

“Inclusion Means Including Us, Too”



Disability and Diversity in Law Schools

KATHLEEN DILLON NARKO

Nearly one out of five Americans has a disability.¹ Accordingly, people with disabilities comprise the largest minority group in the United States. The group is exceptionally diverse in its interests and needs, and members may join the group at any point in life. Many people overlook disability as a part of diversity. A truly diverse population, however, includes people with a range of disabilities. People with disabilities continue to be underrepresented in the legal profession. They face physical and technological barriers that prevent them from performing their work and attitudinal barriers that make performing their work more difficult. It is hard to participate in a meeting when you cannot open the door, and it is hard to show what you can do if you are not given the opportunity.

This article will explore why disability should be included in ideas of diversity and inclusion as well as the barriers people with disabilities face. I focus on those preparing to enter the legal profession—law students.

Why Should Disability Be Included In Diversity?

Are people with disabilities diverse? Through their actions and attitudes, many people seem to answer “No.” Important rationales exist, however, for people with disabilities to be part of true inclusion in the profession.

People with disabilities “have to be represented,” according to William Phelan of the American Bar Association’s (ABA) Commission on Mental and Physical Disability Law. “Many are unemployed, or disenfranchised. They do have to be represented in diversity.” Phelan gives several reasons. First, the legal profession needs to promote diversity in general to instill faith in the legal system. “People want to see diverse leaders.” If not, they may wonder if leaders have the best interests of persons with disabilities in mind, according to Phelan. Second, law firms want and need to respond to their clients’ requests for more diversity in lawyers handling their matters. Finally, as a practical matter, including disability within diversity brings more ideas to the table. One can imagine, for example, employment

disputes regarding disability accommodations handled by a lawyer with a disability. This lawyer would bring a new point of view to the litigation team.

In writing this article I sought out the views of current law students and recent graduates with disabilities. Anna Scholin, president of the National Association for Law Students with Disabilities (NALSWD), underscores the above points by stressing that disability is “yet another way people are different.” She also adds, “Lots of people with disabilities are really smart. [Excluding them] would be cutting off a lot of human talent.” NALSWD board member Greg Oguss states, “If diversity is good generally, then adding more diverse groups is even better.”

What Barriers Do Law Students With Disabilities Face?

Law students face some barriers in common with all people with disabilities and some barriers unique to law schools. One law student with whom I spoke said the professor of her anti-discrimination law class failed to cover disability rights. When asked why, he said there was no discrimination against people with disabilities since the Americans with Disabilities Act (ADA) was enacted more than 20 years earlier. The professor’s comments highlight how disability discrimination is viewed differently from other forms of discrimination.

For many law students with whom I spoke, this professor's statement is far from the truth of their experience.

Physical Access

Law students, along with others with disabilities, must often navigate physical barriers at their schools. Doors with ADA-compliant handles may be so heavily weighted that they are impossible for someone in a wheelchair to open. Or automatic door openers may be inoperable, barring access to areas of the school. Elevators may break down, stranding students on upper floors. Extra-curricular events may take place in locations outside the law school that are not accessible. Similarly, volunteer opportunities for public service may not be in physically accessible locations.

Students with disabilities must ask for help to open the heavy doors, thus reducing their independence. For extracurricular events, they have the choice of either not attending or asking the group to move the event to a more accessible location. The latter may not be possible and at the very least, places the student in an uncomfortable position. No one wants to be seen as the constant complainer. Further, it takes extra effort and time for a law student to raise these issues—commodities in short supply for all law students. Instead, law schools should anticipate accessibility issues and eliminate them in all aspects of student life. A law school should not be content with complying with the minimum legal requirements for accessibility. The standard for law schools should not be literal compliance with the letter of the law. Rather, law schools should embrace the spirit of the law and show others how to achieve compliance and inclusion. Law schools should be leaders in promoting inclusion and welcoming future members of our profession.

Testing Accommodations

Many law students with disabilities need accommodations during exams, such as additional time to complete exams or the use of adaptive equipment. Students with vision impairments may require computer screen readers and extra time to record their answers. For students with neuropathy in their fingers, typing nonstop for three hours may be a painful ordeal. They need breaks every hour. Time-and-a-half is a common accommodation, according to Stephanie Enyart, one of the founders of NALSWD. University accessibility offices generally handle this fairly well, according to students with physical disabilities.

Students with non-physical disabilities, such as learning disabilities, ADD, or ADHD, often have more difficulty receiving testing accommodations, according to Jo Anne Simon, an attorney who represents many students in this area. Many faculty and staff do not understand these disabilities and hence, do not perceive them as real. Instead, according to Simon, they view students with these disabilities as “trying to game the system.” Many students never receive information about how to get accommodations or face many hurdles to obtain them. The “prosecutor mentality” of many law schools deters students from seeking accommodations, says Simon; the students suffer academically as a result.

Even students who receive widely accepted accommodations may run into snags. One student described how his university lost all his disability documentation as well as the confirmation of his accommodations during the summer between his acceptance into law school and his arrival on campus in the fall. This student also had the experience of an accommodation being revoked the Friday before his

exams were scheduled to begin the following Monday. The decision was later reversed, and he did receive his accommodation, but not without a great deal of stress as well as time and energy spent trying to reinstate his accommodation. “Accommodations are our lifeline,” said the student on condition of anonymity. “If there are no accommodations, there can be no success at any level.” The experience drove home for him that “people don’t understand disabilities.” Consistent, knowledgeable accommodations should be the rule. Accommodations merely level the playing field, rather than providing an advantage to anyone.

