hired for the following summer by a big Baltimore firm that considered itself sort of cutting edge and thought I was suitably exotic—that it was kind of cool. They didn't really know what to make of me but to their credit figured how hard could this be? At the end of the summer I was offered a permanent job upon my graduation, and I took that, and I spent ten years at that large law firm and ultimately made partner.

Despite the size of the firm, in the course of any given day, one really only deals with a limited number of other lawyers or other people at the firm. I was blessed with a number of excellent mentors who treated me, as near as I could tell, like they treated everyone else. When a new matter came in, when a new associate was needed and it was my turn on the selection wheel,

the head of litigation would come into my office and ask if I had enough time to handle another file. Well, of course, there was only one acceptable answer to that—"sure, you bet." I understood that, and fortunately I never screwed up so badly that it couldn't be fixed.

Eventually clients became devoted to me. However, ultimately after making partner I decided that I wanted a smaller shop, I wanted to do more litigation, I wanted to get into court more often than I could in a large law firm. I ended up going with a very small law firm that is today Brown, Goldstein & Levy, LLP, where it will be 20 years come next April. So I am now in the position as a partner of that firm, a smaller firm of 16 lawyers. I have a lot more say about what goes on, who we hire, what we do than I did at the larger law firm.

So, having had the experience of being an entry level associate and then an entry level partner—which was not much different from being an associate at a large firm, I came to find out—I now was in the position of hiring and being responsible for the mentoring, the promoting, and the retaining of lawyers. I must say, it's one of the hardest things I have ever done.

Every single lawyer is different, whether they have a disability or not, and all that is necessary—to get into law school, to get out of law school, and then to pass the bar—is pretty difficult. Stupid people can't accomplish that. So if someone is having difficulty doing the work, there has to be an explanation. It may be something simple that can be fixed or maybe it's something you have to figure out.

Most often, though, in my experience, the principal reason people don't succeed in a law firm is that they would prefer, whether they realize it or not, to be doing something else. I will never forget that the measure of one's worth is not necessarily whether they happen to succeed in a particular situation.

I'll never forget having an associate, whom I recruited from my previous firm, who happened to be an African-American woman. After a while, things were not going well. Ultimately, we had a heart-to-heart about maybe she would prefer to be doing something else. She said, "Oh, thank God, I've been miserable for a year, but I felt so indebted to you for having given me this opportunity. I just don't think litigation is what I like doing." She ended up taking a different career path in the governor's cabinet and doing a variety of things that she has succeeded in far beyond where she would be if she were still working at my law firm.

So, I say to all of you out there that if what you want to do is work for a firm or some sort of a large

organization, eventually that will happen. But keep in mind that the beauty and the glory of a law degree, and the sort of training involved in getting a law degree and in passing the bar, makes you suitable for a wider variety of different applications than just about any other degree or training there is out there. So, particularly in this job environment, broaden your sights and the alternatives that may be available to you.

David Wilkins

“That means you better not be overlooking any area of talent. There just simply aren’t enough able-bodied, white, Anglo-Saxon men of means to go around. So you better figure out who the population of lawyers is now.”

When I first started talking about mentoring, retention, and training at ABA conferences—23 years ago—people would say, “Oh, yeah that’s great for those women and minorities. They need mentoring and training, but, you know, when we were all men, we never needed anything.” But then, of course, a funny thing happened: it turned out that mentoring and training became something all associates needed and that retention became the single biggest watchword in the legal profession.

So why care about retention? In 1970, there were 100 lawyers in their 50s for every 125 lawyers in their 30s. In other words, there were 25 percent more lawyers in their 30s than lawyers in their 50s. By 1985, it became 100 lawyers in their 50s to 290 lawyers in their 30s. There was a huge expansion in the legal profession, which basically doubled in size from 1960 to 1985 and again from 1985 to 2000.

Do you know what the percentage is today? As of 2005, there were 100 lawyers in their 50s for 128 lawyers in their 30s. In other words, the ratio of younger lawyers to older lawyers is basically the same as it was in 1970, and the projection is that, by 2015, the ratio is going to be 100 lawyers in their 50s for 105 lawyers in their 30s. In other words, one-to-one.

Now, if I was teaching this in the classroom, I would ask what difference does this make for the legal profession? And because you’re really smart, you would come up with three answers. First, you would ask what in the world are we going to do with these old geezers? Meaning that one of the biggest issues the legal profession is facing is the graying of the population of the “baby boomers” who are not likely to disappear gently.

The second thing, though, much more important for our purposes, is you better figure out who the new

lawyers are and what they want, because there are a lot fewer of them to go around and the demand for them is much greater than it’s ever been before. That means you better not be overlooking any area of talent. There just simply aren’t enough able-bodied, white, Anglo-Saxon men of means to go around. So you better figure out who the population of lawyers is now.

And third, you better figure out how to manage an organization that has all these people in it. This is what I like to call the culture wars because the organizations by definition are going to be increasingly diverse and if they’re going to work effectively, you’re going to have to figure out how to make that diversity a strength.

What do we know about retention? Well, we know that with respect to the integration of any group that retention is key and we know this because of the experience of women. Women have been more than 40 percent of the entering class of associates at law firms since the mid-1980s. Yet women are still only about 17 percent of the partners in large law firms and if you only look at the equity partners, a little bit harder to get that statistic, it’s got to be more like 13 percent or 14 percent. So having said the demographics are changing, the idea that simply changing the demographics at the entry point is going to change the composition of the organization is not true. You have to retain the people as well as just hire them.

We also know that mentoring is the key to retention. If I asked my students “What do you learn about actually practicing law from law school?” the answer would be “nothing.” So how do you learn it? Well, you have to practice. And the only way you’re going to get to practice it is if somebody who already knows how to do it gives you the opportunity to learn from them and gives you experience with clients who will let you practice—hopefully not screwing up so badly that it causes malpractice. Everybody needs to practice and everybody needs to make mistakes.

So, mentoring is the key to retention, and the key to mentoring is the work. Formal mentoring programs are nice, but going out for a beer with somebody, socializing, having lunch is never going to make you successful in the legal profession. No one makes partner or is promoted because they do good lunch. Maybe that used to be the case, but it’s no longer because the world is getting increasingly competitive. So, it’s all about the work. You have to get access to the actual work and the opportunities that work presents, including the opportunity to fail.

What do we know about how work is distributed?

Well, these are environments in which everyone is under tremendous pressure, and it only gets worse when you become a partner and you're responsible for keeping the doors open. That means that people are making decisions about who to give work to under conditions of very limited information and very high stress. And there is a ton of empirical data in social psychology about how people make decisions under those circumstances, which is, they make them by giving the work to the people they feel the most comfortable with that will get the work done on time.

Who is it that they feel most comfortable with? Surprise, surprise, it's people who remind them of themselves. After all, I succeeded and I'm great; so therefore, somebody like me is likely to be great and succeed as well. Also, I'm likely to get along with them, I'm likely to feel comfortable with them, and it will make it easier for me to work with them. Now, you don't have to say that this makes you a racist or a bad person. It makes you human because if you're honest with yourself, you do it, too. It's just a natural human tendency, but it's a human tendency that we have to begin to fight if we're going to actually accomplish the goal of the organization, which is to create a working environment in which different kinds of people can succeed, because otherwise we just don't have the bodies to go around.

So, how do we begin to do that? One very, very important thing is to study the experiences of different groups of people. That's partly why we know so much now about mentoring, about work assignments, and how organizations work—because we study them. We launched the first ever career study of Harvard Law School graduates, asking members of the classes of 1975, 1985, and 2000 how they succeed; how they got work; and what their goals and aspirations were. For the first time, we're also asking about issues on disability and how these disability issues interact with other issues, whether it be race, gender, religion, or age. In other words, we don't want to focus on disability by itself, but rather, examine how disability interacts with a whole range of other things that happen to people that might affect them in their career, so that we can learn from it.

The second thing is that organizations make progress on issues that they dedicate resources to. All

the good talk in the world doesn't accomplish anything unless the organization is willing to put its money where its mouth is. An organization has to commit the top management, and in a law firm that is generally the managing partner. Every time you see a managing partner, like you do at an event like this, that's a huge plus because that's saying that a managing partner is making a commitment to the issue.

It also often helps to have dedicated specialists who can actually think about the issues. Now, they don't have to be specialists in disability. They might be specialists in issues of retention or development or issues having to do with how people get integrated into a law firm that work across a range of issues. But if you have somebody who pays attention, then that person can help to drive organizational change. It helps to have people network together at both the individual and organizational levels, like at events such as this one.

Moreover, it's very important to understand how these issues fit into the overall strategy of the organization. If it's off to the side—if there's dollars over here and diversity over there, it's never going to work. It's only going to work if it becomes integrated into the overall strategy. This does not mean that the only way to talk about this is with respect to the economic bottom line—because having studied race, I can tell you there's a lot of counterproductive things that can happen when people exclusively view diversity as being good for business. Otherwise, members of diverse groups can feel marginalized. They feel the only reason you care about them is because of that thing that you're defining them by, which is only one part of who they are.

Finally, billable hours probably are not going away, but it is being transformed. Clients are putting substantial pressure on law firms to show that they are providing value. Yet, there are different ways in which people create value. Some may be much faster in doing work in the standard billable hour format. Others may be providing different sorts of value to the organization by awakening it to possibilities that it might not otherwise see. Increasingly, people are looking to see how do we maximize talent and what are the different ways in which we can think about measuring and evaluating talent. The organization that figures that out the best is the one that's going to succeed the most.

CHAPTER SEVEN

Creating the Most Inviting Workplace for Lawyers with Disabilities

Continuing with the theme of revealing the best practices for legal employers, this chapter delves into concrete ways to make the workplace more inviting and productive for lawyers with disabilities. It draws on the knowledge of three experts in a roundtable exchange of their ideas and perspectives, followed by extended portions of papers each one of them prepared for this occasion.

Will Grignon, a member of the ABA Commission and a former major law firm associate who is blind, introduces the topic, poses key questions, and writes about lawyers with invisible (non-apparent) disabilities.

Eve Hill is a former ABA Commission member representing the Burton Blatt Institute of Syracuse University and a lawyer with a non-apparent disability. Based on a national case study of corporate disability culture, she explains how lessons learned from this corporate study can be applied throughout the legal profession to improve disability diversity.

Walter Lohmann is a co-chair of the diversity committee and a partner at Kirkland & Ellis. His presentation is based on his experiences as a partner, co-chair of the firm's diversity committee, and a mentor to law students, associates, and partners from diverse backgrounds, including lawyers with disabilities.

Panel Roundtable

Will Grignon

"[C]orporate culture is like obscenity—you know it when you see it."

In this session, we're going to talk about corporate culture, but as some experts have said, corporate culture is like obscenity—you know it when you see it. I came up with an acronym for culture. It's collective understanding leading to unspoken rules and expectations. It's what the young associates refer to as that secret body of knowledge that everyone seems to know except for

them, and then you talk to them, the senior partners, and they have no clue either.

Disability is treated sometimes as an obscenity, and the Greek word for obscenity, *ob skena*, literally means "off stage," that it cannot be shown on stage. This is fitting because disability has been traditionally "off stage," until recently when you go to everybody's websites and diversity is spread all over everybody's websites. However, there is a disconnect between the website promise and the law firm or nonprofit reality. Unspoken rules and expectations are working against a lot of these initiatives.



Session V panelists engage in a roundtable discussion.

I'm sure many of you have had massively expensive consultants come in and have had rollouts and initiatives. It's trumpeted, but three months later it's sort of petered out. We will contend that that initiative or rollout has come against your inherent or intrinsic culture and to discuss corporate culture and how we can analyze it and change it and make it more welcoming for not only lawyers with disabilities, but for all diverse candidates and, by extension, for everyone in the law firm, making it a better community for all.

Eve Hill

"Making accommodations available to more people with disabilities, as well as without disabilities, will encourage

all employees to ask for the things that they need to do the best work that they can do.”

The institute where I work has been doing research on corporate culture—how inclusive policies can be integrated into corporate culture to make a difference for including employees with disabilities. We found that a number of different policies and approaches about corporate culture can support inclusion of employees with disabilities. Since law firms are much like corporations, this stuff should apply just as well to law firms as it does to other employers. Preliminarily, we found a number of policies that make a difference.

One of those is assigning mentoring relationships. We tend to think mentoring will arise organically and people will find each other, and it turns out that mentoring is really important—that’s how you learn what the unspoken rules are. And it doesn’t always happen naturally, and particularly it doesn’t always happen naturally for the people who are different from everybody else in the firm.

Imagine being the first African American at your firm, the first woman at your firm, the first person with a disability at your firm. You might want to have a system already in place where everybody gets a mentor, rather than assuming “I’m sure someone will be willing to talk to that person.” Create more formalized mentoring relationships so that people really do get a mentor and can learn what those unspoken rules and expectations are.

Another thing is taking a more expansive approach to accommodations. We tend to look at accommodations in a very “what we’re required to do by the law” approach. We’re required to “accommodate a person with a substantial impairment of a major life activity if accommodation is reasonable.” The only people who are going to ask for that are the people who really need it, who can’t do the job without it. So, you’re going to get a lot of people with and without disabilities, who could do way better if they could get some kind of accommodation, but aren’t going to ask for it because you’ve got really strict rules about who gets them.

Taking a more flexible approach to accommodation that allows people to get what they need to be the most productive lawyer that they can be is another way to look at it. Making accommodations available to more people with disabilities, as well as without disabilities, will encourage all employees to ask for the things that they need to do the best work that they can do. The research we’ve done so far indicates that those kinds of policies and approaches lead to better employee morale, reduce attrition, which is a big cost for companies, and

lead to more inclusion of people with disabilities.

Also, only talking about accommodations with the people that you know have disabilities discourages people from getting accommodations and makes it a less inclusive atmosphere at the firm. For one thing, you actually don’t know who all your people with disabilities are. I have a disability and nobody can tell. So, by not talking to me about it, I’m probably thinking, “Oh, this place really doesn’t like people with disabilities because they’re not being very open,” so talking about disability policy to people you don’t know have disabilities can make a big difference.

Finally, buying into disability inclusion at the highest levels and in the most public ways is important. We should talk about inclusion, including disability, all the time, and we should track those with disabilities. What gets counted makes a difference, and law firms and companies are very uncomfortable about the idea of counting their employees with disabilities: “We’re not supposed to ask!” And that’s correct, you’re not supposed to ask, but for affirmative action purposes you can ask, if you are clear about what the purpose is and you’re clear about confidentiality.

You can’t have a survey that says “if you have a disability please tell your supervisor so that we can count you,” so be really careful about that, but you can count, and that’s what gives you the ability to say, “Oh, no, we don’t have anybody, maybe we should work on this.”

These are really preliminary findings. We’ve done it with a fairly small number of companies but very different kinds of companies in very different locations, and we would like you all to participate, too, regardless of what size your firm is or what type of firm it is. This is one of those benchmarking opportunities that Will was referring to where entities will come in, charge you \$100,000 and do all this for you. We do it for free, because we want to include the results in our research so we can then advise others. So we can come in and benchmark your policies, survey your employees, figure out what’s working and not working, and hopefully identify things you can brag about.

Walter Lohmann

“The visibility and priority given to recruiting and retaining disabled lawyers lags behind that given other diverse communities.”

Speaking from a large law firm perspective to the issue of providing a welcoming culture and environment for the disabled lawyer, I see things to be encouraged about

and things that will continue to challenge us. On the encouraging side, I think that at many large law firms, the whole diversity committee culture has paved the way toward creating an atmosphere in which recruiting and retention is a priority. We're already in the second generation of diversity-related efforts. We're the first focused on creating committees and writing policies and hiring professionals so that firms can say, "Yes, we do diversity". This second generation, at least some of the more enlightened firms, want to refine the culture of their firms by getting people all the way up and down the organization motivated to be supportive.

In our case, our partners are now being compensated upon their contributions, and so it moved beyond the "Holy cow, we need to form a committee!" into what is a very productive phase from the diversity perspective and how far that has come, and some concrete mechanisms that we can use to recruit and work to retain diverse lawyers generally and disabled lawyers specifically. Diversity mentoring programs, pipelining committees, administrative departments in support of diversity inclusion, I think are outstanding.

Second, we need to work harder to connect our disabled lawyer community and law student community with those mechanisms, but I think the mechanisms exist. I think leaders are emerging both within the firms and outside. People such as Will, the National Association of Law Students with Disabilities, those behind the IMPACT career fair, will continue to demystify the disabled lawyer in the eyes of the law firms.

