

# Centering Disability in the Law School Pedagogy: A Way to Include Disabled Law Students

*Ella Maiden\**

## TABLE OF CONTENTS

I.	INTRODUCTION	176
A.	Definitions	181
II.	THE LACK OF DISABLED LAWYERS PROBLEM AND LAW SCHOOLS' ROLE	182
A.	The Problem of Limited Disabled Legal Representation	182
i.	<i>The Issue of Adequacy of Representation</i>	184
ii.	<i>Issues of Public Perception and General Diversity in the Profession</i>	189
B.	Why Should Law Schools Care About Fixing This Problem?	192
III.	THE ABLE-BODIED AND ABLE-MINDED LAW SCHOOL PEDAGOGY AND CHANGES TO THE PEDAGOGY TO INCREASE REPRESENTATION OF LAW STUDENTS WITH DISABILITIES	196
A.	Law School Data Neither Supports nor Negates a Focus on Pedagogy	197
B.	Pedagogy as a Tool for Increasing Disabled Law Students	199
C.	“Thinking Like A Lawyer” and Exclusion of Different Ways of Learning in The Law School	203
D.	Pedagogical Support for the Medical Model and the Marginalization and Invisibility of Disability	209

---

\* Associate, PCB Byrne LLP (UK). LL.M. , University of California, Berkeley. B.A. and LL.B.(Hons), University of Auckland, New Zealand. Barrister & Solicitor, admitted in New Zealand. Before beginning this paper, I note that I am a non-disabled white woman discussing issues relating to and affecting people with disabilities. I have been interested in disability legal issues after my work with disabled survivors of abuse in state and church-based care in New Zealand. In no way does this project intend to substitute disabled persons' lived experience. Instead, my aim is to highlight the persistent exclusion of disabled people from the legal education system and legal profession, why this is an issue for the legitimacy of our legal systems and what law schools should do about it.

I am grateful to Professor Jonathan D. Glater for his guidance, and my classmates in Education Law at Berkeley for their helpful comments and suggestions on this article. Thank you, also, to my husband for his support and advice on this article. All views in this article are my own.

E.	Centering Disability in the Pedagogy to Increase the Number of Disabled Law Students	214
<i>i.</i>	<i>Centering Disability in the Pedagogy</i>	215
<i>ii.</i>	<i>What This Might Look Like</i>	216
IV.	CHALLENGES TO TAKING A DISABILITY CENTRIC PEDAGOGICAL APPROACH	218
A.	Accommodations Challenge	219
B.	Rigor Challenge	220
V.	CONCLUSION	222

## I. INTRODUCTION

People with disabilities<sup>1</sup> make up around 26% of the United States population, but only 1.22% of lawyers identify as disabled.<sup>2</sup> This under-

---

1. Throughout this paper I have used both identity first language, “disabled people” and people first language, “people with disabilities.” This is a purposeful choice, as I recognize that some groups prefer people first language and others prefer identity first language, and there are competing views in relation to preferred language. See generally, NAT’L AGING & DISABILITY TRANSP. CTR., <https://www.nadtc.org/> (last visited Sept. 25, 2023) (discussing that person-first language has long been considered the default in the US. On this view, person-first language is viewed as the most respectful terminology, as it puts the person before their impairment or diagnosis and recognizes them as individuals and human. See Erin Hawley, *Person-First and Identity-First Language Choices*, NAT’L AGING & DISABILITY TRANSP. CTR.: NEWS & BLOG (Sep. 1, 2020), <https://www.nadtc.org/news/blog/person-first-and-identity-first-language-choices/>. The American Psychological Association has also emphasized that both person-first and identity-first languages “are designed to respect disabled persons” and both can be used in writing, either as a mixed approach (i.e., both person-first and identity-first) or on the basis of a group’s preferred approach. *Disability*, AM. PSYCH. ASS’N: APA STYLE, <https://apastyle.apa.org/style-grammar-guidelines/bias-free-language/disability> (July 2022). For discussions on the importance of identity first language, see Giacomo Vivanti, *Ask the Editor: What is the Most Appropriate Way to Talk About Individuals with a Diagnosis of Autism?*, 50 J. AUTISM & DEVELOPMENTAL DISORDERS 691, 691-92 (2020), where the author says that identity-first language is increasingly used in disability, especially in relation to neurodiversity and the blind and Deaf communities, as “an expression of positive social identity whereby language historically used to dehumanize and marginalize . . . is redeployed as a form of empowerment.” Monique Botha et al., *Does Language Matter? Identity-First Versus Person-First Language use in Autism Research: A Response to Vivanti*, J. AUTISM & DEVELOPMENTAL DISORDERS 870, 871 (2023) (stating that although there is not a clear consensus on what language should be used in relation to autism, it is clear that the “least preferred—and most offensive—language [is] the specific-person first formulation of “person with autism.”). Morton Ann Gernsbacher, *Editorial Perspective: The use of Person-First Language in Scholarly Writing may Accentuate Stigma*, 58 J. CHILD PSYCH. & PSYCHIATRY 859, 859 (2017) (noting that the style guides for the US Medical Associations use person-first language may accentuate stigma because “not everyone is treated as a person first”, and may reinforce the idea that there is something bad attached to the person); see also Cara Liebowitz, *I am Disabled: On Identity-First Versus People-First Language*, THE BODY IS NOT AN APOLOGY: DISABILITY (Mar. 20, 2015), [www.thebodyisnotanapology.com/magazine/i-am-disabled-on-identity-first-versus-people-first-language/](http://www.thebodyisnotanapology.com/magazine/i-am-disabled-on-identity-first-versus-people-first-language/) (recognizing that although she does not want to be identified solely on the basis of her disabilities, she also acknowledges that there is no way to see her without the disability). Further, “Disability” is a broad and amorphous term. This paper views disability from the social model and uses the United Nations Convention on the Rights of Persons with Disabilities’ (CRPD) definition of disability: “persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on equal basis with others.” G.A. Res. 61/106, at art. 1, Convention on the Rights of Persons with Disabilities (Dec. 12, 2006) <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons->

representation of disabled people in the legal profession, on its face, seems problematic. However, it is even more problematic when considering that people with disabilities interact with the legal system at high rates. Recent studies of the criminal justice system have found that 38% of federal prisoners have at least one disability, and that disabled people are more likely to be arrested than non-disabled persons.<sup>3</sup> Further, disabled people are twice as likely to be victims of serious crime than non-disabled persons.<sup>4</sup> In the civil legal system, 11,452 cases under the Americans with Disabilities Act (ADA) were filed in 2021,<sup>5</sup> and in 2017, 27% of the civil rights cases filed were ADA lawsuits.<sup>6</sup>

The incredibly low number of disabled lawyers presents a number of problems. Firstly, it suggests that there is a deficit in the quality of legal representation provided to disabled clients, as most lawyers (and, by implication, most lawyers representing disabled clients) are non-disabled. Researchers have shown that lack of shared lived experience and culture between clients and their attorney can lead to misunderstandings and miscommunications, as well as biases

---

disabilities. Throughout this paper, “disability” is used in a generalized way, and so some of the issues raised may not affect all persons with disabilities.

However, I have tried to use examples of how different learning approaches for different disabilities to emphasize the main argument that the legal education pedagogy appears to have an non-disabled person as its target student and so changes are needed.

2. Infographic of *Disability Impacts All of Us*, CTNS. FOR DISEASE CONTROL & PREVENTION: DISABILITY & HEALTH PROMOTION, <https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html#text-version> (May 15, 2020); NAT’L ASS’N FOR L. PLACEMENT, INC., 2021 REPORT ON DIVERSITY IN U.S. LAW FIRMS, 35 (2022) <https://www.nalp.org/uploads/2021NALPReportonDiversity.pdf> [hereinafter NALP].

3. LAURA M. MARUSCHAK ET AL., DISABILITIES REPORTED BY PRISONERS: SURVEY OF PRISON INMATES 1 (2021) <https://bjs.ojp.gov/content/pub/pdf/drpspi16st.pdf>; See Erin J. McCauley, *The Cumulative Probability of Arrest by Age 28 Years in the United States by Disability Status, Race/Ethnicity, and Gender*, 107 AM. J. PUB. HEALTH 1977, 1977 (2017) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5678390/pdf/AJPH.2017.304095.pdf>; See also ERIKA HARRELL, CRIME AGAINST PERSONS WITH DISABILITIES, 2009-2015 – STATISTICAL TABLES 1 (2017) <https://bjs.ojp.gov/content/pub/pdf/capd0915st.pdf>.