Two areas where students continue to face uneven playing fields are areas critical to the success of law students: the LSAT and the bar exam. The ABA's Phelan describes a situation where a law student with vision impairment asked for accommodations to take the LSAT. His request for a computer screen reader was denied, and he was told that he would have a person read the questions aloud to him. On the day of the test the trained reader did not appear, and an untrained volunteer agreed to read instead. The untrained reader had difficulty pronouncing many of the words, and the prospective law student had difficulty understanding him and completing the exam. This student was then faced with a dilemma: take his chances with his scores based on a faulty reader or cancel his test results and postpone his application to law school for a year.

Similar difficulties arise with accommodations for the bar exam. Stephanie Enyart sued the National Conference of Bar Examiners to be able to use a computerized screen reader as well as a text magnifier. The U.S. Court of Appeals for the Ninth Circuit recently ruled in her favor.² Students face roadblocks at their entrance to law school as well as their exit. If they are unable to score well on these examinations, they may never become lawyers. Admission to law school or passing the bar should turn on a student's knowledge and abilities, rather than the type of accommodation allowed.

Technology Accommodations

Enyart states that common challenge for students with vision and other impairments is getting textbooks in an accessible format. Usually, this requires the law school or the publisher to provide an electronic version of the textbook. Although the process varies from school to school, some students receive their books six-to-eight weeks after the start of classes. For many, this makes it almost impossible to catch up on reading. In addition to textbooks, many students often cannot obtain access to the study guides that most law students take for granted. It is hard to imagine going through law school without at least one commercial outline.

Phelan concurs technology accommodations are a significant issue for students with vision or hearing impairments. Many websites are not accessible. They include images without explanatory text, so that a computer screen reader will simply say “image” instead of describing the picture. Or a video may have no subtitles for someone with a hearing impairment. With instruction becoming increasingly web-based, law schools should again anticipate this opportunity to allow students to learn on equal footing with their peers.

In addition, students who are deaf or hard of hearing depend on communication to learn. They can benefit from Communication Access Realtime Translation (CART), which is live transcription of spoken words by a court reporter, according to Michael Schwartz, associate professor of law and director of the Disability Rights Clinic at Syracuse University College of Law. The transcription can then be

projected on a screen in the classroom. Schwartz, who is deaf, says CART can enable students who are deaf to follow speech that may be too fast-paced for sign-language interpreters. Schwartz prefers to receive information through CART and express himself through a sign language interpreter, noting that it is “exhausting” to follow an interpreter for an extended period. Law schools need to be aware of assistive technology and offer it when needed.

Career Placement

Another common complaint that Scholin and Enyart have heard is that law school career placement offices need more education on how to place students with disabilities. Some students have been told they should only consider jobs with the government, that only the government would accommodate their needs and provide adequate benefits. The perception among many law students with disabilities, according to Enyart, is that career placement offices, although well-meaning, “don’t know what to do with differences.”

According to the ABA’s Phelan, concerns about how employees with disabilities will perform in the workplace are misplaced. Many employers fear that attorneys cannot meet billable hour requirements. If lawyers “have accommodations, they can do it, especially ones who have had [the disability] for years.” Carrie Griffin Basas, director of the Washington State Governor’s Office of the Education Ombuds, notes, “We all have special needs and crises. To decide one population has more problems than others is wrong.”

Phelan notes that an attorney “would not have gotten through law school and the bar exam if they couldn’t do it.” These attorneys with disabilities are “used to dealing with tough situations.” They are often “excellent advocates and industrious.” Recent graduate and former NALSWD board member Rebecca Williford echoes Phelan’s statements. “People with disabilities are survivors, and it’s going to take a lot to derail them. It’s not the job of law school administration to make the decision that a person can’t work in a firm.” Law schools should inform students with disabilities about all employment options.

What Should Law Schools Do?

What should law schools do to accommodate students with disabilities and ease their way into the legal profession? According to Enyart, law schools should reach out to students with disabilities and seek their opinions on how to improve technology and accessibility. NALSWD has issued a best practices guide for law schools that may help foster communication between law schools and their students.

Without law schools reaching out to students with disabilities, the students have to ask for every accommodation. One student notes he feels alienated from his classmates because of his very different experience. This feeling of isolation is the opposite of inclusion. Our profession should do more, starting at the law school level, if not before.

Simon agrees, stating, “Law schools should set a tone of inclusion and acceptance of a diverse student population in all its manifestations.” Syracuse’s Schwartz stresses that law schools should do more than meet minimum ADA requirements at the lowest cost possible. “They’re the deaf ones,” Schwartz says of law schools. “They’re not listening” to the needs of students, he says, while stressing that his university is an exception. Schwartz says law schools should ask, “What can we do to make it welcoming?”

Many of the law students interviewed describe themselves as members of “the ADA Generation.” That is, they have gone through school with “the ADA protecting us,” says Enyart. “We have very similar challenges to other communities” within diversity, says Enyart. The other law school groups within the diversity community realize this, according to Scholin, embracing disability as another diverse group. Scholin states that disability is “yet another way people are different,” and “we want to be accepted despite our differences.” As Enyart sums it up, “Inclusion means including us, too.” ☺



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Endnotes

¹Statistics in this paragraph come from various sources, as reported in *ABA Disability Statistics Report 2010*, www.americanbar.org/content/dam/aba/migrated/disability/PublicDocuments/ABADisabilityStatisticsReport.authcheckdam.pdf.

²*Enyart v. National Conference of Bar Examiners, Inc.*, 630 F.3d 1153 (9th Cir. 2011).

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