So I think we have a fertile environment established, but on the challenging side, there are a few things to observe, I think. The visibility and priority given to recruiting and retaining disabled lawyers lags behind that given other diverse communities. I liken it to the firm's lack of appreciation of issues facing racial and ethnic minority lawyers 10 years ago and GLBT (Gay, Lesbian, Bisexual and Transgender) attorneys five years ago. To some degree, firms have come to know and embrace these other communities of diverse lawyers, and similarly embracing the disabled lawyer community is a step up in the evolution of diversity issues.

Further complicating the issue is the fact that the disabled lawyer community is relatively small yet very complex, very multifaceted. Cookie cutter, one-size-fits-all approaches don't cut it. Personalized strategies are needed and that's always challenging for big law firms, and I think that simple adaptation of policies and programs developed for other numerous communities may be unsuitable to this community. I think the needs are relatively unique.

And I think our process is complicated further by the levels of self-identification and the perceived awkwardness of discussion of accommodation needs. That challenge is exacerbated by the competitive atmosphere and culture that exists in major firms. Many diverse lawyers and certainly lawyers with disabilities believe they're putting themselves at a disadvantage by self-identifying and seeking to take advantage of accommodations. It's a real issue.

Diverse lawyers generally, and disabled lawyers specifically, feel like they need to be better, smarter, more aggressive, generally tougher than the majority of their lawyer peers. I think the recession doesn't help. We need to be extremely vigilant about maintaining focus and resources on recruiting and retention of disabled lawyers against constantly shrinking budgets. And perhaps most importantly, traditional score-keeping methods for diversity achievement, the minority scorecard, rankings, the initiatives, client requests tend not to focus on disabled lawyers, which removes the bean counting incentive that motivates so many law firms.

But I think all these challenges are very similar to those faced in earlier generations of the law firm diversity movement. And they've been overcome to some degree in those other communities. So, I have no doubt that the same will happen with regard to the disabled lawyer community, we just need to continue to work at it, make it a priority, to some degree by adapting other policies and mechanisms to this community and to some degree by developing approaches unique to this community. We at my firm and other firms look forward to working with the ABA and others to build metrics against which law firms can measure progress and do what they do best, which is compete with one another.

You need a buy-in at the top levels. The leadership has to be behind this or it's not going to go anywhere. Is that an important aspect in your research?

Eve Hill

Absolutely. The top leaders have to talk about this in a variety of different contexts. That's how it filters down to everyone else, and then you have to make sure there's training for both top leadership and intermediate leadership so that the principles can be applied, so they can carry it with them and really talk about it and show people that they know what they're talking about.

Walter Lohmann

The commitment to diversity as a general matter and recruitment and retention of traditional diverse groups

is strong and very articulately expressed at the highest levels of the firm, some having gotten to that view because it's the right thing to do and some because our clients absolutely day-to-day are demanding it.

I think our challenge is to adapt that commitment, which is very clear and very express, to the disabled lawyer community, which as I've said is the next challenge. I think we focused on racial minorities. I think we've made wonderful progress in the last several years with regard to LGBT lawyers, and I think to some degree the next major challenge is to do, for and with disabled lawyers, what we've done with the first couple of generations of diverse communities and be able to adapt the commitment to that.

Literature refers to “chiefs and champions.” We need the chiefs at the top, spreading the good word and you need your champions throughout your organization, carrying out and ensuring that this is permeated throughout the whole institution or organization. How do you combat cultural inertia or just plain backlash that you might encounter in your organization?

Hill

If your top levels are talking about diversity and including disability that filters down, people pick up on that message. It's written into your diversity plan so every time you see it, that message carries out. Also start to incorporate this into actual policies. So if we're going to judge a supervisor's performance based in part on the low level of disability and other diversity complaints that their departments get on treating reasonable accommodation as a positive thing—How many of those did you authorize this year and how effective were they and how did you follow up on those?—incorporate those things into the things that we track, that we count, and that we count as part of the manager's performance, that is the way to make change real. Then people really get that message when they have to fill out the form every year that says “what did you do about this over the past year,” they stop wanting to go, “Oh, well, I didn't really work on that.”

Lohmann

In the “old days,” you would have heard from some people that a law firm is a meritocracy, a free market system, that any attempt to give support to one community or another is antithetical to the meritocratic approach to a law firm. However, I think we've gotten over that. There is an awareness that there are people who haven't arrived at law firms with obvious champi-

ons—people who went to the same law school as them, have the same gender as them, travel in the same circles, or have the same background. Therefore, I think it's more a matter of just making sure that everyone has an opportunity to have a champion in the same manner as the traditional majority lawyers have.

Hill

Lawyers in the previous generation assumed that they were born knowing how to be a lawyer; that there was something that went with whiteness and maleness that was appropriate for lawyerdom; and we've learned that was a great deal of privilege that those people carried that the rest of us don't necessarily have and that those with privilege might have to give up some of that privilege in order to let the rest of us participate in the profession.

In my experience, lawyers aren't born good mentors. They're actually pretty lousy mentors and they're not born natural managers. How do you assure that these mentors know what to do and that they're actually doing what they're supposed to be doing?

Hill

The idea that lawyers are not good managers or good mentors is a cop-out. It's like saying, “I can't actually learn to use the digital calendar. Gee, you'll have to give me a full-time secretary.” Thus, you're already accommodating people, you're just not calling it that. But you can learn to be a manager. There are classes. Some of them are good, and if you take it seriously, you can learn how to do this.

If we, as lawyers, can learn how to do client development and fundraising in the nonprofit world, mentoring is easy. The key to mentoring is to schedule it and show up. Don't keep rescheduling. Even if you're bad at it, show up. Schedule it, keep the appointment, make it important, and keep doing it, even if you feel awkward at first. That's elementary.

Begin by talking about something, anything, in order to build a personal relationship. Then start talking about what the new guy's experience is at the law firm and encourage the mentee to ask what might seem to be stupid questions. This is how someone learns about those unspoken rules that have never been written down. They need to know, for example, that if they show up to work at 7:00 A.M., and think that their going to get credit for face time, that nobody else shows up until 9:00 and so nobody knows that you're here.

First was “buy-in,” that everybody has to be on the same

page and committed; that it has to go from the top down and distributed throughout the organization. The second is “tie-in,” in that some firms are now tying performance evaluation and compensation or promotion to actual diversity-related activities or task completion. Can you address that tie-in?

Lohmann

Law firm partners really get to the bottom line issues very quickly. There’s a certain population of law firm partners who are attuned to diversity and inclusion and gravitate to it naturally, and I think there are some that need to be led. The best incentive that I can think of is to do so through the review process. At our firm, we’ve succeeded in the last couple of years to have our lawyers at all levels evaluated in part based upon their contribution to diversity efforts and they’ve gone the further step of requiring those partners in their self-evaluation memorandum, which is the basis for the review system, to account for their contribution to our diversity efforts.

That puts the responsibility on the diversity committee and the diversity leaders to articulate to the partners what they can do, to be involved, how they can contribute, because to some degree they can be clueless. So I think it requires give and take. They’re now being told that their performance is going to be evaluated in part on their diversity contributions, but we need to step up and give them a tool kit of different contributions that they can make.

One of the challenges is that lawyers with an invisible disability are oftentimes very fearful to disclose. Have you found any concrete ways that an organization can enhance or provide a safe place for disclosure in the workplace?

Hill

First is making accommodations not so scary or rigid. Reduce it to just a certain group of people process. One of the best practices is to centralize accommodation funding, centralize the process for requesting and obtaining reasonable accommodations, and it turns out that that seems to cut both ways. It seems to be a good thing to centralize funding for accommodations, but it doesn’t seem necessarily to be a good thing to centralize the request and approval process.

Managers who really understand disability and understand accommodations are taking the approach that it is a way to make everyone the most productive that they can be. This is a better way of providing accommodations that will actually work and be accepted both

by the manager and by the rest of the team.

It’s important to invest in those managers so that they will figure out what accommodation will work with the person, make sure it does work, and work with the team to make sure it doesn’t end up with the person being blackballed or being treated poorly. This is a much better approach than putting the responsibility into a separate group of experts who will run the math and pop out an accommodation that may or may not work in that particular context.

Lohmann

I think that it gets down to the management level very quickly. I don’t think our firm or other big firms have done a particularly terrific job at this, but I think, once strong partner-associate, management-subordinate relationships are developed, and communication and trust improves, and informal mentoring occurs, then communication can flow with regard to hidden or invisible disabilities, so that accommodation can be sought.

There are lawyers that I’m acquainted with who clearly possess a very visibly apparent disability, but who haven’t self-identified. This goes back to this sense that one can’t show weakness, one can’t show vulnerability in a law firm culture, and I’m hopeful that through education and through management training and through sensitivity at the micro, person-to-person level, we’re going to get broader acceptance of accommodations.

Hill

The other thing that we have tried, but has not worked particularly well, is to establish affinity groups, including those for lawyers with disabilities. We have them for a bunch of different diversity groups of people but they often turn into just a complaint session, which just makes it harder for the firm or for the company. It ends up with people with hidden disabilities not wanting to be associated with that group. If they are to work, those affinity groups have to be done well and managed productively in order to turn out to be something that makes the workplace more open and safer for persons with disabilities.

Each panelist will present several concrete, doable, and readily achievable steps that he or she thinks can assist an organization to improve or enhance their culture vis-à-vis disability.

Lohmann

1. Be visible, engage in challenging law firms, corporations, nonprofits, the government in a

conversation about disability issues generally, and on a very personal level as well.

2. Continue to create metrics that law firms through their clients are motivated to meet and benchmark those metrics. Law firms love contests of any kind, and if we can motivate people through the creation of metrics and recognition systems, I think that would result in considerable progress.
3. Don't hesitate to take ownership of your firm's diversity efforts. You may not know it, and the firm may not show it in obvious ways, but your firm needs you to educate them to put a face to your community and lend your energy and drive to continue to progress. These programs, whether it's clear or not, are intended for you and you should embrace and own them.

Hill

1. Formalize mentoring so that everyone gets one and takes it seriously. Make it a priority.
2. Make accommodations for all employees. Remember that telecommuting started out as an accommodation for employees with disabilities and now is seen as a tool for everybody, which in the process helps to save our environment.
3. Include disability in diversity statements and talk about it and count it and tell everyone about your diversity and disability policies and not just the people that you know who have a disability.

How can you help that employer to be more willing to accept the goals of this program to work and mentor you?

Hill

I would introduce them to firms that have done it. I also have introduced them to Walter, so they can talk about the practicalities. Then I would talk about the business case. I introduce companies to each other in the non-law firm context all the time. We talked to Walgreens about having an accessible distribution center, not because it's cool, which it is, but because it increased productivity 20 percent, just by incorporating those things.

For law firms, we can talk about the bottom line business case as well, including the whole billable hour question, how you get clients and how you respond to any client concerns that they really shouldn't have, but many do. We also introduce them to firms that have already tried doing this, so they can find out what the pitfalls and the benefits are.

Comments

Michael Greco, ABA President (2005–2006)

I'm going to tell you a story. About two months ago, the Boston legal community lost one of the greatest judges we've ever had, the second African-American judge ever on the federal district court and he happened to be one of my closest friends. Reginald Lindsey and I started practicing together in 1970, after law school. Reginald Lindsey became a great trial lawyer, and then 25 years ago, he developed a tumor in his back and he was in a wheelchair the rest of his career.

I remember talking with Reg after he was in the wheelchair and after he became a judge, and he said to me, "Mike, people refer to me as a disabled lawyer, as a disabled judge. I never want to hear you say that I am a disabled person. I am a person with a disability. And there's a huge difference, Mike, between being called disabled and having a disability that I can work around and over." So, I have not used that expression, thinking of Reg. I do not say someone is a disabled lawyer. I say that person has a disability and is working with it.

So You've Hired a Lawyer with a Disability . . . Now What?

By Eve L. Hill, Senior Vice President,
Burton Blatt Institute of Syracuse University

"Firm diversity statements and goals often do not include disability. Visible, explicit commitments to inclusion of disability in diversity efforts are effective at communicating corporate disability culture."

People with disabilities, including lawyers, can be successful, productive, and loyal employees. Or, like nondisabled employees, they can be frustrated, unproductive, and short-term. What makes the difference? A firm's "culture" makes a major difference in the success, productivity, and loyalty of all employees. A firm's disability culture makes a major difference for employees with and without disabilities.

The Burton Blatt Institute (BBI) at Syracuse University is conducting case study research of corporate disability culture, assessing its impact and how companies can improve their disability culture.¹

1. This research is funded by the U.S. Department of Labor Office of Disability Employment Policy, grant/contract #E-9-4-6-0107. The opinions contained in this publication are those of the author and do not necessarily reflect those of the U.S. Department of Labor.

The research so far has studied six companies ranging in size from 38 to 38,000 employees, in a variety of fields. The companies chosen have demonstrated success in hiring and retaining employees with disabilities. BBI analyzed what makes up a company's disability culture, how culture affects satisfaction, productivity, and loyalty of employees with and without disabilities, and what businesses can do to create a corporate culture that maximizes satisfaction, productivity, and loyalty of employees with and without disabilities.² BBI's corporate culture research is ongoing.

Creating Inclusive Corporate Culture

Recruitment

Inclusive corporate disability culture begins with recruitment of people with disabilities. A firm cannot simply assume that their general recruitment efforts will result in a pool of applicants that includes lawyers with disabilities. Several targeted recruitment mechanisms are available, including the IMPACT Career Fair for law students with disabilities (<http://www.law.arizona.edu/Career/Impact/welcome.cfm>) and the National Association of Law Students with Disabilities (<http://www.nalswd.org/>). Use a variety of recruiting mechanisms to reach the widest pool of qualified applicants, rather than relying on candidates to find you or colleagues to make referrals. Law students with disabilities may not have the connections necessary to find you. Using a variety of hiring methods (e.g., resumes, telephone interviews, in-person interviews) also helps get the best candidates, including candidates with disabilities.

It is also essential to ensure that your recruitment methods and processes are accessible. Application forms and firm resumes should be available in accessible formats (e.g., large print, CD). Websites should be accessible to people with vision impairments who use screen reading software as well as to people with hearing impairments (e.g., pictures and other graphics should have text equivalents, videos should be captioned). For more information, see <http://www.w3.org/WAI/quicktips/>. Interview locations should be wheelchair-accessible. Thinking these issues through before an applicant with a disability shows up will make the process run smoothly and demonstrate the firm's commitment to including people with disabilities.

Internships can be a way to support diversity efforts. Accepting interns from diverse (including disability) communities can introduce the firm to candidates who may not have been hired based solely on their resumes.

On the Job

BBI's research so far indicates that companies' commitment to making their training and other opportunities fully accessible is highly effective at creating an inclusive corporate culture. Therefore, firms should ensure that firm events (including social events), trainings, and other activities are fully accessible in terms of location, activities, materials, communication, etc., even if you don't know whether any of your employees (or their guests) need accessibility. If an event can't be made accessible, don't hold it. This effort should include meetings (depositions, client meetings, meetings with opposing counsel, etc.).

BBI's research indicates that companies found manager training on disability subjects to be very effective at achieving an inclusive corporate culture. Firms should train partners and senior attorneys about disability issues, including disability awareness and accommodations. Even if the firm has a centralized accommodations mechanism, firm leaders should understand it and be able to explain it and contribute to it.

Equitable access to mentoring and coaching opportunities was also found in BBI's research to be effective at achieving an inclusive corporate culture. Many firms expect mentoring/coaching relationships to evolve naturally. However, senior attorneys without disabilities may be uncomfortable interacting with junior lawyers with disabilities and, therefore, may not seek them out for mentoring. Assigning mentors, along with disability awareness training, may help overcome that reluctance and give lawyers with disabilities access to perhaps one of the most important elements of professional success.

Research indicates that centralizing funding for accommodations can be an effective way to support inclusive corporate culture. Centralized funding can increase consistency of accommodations across departments, ensure greater confidentiality of employees' disabilities, reduce accommodation costs, and avoid departmental resistance to spending department funds on accommodations. However, the effectiveness of centralized accommodations may be tempered by the often increased formality and bureaucracy of centralized accommodation processes, and potential departmental perceptions that their employees' needs are unimportant or someone else's problem and resistance to outside mandates and interference. Centralized accommodations also

2. Data from the study, as well as additional publications and findings, are available by contacting the author (ehill@law.syr.edu) or Meera Adya, Research Director, BBI, at madya@law.syr.edu. For more information, see <http://bbi.syr.edu/projects/corpculture/>.

may not adequately understand and respond to the needs of the employee's department, coworkers, and supervisors, leading to resentment and lack of "fit." Ideally, a balance should be struck between centralized funding and decentralized decision-making about accommodations.

According to BBI's research, allowance of accommodations for all employees, not just those with disabilities, is an important factor in inclusive corporate culture. By taking the approach that accommodations can increase productivity of all employees, rather than reserving accommodations for individuals for whom they are legally required, firms can demonstrate their commitment to their employees, while, at the same time, increasing productivity. Examples of accommodations that can benefit both employees with and without disabilities include flexible work schedules, telework, speech recognition software, and accessible print materials.