4. HARRELL, *supra* note 3.

5. Minh Vu et al., *ADA Title III Federal Lawsuit Filings Hit an all Time High*, SEYFARTH (Feb. 17, 2022), [adatitleiii.com/2022/02/ada-title-iii-federal-lawsuit-filings-hit-an-all-time-high/](https://adatitleiii.com/2022/02/ada-title-iii-federal-lawsuit-filings-hit-an-all-time-high/).

6. *Just the Facts: Americans with Disabilities Act*, U.S. CTS.: JUDICIARY NEWS (July 12, 2018), <https://www.uscourts.gov/news/2018/07/12/just-facts-americans-disabilities-act> (noting that 10,773 out of the 39,800 civil rights cases filed were ADA claims).

influencing an attorney's legal approach.<sup>7</sup> Secondly, the low number of disabled lawyers suggests that the law does not apply equally to all,<sup>8</sup> because the people working within the legal system do not reflect the people who are subjected to it.<sup>9</sup> Thirdly, the low number of disabled lawyers suggests that the legal profession is not receiving the benefits that follow increased diversity in a workplace.<sup>10</sup>

Given these issues, there is a need to increase the number of disabled lawyers. However, the reasons for the lack of disabled lawyers are not entirely clear-cut. Inaccessibility permeates across the law profession,<sup>11</sup> the legal education system, and the higher education system generally.<sup>12</sup> There are further pipeline issues from K-12 education that may result in lower numbers of students with disabilities applying to law school.<sup>13</sup> Disability is also often linked to poverty statistics, suggesting that disabled students may be less able to afford (or take on debt to afford) law school.<sup>14</sup>

---

7. See discussion *infra* Part II; see also Janet W. Schofield et al., *Culture and Race in Provider-Client Relationships*, 23 SOC. WORK PUB. HEALTH 1, 15 (2007).

8. See U.S. CONST. amend. XIV, § 1 (prohibiting any State from denying "any person within its jurisdiction the equal protection of the laws").

9. See discussion *infra* Part II; see also Cynthia Mares, *Is Anybody Listening? Does Anybody Care?*, FED. LAW., June 2015, at 36, 37; Eric H. Holder, Jr., *Fifty-Third Cardozo Memorial Lecture: The Importance of Diversity in the Legal Profession*, 23 CARDOZO L. REV. 2241, 2247-48 (2002).

10. See discussion *infra* Part II; see also *Diversity in Law: Who Cares?*, A.B.A. (Apr. 30, 2016), <https://www.americanbar.org/groups/litigation/committees/diversity-inclusion/articles/2016/spring2016-0416-diversity-in-law-who-cares/>.

11. See Haley Moss, *Raising the Bar on Accessibility: How the Bar Admissions Process Limits Disabled Law School Graduates*, 28 AM. U. J. GENDER, SOC. POL'Y & L. 537 (2020) (discussing increasing access in the legal profession itself); see also Carrie Griffin Basas, *The New Boys: Women with Disabilities and the Legal Profession*, 25 BERKELEY J. GENDER, L. & JUST. 32 (2010); see also Peter Blanck et al., *Diversity and Inclusion in the American Legal Profession: Discrimination and Bias Reported by Lawyers with Disabilities and Lawyers who Identify as LGBTQ+*, 47 AM. J.L. & MED. 9 (2021).

12. See discussion *infra* Part III; JAY TIMOTHY DOLMAGE, *ACADEMIC ABLEISM: DISABILITY & HIGHER EDUCATION* (2017) (arguing that academia is built upon ableist ideas).

13. See discussion *infra* Part III; Institute of Education Sciences, *The Post-High School Outcomes of Young Adults with Disabilities up to 8 Years After High School: A Report from the National Longitudinal Transition Study-2 16* (2011) (noting that 60% of young adults with disabilities will go to post-secondary education after high school, in comparison to 67% of non-disabled young adults).

14. See AM. BAR ASS'N COMM'N ON MENTAL AND PHYSICAL DISABILITY L., *ABA DISABILITY STATISTICS REPORT 3-4* (2010) [hereinafter ABA Report].

This paper recognizes that the lack of disabled lawyers is caused by multiple, interacting, factors, and that these factors require specific inquiries and research.. Given that one approach cannot resolve this issue, this paper focuses on one of the key institutions that plays a significant role in determining the next generation of lawyers: the law schools.<sup>15</sup> Disabled law students appear to only make up 4.5% of a law school class.<sup>16</sup> This suggests that law schools are partly responsible for the lack of disabled lawyers in practice.

If this is the case, what should law schools do to address this issue? Unfortunately, there is limited data around disability and law school, making it difficult to identify whether admission requirements, pedagogical practices, school culture, or other factors are responsible for the low number of disabled lawyers. Despite this lack of data, this paper argues that law schools should change their pedagogy to center the experiences of disabled students. This is because scholarly research and studies, in relation to racial and ethnic minorities, show that academic pedagogies that marginalize and exclude racial minorities can cause lower academic self-esteem and lower graduation rates.<sup>17</sup> However, culturally relevant and sustaining pedagogies<sup>18</sup> have positive impacts on racial and ethnic minorities' academic success.<sup>19</sup> It also appears that Black students are more likely to enroll in institutions that implement culturally sustaining pedagogies.<sup>20</sup> Although not entirely analogous, there appears to be a similar exclusion of disability from the

---

15. In most states, ABA accredited law degrees are pre-requisites for eligibility. See *What is a Lawyer?*, A.B.A., (Sept. 10, 2019), [https://www.americanbar.org/groups/public\\_education/resources/public-information/what-is-a-lawyer/](https://www.americanbar.org/groups/public_education/resources/public-information/what-is-a-lawyer/).

16. NAT'L ASS'N FOR L. PLACEMENT, INC., *supra* note 2, at 10 (stating that although the data is not entirely clear, especially in terms of the disparity between disabled law students and lawyers, in 2020, only 4.5% of law school graduates self-identified as disabled).

17. See discussion *infra* Part III; Samuel T. Beasley et al., *Linking the Emancipatory Pedagogy of Africana/Black Studies with Academic Identity Outcomes Among Black Students Attending PWIs*, 9 AFRICOLOGY: J. PAN AFR. STUD. 9, 11 (2016).

18. See discussion *infra* Part III, but these are pedagogies that “foster . . . linguistic, literate and cultural pluralism” and bring the marginalized identity into the pedagogical norm. Django Paris, *Culturally Sustaining Pedagogy: A Needed Change in Stance, Terminology, and Practice*, 41 EDUC. RESEARCHER 93, 93 (2012); see also Krystal L. Williams et al., *Centering Blackness: An Examination of Culturally-Affirming Pedagogy and Practices Enacted by HBCU Administrators and Faculty Members*, 46 INNOVATIVE HIGHER EDUC. 733 (2021).

19. See discussion *infra* Part III; see Beasley et al., *supra* note 17, at 18.

20. See discussion *infra* Part III; but see Ana Ndumu & Shaundra Walker, *Adapting an HBCU-inspired framework for Black student success in U.S. LIS education*, 37 EDUC. FOR INFO. 219, 221 (2021).

law school pedagogy – both through the pedagogical focus on “thinking like a lawyer”, which is based on the way a non-disabled and neuro-typical lawyer thinks, and also the pedagogical support for the medical model of disability.<sup>21</sup>

This argument will be developed in three sections. Section II, Part A, argues that the lack of disabled lawyers is a problem because it is likely the legal representation provided to disabled clients is inadequate, and because it raises concerns about diversity in the legal profession and the legitimacy of the legal system. Part B sets out why this paper focuses on law schools and argues that law schools have an obligation to increase the number of disabled law students. Section III argues that law school administrators and Deans should focus on pedagogy to increase the number of disabled law students. This argument is developed by, first (in Part A), recognizing that the limited data does not necessarily support or negate focusing on the pedagogy. Part B argues that culturally sustaining and relevant pedagogy is a tool for increasing accessibility to law school for disabled people. Parts C and D then present how the current law school pedagogy marginalizes and excludes disabled law students, which appears to have an impact on their academic success. Part E, argues that disability should be at the center of the law school pedagogy to reduce, to reduce the marginalization and exclusion of disabled law students. Section IV sets out, and responds to, challenges to this argument. Finally, Section V concludes with a call for creativity and change to the legal education system to ensure that people with disabilities can and do go to law school.