Perceived "fit" between a person's abilities and his/her job is another factor that is found to be highly predictive of job satisfaction and loyalty. Therefore, firms should consider assigning tasks based on employees' strengths, rather than requiring every attorney to be good at every aspect of the work.

Communicating Inclusive Corporate Culture

BBI found that good disability culture improves satisfaction, productivity, and loyalty of all employees—with and without disabilities. Employees' perceptions of a company's culture (including openness, flexibility, fairness, commitment to diversity, valuing of employees, etc.) affect their level of engagement with the company (satisfaction, commitment to the company, engagement in organizational citizenship, and intent to stay with the company). The level of positive effect was similar for employees both with and without disabilities. Moreover, perceptions of corporate culture by nondisabled employees directly affect the experiences of employees with disabilities. The more nondisabled employees understand disability policies and understand the reasons for those policies and the fairness of those policies, the more those employees contribute to improving the employment experience of employees with disabilities.

Because employee perceptions of corporate disability culture are a key factor, it is essential that corporate disability policies and commitments not only actually be in place, but that they be communicated effectively to all employees. Disability inclusion commitments and accommodation policies that are unknown and unavailable to employees with and without disabilities lead to

confusion, suspicion, and perceptions of unfairness among employees with and without disabilities.

Supervisor attitudes and approaches to disability issues affect all employees' perceptions of the inclusiveness and fairness of corporate disability policies. Often, firms will assign disability issues to a centralized department (disability office or human resources office), thus leaving supervisors out of the process. This may be perceived by employees as indicating that disability is not important to firm leadership. It may also leave supervisors without an understanding of the company's disability policies, making it difficult for them to project the company's inclusive culture to their employees. Ensuring that partners and supervisors understand, and have positive attitudes toward disability, diversity, and accommodation can reduce employees' perceptions of unfairness, prejudice, and discrimination.

Firm diversity statements and goals often do not include disability. Visible, explicit commitments to inclusion of disability in diversity efforts are effective at communicating corporate disability culture. Moreover, including disability in a firm's tracking of diversity progress and outcomes is an important way of ensuring that the disability diversity commitment is taken seriously and is visible to all employees. It is acceptable to "count" employees with disabilities, as long as it is clear that the information collected is for purposes of diversity/affirmative action, participation is voluntary, and the information is kept strictly confidential. In addition, firms may consider having their disability culture "benchmarked." BBI can include firms in its case studies, which will both contribute to the ongoing research and provide firms an assessment of their culture, comparison to other firms and companies in terms of what works and what doesn't, and identification of areas for improvement. For more information, contact Meera Adya, Research Director, BBI, at 315-443-7346 or madya@law.syr.edu.

Openness about accommodation policies and procedures reduces confusion, suspicion, and perceptions of unfairness. In addition, provision of "accommodations" in the form of flexible practices for all employees is another way of communicating corporate culture. Rather than telling employees about disability and accommodation policies only if the employee indicates that he/she has a disability or if he or she requests the information, disability and accommodation policies should be provided to all employees. Ideally, accommodations that increase productivity and effectiveness should be available to all employees. Such an open policy evidences a firm commitment to supporting the productivity of all employees,

rather than a closed policy that provides “special” benefits only when legally required.

Invisible Disabilities in the Workplace: 10 Facts About Invisible Disability (ID)

By William H. Grignon, Esq.

1. There are an estimated (probably under-reported) 54 million people with disabilities in America (18 percent)¹
 - 26 million of these disabilities are severe²
 - Most disabilities are invisible or “hidden”³
 - The percentage of survey-responding ABA lawyers who self-identify with a disability is approximately 7 percent⁴
2. As compared with the general population, lawyers are:
 - Two times as likely to have an addiction⁵
 - Four times as likely to have depression⁶
 - Six times as likely to complete suicide⁷
 - Nine times more likely to have psychological disorders,⁸
 - And are 66 percent likely to leave a large firm in the first five years of practice⁹
3. An ID is a disability that is not immediately apparent to casual observers or is not visible to the naked eye¹⁰
 - A person can have an ID whether or not they use an assistive device like a wheelchair, walker, cane, etc.¹¹
4. Some kinds of ID include:
 - Depression, alcohol/drug addiction
 - Learning disabilities, attention-deficit hyperactivity disorder, psychiatric disabilities
 - Chronic fatigue syndrome, fibromyalgia, multiple chemical sensitivity (MCS)
 - Lyme disease, progressive multiple sclerosis, arthritis, lupus, cystic fibrosis
 - Diabetes, asthma, chronic infections
 - Seizure disorder, heart conditions, cancer, brain injury¹²
5. ID refers to a person's conditions that causes symptoms such as:
 - Extreme fatigue
 - Dizziness
 - Disorientation
 - Pain
 - Weakness
 - Cognitive impairments¹³
6. ID symptoms can occur due to:
 - Birth disorders
 - Injury
 - Chronic illness
 - Chronic pain
 - Chronic environmental stress¹⁴
 - Side effects of medication¹⁵
7. ID can:
 - Be intermittently or permanently debilitating
 - Fluctuate over time or throughout a day
 - Be exacerbated by stress, fatigue, or illness¹⁶
8. Employees with ID, especially in the legal profession, are very reluctant to disclose (“self-identify”) their ID for fear they will be:
 - Exposed to breaches in confidentiality and gossip
 - Stigmatized as damaged, unreliable, and a weak link
 - Discriminated against in case assignments, promotions, career¹⁷
9. IDs are protected by law, including, but not limited to:
 - The Rehabilitation Act of 1973¹⁸
 - The Americans with Disabilities Act (ADA)¹⁹
 - State laws²⁰
10. Employees with ID have a duty to disclose their ID:
 - Before they request reasonable accommodations
 - Before a performance issue arises
 - If the ID poses a safety risk²¹

1. See <http://indepliving.blogspot.com/2007/06/statistics.html>.

2. *Id.*

3. *Id.*

4. See <http://www.abanet.org/disability/docs/2008GoalIX.pdf>.

5. See http://www.benchmarkinstitute.org/t_by_t/mcle/sa.pdf.

6. See <http://www.californiacareerservices.com/pub5.shtml>.

7. See http://ahead-lists.org/pipermail/mn_ahead_ahead-lists.org/2007January/000037.html.

8. See http://www.usd.edu/elderlaw/student_papers_f2005/legal_burnout.htm.

9. See http://www.usd.edu/elderlaw/student_papers_f2005/legal_burnout.htm.

10. See <http://www.disabled-world.com/artman/publish/invisible-disabilities.shtml>.

11. See <http://www.myida.org/ids.htm>.

12. See <http://library.thinkquest.org/11799/data/invis.html>.

13. See <http://www.wsbln.org/HiddenDisabilitiesGuide.pdf>.

14. See <http://www.edstoday.org/newsletter/IssuesPDF/Issue10.pdf>.

15. See <http://www.epilepsydurham.com/docs/Intractable%20Epilepsy%20The%20Invisible%20Disability.pdf>; see also mysite.verizon.net/vze20h45/disability/search.html.

16. See <http://www.cildrc.org/DRCPages/disAbilityPrimer/disAbilityPrimer.htm>.

17. See, e.g., Jennifer Jolly-Ryan, *Disabilities to Exceptional Abilities: Law Students with Disabilities, Nontraditional Learners, and the Law Teacher as a Learner*, 6 U. NEV. L.J. 116, 128–129 (Fall 2005); see also <http://www.abanet.org/disability/docs/2008GoalIX.pdf> (discussing reasons for low self-identification rates among ABA members).

18. See <http://www.ed.gov/offices/OSERS/RSA/Policy/Legislation/narrative.html>.

19. See <http://www.usdoj.gov/crt/ada/pubs/ada.txt>.

20. See <http://www.disabilityaccessinfo.ca.gov/lawsregs.htm>; <http://www.leginfo.ca.gov/calaw.html>.

21. See, e.g., <http://www.aapd-dc.org/NOW/presentWorkplace.html>; see also <http://www.eeoc.gov/policy/docs/guidance-inquiries.html>.

CHAPTER EIGHT

Best Accommodation Practices in the Legal Profession

Arguably, the most important ingredient for, and often the greatest obstacle in the way of, diversity for lawyers with disabilities in the legal profession is the issue of accommodations. Although the law requires reasonable accommodations be made for lawyers with disabilities—with regard to promoting disability diversity and maximizing the capabilities of all lawyers—what is reasonable should be interpreted without being wedded to interpretations of federal and state legal requirements. What benefits all concerned is doing what is necessary to enhance the ability of every lawyer in a work setting to do their best work by providing them, within reason, whatever individualized assistance they need to bring that about. Much of what is of benefit to a lawyer with a disability may also benefit other lawyers in measureable ways. Moreover, most of these individual benefits enhance the culture of law firms, corporations, government agencies, organizations, or other office settings, and make them better places to work.

Yet, as was discussed in the previous chapter, the provision of effective accommodations requires a certain amount of knowledge and sensitivity on the part of both the employer and the employee. This is not an intuitive process by any means, although informed guesses may play an important role. For the legal employer, this process begins with knowing what the law is and meeting every one of those requirements in good faith; but that is only the beginning. Afterward, it becomes a more creative, individualized endeavor in which the lawyer with a disability and the supervisor share knowledge and perspectives in order to achieve the best result for all concerned. At the end of the interactive accommodations process, employee and employer should both benefit, but they need to be ready to adapt as new information and more experience about the individual's situation become available.

To help both legal employers and employees achieve such a “win-win” result, three presenters and a moderator, in a roundtable format in which specific questions are

posed, address key information and strategies for bringing this about. The moderator is Mildred A. Rivera-Rau, a former member of the ABA Commission and an attorney with the Equal Employment Opportunity Commission (EEOC). She is joined by Christopher J. Kuczynski, a senior attorney from the EEOC's ADA (Americans with Disabilities Act) Policy Division, who sets out the basic legal requirements employers must follow.

Emily S. Blumenthal, a partner in the Atlanta offices of Jackson Lewis, focuses on the many potential roadblocks for employers in the way of achieving full disability access in the legal profession both in the roundtable and a separate article, which follows. Her article also includes a concise summary of recommendations from the Job Accommodations Network (JAN) at the Department of Labor.

Linda Carter Batiste, a Principal Consultant with JAN addresses the practical aspects of providing accommodations in cost-effective and productive ways. She applies her broad knowledge about accommodations in a variety of employment settings to the legal profession.

Panel Roundtable

When should someone disclose he or she has a disability and needs accommodation?

Christopher Kuczynski

The idea of when to disclose a disability is, to a great extent, a personal choice. I have an obvious disability, so disclosure is not so much an issue for me. Although there was a time when if I didn't really want anyone to know that I had a disability, I could fake it. And I did do that, and I found that in doing my first round of interviews for law jobs, that I tried to do that, and inevitably the conversation about disability and accommodation had to come up at a pretty early stage.

For people with hidden disabilities, there are reasons why they may not want to disclose very early on,

particularly if it's a stigmatizing disability. I generally tend to favor disclosure at pretty early stage, particularly if someone believes that there is a chance they're going to need a reasonable accommodation to do the job.

There also are some legal considerations under the ADA. EEOC has said that there is no particular time in the employment relationship when somebody has to disclose. For example, an employer couldn't refuse to provide a reasonable accommodation because the person didn't reveal at the application stage that he or she had a disability.

There may be reasons, aside from personal choices people make, why an accommodation might not be requested until some later point in the employment relationship. One is that the disability and the particular job may not require a reasonable accommodation initially, but the nature of the job, the nature of the disability, changes at some point, so that a person realizes later on in the process that he or she needs an accommodation. The law provides for that by saying that if the job changes, the disability changes, or the person discovers that accommodation is needed, then it's appropriate legally to make the request when the need for accommodation becomes apparent.



**From left to right: Emily S. Blumenthal;
Christopher J. Kuczynski; Mildred A. Rivera-Rau;
and Linda Carter Batiste**

The other thing to keep in mind about disclosure relates to what EEOC has said about performance and conduct. Last September, we issued a question-and-answer document dealing with performance and conduct issues for attorneys, which reiterates a point that we have made over and over again since at least the mid-1990s that an employer never has an obligation to rescind discipline that's justified by poor performance or misconduct.

Frequently, you hear about scenarios in which there has been a performance or conduct issue and following

the employer's attempt to discipline, the person will now disclose that the problem was really related to a disability and accommodation was needed. In some cases, when the discipline is progressive, that may be acceptable. The employer then can make an accommodation going forward, but the employer never has to rescind discipline that has been imposed for performance or conduct violations.

So the advice that we've given over and over again is that an individual with a disability should request an accommodation before performance or conduct becomes an issue when the individual realizes that an accommodation is going to be needed. Accommodation is never required retrospectively or to undo discipline imposed, but only in the future.

Emily Blumenthal

From my perspective, representing employers and managers involves a very individualized, case-by-case determination. Certainly with the interactive dialogue, which is such a key focus under the ADA, it's critical that there be good communication before someone is having difficulties safely or successfully performing their job. It is important to dialogue about what accommodations might be necessary. If an employer is on notice of a concern, dialoguing about it is critical. What we advise employers to do is to address any failure to meet expectations and to do it in a non-accusatory fashion. Explain what the concern is and talk about that concern and what can be done to address it. Oftentimes, in that context, it's a good opportunity for the employee to disclose that some accommodation is necessary so that need can be addressed going forward.

How should an employer know if it's received a request for reasonable accommodation and what should it do in response?

Kuczynski

EEOC has made the point that a request for reasonable accommodation does not have to include, and a lot of courts endorsed this view, the magic words "reasonable accommodation," "ADA," or "Rehabilitation Act." Instead, it must be a request for some change in the workplace or in the way things are done that's needed because of a medical condition. Also, the request does not have to be due to a disability because at the time the request is made, it may not be established that the person has a disability. Often the person will have some obvious disability, but in other situations where there's a hidden

disability, psychiatric or hidden physical disability, it may not be obvious that what the person has is a disability. This is something that is determined in the context of the interactive reasonable accommodation process that ought to follow the request for reasonable accommodations.

I'm not sure that the legal profession is doing any better in terms of knowing and recognizing a request that doesn't come dressed up as a request for reasonable accommodation than any other employers are doing. Sometimes these requests are missed. When I was on a task force that looked at a federal agency's reasonable accommodation procedures, one of the things we realized is that one of the biggest problems agencies have, whether you were talking about attorneys or some other position, was that the supervisor, manager, whoever got the request, didn't know it was a request for reasonable accommodation.

Once the request is made and it's recognized as a request for accommodation, there's an interactive process that the employer and the individual go through. Sometimes that process is simple and straightforward; the disability or the need for accommodation will be obvious. Other times, it may involve an exchange of documentation to establish what an appropriate accommodation is.

That exchange may be very different after the ADA Amendments Act (ADA-AA). The ADA-AA makes it easier for people to establish they have disabilities under the ADA. What it's probably going to do is make this interactive process and the exchange of documentation a more simple, straightforward process in which the focus is going to be not on whether the person has a disability, but does the person have some work-related barrier as a result of the physical or mental disability that requires a reasonable accommodation.

The interactive process is one that both the employer and the person with the disability have an obligation to engage in. Frequently, the burden or who wins or loses that case may very well depend on who has engaged in good faith in the interactive process and who has caused the interactive process to break down. So employers have an obligation to follow through after the request is received. Also, the individual with the disability has the obligation to furnish necessary information, like documentation supporting the request—if that's necessary—maybe some ideas of what accommodations might work or at least some indication of what the job-related barrier is.

The EEOC has consistently said the individual with disability has the burden of initiating the interactive process by making the request. The Second Circuit,

however, takes a somewhat different view that says, if the employer knows or has reason to know somebody has a disability, then it has an obligation to initiate the interactive reasonable accommodation process.

Finally, an accommodation delayed may be an accommodation denied. Thus, the employer has an obligation to promptly act on a request for reasonable accommodation, if it's got internal reasonable accommodation procedures—they're not required, but they're a good idea, and they'll include time frames for when accommodation requests will be acted upon.

In your experience, what types of accommodations are most often requested by lawyers with disabilities?

Blumenthal

I have had the opportunity and privilege of working with a few attorneys in my own firm with disabilities, either hidden or apparent, and learned quite a lot from them. I think there's been discussion earlier today about the sort of skills that we develop in what is an inherently stressful practice—the practice of law—which can be time-intensive tracking with the mighty billable hour. In my experiences, what we have seen as one of the most frequent sort of accommodations requested would be leave accommodations or accommodations with respect to modified work schedules.

It may relate to the billable hour requirement. It may relate to teleworking or telecommuting. And it may also turn, to a great degree, on the type of practice that an attorney has, whether it's advice and counsel as a primary focus; whether it's training or litigation and court time; whether it's meetings; whether it's transactional, etc. There's a whole variety of considerations in that regard.

We have made accommodations as to accessibility. Some attorneys who may have been practicing for years suddenly have a life-changing experience and need an accommodation. We have counseled some firms on making those changes and providing accessibilities that they had not earlier.

We also have worked with attorneys who need modified equipment or some specialized equipment. Employers can no longer profess ignorance of a disability. They have to aggressively pursue that interactive dialogue, and exchange, and if an employer becomes a test case, which is never anything an employer seeks out, it is important to show sincere good faith efforts to discuss, consider, and attempt to accommodate.

I worked with an associate for several years who always did a great job—very hardworking, very diligent,

great attitude, never complained. Lo and behold, after some time working together, when we were on an assignment in South Georgia, knocking on a few trailer doors looking for witnesses, and then interviewing some people on the third shift of a blue-collar assembly line production, late around 11:30 at night, he told me he would need an accommodation. He said, “I have diabetes. You’ve been going for hours, but if I don’t eat soon, we’ll have a problem.” I was amazed because for years I worked with him, and he had never mentioned anything. I was happy to accommodate him and work with that. I must say, it’s difficult to find a place to buy food at 11:30 at night in Americus, Georgia. But, the point is to have that dialogue.

I do think there’s a real reluctance for people to come forward and self-disclose. I think that’s the case for a number of reasons. I think if an employer is aware of a disability, there is an argument that the employer may be making decisions based on that awareness. But I also think this notion of more interactive dialogue and a shared burden between both an employee and employer in this context—in the law firm setting, the associate–partner, whatever the mentoring team relationship may be—is critical to having better access and opportunities for everyone.

Linda Carter Batiste

One of our primary goals at the Jobs Accommodation Network is to keep employers out of trouble related to job accommodations. To find out what types of accommodations are requested by lawyers, I went through my cases for the last few years, just to get an idea. The number one issue that comes up for all employers is flexible scheduling, which is kind of surprising, because scheduling issues usually are the employer’s decision—when you take your breaks, where you work, what your hours are.

For the legal profession, the other number one issue is physical accessibility, and that tends to be external issues, like visiting client’s offices, which you have no control over, and going to inaccessible courthouses. I’m seeing changes in that with the Supreme Court decision about accessibility to courthouses and the decision to let that go forward. So we are seeing some changes. Even in West Virginia, our Supreme Court has appointed an ADA coordinator to look at courthouse accessibility. So there is some movement there. Hopefully, that will continue.

Kuczynski

I would mention two things. First, the EEOC sees many cases involving sign language interpreters as a reason-

able accommodation. We had a big jury award of punitive damages in a case against Federal Express, where someone needed a sign language interpreter for safety briefings just post-9/11, and could not get a sign language interpreter. There were all kinds of problems with the policy that the company had. Also, there wasn’t follow through on educating people and training people about the policy they had. This seems to be an accommodation, that for one reason or another, employers struggle with in terms of not thinking they’re going to be able to get access to sign language interpreters in a timely way or believing they’re being asked to provide them all the time or they’re going to have to hire somebody full-time to do that. Some employers think they’re actually hiring the interpreter to do the job of the person with the disability.

The second thing is reassignment as a reasonable accommodation. It’s challenging because it’s a situation that occurs when somebody can no longer be accommodated in their present job because of the disability. And it’s the kind of accommodation I think that we don’t necessarily associate with the law because of the impression that all lawyer jobs are same. In fact, there are lots of different kinds of law jobs that someone can do. Emily mentioned advice and counsel and litigation to name two. The nature of that work is very different. One type of work a person with a particular disability might find difficult to do, but might easily do and excel at doing other types.

So there are situations I think in which somebody could be appropriately reassigned from one law job with certain functions to another, and I think it might be something that we don’t think about enough as an accommodation in this area.

Are accommodations costly?

Carter Batiste

We’ve been doing ongoing research on the costs and benefits of providing accommodations. Our latest published data were from surveys we did of 1,182 employers that had called us and talked about an accommodation. We called them back about six months later and asked, “Did you make an accommodation? How much did it cost? What benefits did you receive?”

What we found was that almost half of them said it didn’t cost anything. So how can that be? The answer employers gave was that they don’t count the typical management process, so beyond that management time, almost half cost them nothing.

Where there was a cost, typically it was \$500, which is consistent with what we have found over a number of years. Yes, there are costly accommodations, but the idea that they will break the bank really hasn't been the case for the employers we're talked with.

Are there limits on what an employer has to do as a reasonable accommodation?

Kuczynski

One obvious limit is the notion of undue hardship. An employer doesn't have to do something that would constitute a significant difficulty or expense. Of those two, the difficulty issue is most common, such as time off that can't be provided or a schedule that can't be modified in some way. An example of the latter would be trial attorneys who do not function well in the morning. That may not be a schedule change an employer can make.

There are relatively few situations involving the EEOC in which employers argue that something is too costly. They don't want us looking in their books anyway to see where all the money is being spent. This underscores what Linda said, which is many of these accommodations are not costly, and even some of the more costly ones employers are willing to provide, or at least not deny based on cost.

A second limit is that essential job functions or duties don't have to be removed. Misconduct and poor performance don't have to be excused. The employer can impose the same standards for people with disabilities as everyone else. The purpose of reasonable accommodation is to enable the person to meet the standards the employer has.

You can apply the same production standards to attorneys with disabilities as to attorneys without disabilities. In our attorney accommodation publication, we talk about billable hour requirements. I would caution that this is a standard that employers get to take advantage of, if they're applying it uniformly to everybody in the workforce. If they're departing from that standard for certain individuals, not applying it consistently, then someone is going to be able to make an argument that applying it rigidly to a person with a disability might violate the ADA.

Personal use items that don't have to be provided, things that people need on and off the job, wheelchairs, hearing aids, eyeglasses, things of that nature—it's a long history with EEOC, but those are the types of things that don't have to be provided as reasonable accommodation.

Are there any benefits to providing accommodations beyond compliance with the law?

Blumenthal

The short answer would be a resounding "yes." One of my colleagues likes to say that, at best, we are all only temporarily able, and I think there's some real truth to that.

To continue the discussion that Chris and Linda have started, I don't think you want to draw a line on the continuum of conduct as to what's the behavior that's not crossing the line; what's the bare minimum we have to do to comply. Instead, I think you want to manage to a higher standard and not get hung up on what's legally required, but how to make a relationship successful.

Let's talk about cost. Take a look, for example, at the *Toyota v. Williams* case, which went through many years of costly legal proceedings before it got before the Supreme Court, and then got remanded back for more. Litigation is probably one of the most tremendous expenses and costs that an employer can face.

Focus on how to determine who is qualified and can successfully perform essential job functions. Then talk about how this can be done for the lawyer with a disability. Partner with organizations like JAN and the EEOC in problem-solving and addressing challenges, even in adversarial situations. It really helps to show that you are providing accommodations beyond the bare minimum, including being recognized as the employer of choice for promoting diversity. We have clients that demand such diversity.

We have a diversity committee at our firm and regular diversity committee meetings. We like to publicize diversity when we are submitting a request for proposal to a prospective client. That's one of the things we highlight about our practice and what distinguishes us. There are certainly benefits to taking that approach and having a diverse team.

What are the best accommodation practices you've seen in the employment of lawyers with disabilities?

Carter Batiste

For most employers, the best accommodation practice is to decide you want to do something and try to do it. You don't have to be perfect. You don't have to know everything. Just decide what you want to do. I've been doing this for 17 years, and I can tell within a minute when an employer's calling me with a bad attitude and they don't want to do it. And they don't do it. They can tell you why nothing you suggest is going to work: "No,

no, no, we can't do that." The flipside is an employer that wants to do it; they'll take in all of the information, and most of the time, they'll come up with something.

The other thing is for employers to use available resources. Your employee with a disability, as you've heard from all of these sessions, is your best resource. The employee, in most cases, also has ideas and you don't have to do any more research. Just look at the ideas and see if they work for you.

If not, use JAN. We're free. We're there. We've been working on this a long time. We can give you ideas. There are many resources out there. You can try out equipment and you don't have to pay for it. You can test it. Also, we can give you many resources.

For lawyers with disabilities, I would say when you run into a brick wall with an employer, one of the things that we've been talking to individuals about trying is to suggest a temporary period where you try out the accommodation. It sounds funny, but when you don't make it a big, scary, permanent thing, employers are less fearful. Give it three months, give it six months, however long you want. Write a contract with the employer. It's amazing how often that takes all the fear out of it for employers.

I talked to many individuals who come back and said that they tried that approach, and once it works, you're fine. If it doesn't work, then you go back to the drawing board. That's a great way to get in the door, as people have said. If you're working there, it's easier. But getting your accommodation tried out is one way to do it.

Are legal practices less likely to consider qualified lawyers with disabilities in challenging economic time?

Blumenthal

To the extent lawyers are qualified, then it would be discriminatory to consider their disability. It would be a form of stereotyping. The law requires equal treatment. But there also is the question of hardship. The challenge of an accommodation may be relevant to costs that an employer may bear. There is no question, as one of our earlier panelists pointed out, that in this challenging economy, it is difficult for anyone coming out of law school trying to make the transition from school to employment.

Yet, with the amendments to the Americans with Disabilities Act and other evolutions that we're seeing from the courts, the focus, I would submit for employers, should be on qualifications: who is best qualified for this job, which includes the benefit of having a diverse group of attorneys in your firm as a reflection of your clients.

Can you address the issue of confidentiality when disclosing and/or providing accommodations?

Kuczynski

The ADA has specific confidentiality provisions. There are provisions that govern confidentiality and information about a disability, including basically all medical information. The language of the statute is a little bit difficult to get through sometimes. But we've interpreted the confidentiality provisions to apply to all medical information, including the fact that someone is receiving a reasonable accommodation. The employer can disclose this confidential medical information only under very limited circumstances, such as to supervisors and managers who need the information in connection with necessary work restrictions or for purposes of providing a reasonable accommodation.

It's also important, I think, not only to have the legal protection, but to make sure that the employer is carrying this out in a way that gives people some assurance that, if they come forward and request a reasonable accommodation and put this medical information on the table, it is going to be kept confidential and used only for that limited purpose. One way to do that is to communicate the policy clearly, particularly regarding reasonable accommodations. Written procedures are not required. They're a good idea, I think, just like a written anti-harassment policy or anti-retaliation policy is a good idea, and they don't necessarily have to be long or complicated.

One of the things I would include in a reasonable accommodation procedure that I was to disseminate to employees, either in writing or verbally, is this idea about confidentiality and what the law's protections are, and the company's commitment or the employer's commitment to ensuring not only that those legal obligations are met, but that it will respect the confidentiality of anyone coming forward requesting the reasonable accommodation.

There are legal risks to not doing that, if the information gets out and is subsequently used to make an employment decision, or if it's used by coworkers as the basis for harassing someone. There have been cases that found the employer liable for disability discrimination in those contexts. Beyond that, it's got to be part of the culture of the organization to make sure that the message is communicated that this information will be treated confidentially, so that people are empowered to come forward and request accommodations.

Blumenthal

As an anal-retentive attorney, there are a couple words I'm very particular about, and "confidentiality" is one of them. What I advise is to never promise complete confidentiality. As Chris said, an employer will have a need to share certain information with persons who have a business need to know about it. And that is key to the interactive dialogue and accommodation process. However, there's a difference between posting something on the firm blog or website and discretely discussing it with persons who have a business need to know for constructive purpose.

There are laws that protect your privacy, whether it's common law, state law, privacy protections, or the protections from the ADA in terms of segregating medical information. But certainly, there should be an expectation that, when this comes up, there will be a business need to discuss it. It will be handled sensitively by employers, only with those who need to know about it. That is, we're not going to tell everyone. But that is how employers have to dialogue about it. That goes back to communications and relationships. Firms take a number of approaches. One approach my firm takes is to have litigation teams in our litigation practice, and by working with those team leads on a regular basis, there's a greater comfort level in discussing issues and tackling how to make your way up the mountain with whatever particular challenge you're facing.

Roadblocks to Access in the Profession

By Emily S. Blumenthal, Partner, Jackson Lewis LLP

Mobility

A typical day in the life of a busy lawyer may involve, among other things, travel, court appearances, conference calls, witness interviews, research, writing, presentations, and meetings with clients, co-counsel, and adversaries. The legal profession also generally requires long hours, often under stressful working conditions. Billable hours are typically used as a benchmark of success for many lawyers, particularly those in private practice. How do attorneys with cognitive, motor, psychiatric, sensory, or other impairments overcome these limitations so that they can be successful in the demanding practice of law?

Despite the legal protections afforded to disabled individuals by the ADA and state law, many lawyers are reluctant to ask for an accommodation they may otherwise be entitled to under the disability discrimination

laws. For example, the results of a 2007 study of students at five law schools in Georgia indicate that applicants for legal jobs often hide the fact that they have a disability from potential employers.¹

One explanation for attorneys' reluctance to disclose their disabilities to employers is that there are few successful attorneys with disabilities to serve as role models, particularly at large firms. A study conducted by the New York City Bar Association, for example, identified only 15 out of more than 18,000 attorneys at 94 participating law firms as disabled.² The general sense is that the dearth of disabled lawyers stems more from a lack of knowledge and understanding than any intentional discrimination.



Panelists for Session VI answer questions about workplace accommodations.

Nevertheless, there is no doubt that higher rates of unemployment, lower salaries, lack of mentoring, and fear of revealing their disability status are all roadblocks to success for disabled attorneys and law students. These roadblocks are exacerbated by legal employers' misconceptions about the abilities of disabled attorneys and the costs of reasonable accommodations. However, many employers are beginning to realize the value in hiring and retaining disabled attorneys.

Mechanics: A Closer Look at Reasonable Accommodations

Reasonable accommodations may be defined as "any change in the work environment or in the way things

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

2. NEW YORK CITY BAR ASS'N, 2006 DIVERSITY BENCHMARKING STUDY: A REPORT TO SIGNATORY LAW FIRMS 28-29 (2006), <http://www.nycbar.org/Diversity/FirmBenchmarking06.pdf> (noting that the lack of an increase in the number of attorneys with disabilities practicing at participating law firms could either be a result of the firms' failure to recruit disabled attorneys or the attorneys' failure to disclose their disabilities).

are customarily done that enables an individual with a disability to enjoy equal employment opportunities.”³ There are three categories of reasonable accommodation:

1. modifications to the application process;
2. modifications to the work environment or manner in which work is customarily performed; and
3. modifications that enable an employee with a disability to enjoy equal benefits and job privileges.⁴

Because working conditions for lawyers vary from job to job, reasonable accommodation decisions have to be made on a case-by-case basis with interactive discussion. For example, trial lawyers must be able to appear in court, think quickly, and speak with ease and authority. Intellectual property attorneys may need a background in science or engineering and a keen eye to process the details of and protect their clients’ creations. Other lawyers may work inside a company and require regular travel to remote locations to negotiate and direct business activities. Thus, reasonable accommodations depend not only on the attorney’s disability but also on the essential functions of his or her specific job.

In 2006, the EEOC released a fact sheet entitled Reasonable Accommodations for Attorneys with Disabilities (Fact Sheet) to provide legal employers with guidance. According to the Fact Sheet, reasonable accommodations for attorneys include all of the following:

- making existing workplaces accessible (e.g., installing a ramp, widening a doorway, or reconfiguring a workspace);
- job restructuring (e.g., removing a marginal function);
- part-time or modified work schedules;
- unpaid leave once an employee has exhausted all employer-provided leave (e.g., vacation leave, sick leave, personal days);
- acquiring or modifying equipment (e.g., a TTY that would enable a deaf attorney to use a telephone relay service, or an assistive listening device that an attorney who is hard of hearing can use at a meeting);
- modifying workplace policies;
- providing tests or training materials in an alternative format, such as Braille or large print or on audiotape;

- providing qualified readers or sign language interpreters;
- permitting telework, even if the employer does not have an established telework program or the employee with a disability has not met all the prerequisites to qualify for an existing telework program (e.g., length of service);
- changing the methods of supervision (e.g., supervising partner provides associate with critiques of his work through e-mail rather than face-to-face meetings); and
- reassignment to a vacant position.⁵

In addition, the EEOC suggests that, during the application process, employers should, among other things, use sign language interpreters; provide written materials using Braille or large print; and ensure their on-line recruiting efforts do not exclude individuals who use specialized consumer software.⁶ Legal employers should also work to ensure that firm-sponsored social events are accessible to disabled attorneys and that they provide reasonable accommodations in connection with emergency evacuation procedures.⁷ As the EEOC points out, many of these accommodations can be made at little cost.