## A. Definitions

Throughout this paper, a number of terms are used to discuss disability in the law. These terms are defined here. “Ableism” is defined as the “discrimination of and social prejudice against people with disabilities based on the belief that typical abilities are superior.”<sup>22</sup> “Non-disabled” refers, generally, to people living without disabilities.<sup>23</sup>

---

21. *See infra* note 25.

22. Ashley Eisenmenger, *Ableism 101*, ACCESS LIVING: NEWSROOM (Dec. 12, 2019), <https://www.accessliving.org/newsroom/blog/ableism-101/>.

23. Definition of “Non-Disabled”, NATIONAL CENTRE ON DISABILITY AND JOURNALISM (Aug, 2021), <https://ncdj.org/style-guide/#N>.

“Neuro-typical” is used to describe people whose brain-functioning is considered to be “normal” (or at least what is commonly viewed as “normal”).<sup>24</sup> “Pedagogy” is defined as the “art or science of teaching.”<sup>25</sup> In other words, references to pedagogy are references to teaching methods used to meet the aims of an educational system. The “Medical Model of Disability” refers to the ideology that disability is objectively and medically determined.<sup>26</sup> Under this model, people with disabilities are viewed as being “impaired”, and their disability is their “problem” to fix.<sup>27</sup> Further, the medical model removes any responsibility from society for the barriers that disabled people face, or for removing those barriers.<sup>28</sup>

## II. THE LACK OF DISABLED LAWYERS PROBLEM AND LAW SCHOOLS’ ROLE

This section is split into two parts. Part A discusses the high number of disabled people interacting with the legal systems and the underrepresentation of disabled lawyers in more detail. It then argues that this disparity likely causes inadequate legal representation to be provided to disabled clients, and also that this disparity raises concerns in relation to the legitimacy of the legal system. Part B focuses on the role of law schools in determining the number of disabled law students, and thereby the number of disabled lawyers, and the obligation law schools have to increase the number of disabled law students.

### A. The problem of limited disabled legal representation

Disabled people interact with both the U.S. criminal law and civil law enforcement systems, at high rates. They are 2.5 times more likely than nondisabled persons to be victims of crime, and three times more

---

24. Definition of “Neurotypical”, NATIONAL CENTRE ON DISABILITY AND JOURNALISM (Aug, 2021), <https://ncdj.org/style-guide/#N>.

25. Definition of ‘Pedagogy’, COLLINS, <https://www.collinsdictionary.com/us/dictionary/english/pedagogy> (Sept. 26, 2023); Definition of ‘Pedagogy,’ MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/pedagogy> (Sept. 26, 2023).

26. Angélica Guevara, *The Need to Reimagine Disability Rights Law Because the Medical Model of Disability Fails Us All*, 2021 WIS. L. REV. 269, 277 (2021).

27. *Id.* at 278.

28. DOLMAGE, *supra* note 12, at 56.



likely to be victims of serious crime.<sup>29</sup> Disabled people also make up around 38% of the prison population<sup>30</sup> and are more likely to be arrested.<sup>31</sup> Further, due to the nature of U.S. disability discrimination law, which requires disabled people to exercise their rights through legal claims, 27% of the civil rights cases filed in 2017 were ADA claims, and last year 11,452 cases were filed.<sup>32</sup> However, despite people with disabilities interacting with the legal system at high rates, lawyers with disabilities are under-represented in the legal profession. The data about lawyers with disabilities across the United States legal profession is limited—it does not appear to be routinely collected and it is also likely to be inaccurate because many lawyers with disabilities do not disclose their disability status.<sup>33</sup> However, the available data suggests that lawyers with disabilities make up, at least, 1.22% of lawyers in law firms.<sup>34</sup>

---

29. HARRELL, *supra* note 3, at 3-4.

30. MARUSHAK ET AL., *supra* note 3. Importantly, the overrepresentation in the criminal law system is not due to disabled people having a higher propensity for criminality. SHEREEN HASSAN & ROBERT M. GORDON, DEVELOPMENTAL DISABILITY, CRIME AND CRIMINAL JUSTICE: A LITERATURE REVIEW 1 (2003) (highlighting that, “[D]isabled people [are more likely to] exhibit characteristics, or experience social and economic conditions, that have generally been associated with criminality, such as low self-esteem, poverty, and a lack of social skills. Age-related moral development may also be adversely affected by a disability but primarily because a failure to provide special programs to assist with the social and moral developmentally disabled individuals.”).

31. McCauley, *supra* note 3, at 1979 (finding that people with disabilities who are 28 years old or younger have a higher cumulative probability of arrest (42.65%) in comparison to non-disabled persons).

32. *Just the Facts: Americans with Disabilities Act*, *supra* note 6 (noting that in the year ending 2017, 39,800 civil rights cases were filed in the United States District Courts. ADA cases made up 10,773 of these filings).

33. See CARRIE G. BASAS ET AL., *Lawyers, LEAD ON: LAWYERS WITH DISABILITIES SHARE THEIR INSIGHTS* 57 (2011) (noting that many lawyers with disabilities do not disclose for “fear or receiving negative responses from employers,” and referred to examples from lawyers who did not disclose for fear of being stigmatized); Basas, *supra* note 11, at 69-79 (demonstrating through surveys of female lawyers with disabilities that these lawyers were often “covering” or hiding their disabilities for fear of being treated differently or not viewed as competent enough).

34. “At least” is used here because this study noted that given the opt-in nature of the study, this figure is likely to be underinclusive. NALP, *supra* note 2, at 35. 2020 study by Peter Blanck, Ynesse Abdul-Malak et al., collated data from 3,590 lawyers, 25% identifying as disabled (including mental health conditions). However, the authors emphasized that the group surveyed was a deliberate oversampling of lawyers with multiple marginalized identities and so the proportion of lawyers reporting as disabled is higher than that reported in the legal profession overall. Further, the authors noted that aggregate data about lawyers with disabilities was not

*i. The issue for adequacy of representation*

The lack of disabled lawyers is problematic in terms of the overrepresentation of disabled people in the legal system as it suggests that the legal representation available to disabled defendants (criminal or civil) or plaintiffs may be inadequate. In the vast majority of cases, the lawyers representing disabled clients will not have shared lived experience or culture. The benefits of lawyers having shared lived experience and culture has been discussed, most often, in relation to race and ethnicity. As discussed by Schofield, Wang, and Chew, it is important for a lawyer and their client to “communicate effectively” and be “in sync” about the approach to conflict resolution.<sup>35</sup> The authors note that lawyers are required to gather information from their client about the legal dispute, identify alternatives and consequences and determine the legal strategy.<sup>36</sup> However, lack of lawyer and client “match” (i.e. racial and ethnic match) “increases the likelihood of misunderstandings and miscommunications between the [lawyer] and the client with the result that the client may receive less than optimal services.”<sup>37</sup> This is because lawyers who are not of the same race or ethnicity as their client may not understand their client’s cultural views on conflict resolution,<sup>38</sup> or miss or not give enough weight to social or cultural cues in information gathering stages.<sup>39</sup> For example, Schofield, Wang, and Chew describe that Asian American norms prefer indirect

---

readily available. Therefore, although this study is useful for understanding how organizations can accommodate disabled lawyers more, it does not provide an accurate picture of the number of disabled lawyers in the United States profession. Blanck et al., *supra* note 11, at 25, 41, 52, 56.

35. Schofield et al., *supra* note 7, at 18.

36. *Id.* at 17.

37. *Id.* at 26.

38. *Id.* at 18-20 (describing the differences in approaches to problem-solving between White Americans, and Asian Americans, Latin Americans and Black Americans and noting that White Americans are focused on individual rights and believe conflict is due to different or conflicting individual beliefs and/or desires and therefore, the goal of conflict resolution is for each party to confront each other through rational and non-emotional debate and then come to a solution; however, for Asian Americans, they view conflict both with White American norms, but are also influenced by traditional Asian approaches to conflict, which focus on the idea that each person is part of a social unit and as a result, conflict is undesirable, and the focus is on management not resolution).