The EEOC makes clear, however, that, “employers are never required to remove an ‘essential function’—i.e., a fundamental job duty Conducting legal research, writing motions and briefs, counseling clients, teaching a law course, drafting regulations and opinion letters, presenting an argument before an appellate court, drafting testimony for a legislative body, and conducting depositions and trials are examples of what may be essential functions for many legal positions.”⁸ Similarly, employers are not required to lower the standards for meeting these essential functions.⁹ As an example, the EEOC notes that, while a law firm may require disabled attorneys to meet the same billable hours requirement as non-disabled attorneys, the law firm is required to provide reasonable accommodations to help attorneys meet this requirement.¹⁰

Employers also are not required to make reasonable accommodations that constitute an “undue hardship.”¹¹

3. U.S. EQUAL EMPLOYMENT OPPORTUNITY COMM’N, REASONABLE ACCOMMODATIONS FOR ATTORNEYS WITH DISABILITIES (July 27, 2006), <http://www.eeoc.gov/facts/accommodations-attorneys.html>.

4. *Id.*

5. *Id.* (internal citations omitted).

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

Undue hardship determinations are made on a case-by-case basis and take into account the nature and cost of the accommodation, as well as the employer's resources and the effect of the accommodation on the operation of the employer's facility.¹²

The Job Accommodation Network (JAN), a service of the Office of Disability Employment Policy, U.S. Department of Labor, is another resource for identifying possible accommodations. Excerpts from JAN's Fact Sheet on Job Accommodations for Lawyers with Disabilities are provided below:¹³

Concentration:

- Reduce distractions in the work area
- Provide space enclosures or a private office
- Allow for use of white noise or environmental sound machines
- Allow the employee to play soothing music using a cassette player and headset
- Increase natural lighting or provide full spectrum lighting
- Plan for uninterrupted work time
- Allow for frequent breaks
- Divide large assignments into smaller tasks and goals
- Restructure job to include only essential functions

Motor and Mobility Impairments:

- **Access Workspace:**
 - Provide parking close to the worksite
 - Reduce walking or provide a scooter or other mobility aid
 - Provide an accessible entrance
 - Install curb cuts
 - Provide an elevator
 - Install automatic door openers
- **Access Workstation:**
 - Implement ergonomic workstation design
 - Provide ergonomic chairs, forearm supports, articulating keyboard trays, telephone headsets, anti-fatigue mats
 - Provide adjustable sit/stand workstations and/or accessible workstations
 - Provide lateral files and lazy Susan filing carousels for frequently accessed files
 - Provide an accessible route of travel to other work areas used by the employee

- Move workstation close to other work areas, office equipment, and break rooms

Depression and Anxiety:

- Reduce distractions in work environment
- Provide to-do lists and written instructions
- Remind employee of important deadlines and meetings
- Allow time off for counseling
- Provide clear expectations of responsibilities and consequences
- Provide sensitivity training to coworkers
- Allow breaks to use stress management techniques
- Develop strategies to deal with work problems before they arise
- Allow telephone calls during work hours to doctors and others for support
- Provide information on counseling and employee assistance programs

Hearing:

- Provide amplification for meetings, telephone use, and communication in noisy environments
- Provide real-time captioning
- Use e-mail, instant messaging, and text messaging when appropriate
- Provide visual indicators for alarms and emergency situations
- Reduce background noise
- Use TTYs, assistive listening devices, and interpreters when needed
- Provide clear paths of travel in busy environments

Speech:

- Provide speech amplification, speech enhancement, or other communication device
- Use written communication, such as e-mail or fax
- Hire a sign language interpreter and train on basic sign language
- Use real-time captioning, instant messaging, text messaging
- Provide an accessible, quiet, and public room for meetings.

Additional information regarding specific accommodations for a number of other impairments can be found using JAN's Searchable Online Accommodation Resource system, available online at <http://www.jan.wvu.edu/soar/index.htm>.

12. *Id.*

13. JOB ACCOMMODATION NETWORK, FACT SHEET SERIES: JOB ACCOMMODATIONS FOR LAWYERS WITH DISABILITIES 2-5 (Sept. 3, 2008), available at <http://www.jan.wvu.edu/media/lawyersfact.doc>.

CHAPTER NINE

Implementing the Pledge to Hire Lawyers with Disabilities

Disability Diversity in the Legal Profession: A Pledge for Change

As Legal Employers, Chief Legal Officers, Hiring Partners, and Hiring Personnel, we hereby affirm our commitment to diversity, including diversity regarding individuals with mental, physical, and sensory disabilities, in the legal profession. Our Pledge for Change is based on the need to enhance opportunity in the legal profession and our recognition that the legal and business interests of our clients require legal representation that reflects the diversity of our employees, customers, and the communities where we do business. In furtherance of this commitment, this is intended to be a pledge for the profession generally and in particular for our law departments, firms, agencies, and organizations. We further pledge that we will encourage those law departments, firms, agencies, and organizations that we do business with to make a similar diversity commitment.

In this concluding chapter, representatives from the American Bar Association (ABA), the Association of Corporate Counsel (ACC), and Starbucks Coffee Company (Starbucks) address the “Pledge for Change” (Pledge) and what it means to all segments of the legal profession. The 2008–2009 President of the ABA, H. Thomas (Tommy) Wells, Jr., as host of the Conference, discusses the Pledge’s implementation from the point of view of the ABA and the legal profession, generally.

Frederick J. Krebs, as President of the ACC, and J. Daniel Fitz, as its Chair, examine the Pledge from the perspective of the ACC, which was the first organization to promote a diversity pledge to its members and law firms hired by those corporations. This presentation includes a description of what is being done in the United Kingdom on behalf of lawyers with disabilities.

Lucy Lee Helm, a Senior Vice President and Deputy General Counsel at Starbucks explains what in-house counsel can do to promote disability diversity in the

corporations they represent and the law firms they employ, based on her company’s experiences in making diversity part of its corporate culture.

These presentations are preceded by an overview describing the major complexities that may arise when implementing a diversity pledge on behalf of lawyers with disabilities, and are followed by questions and comments from the Conference attendees.

The Unique Circumstances Involved in Implementing Disability Diversity

The “Pledge for Change” represents a commitment by legal employers and the legal profession to actively support and encourage the hiring, retention, and promotion of qualified lawyers with disabilities equivalently, in terms of general methods and resources, to what they have done to address diversity based on race, ethnicity, gender, and more recently, sexual preference. This equivalence, however, recognizes that the challenges facing lawyers with disabilities, and the employers who hire them, are different in certain important respects from those challenges faced by the other diversity groups. In a number of chapters, this Conference Report has articulated what most of these differences are and how employers can adopt various best practices to meet most of these unique challenges. Nevertheless, before discussing the Pledge’s implementation, it is important to reiterate what the most important differences are.

First, in terms of the diversity “pipeline”—which begins in elementary school and concludes with people of diverse backgrounds becoming leaders in their respective fields—disability in the legal profession is still mired in the elementary school to college segments because, statistically, a substantially smaller percentage of people with disabilities enter law school than for all the other diversity categories. Although the percentages for other minorities, particularly based on race and ethnicity, are discouraging, the percentages are far worse

for law students with disabilities. Thus, putting programs into place that allow more college students with disabilities to go to law school should be a primary concern. Today, there are no major scholarships targeted specifically for college students with disabilities to attend law school.

Second, the need for the Law School Admissions Test, law schools, bar admission committees, legal employers, and society more generally, to willingly, creatively, and interactively provide accommodations for law students and lawyers with disabilities that will allow them to meet their full potentials as law students and lawyers is essential.

Third, law schools, legal employers, federal and state governments, the ABA, and most state and local bar associations are not consistently and comprehensively compiling meaningful statistics on law students and lawyers with disabilities. In fact, there is a massive information gap, which is a substantial deterrent to disability diversity generally, and measuring progress in implementing disability diversity more specifically.

Finally, past and current bias against law students and lawyers with disabilities and inconsistent and incomplete confidentiality guarantees make it difficult, risky, and sometimes practically impossible for many lawyers with non-apparent and even apparent disabilities to disclose the existence or full nature of their impairments in good faith.



From left to right: Lucy Lee Helm; H. Thomas Wells, Jr.; J. Daniel Fitz; and Alex J. Hurder

Due to these and other pressing concerns, disability diversity in the legal profession remains much more an aspiration than a reality. Even in 2009, there are relatively few lawyers with disabilities who are employed by law firms; corporations; federal; state, and local governments; and other legal employers. The Conference's "Pledge for Change"—or some comparable formal, written commitment to embrace disability diversity as one

essential component of an overall commitment to a diverse workplace—is an essential first step that all legal employers should take to address the shortcomings of the entire legal profession in the employment of lawyers with disabilities.

Panel Discussion

H. Thomas Wells, Jr.

"[I]t's . . . a lost opportunity for the legal profession, because we're simply not . . . tapping into the vast talents of people who happen to have what is currently described as a disability."

Let me start with what I see are two perception problems, and when I'm talking about perception problems, it's probably going to be to perceptions outside this room, because I think the folks in this room get it. The first perception problem is that when we are talking about diversity, we are only talking about racial or ethnic diversity, perhaps sometimes including women in that equation. And that perception is unfortunate, because there are at least other kinds of diversity that, in my mind, and I think in the minds of most of the people in this room, should be included; one of which, obviously, is disability. Another is sexual orientation and gender identity.

The second perception problem that I see deals more specifically with disability, with lawyers with a disability. And this perception problem I think also is a problem outside of this room, but it's one we need to figure out how to change outside this room.

That perception is that accommodation is extraordinarily difficult and prohibitively expensive. The reality is that, in virtually every case, it is neither. You just heard in the last panel talking about the surveys of employers indicating that the average cost of an accommodation is somewhere between zero and \$500. That's a pittance.

However, if you go to the managing partner of most law firms and say, "What would it cost you to accommodate a blind associate?" you're going to get figures starting probably at \$10,000 and ranging up, when, in fact, as any of you who heard Isaac Lidsky at the reception last night, this simply is not the case. Fortunately, our technology is advancing in ways we would hope it would advance. And because of that, we're bringing down the difficulties with and costs of accommodation.

We have to figure out a way to get that message out,

because otherwise, as I said at lunch today, when women and men of diverse backgrounds face systemic barriers to rising in the ranks of our profession—whether it be on admission to law school, on matriculation from law school, on taking the bar exam and passing the bar exam, on getting hired, on making partner—it's not just a lack of opportunity for those individuals. It's a lost opportunity for the legal profession, because we're simply not going to be tapping in to the vast talents of people who happen to have what is currently described as a disability.

So, how do we address the perception problem? I would like to think one way we address it is with events like this. I had an interview earlier with one of the reporters outside, and he was asking me, "You come to events that the ABA puts on every week, do you ever learn anything new?" My answer is I always learn something new. That's what I love about practicing law. That's what I love about being a trial lawyer; it is that every case is different and I have to become an instant expert at whatever the case happens to be.

But I was not aware of the employer surveys until the last panel. Now if I go to my managing partner and say we need to consider this very highly qualified lawyer who has a disability, he's going to say, "Oh, my God, what's that going to cost me to accommodate?" If I tell him \$0 to \$500, it's over. He's going to say, "Sure, absolutely." But we need information like that. We need to disseminate information like that.

Events like this are one way to do it. Quite frankly, another way to do it is having lawyers with disabilities active in the American Bar Association. For example, the ABA President gets to make in the range of 700 appointments every year. Many of them are held over and you don't actually appoint 700 people each year. But from the statistics we kept in the 2007–2008 year of the approximately 700 appointments, 13 were people who identified themselves as having a disability. In the year last, when I was making the appointments, 2008–2009, we managed to move that up to 46 from 13.

Currently, however, on the ABA Board of Governors, which has 38 governors, we do not have anyone who is identified as having a disability. We have 554 members of our policy-making House of Delegates for whom we have no statistics on how many have a disability. I know for a fact from being in the House that some do, but we simply don't have the statistics on that. So another way, I think, that the perception problem can be addressed is by having people with a disability in high visibility positions. I think it's great that we were able to have Kareem

Dale here at lunch to speak to us, clearly someone in a very high-profile position, and I think that helps address the perception problems.

Finally, a couple of years ago, the ABA went through an exercise restating its goals. We used to have 11 or 12 goals that developed over time. They really didn't make a coherent whole, so we went into a strategic planning process and the first thing you do in that is try to restate your goals and make them accurate and hopefully coherent.

To give you an idea that the value that the American Bar Association places on diversity, we now have only four goals in no particular order: serve our members, serve our profession, serve the public, and promote diversity. And when we talk about diversity, we're talking about diversity of all kinds: racial and ethnic, women in the profession, disability, and sexual orientation and gender identity. That is a pretty powerful statement for the largest voluntary professional organization in the world.

Frederick J. Krebs

"[A]s an organization we constantly examine our own hiring and diversity practices for our staff, and the diversity of our board of directors and governing body."

The pledge that you see at this Conference, the ABA's "Pledge for Change," is modeled after a broader diversity pledge developed a number of years ago. We at the ACC (Association of Corporate Counsel) and others in the corporate and the law firm communities, the ABA, Minority Corporate Counsel Association (MCCA), and many other organizations undertook initiatives to expand diversity of the legal profession.

When first developed, the pledge was a fairly straightforward statement by members of the corporate counsel community that essentially said the signatories supported the concept of diversity. Charles Morgan, then the general counsel of Bell South, developed the original pledge a number of years ago. Ultimately, a significant number of general counsel signed it—more than 200. A key point to note: the corporate community sought to use its economic power to bring about change, specifically to encourage law firms they retain to make diverse hires and to broaden their horizons in hiring. There was a consensus that, in addition to being the right thing to do, being a more diverse organization had tremendous business advantages.

The second phase began a few years ago, led by Rick Palmore, then the General Counsel of Sara Lee and

a member of the ACC board of directors. He developed a revised version of the original corporate counsel pledge. We supported this effort as did MCCA and other organizations. This pledge took the diversity commitment further by asserting that, in addition to supporting diversity generally, the corporate signatories would make decisions about which law firms to hire or retain based on the firms' commitment to diversity. This diversity process has moved forward, and it has had an impact on the legal profession.

As I look at this room, I think we have the wrong people here. In one sense, we are preaching to the choir. You don't need to have conversation about the importance of diversity. You don't need to have the conversation about why it's right to include disabled attorneys and broaden and expand horizons in hiring opportunities. You are well aware of these issues. You are committed to them.

But the challenge is to go beyond this room. The challenge is to reach out to others and get them to change their minds and to have an impact that way. And that is a challenge because this change will be about attitudes. It will be about a willingness to take a chance, a willingness to move into areas that, for a hiring partner or for a corporation, are areas that maybe they are not comfortable with, that they have not experienced or been exposed to.

The legal profession is traditionally a very conservative profession, and change does happen slowly. So I think the challenge is not in this room, but it's to take what is in this room and what you all know and move beyond it.

Certainly, for ACC as an organization, we must look at ourselves. There are two things we do at ACC. One, as an organization, we constantly examine our own hiring and diversity practices for our staff, and the diversity of our board of directors and governing body. Also, at our conferences, we make certain that we have a broad, diverse group of speakers. We want to go beyond talking about diversity; we want to be a model for others. Second, we encourage and support our members who wish to address this issue by providing them the tools, sharing the success stories, and enabling them to take advantage of the research which organizations like National Association for Law Placement (NALP), the MCCA, and the ABA provide.

J. Daniel Fitz

"[T]he most powerful weapon against these entrenched attitudes is the evidence provided by lawyers with disabilities who are working and doing the job every day."

Since I've lived in the United Kingdom for the last 22 years, I thought I would give the U.K. Law Society's Lawyers with Disabilities Group a call to see if they could put me in touch with a lawyer there who has a disability, just to see what that lawyer's experiences have been and also to see what the Lawyers with Disabilities Group in the UK has identified as the major issues. It's remarkably the same as the discussion that we were having here today. Like the U.S., the U.K. and the European Union have strong anti-discrimination legislation that applies to persons with disabilities.

In addition, like the ADA practices, the ethical rules binding upon U.K. solicitors prohibit discrimination of many types, including on the basis of disability. And it goes beyond what the legislation requires because it puts higher standards on solicitors on the way that they practice and manage their practices.

Lawyers with disabilities in the U.K. are finding employment, but it is a struggle. The public sector, the voluntary sector, and industry tend to be somewhat more accommodating than private practices, but change has been occurring, including in private practices, especially in the larger firms in larger cities. Like here, attitudes in the U.K. are the most significant barrier to attracting students to study law, because they assume that they won't be able to get a training job afterwards [Note: In the U.K., a solicitor must work for two years in a supervised setting before he or she is qualified to get a license to practice]. And once they have qualified as solicitors, they worry they won't be getting that first job.

Interestingly, another perceived barrier that the Lawyers with Disabilities Group identified is the near impossibility of identifying to employers what reasonable accommodation will entail, other than on an individual and case-by-case basis. And I don't know what it's like here in the U.S., but in the U.K., employers are interested in promoting diversity by employing persons and lawyers with disabilities, but they want to talk about the up-front issue of what's it going to cost them, and the answer has to be: "It depends on the person they hire."

But the good news is, just as here in the U.S., the most powerful weapon against these entrenched attitudes is the evidence provided by lawyers with disabilities who are working and doing the job every day. This reinforces the advice we received earlier today of "just do it," just go ahead and employ people and make it work. You have the right intentions, it's okay to make mistakes, it's even okay to fail, but the most progress will be made in changing attitudes by more of us who

are in positions of authority proceeding to hire people with disabilities and making it happen.

Moving on to the Pledge and how we go about implementing it. Those of us who are employers can lead by example and many on the panel have done that. Also those who are leaders can take risks and reorder the priorities of their organization, so compliments to Mike Greco and Tommy Wells who did so at the ABA and Walter Smith at Baker Botts L.L.P. I thought that was a fantastic story: he becomes managing partner and, boom, he says we're going to do this, we're going to employ individuals with disabilities in all of our offices in the U.S.; and that has made a difference.

So it takes leading by example, and for those lawyers who are employed, who have disabilities, they're tearing down preconceptions every day just by doing their job, so that's another way of preparing the ground for new lawyers with disabilities who want to be hired. The existing employed lawyers with disabilities are the best reason to hire new lawyers with disabilities.

For those seeking employment, the best advice I heard all day is, if your job is going to require accommodation, why not raise it? To me, this is all part of the demystification process where they can sit down and have a conversation without it being fraught with more meaning than it deserves.

And the last point I'll make is about what can bar associations do. We've heard a bit about that already, but one thing we can do is promote implementation of the Pledge by profiling those employers that we think are doing a good job of it, because lawyers respond to evidence.

Lucy Lee Helm

"[W]e try to make the company, our stores, our physical environment and our hiring practices more inclusive . . . because we want to do the right thing . . . and our customers actually expect us to do so."

Let me add a few perspectives from the in-house legal employer. One of the challenges that we heard last night from our keynote speaker, Isaac Lidsky, was that we really shouldn't be promoting employment of persons with disabilities simply to fill a diversity pledge, but instead, because it makes business sense and there's a good financial reason to do that.

I would pose that both things are true: we should hire people with disabilities to meet diversity goals and we should hire people with disabilities because it makes

good business sense. And let me tell you why I think both of those things. Diversity goals are a reality in today's business. Employees are demanding that employers hire people who look like them and customers are seeking out companies that look like them. That's a reality that we should be taking advantage of.

I think the challenge is to encourage corporate employers to understand that their employees and consumers actually include people with disabilities because sometimes that's not so obvious to them, particularly the sheer number of persons in that category. That will help motivate them to hire people with disabilities, including legal professionals. I think that also translates into law firms—because if diversity is such an important goal of public companies, then law firms who get hired by those companies often are asked to meet diversity goals—and depending on the company, disability may be part of those diversity goals.

As far as whether hiring people with disabilities makes business sense, again, I can only speak from my experience at Starbucks, but the reality is that leaving people with disabilities behind leaves money on the table. If you are not inclusive, you are losing customers who might come in your door. And it's as simple as that.

As a legal employer, whether a law firm or in-house legal department, you have to think of what is in it for those companies to hire persons with disabilities. I happen to work also for a company that strives to do the right thing, and the reason we can make that a priority is because our customers are the type of people who expect Starbucks to do the right thing. They want a publicly conscious, socially conscious company and we're fortunate in that. Not every company has that mandate that we do.

So I can tell you that the reason we try to make the company, our stores, our physical environment, and our hiring practices more inclusive is because we want to do the right thing for our customers and employees, and our customers actually expect us to do so. We want to be inclusive, and it makes good business sense. But it also means, if we have a goal of truly diversifying our employee base, including hiring people with disabilities, then we don't want to hire just anyone simply because they meet a demographic—we want to hire the best persons, the brightest, most talented, and capable persons. You do that by becoming a company that says to people that you are inclusive and welcoming.

You become what is known as "an employer of choice," and if you're an employer of choice, then that means you have your choice of people that you want to hire. In terms of becoming an employer of choice to

persons with disabilities, the way you do that is by becoming more open and accessible in your physical environment, reaching out to people with disabilities in your marketing, and in everything that you do. Then that opens up the pool of talented and qualified people who want to work for you. I think there is an untapped pool of legal professionals who would become available to employers that are recognized as being welcoming to and inclusive of persons with disabilities.

The barrier of providing accommodation sometimes is not so big as the perception that we aren't able to find and employ qualified persons with disabilities. When asking people to specifically reach out in the hiring process to people with disabilities, it is frustrating to hear the concern "I don't know any people with disabilities," or worse, "I don't know any qualified people with disabilities." That's the kind of barrier that I think is worse than how do you accommodate persons with disabilities once they are hired. If you can't get past the barrier of people who say "I don't know where to find qualified persons with disabilities to hire," then you can't even get to all of the rest of the issues that we've talked about here today in terms of accommodating and retaining persons with disabilities in your workforce.

So I think what it means to make a pledge like this is for each of us to take a public stand that says hiring and including people with disabilities in our customer base and in our workforce is a critical priority of ours and that we are willing to state that publicly and willing to take specific actions to support the Pledge.

In Starbucks' legal department, we have a commitment to diversity in hiring and we had succeeded in many ways in breaking through barriers as to other kinds of outreach, so that the diversity of our work pool had actually increased. However, we weren't seeing candidates who were self-identified as having disabilities, so our General Counsel gave us a challenge: to figure out ways to broaden the pool of people with disabilities who would be willing to think of Starbucks' legal department as a place that they would like to work.

Part of what we did was to reach out to the Commission, to disability-related legal groups and disability rights organizations that had contact with people with disabilities to learn more, and to see how we could become more inclusive and open in our outreach and discussions. We did not presume that we knew it all, but we figured out by discussions with those in the bar association and other disability advocates how we could get better at what we do.

Finally, I would challenge all of us participating in

this Conference to take on the responsibility as we leave here today of being more vocal with our commitment to hiring people with disabilities. What that means to me is to do outreach to other members of the bar at law firms and other members of the corporate in-house legal community. Tell them that we have signed on to this Pledge. Tell them that we are at this Conference and why. Tell them that they should be a participant in or sponsor of this Conference. Let's figure out ways to make people aware that increasing the employment of legal professionals with disabilities is an important issue that the ABA, law firms and corporations, governments, and other employers are actually tackling.

Questions and Comments

I work for the Social Security Administration. The federal government hires with an authority called Schedule A, which is a non-competitive hiring process. Every federal agency has a selective placement coordinator. If you go to that agency's website and you type that in the search engine, it will bring up the information on hiring. Every agency has a website, like the Department of Labor is dol.gov. The Department of Justice is usdoj.gov.

Hi, I'm with the U.S. Department of Justice. To supplement what was said earlier with regard to looking for selective placement coordinators and the Office of Personnel Management, a Website that folks can go to is www.opm.gov/disability and that's another place to find the selective placement coordinators. And if any of you would like to have a comprehensive resource article that has more than 80 resources on employment of people with disabilities, internships, and Schedule A, and so forth, you can e-mail me at ollie.cantos@usdoj.gov and in the subject line, put the words "employment article," and I will get that information to all of you.

Hi, I'm Claudia Center. I think it was mentioned briefly before, but in addition to the top leadership in our profession making a commitment to diversity, law students and new lawyers with disabilities need to engage in advocacy and networking organizations, and I would again mention the National Association of Law Students with Disabilities. I think it's really great to look and see what the students are coming up with and to support the students who are doing advocacy and support for each other.

One of the concerns is that this Pledge is inspired by [Rick Palmore's] "Call to Action," but the "Call to

Action” followed the statement of principles, and it still has no teeth. Is there a thought about adding some teeth to this Pledge?

Alex Hurder

I think we see the Pledge as a way to educate people, to communicate with people, and to ask for their commitment. I don't think there's been a plan for enforcement. And possibly that needs to be something that individuals do when they encounter difficulties. The education effort may help with that, but I think what we see as the main thrust of the Pledge is that it lets us communicate with people and give them the knowledge and the information that we have.

Fitz

From the ACC perspective, we don't talk very much about it, but one role of General Counsel is as chief procurement officer; and in the other pledges that we've done, implicit in that or explicit in that is general counsel are expected to ask their providers of legal services what their position is on it. Implicit is if we get the wrong answer, we may take our business elsewhere. There is no name and shame mechanism, for those who refuse to sign the Pledge. However, often just by asking what's your position on the Pledge, you will find that firms that don't have a position on it will quickly develop one, because they're all good salespeople and they want to take away your reasons for saying no and only leave you with a yes if you want to engage them.

And it probably wouldn't be effective if we were explicit about it either. No one likes to have that kind of overt coercion. It is left very much as an implicit possibility.

Has anybody signed it yet, and if so, has the ABA signed the Pledge yet?

Michael Greco

The Board of Governors approved the distribution of the Pledge, including at this Conference, and the Commission has been working for many years to call attention to the need for employers to consider adopting what the Pledge says, even though it wasn't a pledge until recently. Therefore, I'm thinking that it would be very helpful to the Commission's work going forward, and to the ABA and implementation of its Goal III to formalize support of the Pledge by all who are present today. This would be an expression that the Pledge is a good idea and that all legal employers should consider signing it.

The motion is that the attendees at the Second National Conference on the Employment of Lawyers with Disabilities urge that all legal employers consider signing the Pledge that is before us.

Would you raise your hands if you are in favor of that motion or say “aye.” Now I'll give you a chance to say “nay” if you're opposed to it.

We have unanimous consent of affirmation of all those here that legal employers should support the Pledge. And that's a great way to end this Conference.

[Editor's Note: This informal motion is a reflection of the sentiments of those who attended the Conference. However, as with all statements in the Conference Report itself, the views expressed in the motion do not represent official ABA policy unless they are adopted by the ABA House of Delegates or Board of Governors, pursuant to the bylaws of the Association.]

APPENDICES

APPENDIX A

ABA, the Commission on Mental and Physical Disability Law, and Lawyers with Disabilities

Over many years, the American Bar Association (ABA) has been directly involved in issues affecting lawyers with disabilities and disability rights. The Association has demonstrated its commitment to these issues organizationally, through the establishment and funding of the ABA's Commission on Mental and Physical Disability Law, through the adoption of specific policies by its House of Delegates, and by sponsoring the two national conferences on the employment of lawyers with disabilities.

The American Bar Association and Lawyers with Disabilities

Founded in 1878 by 100 lawyers from 21 states, the American Bar Association is the largest voluntary professional association in the world with over 400,000 members. The ABA provides law school accreditation, continuing legal education, information about the law, programs to assist lawyers and judges, and initiatives to improve the legal system for the public. The ABA's mission is "[t]o serve equally our members, our profession and the public by defending liberty and delivering justice as the national representative of the legal profession." Goal III—one of the Association's four goals—is to "eliminate bias and enhance diversity."

The objectives of this goal are to "(1) Promote full and equal participation in the association, our profession, and the justice system by all persons; and (2) Eliminate bias in the legal profession and the justice system."

The ABA has a number of different programs and activities pertaining to lawyers with disabilities. Many ABA entities actively promote lawyers with disabilities within their governance structures, but the entity, whose mission is to implement Goal III for the benefit

of lawyers and law students with disabilities within the ABA, is the Commission on Mental and Physical Disability Law. Former ABA President Chesterfield Smith established the Commission on the Mentally Disabled in 1973 to respond to the advocacy needs of persons with mental disabilities, particularly those locked away in large isolated institutions. After the passage of the Americans with Disabilities Act (ADA) in 1990, the ABA broadened the Commission's mission to serve all persons with disabilities and changed its name to the Commission on Mental and Physical Disability Law (Commission). Today, the Commission carries out an array of projects and activities addressing disability-related public policy, disability law, and the professional needs of lawyers and law students with disabilities. The Commission's longest running project is the *Mental & Physical Disability Law Reporter* (1976–present).

The Commission, chaired by Alex J. Hurder and directed by John W. Parry, is composed of 15 lawyers, law professors, and other disability professionals, many of whom have disabilities or family members with disabilities. They are appointed for one-year renewable terms by the current President-Elect of the Association. In addition, there are liaisons to the Commission from various Association entities, including the ABA's Board of Governors. The Commission's mission, as approved by the Association's Board of Governors, is

[t]o promote the ABA's commitment to justice and the rule of law for persons with mental, physical, and sensory disabilities and their full and equal participation in the legal profession.

Three of the Commission's major ongoing projects pertain directly to lawyers with disabilities. The Subcommittee on Lawyers with Disabilities was created in 1994, just after the ABA Board of Governors expanded the Commission's mission to include lawyers with physical and sensory disabilities. Its focus has been on

activities to expand opportunities within the Association for lawyers with disabilities, the implementation of Goal III to benefit lawyers with disabilities, and a nationwide mentor program for law students (and recent law graduates) with disabilities.



John W. Parry, Director, ABA Commission on Mental and Physical Disability Law

Also, each year the Commission—through its Goal III Subcommittee—surveys all ABA sections and divisions and all CLE (Continuing Legal Education) programs to closely approximate the number of appointments of lawyers with disabilities to leadership positions. Based on this data, which can be compared over time, the Subcommittee makes recommendations on ways to improve participation of lawyers with disabilities in ABA activities, and honors those ABA entities that have demonstrated a noteworthy commitment to Goal III as it pertains to lawyers with disabilities.

Finally, the Commission has the Subcommittee on the National Employment Conference that planned and helped to carry out this event and, based on this Conference, will work on followup activities, including distributing this report and promoting the ABA Pledge for Change.

For more detailed information about the Commission, its programs, activities, and publications devoted to disability law, ABA Sections and Divisions with disability-related activities, state bar association disability committees, and national disability legal organizations, see Appendix B of this document.

ABA Policies Pertaining to Lawyers with Disabilities

For several decades, the ABA and its entities have produced recommendations intended to support persons with disabilities, including the passage of the Americans with Disabilities Act. These recommendations, policies, legislative priorities, and standards have a particular impact on law students with disabilities, the employment

of lawyers and judges with disabilities, and their participation in the legal profession; they are listed below:

- **Bar Admissions.** Recommends that when making character and fitness determinations for bar admissions, bar examiners (1) consider the privacy concerns of bar admissions applicants; (2) tailor questions concerning mental health and treatment narrowly in order to elicit information about current fitness to practice law; and (3) take steps to ensure that their processes do not discourage those who would benefit from seeking professional assistance with personal problems and issues of mental health from doing so. Recommends that fitness determinations may include specific, targeted questions about an applicant's behavior, conduct, or current impairment of his or her ability to practice law.
- **Court-Related Needs of Persons with Disabilities.** Supports efforts to make the state and territorial judicial systems more responsive to the elderly and persons with disabilities.
- **Court Interpreters.** Recommends that all courts be provided with qualified sign language interpreters in order that parties and witnesses who are deaf or hearing-impaired may fully and fairly participate in court proceedings.
- **ABA Members with Disabilities.** Affirms commitment to provide benefits of membership to ABA members with disabilities to the maximum extent feasible.
- **Discrimination Based on Disability.** Supports in principle federal legislation that prohibits discrimination on the basis of disabilities in a manner parallel to existing prohibitions on discrimination based on race, sex, national origin, and religion.
- **Discrimination Based on Pay.** Urges Congress to amend the Civil Rights Act of 1964 and federal age or disability employment discrimination laws to ensure that in claims involving discrimination in pay, the statute of limitation runs from each paycheck reflecting an improper disparity.
- **Employment.** Supports federal, state and local legislation designed to further equal employment opportunities for persons with disabilities.
- **Law Schools.** A law school shall not use admission policies or take other action to preclude admission of applicants or retention of students on the basis of race, color, religion, national origin, gender, sexual orientation, age or disability. Assuring equality of opportunity for qualified individuals with disabilities may require a law school to provide such students,

faculty and staff with reasonable accommodations.