39. Kia Vernon, *Representation in Representation: How the Path to End Racial Injustice Begins with the Legal System*, 43 N.C. CENT. L. REV. 136, 142 (2021); Jayesh M. Rathod, *The Transformative Potential of Attorney Bilingualism*, 46 U. MICH. J.L. REFORM 863, 901 (2013); Schofield et al., *supra* note 7, at 16-17.

expression of feelings, which may be perceived by a White lawyer as their client being uncooperative or even guilty.<sup>40</sup> Further, a lawyer who does not share race or ethnicity with their client may not pick up on their own biases (or biases by others involved in the proceeding) against their client,<sup>41</sup> or may not be able to create a trusting and open lawyer-client relationship that is necessary for good legal representation.<sup>42</sup> As argued by Shani King, Black clients are more likely to employ a Black attorney because their case would be in the “hands of someone who sees the world as they do, someone who can personally identify with their historical and current struggle in this country as black Americans, and someone who may be less likely to judge them because they are black.”<sup>43</sup> Additionally, clients may receive less optimal services because their lawyers do not speak their language or may not pick up on how cultural cues may affect their client’s credibility in court.<sup>44</sup> Cumulatively, some combination of these kinds of failures can mean that a lawyer who does not share their clients culture or lived experience may not accurately understand their clients position, concerns, and

---

40. Schofield et al., *supra* note 7, at 20. Shani M. King, *Race, Identity, and Professional Responsibility: Why Legal Services Organizations Need African American Staff Attorneys*, 18 CORNELL J.L. & PUB. POL’Y 1, 17 (2008) (highlighting that black culture includes verbal and non-verbal communication, including rhythm and inflection, which has historically been used to stereotype Black people as “uncivilized or uneducated.”).

41. White lawyers may think that a Black client does not have an employment discrimination claim. Further, a White lawyer may have implicit biases towards Black criminal clients, as there is evidence that White mock jurors were more likely to convict and recommend more severe sentences for Black defendants than a White defendant, where racial issues were not emphasized. *See* Schofield et al., *supra* note 7, at 21-24 (noting that employment discrimination claims may be approached differently by White and Black lawyers, as a study found that only 10% of White Americans believe that African Americans are treated unfairly in the workplace, whereas half of African Americans believe this).

42. Vernon, *supra* note 39, at 142; Rathod, *supra* note 39, at 898 (emphasizing that this creation of trust is particularly important in relation to language and arguing that a lawyer who is able to speak their client’s language not only understands their client better, but also allows their client to view themselves as an equal and encourages engagement in the process because they can tell their story with the knowledge that it will be told in the way they want to tell it and understood by their lawyer); King, *supra* note 40, at 18 (arguing that because communication reflects African American culture, African American lawyers who understand these cultural manifestations are less “likely to judge” and are “in a unique position to gain the trust that is necessary for an effective attorney-client relationship”).

43. King, *supra* note 40, at 15-16.

44. Vernon, *supra* note 39, at 141-43 (describing how some studies show that people who avoid eye contact are perceived to be less credible, and so if this cultural mannerism is not picked up by the lawyer, it could be detrimental to the client’s case).

motivations, which goes to the heart of that lawyer's ability to effectively represent their client. As Professor Kia Vernon emphasized, "[a]lthough attorneys can attempt to understand their clients' issues, there are some experiences that they can never comprehend because they have never lived them."<sup>45</sup> Importantly, these arguments are not just theoretical. In the context of race, there is evidence that black criminal defendants preferred Black lawyers because the Black defendants had concerns that a White lawyer would be racist; a White lawyer would not fully understand what it is like to be Black in America and so miss part of their story; and getting a White lawyer up to speed on these issues would take considerable time and effort, which a defendant does not have.<sup>46</sup>

The benefits of lawyers and clients having shared culture and lived experience has largely been discussed in relation to ethnic and racial minorities. However, the importance of shared culture and lived experience between lawyer and client is also applicable to disability. This is not to say that race, ethnicity, and disability are entirely analogous identities—they are intersecting and interrelated identities, which have separate histories, traditions, cultures, stigmas, and key issues of concern.<sup>47</sup> However, disability also forms part of a person's identity and intersects with race and ethnicity.<sup>48</sup> Disability is also a culture, with a "common history of oppression and a common bond of resilience."<sup>49</sup> When viewed as a minority group, disabled people can face similar experiences of prejudice, stereotyping, and institutional discrimination and so "occupy a stigmatized social position similar to

---

45. *Id.* at 140.

46. See King's discussion of Kenneth P. Troccoli's article, *'I want a Black Lawyer to Represent Me': Addressing a Black Defendant's Concerns with Being Assigned a White Court-Appointed Lawyer*. King also refers to another example of a black defendant feeling disrespected by his white lawyer and not being able to trust them. Further, social science data and medical studies show white counselors, as compared to black counselors, have a more difficult time gaining the trust of their black clients and that African American medical service providers are more likely to gain trust of African American clients because of shared group identity. King, *supra* note 40, at 20-24.

47. *Id.* at 6 (outlining that "[r]ace, especially for African Americans, has a gravity that cannot be understood if taken out of its socio-political-legal and historical context. The experience of African Americans cannot be fully communicated in books, documentaries, law school, or by cultural competence trainers—it is something that must be lived.").

48. Lisa T. McElroy, *Is It Crazy to Think that Attorneys with Mental Health Disabilities are Uniquely Situated to Help Prisoners?*, 93 N.C. L. REV. 1419, 1434 (2015).

49. Steven E. Brown, *What is Disability Culture?* 22 DISABILITY STUD. Q. 34, (2002), <https://dsq-sds.org/article/view/343/433>.

that of ethnic [and racial] minorities.”<sup>50</sup> Disabled people face both direct and institutional ableism through legal and social barriers that determine, for example, whether they are disabled or not, whether they can receive benefits or accommodations for their disability, and whether they can access an institution.<sup>51</sup> Disabled people may also be subjected to harmful stereotypes, like being viewed as having a “problem” that needs to be fixed or being inherently “vulnerable” and someone to pity.<sup>52</sup> Therefore, by viewing disability as a minority group, discussions about the impacts of shared culture and shared lived experience in attorney-client relationships, where the client is of an ethnic or racial minority, are also relevant in circumstances where the client is disabled.

This is particularly evident when considering how a lack of shared culture and lived experience between non-disabled lawyers and disabled clients can inhibit those lawyers’ abilities to make that client comfortable, pick up on social or cultural cues, and recognize bias and discrimination. At least in relation to the criminal legal system, non-disabled lawyers:

Often lack experience and accurate knowledge about disability, which can lead to misidentification of disabilities, inaccurate assumptions about competency and credibility, and a heightened risk of violence. Lack of knowledge regarding disability among these professionals may also lead to false confessions, lack of necessary accommodations, inappropriate placement in institutions, and the inadvertent waivers of rights. Furthermore, these professionals work according to rules never designed for, or intended to, ‘help.’<sup>53</sup>

---

50. Otherwise known as the “‘minority group’ model of disability.” Gary E. Eddey & Kenneth L. Robey, *Considering the Culture of Disability in Cultural Competence Education*, 80 *ACAD. MED.* 706, 707 (2005).

51. *See, e.g.*, 42 U.S.C. § 12132; 29 U.S.C. § 794.

52. Allan H. Macurdy, *Disability Ideology and the Law School Curriculum*, 4 *B.U. PUB. INT. L.J.* 443, 451 (1995); Angélica Guevara, *The Need to Reimagine Disability Rights Law Because the Medical Model of Disability Fails Us All*, 2021 *WIS. L. REV.* 269, 278 (2021); Alice Mander, *The Stories that Cripple Us: The Consequences of the Medical Model of Disability in the Legal Sphere*, 53 *VICTORIA U. WELLINGTON L. REV.* 337, 344 (2022).

53. Sandra M. Leotti & Elspeth Slayter, *Criminal Legal Systems and Disability Community: An Overview*, 11 *SOC. SCIS.* 255, 258 (2022) (citation omitted).