- **Physical Disabilities.** Supports efforts to ensure access to public buildings and transportation for persons with physical disabilities. Urges federal, state, territorial and municipal courts to make courthouse and court proceedings accessible to individuals with disabilities, including lawyers, judges, jurors, litigants, court employees, witnesses, and observers.
- **Selection of Judges.** Recommends that when making character and fitness determinations of state and territorial, judicial candidates, nominees, or appointees, any nominating or evaluating entity (1) consider the privacy concerns of the candidates; (2) narrowly tailor questions concerning physical and mental disabilities or physical and mental health treatment in order to elicit information about current fitness to serve as a judge, with such reasonable accommodations as may be required; and (3) take steps to ensure that the process does not have the effect of discouraging those who would seek judicial office from pursuing professional assistance when needed.

Histories of the 2006 & 2009 Conferences

The First Conference, May 2006

In May 2006, the ABA, with co-sponsorship of the federal Equal Employment Opportunity Commission (EEOC), held the first National Conference on the Employment of Lawyers with Disabilities. The idea for the Conference originated in the fall of 2003 after the Chair of the EEOC, Cari M. Dominquez, addressed an ABA national diversity conference on racial and ethnic minorities and women. Missouri Supreme Court Judge Richard B. Teitelman, who at that time was the Chair of the Commission on Mental and Physical Disability Law, was impressed that Dominquez chose to use a substantial portion of her address to call for more employment opportunities for lawyers with disabilities in the legal profession.

Judge Teitelman asked John Parry to draft a letter to Dominquez in order “to formalize the relationship between the EEOC and the ABA, through our Commission, and initiate joint projects and activities that would benefit all lawyers and law students with disabilities, including those who are ABA members.” Parry also drafted a letter from Judge Teitelman to Michael S. Greco—who was in the line of succession to be the next ABA President-Elect—asking him to consider making “lawyers with disabilities one of the cornerstones of his Presidency,” and to work with the

Commission on these issues.

Soon thereafter, Parry met with Peggy R. Mastroianni, Associate Legal Counsel for the EEOC, and other EEOC staff to discuss a possible joint collaboration. Judge Teitelman, Scott LaBarre (as successor as Chair of the Commission), and John Parry met with Dominquez and her staff, including Peggy R. Mastroianni, Christopher J. Kuczynski, and Mildred A. Rivera, in May 2004. As a result of that meeting, the EEOC agreed to co-sponsor the ABA National Conference. In August 2004, at the ABA Annual Meeting in Atlanta, Judge Teitelman, LaBarre, and Parry met with Greco and his staff to discuss the National Conference, the joint ABA-EEOC projects, and ABA diversity initiatives that pertain to lawyers with disabilities. Greco enthusiastically supported the Conference and directed the Commission to begin fundraising initiatives, to develop a Conference program, to identify speakers, and to prepare an invitation list. He promised to make lawyers with disabilities one of the cornerstones of his presidency.

The 2006 Conference’s two main purposes were to (1) facilitate the hiring of lawyers with disabilities, and (2) help implement then-Goal IX, which commits the ABA and all its many entities to promote the participation of lawyers with disabilities, women, and racial and ethnic minorities in the legal profession. The underlying theme was to present a frank discussion of the obstacles in the way of hiring lawyers with disabilities, while creating a foundation for hiring these lawyers in the future.

The Commission identified perspectives and topics that would be covered in the Conference presentations. The overarching perspectives would include the legal profession’s commitment to lawyers with disabilities and the EEOC’s perspective on the employment of lawyers with disabilities. The legal profession’s commitment was articulated through the words of Richard L. Thornburgh, the former U.S. Attorney General and a long-time disability rights advocate who was instrumental in the drafting and enactment of the ADA; Greco, who would be hosting the Conference; and LaBarre. Dominquez would speak about the EEOC and the federal commitment to hiring lawyers with disabilities. In addition, U.S. Court of Appeals Judge David S. Tatel presented the perspective of a lawyer who became blind later in life, after he had already begun to establish his law firm career.

The Second Conference, June 2009

In November 2006, shortly after completion of the first conference, then-Commission Chair Scott LaBarre recommended that there be another similar conference which should focus more on encouraging law firms and

other legal employers to implement disability diversity initiatives. He then charged the Commission's Conference Subcommittee to meet and develop ideas for this second conference, which was to be held in 2009.

During the winter of 2008, Commission member Margaret "Peggy" Foran, a Director of the Association of Corporate Counsel (ACC), and John Parry approached the ACC about co-sponsoring this second conference. The ACC is the world's largest support organization for lawyers who practice in the legal departments of corporations, associations, and other private-sector organizations. The idea was to focus on the employment of lawyers with disabilities at major corporations and the law firms that corporations hire to do business for these companies. The ACC agreed to be a co-sponsor.

In April 2008, the Commission decided that the second conference should focus on best practices and convincing legal employers to make a pledge to hire and retain lawyers with disabilities. The Commission also decided to emulate a general diversity pledge promoted by the ACC and authored by then-general counsel of Sara Lee, Roderick Palmore. The Commission tailored Palmore's pledge to highlight the importance of disability diversity for legal employers. Palmore approved the Commission's version of his general diversity pledge, which then became "A Pledge for Change: Disability Diversity in the Legal Profession" (Pledge).

In August 2008, at the ABA Annual Meeting in New York City, members of the Commission approached incoming ABA President H. Thomas Wells, Jr., to host the 2009 conference, and he eagerly agreed. Shortly thereafter, the Minority Corporate Counsel Association also joined as a co-sponsor. In April of 2009, the ABA Board of Governors Operations and Communications Committee approved of the Commission's intention to solicit co-sponsors to sign a diversity pledge for hiring lawyers with disabilities.

The Second ABA National Conference on the Employment of Lawyers with Disabilities had two main themes. The first was to promote the Pledge and to use the Conference and this Report as a tool to obtain commitments from law firms, corporations, and other legal employers to sign the diversity pledge. The second was to provide, through a series of panel programs, practical information and best practices to (1) legal employers about hiring and providing accommodations to lawyers with disabilities, and (2) lawyers with disabilities about what they must do to put themselves in the best position to be hired.

APPENDIX B

ABA Commission Programs

Subcommittee on Lawyers with Disabilities

This Subcommittee works toward the full and equal participation in the legal profession for lawyers with disabilities. Projects focus on education and outreach within the ABA, and within the legal profession as a whole, such as the National Mentor Program for Law Students with Disabilities.

William Phelan, 202-662-1576, phelanw@staff.abanet.org

Mentor Program

The Mentor Program is open to law students, recent law school graduates, and prospective law students with all types of disabilities. The Commission matches law students with practicing attorneys, taking into account students' preferences regarding types of disabilities, geographical location, and practice areas of interest. Mentors can provide academic and career advice, as well as helpful information about bar associations and civic opportunities.

William Phelan, 202-662-1576, phelanw@staff.abanet.org

Annual Meeting Award Ceremony and Reception

Each year, the Commission sponsors an award ceremony and networking reception during the ABA Annual Meeting. The reception is attended by ABA leaders, lawyers with disabilities, and other disability rights lawyers and advocates. Traditionally, the ABA President-Elect presents the Paul G. Hearne Award for Disability Rights at the ceremony. ABA entities who earned Goal III Report honors are also recognized at this event.

Michael Stratton, 202-662-1571, strattonm@staff.abanet.org

Paul G. Hearne Award

Since 1998, the American Bar Association Commission on Mental and Physical Disability Law has been pleased to present the Paul G. Hearne Award for Disability Rights. Each year, an award is presented to an individual who, or an organization that, has performed exemplary service in furthering the rights, dignity, and access to justice for people with disabilities.

William Phelan, 202-662-1576, phelanw@staff.abanet.org

Internships

Paid, volunteer, and for-credit internships are available during the fall, spring, and summer semesters. Undergraduate and law students are welcome to apply. Duties include using Westlaw to research disability law issues, cite-checking cases and legislation, and assisting with various Commission projects.

Amy Allbright, 202-662-1578, allbriga@staff.abanet.org

APPENDIX C

ABA Commission Publications and Services

Comprehensive Disability Law Service (CDLS)

CDLS subscribers receive a one-year subscription (print and online versions) to the *Mental & Physical Disability Law Reporter* and the *Mental & Physical Disability Law Digest*; access to the *Reporter* online database containing summaries of all key federal and state cases and legislation/regulations covered in the *Reporter* from 2003 to the present, searchable by key words, case name, subject area, jurisdiction, date, and key number; and the online *Digest* with links to summaries of federal and state cases and legislation/regulations cited in the *Digest*'s footnotes.

Organization: \$470, Individual: \$410

Law Reporter

Providing up-to-date disability law for more than 25 years, the *Mental & Physical Disability Law Reporter* is a must-have resource for lawyers, judges, mental health professionals, disability advocates, students, professors, and libraries. Print and online versions are available. In each issue (six times a year) are:

- Summaries of more than 300 key federal and state disability law cases and legislation/regulations and Supreme Court developments: civil mental disability law; criminal mental disability law; disability discrimination law
- Highlights of key cases and legislation/regulations
- Feature articles
- Directory of cases and legislation/regulations
- Alphabetical and subject matter indexes, with case citations and key words (Nov./Dec. issue).

Organization: \$384, Individual: \$324

Law Digest

The *Mental & Physical Disability Law Digest* is an online service that provides a comprehensive analysis of 22 disability law topics in three categories: civil mental disability law, criminal mental disability law, and disability discrimination law (same as *Reporter*). Subscriptions are for one year and include updates, as well as e-mails of key federal and state cases and legislation/regulations highlighted in the *Reporter*.

\$152

Disability Discrimination Law, Evidence and Testimony: A Comprehensive Reference Manual for Lawyers, Judges and Disability Professionals

Disability Discrimination Law, Evidence and Testimony explains and analyzes key aspects of disability discrimination law from several different perspectives to serve as a guide through myriad federal and state statutes, court cases, and regulations. It covers employment, state and local government, public accommodations, telecommunications, housing and zoning, education, and criminal and civil institutions. Also included are detailed charts of relevant state statutory provisions and a history of disability discrimination law.

\$105; \$95 (ABA Members)

Criminal Mental Health and Disability Law, Evidence and Testimony: A Comprehensive Reference Manual for Lawyers, Judges and Criminal Justice Professionals

Criminal Mental Health and Disability Law, Evidence and Testimony examines two interrelated aspects of criminal law—mental health and disability discrimination—from the points of view of lawyers, judges, and other professionals within the criminal justice system. The manual builds on established resources within the ABA, including the *Mental & Physical Disability Law Reporter*, *Mental Disability Law, Evidence and Testimony*, and *Disability Discrimination Law, Evidence and Testimony*. It synthesizes the best and most recent information at the ABA on mental health and discrimination law that specifically pertains to criminal justice matters. It also references the ABA's Criminal Justice Mental Health Standards.

\$110; \$99 (ABA Members)

Annual Title I Survey

An annual survey of employment cases brought in federal court under the Americans with Disabilities Act (ADA) Title I, 42 U.S.C. §§12111–117, and Title V, 42 U.S.C. §12203(a).

\$15

APPENDIX D

Other ABA Programs and Committees

Business Law Section

Business Law Diplomat Program

The Business Law Section is committed to encouraging the participation of lawyers with disabilities in Section activities. The Section's Committee on Diversity has created the Business Law Diplomat Program to demonstrate develop future Section leaders, facilitate the full participation of lawyers with disabilities in Section activities, and draw more lawyers with disabilities into active membership.

Maggie Hajduk

312-988-5698

hajduk@staff.abanet.org,

<http://www.abanet.org/buslaw/committees/CL715000pub/diplomat.shtml>

Law Student Diversity Clerkship Program

This summer program finds business law clerkships for qualified diverse candidates who are first-or second-year law students. In considering a student's diversity, the Section will give special consideration to individuals who have overcome social or economic disadvantages, such as disability, financial constraints, or cultural impediments to becoming a law student.

Leslie Banas

banasl@staff.abanet.org

Section of Individual Rights and Responsibilities

Rights of Persons with Disabilities Committee

The Section offers a Committee on Rights of Persons with Disabilities. The Committee urges adoption of laws and policies regarding mental illness or disorders, amends Goal IX of the American Bar Association to promote equal participation in the legal profession by persons with disabilities, and supports the rights of mentally and physically handicapped individuals to equal employment opportunities.

202-662-1030

irr@abanet.org

<http://www.abanet.org/irr/committeehome.html>

Section of Labor and Employment Law

Committee on Equal Opportunity

The Committee on Equal Opportunity in the Legal Profession is committed to developing recruitment/retention materials with a focus on lawyers with disabilities, among other diverse groups.

Kelley Lynette

312-988-5523

laboremplaw@abanet.org

<http://www.abanet.org/labor/committee.html>

Law Student Division

Award & Writing Competition

Each year, the Division distributes the Dean Henry J. Ramsey Diversity Award, which recognizes excellence in activities that have contributed toward the achievement and advancement of women, minorities, and persons with disabilities in the profession. The Division also holds the Adam A. Milani Disability Law Writing Competition to promote greater interest and understanding of the field of disability law. The Division also promotes "Diversity Day" at law schools across the country.

abalsd@abanet.org

<http://www.abanet.org/lsd/home.html>

Tort Trial and Insurance Practice Section

Committee on Diversity in the Profession

The Section offers the TIPS Standing Committee on Diversity in the Profession which promotes involvement of attorneys of diverse backgrounds including attorneys with disabilities. The Committee accomplishes its goals through publications, CLE programs, networking receptions, assistance to the Section's General committees, and outreach programs on the local and national levels.

Sonia Schroeder

312-988-6229

schroeders@staff.abanet.org

<http://www.abanet.org/tips/wami/home.html>

Young Lawyers Division

Diversity Team

The Division has created a special position of "Diversity Director" to address the needs of lawyers with disabilities. The director shall be part of a diversity team composed of chairs of other entities dedicated to promoting diversity in the ABA and national affiliate representatives.

Renee Lugo

312-988-5626

lugar@staff.abanet.org,

<http://www.abanet.org/yld/diversity.html>

APPENDIX E

State and Local Bar Association Services and Programs for Lawyers with Disabilities

STATE

Alabama Bar Association's Section on Disability Law

The Section is open to attorneys who serve the needs of a variety of clients (individuals, corporations, and municipalities) in the rapidly developing field of disability law. Members can network with attorneys of similar interests and attend professional educational seminars, as well as forum to exchange ideas and information. Annual dues are \$20.

Ed Patterson

334-269-1515

Ed.patterson@alabar.org, <http://www.alabar.org>

Arizona Bar Association's Committee on Persons with Disabilities in the Legal Profession

The Committee's focus of study includes:

- Hiring (interview process)
- Accessibility of courtrooms and courthouses
- Progression of disabled lawyers after hiring
- Dissemination of information
- Finding solutions through mentoring and other programs.

Carrie Sherman

602-340-7201

listadm@staff.azbar.org

<http://www.myazbar.org/SecComm/Committees/ADTF/>

Arkansas Bar Association's Disability Law Section

The Disability Law Section shall promote the objects of the Association within the field of disability law, including Social Security Law and including all related federal and state laws. It pledges to promote professionalism, excellence, and understanding and cooperation among those attorneys engaged in this field of law.

Iva Nell Gibbons, Chair

http://www.ark.org/arkbar/sections/disability_law/index.php

California Bar Association's Committee on Legal Professionals with Disabilities

The Committee is made up of attorney and public members, including legal professionals with disabilities, advocates, and educators experienced in addressing legal rights of persons with disabilities, including those with chronic medical conditions. Its charge includes:

- Serve as a liaison between the state bar and legal professionals with disabilities
- Encourage legal professionals with disabilities to become active participants in state bar programs
- Produce and present programs and materials designed to maximize opportunities for individuals with disabilities in the state bar's programs and activities, as well as in the profession as a whole.

Pat Lee

415-538-2240

programdevelopment@calbar.ca.gov

Colorado Bar Association's Disability Law Section

The Section makes recommendations to the Board of Governors concerning legislation or procedural improvements in the disability law field. It also publishes a semi-annual column in *The Colorado Lawyer*, sponsors a session on a current legal topic of interest at the annual bar convention, and co-sponsors occasional training events in disability law.

Melissa Nicoletti

melissan@cobar.org,

<http://www.cobar.org/index.cfm/ID/20116/DISLAW/Disability/>

Connecticut Bar Association's Disability Law Committee

The Committee examines the law as it pertains to the physically and mentally impaired, promotes change where indicated, and assures the safeguarding of the rights of persons with disabilities.

Bernard L. Shapiro, Chair

203-327-2273

bls@ssdssilaw.com

Disability Independence Group Associated with the Florida Bar Association

The Group's mission is to promote recruitment, education, and employment of persons with disabilities in law schools, paralegal schools, law firms, court systems, governmental entities, and other related legal entities, thereby improving the lives of persons with disabilities, outcomes in the delivery of legal services, and the community at-large.