Further, disabled people are often not given “necessary accommodations and communication access” like sign interpreters, which means they may be “unable to understand or participate in their own cases and are more susceptible to wrongful arrests and convictions.”<sup>54</sup>

Disabled lawyers, on the other hand, may be more likely to empathize with disabled clients, recognizing the “common bond of resilience” they share.<sup>55</sup> As Jolly-Ryan argues, disabled lawyers are generally “in the best position to achieve the goals of the civil rights laws as they affect the disabled community.”<sup>56</sup> This is because their lived experience means they can ensure their advocacy accurately describes what it means to be disabled, even if they do not share the same disability(ies) as their client.<sup>57</sup> Lawyers with disabilities are also more likely to understand social norms and cues that people with disabilities may present. As discussed by Hayley Moss (a neurodivergent<sup>58</sup> lawyer), neurodivergent client may not present the usual neuro-typical social cues to show they are comfortable telling their story.<sup>59</sup> Neurodivergent clients may also need visual aids to help them understand what their lawyer is saying or may require augmentative and alternative communication, such as sign language or a communication app.<sup>60</sup> Moss also highlights that “direct communication is a cultural and expected norm” among neurodivergent people, and so figurative language, jokes, or sarcasm may not be understood or picked up.<sup>61</sup> Finally, disabled lawyers are more likely to have experienced ableism

---

54. *Id.* at 259.

55. Jennifer Jolly-Ryan, *Disabilities to Exceptional Abilities: Law Students with Disabilities, Nontraditional Learners, and the Law Teacher as a Learner*, 6 NEV. L.J. 116, 133 (2005); Brown, *supra* note 49, at 45.

56. Jolly-Ryan, *supra* note 55, at 132.

57. *Id.* at 133-34 (noting that the Supreme Court has had difficulties understanding disability and what “corrective measures” mean, which led to a previously narrow interpretation of the ADA).

58. Neurodivergent means the person “behaves, thinks and learns differently” when compared to people who think and learn in the “typical” way. Neurodivergence “includes people with autism, ADHD, Tourette’s, dyslexia and a range of other neurodiverse conditions.” *Neurodiversity & Neurodivergent: Meanings, Types & Examples*, EXCEPTIONAL INDIVIDUALS, <https://exceptionalindividuals.com/neurodiversity/> (last visited Dec. 15, 2022).

59. HAYLEY MOSS, GREAT MINDS THINK DIFFERENTLY: NEURODIVERSITY FOR LAWYERS AND OTHER PROFESSIONALS, 395-396 (2021).

60. *Id.* at 389-390.

61. *Id.* at 388.

and stigma than non-disabled lawyers and so will be able to approach their disabled client's legal issue or claim with this lived experience and understanding. For instance, many disabled clients will bring claims under the ADA, Rehabilitation Act, or Individuals with Disabilities Education Act (IDEA),<sup>62</sup> and it is likely that disabled lawyers will have relied on or interacted with these laws at some point in their lives, so they may be in a better position to understand their client's story and claim. This understanding of ableism is particularly important in the criminal legal context as part of the reason for the overrepresentation of disabled people in the criminal system is due to "criminalization of non-normative behavior"<sup>63</sup> and the intersection of ableism and racism.<sup>64</sup>

Therefore, given the discussion of the importance of lawyers having shared culture and lived experience with their client, it is likely that disabled clients are being disserved by their (in most cases) non-disabled lawyer who represents them.

*ii. Issues of public perception and general diversity in the profession*

The lack of disabled lawyers is also problematic for the public perception of and confidence in the legal system, particularly the criminal legal system. The American Bar Association, lawyers, and scholars have emphasized that for the U.S. justice system to retain its legitimacy and appear as a system that works in the same way for everyone, the people that work within it need to reflect the diversity of

---

62. As noted previously, 27% of the civil rights cases filed in 2017 were ADA claims.

63. Jennifer C. Sarrett & Alexa Ucar, *Beliefs About and Perspectives of the Criminal Justice System of People with Intellectual and Developmental Disabilities: A Qualitative Study*, 3 SOC. SCIS. & HUMANITIES OPEN 1, 2 (2021). See Hassan & Gordon, *supra* note 30, at 12 (highlighting that police were more likely to find disabled perpetrators less believable and the alleged crime more serious). People with learning disabilities are also more at risk of providing a false confession after police interrogation, and studies have shown that defense lawyers put more pressure on their clients to accept plea deals where there is a confession. See Samson J. Schatz, *Interrogated with Intellectual Disabilities: The Risks of False Confession*, 70 STAN. L. REV. 643, 658 (2018).

64. Sarrett & Ucar, *supra* note 63, at 2 (noting that Black Americans have higher rates of disability and are also overrepresented in the criminal justice system due to institutional and direct racism).

the nation.<sup>65</sup> The disparity between the number of disabled lawyers and the high number of disabled people interacting with the legal system, particularly the criminal legal system, could lead a disabled person to reasonably conclude that the legal system targets disabled people for not conforming to dominant norms.<sup>66</sup> As a result, a person with disabilities could reasonably doubt the legitimacy and credibility of the legal system as truly serving “all” citizens. For instance, there appears to be a lack of confidence in the legal system by victims with disabilities, as they are less likely to report crime because they are worried that law enforcement agencies and lawyers (the majority of whom are non-disabled) will view them as unreliable and unbelievable.<sup>67</sup> These fears directly correlate to the numerous problems caused by representation gaps, discussed above. Therefore, as King argued in relation to African American lawyers, the more the legal system reflects the diverse population that they serve, the more people of that population will consider the organization credible and legitimate because of shared lived experience and culture.<sup>68</sup>

Further, the lack of disabled lawyers presents a problem for the legal profession as a whole because the profession is not receiving the benefit of working with disabled lawyers. The ABA has noted that diversity in the legal profession is not just racial and ethnic diversity, but also includes people of different genders, sexual orientation and disability.<sup>69</sup> Having diverse lawyers means that there is a “360-degree approach . . .

---

65. *Diversity in Law: Who Cares?*, *supra* note 10; Mares, *supra* note 9, at 39 (arguing that diversity “reflects something profound about our system of justice. If the lawyers representing the people and the judges making decisions about their lives and livelihoods do not reflect the diversity of our nation, we are failing to provide a system of justice for all.”); Holder, Jr., *supra* note 9, at 2247-48 (arguing that “overall lack of diversity within the legal profession adversely impacts our ability as lawyers to serve those in most need of assistance. . . All of society is negatively impacted when a homogenous legal profession is unable to deal, as effectively as it might, with an increasingly smaller, more diverse world.”); King, *supra* note 40, at 38 (arguing that because African Americans believe the American legal system is racist, “the legitimacy of organizations that serve African Americans in the American judicial system is of the utmost importance. If these organizations reflect the racial and ethnic make-up of the populations they serve, African American clients are more likely to consider these organizations credible and legitimate.”).

66. Leotti & Slayter, *supra* note 53 at 259 (describing how the historical process of ableism has meant that disabled people who do not conform to dominant norms are segregated and isolated, and more vulnerable to mechanisms of surveillance and control).

67. Noreen Glover & Bruce Reed, *Abuse Against Women with Disabilities*, 20 Rehab. Educ. 1, 49 (2006).

68. King, *supra* note 40, at 38-39.

69. *Diversity in Law: Who Cares?*, *supra* note 10.



to analyze each issue” and can help “eliminate the possibility of bias affecting your final decision.”<sup>70</sup> Diverse lawyers who are “working together to identify, analyze, and resolve issues” allows for those diverse “perspectives, perceptions, and beliefs are voiced, considered and represented as part of any proposed solution.”<sup>71</sup> The importance of diversity in experience and thought is particularly evident in the experience of a disabled attorney, Jack Bernard, who is the General Counsel at the University of Michigan. He described working closely with Google and the library to digitize print collections and recognized that accessibility was not at the forefront of the project.<sup>72</sup> He introduced these disability-related perspectives and highlighted to the client that it was fundamental to the digitization program.<sup>73</sup> However, without his input disability accessibility may have just been an afterthought, or not thought about at all.<sup>74</sup> Further, the lack of disabled lawyers makes it difficult for students with disabilities to see themselves in the profession. As highlighted by Moss, “representation matters and seeing folks like yourself represented in the profession, as well as investing in your future success, can meaningfully shift the demographics of lawyers to be more diverse.”<sup>75</sup> So, given that disabled lawyers only make up around 1.22% of lawyers, it is unlikely that the legal profession is receiving the benefits described by Wofford or O’Steen, at least in relation to disability perspectives.

To sum up, the lack of disabled lawyers is a problem for the adequacy of legal representation given to disabled clients (who have high interactions with the legal system); disability confidence in the legal system, because disability is not represented within the workings of the legal system; and for the legal profession, because it does not benefit from disability perspectives and learning from disabled people’s lived experience.

---

70. *Id.*

71. *Id.* (quoting Chasity O’Steen, the chair of Florida Bar Diversity and Inclusion Committee Diversity).

72. BASAS, *supra* note 33, at 35.

73. *Id.*

74. *Id.*

75. HAYLEY MOSS, GREAT MINDS THINK DIFFERENTLY: NEURODIVERSITY FOR LAWYERS AND OTHER PROFESSIONALS, 187-188 (2021).

## B. Why should law schools care about fixing this problem?

Given that the low number of disabled lawyers is a problem, what should be done about it? And importantly, who should be responsible for fixing the problem? The lack of disabled lawyers is rooted in complex issues of systemic ableism, eugenics, and historical exclusion of people with disabilities.<sup>76</sup> It is a multi-faceted issue involving both stigma and discrimination in the legal profession and legal system, and educational pipeline issues that begin from elementary school.<sup>77</sup> Therefore, this is not an issue that can be resolved by one institution or by one approach. This paper seeks to deal with one of the institutions plays a key role in determining the next generation of lawyers: the law schools.

Law schools are a gatekeeper to the legal profession. ABA standards require most lawyers to have completed three years at an ABA accredited law school to be able to practice in the U.S.<sup>78</sup> Although there do not appear to be accurate figures of the number of disabled law students across the U.S., research from the National Association for Law Placement research shows that 4.5% of the graduating class of 2020 self-identified as having a disability.<sup>79</sup> This percentage is higher than the percentage of self-identified disabled lawyers (1.22%),

---

76. KIM E. NIELSON, A DISABILITY HISTORY OF THE UNITED STATES (2012) (discussing disability history and the impacts of exclusionary and eugenics-based policies); David Pfeiffer, *Eugenics and Disability Discrimination*, 9 *Disability & Soc'y* 481 (1994), <https://www.independentliving.org/docs1/pfeiffe1.html>.

77. Moss, *supra* note 75, at 449-453 (describing that she did not know any lawyers in her family or professionally and so lacked support when she decided she wanted to go to law school and arguing for more support for neurodivergent students who are interested in law at high school, as disabled young people are often told at high school that they cannot accomplish much or will struggle if they go to university / graduate school). This is also supported by studies that show families, teachers, and other education / rehabilitation professionals do not expect that students with intellectual disabilities will go to college; students with intellectual disabilities are often not aware of programs and opportunities available; and IEPs often lack college goals. *See e.g.*, K. Sheppard-Jones et al., *The Inclusive Higher Education Imperative: Promoting Long Term Post-Secondary Success for Students with Intellectual Disabilities in the Covid-19 Era*, 87 *J. of Rehab.* 48, 49 (2021) (finding that the most significant barrier to students with intellectual disabilities enrolling in university was the lack of knowledge, information, and communication about higher education opportunities, and also lack of funding (recognizing that disability and poverty are interlinked)).

78. *What is a Lawyer?*, *supra* note 15; *see also* Michelle J. Anderson, *Legal Education Reform, Diversity, and Access to Justice*, 61 *Rutgers L. Rev.* 1011, 1015 (2009) (arguing that because law schools are the primary gatekeepers to legal practice, they are largely responsible for the whiteness of the profession).

79. NALP, *supra* note 2, at 10.

however it is still just a fraction of the total disabled population (26%), and the disproportionate number of disabled people interacting with the legal system (27% of civil rights cases filed are ADA cases and 38% of prisoners are disabled).<sup>80</sup>

Because law schools have a role to play in the low numbers of disabled lawyers, they have an obligation to increase the numbers of disabled law students. This obligation arises out of the different U.S. law schools' commitments to diversity.<sup>81</sup> Reviewing websites from the top ten law schools across the U.S., each one emphasizes their commitment to ensuring and promoting diversity.<sup>82</sup> For example, Yale, the number one ranked law school, emphasizes that:<sup>83</sup>

---

80. *Id.*; *Disability Impacts All of Us*, *supra* note 2; Maruschak et al., *supra* note 3; *Just the Facts: Americans with Disabilities Act*, *supra* note 6.

81. See *infra* note 86. See also, AM. BAR ASS'N, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2022-2023, at 18 (2022) (setting the requirement on law schools to include as part of their curriculum, "education on bias, cross-cultural competency and racism").

82. The "top-ranked" law schools are taken from the US News law school rankings for 2022. *2022-2023 Best Law Schools*, U.S. NEWS & WORLD REP. (2022), <https://www.usnews.com/best-graduate-schools/top-law-schools/law-rankings>. See *infra* pp. 21-23; see also *J.D. Admissions Philosophy, Eligibility, and Admissions Standards*, COLUM. L. SCH., <https://www.law.columbia.edu/admissions/jd/jd-admissions-philosophy-eligibility-and-admissions-standards> (last visited Nov. 9, 2022) (stating that it seeks a diverse student body and that the members of the recent classes "reflect the broad range of economic, ethnic, and cultural backgrounds found in America."); Overview of *Diversity & Inclusion*, U. CHI. L. SCH., <https://www.law.uchicago.edu/diversity-and-inclusion/about> (last visited Nov. 9, 2022) (stating that it only succeeds "when our community includes and welcomes people of diverse backgrounds and perspectives."); *Equity & Inclusion*, PENN CAREY L. SCH. U. PA., <https://www.law.upenn.edu/inclusion/> (last visited Nov. 9, 2022) (emphasizing that it is "committed to increasing the diversity of our legal profession by supporting access for members of communities that have been historically underrepresented."); *Standards for Admission*, HARV. L. SCH., <https://hls.harvard.edu/jdadmissions/apply-to-harvard-law-school/standards-for-admission/> (last visited Nov. 9, 2022) (stating that it seeks students who will "contribute diversity of perspective and experience, general excellence, and vitality to the student body," and actively encourage "students with disabilities" and "those interested in serving communities traditionally lacking legal resources and representation."); *Diversity, Equity, and Inclusion*, MICH. L. U. OF MICH., [www.michigan.law.umich.edu/student-life-and-community/diversity-equity-and-inclusion](http://www.michigan.law.umich.edu/student-life-and-community/diversity-equity-and-inclusion) (last visited Nov. 9, 2022) (stating that it "believe[s] that diversity is key to individual flourishing, educational excellence, and the advancement of knowledge.").

83. Heather Gerken, *Message from the Dean*, YALE L. SCH.: DIVERSITY & INCLUSION, <https://law.yale.edu/student-life/diversity-inclusion> (last visited Nov. 9, 2022).

[d]iversity and inclusion are core to the values of [the] school. Our aim is to train the next generation of leaders in the profession. It would be unthinkable to do so without taking into account the role that oppression has played in this nation's history, the certainty that the next generation of leaders will be far more diverse than generations prior, and the reality that our alumni will lead in a far more multicultural environment than before. We cannot lead the profession without leading on issues of diversity and inclusion.

Berkeley Law also states that it:<sup>84</sup>

has a responsibility to educate lawyers who will serve the legal needs of all members of society. . . . Berkeley Law seeks a student body with a broad set of interests, backgrounds, life experiences, and perspectives. Such diversity is important in a law school, which must train its graduates not only to analyze and interpret the law, but also to reflect on competing viewpoints, advance arguments persuasively in a variety of forums, and develop policies affecting a broad range of people. . . . Historically, Berkeley Law's diverse student body has produced graduates who have served all segments of society. . . . Exposure to a wide array of ideas, outlooks, and experience is an important part of our students' educational and professional development.