Matthew Dietz, President

TTY: 786-621-5647, Voice: 305-669-2822

matthewdietz@usdisabilitylaw.com

Illinois Bar Association's Committee on Mental Health Law

To propose and review legislation, statutes, common law court decisions, administrative procedures, and rules affecting persons with mental illness and developmental disabilities, and to make recommendations about these issues to the Board of Governors.

Nora A. Byrne, Chair

<http://www.isba.org/committees/mentalhealth/index.html>

Iowa State Bar Association's Women and Minorities Committee

This committee shall continue the work of the study committee which preceded it and shall assist the Board of Governors in assuring fair treatment and opportunities for all attorneys practicing in this state.

Romonda Belcher Ford, Co-Chair

515-286-2011

206 - 6th Ave., Ste. 306, Des Moines, IA 50309

rbelche@attorney.co.polk.ia.us

<http://www.iowabar.org/Committees/WomenandMinorities.nsf/d9e9240de3fccd2386257306006b5dfb/8c09b558d7223001862573640054eb6d!OpenDocument>

State Bar of Nevada Diversity Committee

It's primary role is to promote and encourage a more diverse Bar association, with the goal that the association becomes a model for inclusion.

Gale Skala

gales@nvbar.org,

<http://www.nvbar.org/Committees/DiversityCommittee.htm>

New Jersey Committee on Elder and Disability Law

The Committee reviews and comments on issues of special concern to the elderly, their families, and caregivers, as well as disseminates timely information on legal topics vitally important to the elderly.

Janet B. Lurie, Chair

201-489-8939

jbluriesq@aol.com

New York Bar's Legal Issues Affecting People with Disabilities Committee

Addresses legal issues that affect people with disabilities at the local, state, national, and international level.

Stephanie Glazer, Manager of Committee Membership Services

212-382-6664

sglazer@nycbar.org

Oregon Section on Disability Law

The Section focuses on legal issues affecting individuals with disabilities and/or entities that serve, accommodate, or employ individuals with disabilities.

Linda Ziskin

503-889-0472

ziskinlaw@comcast.net

Tennessee Section on Disability Law

The Section is a resource for lawyers practicing in the area of disability rights or interested in building a disability rights practice.

Cynthia E. Gardner

615-298-1080

cindyg@tpainc.org

Disability Issues Committee of the State Bar of Texas

To study the concerns of Texas lawyers with disabilities, as well as clients and members of the public, and make recommendations to the Board of Directors of the State Bar of Texas concerning ways in which the role of the disabled in Texas can be enhanced by improvement in programs and initiatives sponsored by the State Bar.

Disability Issues Committee, State Bar of Texas

800-204-2222 ext. 2155

PO Box 12487 Austin, TX 78704

<http://www.texasbardisabilityissues.org>

LOCAL

Orange County Bar Association Committee on Diversity and Equal Justice

Develops and implements strategic initiatives to increase diversity and provide access to justice in the Orange County legal community.

Trudy Levindofske

949-440-6700

trudy@ocba.net

Orange County Bar Association

P.O. Box 6130, Newport Beach, CA 92658

<http://www.ocbar.org/>

Bar Association of San Francisco (BASF)

Diversity Program Disability Rights

BASF has long been a nationally recognized leader in efforts by the organized bar to achieve equal employment opportunity for minority and LGBT attorneys and those members of the profession with disabilities. BASF aggressively pushes a diversity-related agenda in an effort to help Bay Area legal employers attract and retain a diverse workforce reflective of the makeup of the population which they serve.

Yolanda Jackson, Deputy Director and Director of Diversity
415-782-9000 x8736

yjackson@sfbar.org

301 Battery Street, Third Floor, San Francisco, CA 94111

http://www.sfbar.org/diversity/disability_rights.aspx

Denver Bar Association/CBA/DBA

Diversity Committee

Concentrates on the laws and procedures governing or related to disabilities. The committee makes recommendations to the Board of Governors concerning legislation or procedural improvements in the disability law field. The committee also co-sponsors occasional training events in the area of disability law.

Andrea Mueller

303-824-5340

amueller@cobar.org

<http://www.denbar.org/index.cfm/ID/1094/dba/Committees/#diversity>

The Chicago Bar Association (CBA) Diversity Program

The CBA is committed to fostering diversity in the legal profession including race, color, ethnicity, gender, sexual orientation, age disability, and many other aspects of diversity.

312-554-2000

321 S Plymouth Ct., Chicago, IL 60604

http://www.chicagobar.org/AM/Template.cfm?Section=Diversity_Programs&Template=/CM/HTMLDisplay.cfm&ContentID=3224

Boston Bar Association (BBA) Diversity and Inclusion Section

The Diversity and Inclusion Section provides oversight of activities and programs pursuant to the BBA Diversity Leadership Task Force's recommendations and other diversity initiatives of the BBA.

Brent L. Henry

617-278-1065

bhenry1@partners.org

Roberto M. Bracerias, 617-570-1895

rbracerias@goodwinprocter.com

<http://www.bostonbar.org/sc/mg0203.htm>

New York City Bar Association

Lawyers with Disabilities

Addresses legal issues that affect people with disabilities at the local, state, national and international level.

Dennis R. Boyd

dboyd@nylpi.org

<http://www.nycbar.org/Diversity/LawyerswithDisabilities.htm>

Philadelphia Bar Association Legal Rights of Persons with Disabilities Committee

The Committee tries to meet once a month to discuss emerging trends in the law, developments affecting persons with disabilities, possible resolutions for the Board of Governors, as well as practical pointers in navigating these ever-changing areas of the law.

-Karen L. Detamore, Esq., Friends of Farmworkers, Inc
215-733-0878, Fax: 215-733-0876

kdetamore@friendsfw.org

924 Cherry Street, 4th Floor, Philadelphia, PA 19107,

-Jamie C. Ray, Center for Disability Law Policy

215-557-7112, Fax: 215-557-7602

jrayada@aol.com

1617 JFK Blvd., Ste. 800, Philadelphia, PA 19103,

<http://www.philadelphiabar.org/page/PISDisabilities?appNum=4>

King County Bar Association/Washington Attorneys with Disabilities

An organization of Washington State attorneys and law students with and without disabilities, to educate those within and outside of the profession about the many barriers to the practice of law encountered by individuals with disabilities, to promote the elimination of those barriers, and to support meaningful opportunities for attorneys and other individuals with disabilities.

Shawn Michael Murinko

360 705-7097, Fax: 360 705-6801

smurinko@comcast.net

<http://www.wsba.org/minority+bar+associations.htm>

Appendix F

National Disability Legal Organizations

American Association of People with Disabilities (AAPD)

AAPD is the largest national nonprofit cross-disability member organization in the United States, and is dedicated to ensuring economic self-sufficiency and political empowerment for the more than 56 million Americans with disabilities. AAPD works in coalition with other disability organizations for the full implementation and enforcement of disability nondiscrimination laws, particularly the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973.

800-840-8844

<http://www.aapd.com>

Disability Rights Education and Defense Fund (DREDF)

DREDF is a national law and policy center dedicated to protecting and advancing the civil rights of people with disabilities through legislation, litigation, advocacy, technical assistance, and education and training of attorneys, advocates, persons with disabilities, and parents of children with disabilities. It has offices in Berkeley, California, and Washington, D.C.

510-644-255, 800-348-4232

info@dredf.org

<http://www.dredf.org>

National Disability Rights Network (NDRN)

NDRN is the nonprofit membership organization for the federally mandated Protection and Advocacy (P&A) Systems and Client Assistance Programs (CAP) for individuals with disabilities. Collectively, the P&A/CAP network is the largest provider of legally based advocacy services to people with disabilities in the United States and has offices in every state and territory.

202-408-952, 202-408-9514

infor@ndrn.org

<http://www.ndrn.org>

American Association of Visually Impaired Lawyers

The American Association of Visually Impaired Attorneys was established in 1969 by attorneys who recognized the need for blind and visually impaired lawyers to organize. It is an international, non-profit membership organization which was incorporated under the laws of the District of Columbia in 1971.

202-467-5081, 800-424-8666

austingl@bellsouth.net

<http://www.visuallyimpairedattorneys.org>

The National Association of the Deaf Law and Advocacy Center (NAD)

NAD's mission is to promote, protect, and preserve the rights and quality of life of deaf and hard of hearing individuals in the United States. The purpose of the Law and Advocacy Center is to educate, advocate, and litigate on behalf of and to empower deaf and hard of hearing people.

301-587-1789, 301-587-1788

nad.info@nad.org

<http://www.nad.org>

DeafAttorneys.com

This is a community of deaf and hard of hearing lawyers and law students that offers member forums, resources, and publications.

<http://www.deafattorneys.com>

Judge David L. Bazelon Center for Mental Health Law

For three decades, this Center has been the nation's leading legal advocate for people with mental disabilities—both in the courts and in Congress—dealing with institutional abuse, advocacy in the public schools, workplaces, housing, and other community life legal issues.

202-467-5730

info@bazelon.org

<http://www.bazelon.org>

National Alliance on Mental Illness (NAMI)

NAMI is the nation's largest grassroots mental health organization dedicated to improving the lives of persons living with serious mental illness and their families. It has organizations in every state and in over 1,100 local communities across the country that join together to meet NAMI's mission through advocacy, research, support, and education.

703-516-7227, 703-524-7600

<http://www.nami.org>

Paralyzed Veterans of America

Founded in 1946, this congressionally chartered veterans service organization advocates for its members:

- Quality health care
- Research and education addressing spinal cord injury and dysfunction
- Benefits available as a result of military service
- Civil rights and opportunities that maximize independence.

800-424-8200

info@pva.org

<http://www.pva.org>

National Association of Blind Lawyers

As part of the National Federation of the Blind, this membership organization of blind attorneys, law students, judges, and others in the law field provides support and information regarding employment, techniques used by the blind, advocacy, laws affecting the blind, and other issues of interest to blind lawyers.

303-504-5979

slabarre@labarrelaw.com

<http://www.nfb.org>

Appendix G

Scholarships for Law Students with Disabilities

Alexander Graham Bell Association

Disability: Loss of hearing

Amount: \$5,000 (2007–2008 award)

202-337-5220

<http://www.agbell.org/DesktopDefault.aspx?p=Gnofer>

American Council of the Blind

Disability: Blindness

Amount: Varies

800-424-8666 or 202-467-5081

<http://www.acb.org/scholarship-info2006.html>

American Foundation for the Blind, Inc.

Disability: Legally blind

Amount: Varies with scholarship

202-502-7600

<http://www.afb.org/Section.asp?Documentid=2962>

Council of Citizens with Low Vision International (CCLVI)

Fred Scheigert Scholarship

Disability: 20/70 vision at most in better eye

Amount: \$1,000–\$3,000

Other details: Application open January 1–March 1; grades and extracurricular activities considered

800-733-2258

<http://www.cclvi.org/scholarstemp.htm>

ELA Foundation Fellowship

President's Committee on Employment of People with Disabilities Recognition Program

Disability: As defined by the Americans with Disabilities Act

Amount: \$2,000

Other details: Must be female graduate student; deadline is July 6

202-376-6200 or 202-376-6205

Gore Family Memorial Foundation

Disability: Severe physical impairment if living outside of Broward County, FL

Amount: Varies with scholarship

Other details: For tuition only; full-time student (12 or more credits/semester); 3.0 GPA minimum; application must be submitted between April 1 and June 15

954-781-8634

Hemophilia Health Services

Memorial Scholarship Program

Disability: Hemophilia, von Willebrand disease

Amount: Varies with scholarship; starts at \$1,500

800-800-6606, ext.515

<http://www.hemophiliahealth.com/Scholarships.html>

Lilly Awards Secretariat

c/o Lilly Schizophrenia Reintegration Scholarship

Disability: Bipolar, schizophrenia, schizophreniform disorder, schizoaffective disorder

Amount: Varies with scholarship

800-809-8202

<http://www.reintegration.com/resources/scholarships/apply.asp>

National Federation of the Blind Scholarship Program

Disability: Legally blind

Amount: Varies with scholarship

410-659-9314, x2415

http://www.nfb.org/nfb/scholarship_program.asp

Mid-Tennessee Council of the Blind

Disability: blindness

Amount: \$1,000.00

615-227-1941

<http://www.acb.org/tennessee/pdf/MTCB>

Mississippi Council of the Blind Scholarship Committee

Disability: Blindness

Amount: Not stated

<http://www.acb.org/mcb/SCHOLARSHIP-INSTRUCTIONS.pdf>

National Hemophilia Foundation

Disability: Hemophilia, von Willebrand disease, other chronic diseases

Amount: Varies with scholarship

800-424-2634,

<http://www.hemophilia.org/NHFWeb/MainPgs/MainNHF.aspx?menuid=53&contentid=36>

Utah Council of the Blind

Disability: Blindness

Amount: Not stated

Fax 801-292-6046,

<http://www.acb.org/utah/ucbschol1.htm>

William and Dorothy Ferrell Scholarship

Deadline: Around April 15 of even-numbered years

Eligibility: Legally blind students

Award: Two awards of \$500

Criteria: Academic achievement, financial need, and intent to pursue a career in the field of blind services

Sponsor: Association for Education and Rehabilitation of the Blind and Visually Impaired

<http://aerbvi.org/modules.php?name=Content&pa=showpage&pid=3>

Kathern F. Gruber Scholarship

Deadline: Around April 15

Eligibility: Spouses and dependent children of blinded veterans

Award: \$1,000–\$2,000

Sponsor: Blinded Veterans Association

<http://www.bva.org/services.html>

Howard Brown Rickard Scholarship

Deadline: Around March 15

Eligibility: Legally blind students studying law, medicine, engineering, architecture, or natural sciences

Award: \$3,000

Criteria: Academic excellence, community service, financial need

Sponsor: National Federation of the Blind

<http://www.nfb.org/nfb/Students.asp?SnID=845545075>

Michigan Commission for the Blind

Scholarships are available for blind students with visual acuity of 20/200 or less in the better eye with correction or a limitation of his or her vision such that the widest diameter of the visual field subtends an angular distance of not greater than 20 degrees.

Deadline: Contact Michigan Commission for the Blind

517-373-2062, 800-292-4200

<http://www.michigan.gov/mcb>

U.S. Department of Education (DOE)

The DOE has produced two cassette recordings giving information on postsecondary student financial aid for visually impaired students. Contact the DOE for free cassettes.

800-433-3243

<http://www.ed.gov/fund/landing.jhtml?src=rt>

California Council of the Blind

To qualify: Must be a full-time student registered for at least 12 units for each term of the entire academic year. When beginning or continuing work on a thesis, a letter from the Dean or Department head, stating that the student is working on his or her thesis, must be provided. This must be done at the beginning of each term. No monies will be allocated if proof of registration or continuing thesis studies are not provided. You must be a permanent California resident to apply.

800-221-6359

<http://www.ccbnet.org/>

Graduate Fellowship Fund

Gallaudet University Alumni Association

The fellowships are intended for deaf or hard of hearing students. Audiological assessment comparable to that required for admission to the Gallaudet University undergraduate program may be the qualifying factor in this respect. The minimum educational criterion will be admission to an accredited graduate program. The applicant must have been accepted in an accredited graduate program in a college or university. Preference shall be given, to the extent practicable, to applicants who possess a master's degree or the equivalent and are seeking a doctorate.

202-651-5060 (Voice/TTY)

<http://www.gallaudet.edu/>

National Association of the Deaf Stokoe Scholarship

301-587-1788, 301-587-1789 (TTY)

<http://www.nad.org>

The Louise Tumarkin Zazove Foundation

Scholarships for those with significant bilateral hearing loss.

<http://www.ltzfoundation.org/>



AMERICAN BAR ASSOCIATION

Commission on Mental and Physical Disability Law

DISABILITY DIVERSITY IN THE LEGAL PROFESSION: A PLEDGE FOR CHANGE

As Legal Employers, Chief Legal Officers, Hiring Partners, and Hiring Personnel, we hereby affirm our commitment to diversity, including diversity regarding individuals with mental, physical, and sensory disabilities, in the legal profession. Our Pledge for Change is based on the need to enhance opportunity in the legal profession and our recognition that the legal and business interests of our clients require legal representation that reflects the diversity of our employees, customers, and the communities where we do business. In furtherance of this commitment, this is intended to be a pledge for the profession generally and in particular for our law departments, firms, agencies, and organizations. We further pledge that we will encourage those law departments, firms, agencies, and organizations that we do business with to make a similar diversity commitment.

Organization: _____

Signed: _____ Date: _____

For more information and instructions to participate, visit <http://www.abanet.org/disability/pledge>.

This Pledge was inspired by "A Call to Action," a diversity pledge for the legal profession, created by Rick Palmore, Esq.

**2nd ABA National Conference
on the Employment of
Lawyers with Disabilities**

June 15-16, 2009
Washington, DC



**Commission on
Mental and Physical
Disability Law**