This sentiment is also present in diversity statements by both University of Virginia School of Law and Stanford Law School. Virginia Law emphasizes that "diversity" is fundamental not only to the school community but to "legal education more generally and the practice of law itself".<sup>85</sup> Virginia Law adds that it is "critically important

---

84. *Faculty Admissions Policy*, BERKELEY L., [www.law.berkeley.edu/admissions/jd/faculty-policy-regarding-admissions](http://www.law.berkeley.edu/admissions/jd/faculty-policy-regarding-admissions) (last visited Nov. 9, 2022).

85. Risa Goluboff, *A Statement on Diversity, Equity and Belonging at UVA Law*, U. VA. SCH. LAW: DIVERSITY, EQUITY AND BELONGING, <https://www.law.virginia.edu/diversity/statement-diversity-equity-and-belonging-uva-law> (last visited Dec. 14, 2022).

that the lawyers, leaders, and public servants we train both embrace and reflect the diversity of our nation and the globe.”<sup>86</sup> Stanford Law School also recognizes that changes to diversity in the legal profession “must begin with legal education.”<sup>87</sup> To achieve this, some of these schools have established recruitment programs to increase diversity.<sup>88</sup>

These statements and commitments by law schools to establish a diverse law school population, not only for the good of their students’ education but also in recognition of the importance of diversity in the legal profession, suggest that law schools have willingly assumed an obligation to increase the number of law students with disabilities. As discussed earlier, disability is an identity and culture, with lived experiences of oppression and resilience, and therefore, a necessary part of any considerations of diversity.<sup>89</sup>

### III. THE NON-DISABLED AND NEURO-TYPICAL LAW SCHOOL PEDAGOGY AND CHANGES TO THE PEDAGOGY TO INCREASE REPRESENTATION OF LAW STUDENTS WITH DISABILITIES

Given the low number of disabled lawyers presents a number of issues and that law school have some role to play in determining the number of disabled law students, what should the law schools do about the low number of disabled lawyers? The next part of this paper argues that the changes to law school pedagogy could help disabled law students to thrive, and possibly increase the number of law students with disabilities (which in turn increases the number of disabled lawyers). This argument is made by first, setting out the limitations of the data available about disabled people in law school, and second, presenting

---

86. Risa Goluboff, *A Statement on Diversity, Equity and Belonging at UVA Law*, U. VA. SCH. LAW: DIVERSITY, EQUITY AND BELONGING, <https://www.law.virginia.edu/diversity/statement-diversity-equity-and-belonging-uva-law> (last visited Dec. 14, 2022).

87. *Diversity, Equity & Inclusion in Action at SLS*, SLS, <https://law.stanford.edu/community/diversity-equity-and-inclusion/diversity-equity-inclusion-in-action-at-sls/> (last visited Dec. 14, 2022).

88. See e.g., *Diversity and Inclusion*, N.Y.U., <https://www.law.nyu.edu/about/strategic-plan-in-action/diversity-inclusion> (last visited Dec. 14, 2022); see also *About the Program Roadmap Scholars Initiative*, U. VA. SCH. LAW, <https://www.law.virginia.edu/academics/program/roadmap-scholars-initiative> (last visited Dec. 14, 2022).

89. And it is noted that many of these websites refer to disability specifically.

the reason for focusing on pedagogical changes, with reference to the impacts of dominant pedagogies that are not culturally sustaining or reflective, on academic success for minority students. This section then outlines how the law school pedagogy marginalizes and excludes disabled law students. Finally, this section presents an argument for changing the pedagogy to center disability and reflect different learning styles.

### **A. Law school data neither supports nor negates a focus on pedagogy**

It is not entirely obvious what law school deans and administrators should focus on when considering ways to increase the number of disabled law students. There are a number of areas that could be of focus—recruitment, admissions, pedagogy, the law school environment—and it would be ideal to have data that could provide more guidance on the key barriers to entry for disabled students. Unfortunately, the available data about disability in law school is not very helpful.<sup>90</sup> As highlighted earlier, 5.5% of the graduating class in 2021 self-identified as disabled.<sup>91</sup> However, this number is likely to be inaccurate, given that it relies on self-identification and many disabled law students will not disclose their disabilities.<sup>92</sup> Further, admissions data is generally lacking. Although the ABA has mandatory disclosure requirements for accredited law schools, it only requires law schools to disclose admissions and enrollment data in relation to gender and race/ethnicity each year.<sup>93</sup> Without knowing the number of disabled students admitted and enrolled each year, it is difficult to determine whether the percentage of disabled law students admitted is the same as the percentage that graduates, and whether there is any disparity in

---

90. Jasmine E. Harris, *Debating Disability Disclosure in Legal Education*, 71 J. LEGAL EDUC. 94, 115-17 (2021) (noting the inadequate disability data in law school is a problem in itself and more data is needed to understand the key barriers for students seeking access to law school and the legal profession).

91. NALP, *supra* note 2, at 10.

92. See *infra* Section III, Part C.

93. The reason for this omission is interesting. It suggests that disability is not viewed as a minority group that should be monitored in the same way that gender and race are, and therefore, it makes it difficult to identify whether law schools are excluding disabled people. Further as argued by Hayley Moss, failure to report on disability data emphasizes the stigma of being disabled at law school and how little the law profession thinks about disability. MOSS, *supra* note 75, at 111.

graduation rates for disabled and non-disabled law students. Thus, while there is some data that suggests in the period of 2016-2017 Law School Admissions Test (LSAT) cycles, 0.02% of people received accommodations (suggesting they were disabled),<sup>94</sup> without additional admissions data that shows the number of disabled people who applied to law schools and the number who were accepted, it is difficult to determine whether the lack of disabled law students is due to barriers in the admissions process.

As noted earlier, there is also a pipeline issue at play, which is likely to impact on the number of disabled students who might apply to law school. A 2011 ABA report said that “individuals with disabilities are less likely to apply to be admitted to law school” and referred to a correlation between poverty and disability as a key reason for the low application rates.<sup>95</sup> Further, the ABA noted that the differences in academic achievement and bachelor’s completion “helps explain why so few persons with disabilities become lawyers, as many individuals lack the educational background and academic prerequisites to apply to law school.”<sup>96</sup> At high school, students with disabilities gain fewer credits than non-disabled students,<sup>97</sup> and students with disabilities focus more on vocational and non-academic credits than the general student population.<sup>98</sup> High school students with disabilities have, on average, a lower GPA than their non-disabled peers.<sup>99</sup> After high school, young

---

94. In the 2016-2017 LSAT cycle, 3789 applicants requested accommodations, 3000 of these were granted and only 2310 took the test with the accommodations. In that cycle 112,406 applicants took the LSAT, which suggests 0.02% of people who took the LSAT were disabled. However, this figure is likely to be an under-representation given that some people with disabilities will not have requested accommodations. Laura A. Lauth, et al., *Accommodated Test-Taker Trends and Performance for the June 2012 through February 2017 LSAT Administrations* (TR 17-03), LSAC, <https://www.lsac.org/data-research/research/accommodated-test-taker-trends-and-performance-june-2012-through-february#:~:text=The%20proportion%20of%20those%20who,77%25%20across%20the%20study%20years> (last visited Sept. 17, 2023).

95. ABA Report, *supra* note 14, at 4.

96. *Id.*

97. Institute of Education Sciences, *Secondary School Programs and Performance of Students with Disabilities: A Special Topic Report of Findings from the National Longitudinal Transition Study-2*, 13 (2011) (noting that students with disabilities earn on average 22.7 credits, and non-disabled students earn on average 24.2 credits).

98. *Id.*

99. *Id.* at xii (noting students with disabilities have a 2.3 average GPA, whereas non-disabled students have a 2.7 average GPA).

adults with disabilities are less likely to continue to post-secondary education.<sup>100</sup> This disparity may be due to a lack of knowledge and information about higher education opportunities, or lack of expectation that students with disabilities can go and succeed at college.<sup>101</sup> Those that do continue to post-secondary education are more likely to have enrolled in two year programs or community college,<sup>102</sup> and have lower completion rates in comparison to similar aged non-disabled students.<sup>103</sup> Accordingly, this data suggests that students with disabilities are less likely to apply to law school.

However, some things are known. There are a small number of disabled lawyers, which is far less than the disabled population in the U.S. There are also high numbers of disabled people interacting with the legal system. Law schools help determine the number of disabled lawyers. This suggests that there are some barriers preventing disabled students from accessing the legal profession. Some change is therefore necessary to ensure more disabled law students can access law school and, thereby, the legal profession. And, given law schools' express commitment to increasing diversity, it is logical to target law schools as a site for change.

## **B. Pedagogy as a tool for increasing disabled law students**

As discussed above, there is no clear evidence that the lack-of-disabled-lawyers problem is because of pedagogical practices or if it is because of admission requirements or general issues in the school-to-college pipeline. Despite this, a focus on pedagogy is important for

---

100. Institute of Education Sciences, *supra* note 13, at xxvi (noting 60% of young adults with disabilities will go to post-secondary education after high school, in comparison to 67% of non-disabled young adults).

101. *See* Sheppard-Jones et al, *supra* note 77, at 49 (showing that families, teachers and other education professionals do not expect that students with intellectual disabilities will go to college, and Individual Education Plans (IEPs) often do not include college as a goal, and stating that other research has found that the most significant barrier to students with intellectual disabilities enrolling in university was lack of knowledge, information and communication about higher education).

102. Institute of Education Sciences, *supra* note 13, at 19 (noting that 44% of young adults with disabilities enroll in two-year programs or community colleges. 32% enroll in vocational, business, or technical schools and 19% enroll in 4-year colleges).

103. *Id.* at 47 (noting that 41% of disabled students complete their bachelor's degree, compared to 52% of non-disabled students and only 34% of disabled students complete a 4-year program, compared to 51% of non-disabled students).



increasing the number of disabled lawyers and making lawyering more accessible to disabled people. To support this claim, this section refers to critiques and research by scholars in relation to the impacts of culturally affirming and relevant pedagogy on black student success and enrolment.<sup>104</sup>

Numerous scholars have discussed that the dominant ideologies and pedagogies at universities are White and Eurocentric. The “dominant language, literacy and cultural practices” are based on “White, middle-class norms” and any other cultural norms or languages are treated as “less-than and unworthy of a place in U.S. schools and society.”<sup>105</sup> This “facilitate[s] overt, covert and subtle racism and the marginalisation of people of colour” which then leads to feelings of marginalization and exclusion from academia and the university.<sup>106</sup> Studies have shown that feelings of marginalization, invisibility, and exclusion affects the wellbeing of students, “sense of belonging”, academic success and graduation rates.<sup>107</sup> As discussed by scholars Samuel Beasley, Collette Chapman-Hilliard, and Shannon McCain, the idea of academic self-concept (which is believing that a person can be successful in an academic setting) is crucial to the success of Black students.<sup>108</sup> Further, Beasley et al emphasize that because white supremacy permeates throughout the academia, it can lead to Black students internalizing “supposed limited academic skills.”<sup>109</sup> This then impacts Black student success because it can undermine some students’ ability to see value in academic outcomes and take educational assessments seriously.<sup>110</sup>

Researchers and scholars have long advocated for changes to the dominant pedagogy.<sup>111</sup> This led to advocacy for “culturally relevant pedagogies” (CRP), first discussed by Ladson-Billings in 1995.<sup>112</sup> CRP

---

104. It would have been useful to make this claim with reference to disability pedagogies, particularly those used at Deaf Schools and Universities. However, I was unable to find research on this pedagogy and its impacts on students.

105. Paris, *supra* note 18, at 93.

106. Jason Arday et al., *Attempting to Break the Chain: Reimagining Inclusive Pedagogy and Decolonising the Curriculum within the Academy*, 53 EDUC. PHIL. & THEORY 298, 300-05 (2021); see Paris, *supra* 18, at 93; see also Beasley et al., *supra* note 17, at 11-13.

107. Beasley et al., *supra* note 17, at 11; Williams et al., *supra* note 18, at 736.

108. Beasley et al., *supra* note 17, at 12.

109. *Id.* at 13.

110. *Id.*; Arday et al., *supra* note 106, at 301.

111. Paris, *supra* note 18, at 93.

112. *Id.* at 94.

recognizes the “cultural resources that racially marginalized communities bring to educational spaces” and how this can “foster their educational advancement.”<sup>113</sup> In 2014, Django Paris, a leading CRP scholar, questioned whether CRP goes far enough in supporting “linguistic and cultural dexterity and plurality necessary for success and access in [the] demographically changing U.S.”<sup>114</sup> He advocated for “culturally sustaining pedagogies”, which means a pedagogy that “perpetuates and fosters . . . linguistic, literate, and cultural pluralism.”<sup>115</sup> It builds upon CRP and aims to reposition “consistently marginalized students” into “a place of normativity” becoming the “subjects in the instructional process not mere objects.”<sup>116</sup>

Historically Black Colleges and Universities (HBCUs) and Black/African Studies at Historically White Universities (HWIs) implement culturally relevant and culturally sustaining pedagogies in a few ways.<sup>117</sup> For example, Williams describes how one HBCU “restructured its first year experience programs using a socio-cultural lens that provoked Black students to connect with their racial identity and unlearn antiblack tropes regarding their abilities.”<sup>118</sup> This centering of blackness leads to higher academic confidence and academic success compared to students at HWIs or who do not take Black/African studies.<sup>119</sup> The admission rates at HBCUs also support the idea that culturally relevant and affirming pedagogies are attractive to Black students. HBCUs only make up 3% of the colleges in the United States, but educate around 33% of Black students.<sup>120</sup> Further, Black graduates

---

113. Williams et al., *supra* note 18, at 737.

114. Paris, *supra* note 18, at 95.

115. *Id.*

116. Williams et al., *supra* note 18, at 737.

117. *See id.* (providing more information on culturally sustaining practices used at HBCUs).

118. *Id.* at 735.

119. Studies have shown that HBCU’s produce “higher levels of academic achievement among black students versus their HWI peers.” Although there are studies that have shown no difference in academic success for black students who attend HBCUs or HWIs, Arroyo and Gasman emphasize that this finding is still significant given that HBCUs have reduced resources and a higher number of “underprepared students.” Andrew T. Arroyo & Marybeth Gasman, *An HBCU-Based Educational Approach for Black College Student Success: Toward a Framework with Implications for all Institutions*, 121 AM. J. EDUC. 57, 68 (2014). Further, black students who take Black/African studies have been found to have higher levels of academic achievement, interest in university and higher graduation rates compared to those who did not take the course. Beasley et al., *supra* note 17, at 17-18.

120. Ndumu & Walker, *supra* note 20, at 222.

from HBCU's make up disproportionately high numbers of the Black workforce.<sup>121</sup> Although there are a number of reasons why Black students may wish to apply to HBCU's,<sup>122</sup> the culturally relevant and sustaining pedagogy must play a part in attracting students because it leads to academic success.

The discussion above establishes the importance of culturally affirming and relevant pedagogies to Black academic success and enrolment. It does not necessarily explain how pedagogical changes might help to resolve the problem of the lack of disabled lawyers and increase access to law school for students with disabilities. As noted earlier, disability and race are not entirely analogous identities and many of the reasons why HBCUs see high rates of enrolment are likely to also be linked to the historical importance of HBCUs, as well as the culturally relevant and sustaining pedagogies.<sup>123</sup> However, as discussed earlier, disability is a culture, that occupies a similarly stigmatized social position to that of racial minorities.<sup>124</sup> Therefore, this discussion of culturally relevant and sustaining pedagogies is not supposed to create a direct correlation between pedagogies for Black students and changes to pedagogy for disabled students. Instead, this discussion supports the idea that pedagogies that center the experience of a marginalized group and value their cultural practices can lead to greater academic success for that group and can increase enrolment (and are also generally good for education systems and society as a whole).<sup>125</sup> This argument is developed further in the next section, through discussion of (a) how the dominant law school pedagogy not only perpetuates whiteness, but also ableism, which leads to exclusion and marginalization of disabled students and impacts their ability to succeed academically; and (b) why a pedagogy that centers disability and values disability culture is necessary.

---

121. Arroyo & Gasman, *supra* note 119, at 71 (citing the United Negro College Fund (2008) which reported 70 per cent of black dentists and physicians, 50 per cent of black engineers, and 35 per cent of black attorneys, graduated from HBCUs).

122. Williams et al., *supra* note 18, at 724 (including, "the cultural connection between HBCUs campuses and the Black community, and how that impacts Black students' college choice process.").

123. *Id.* at 734.

124. Eddey & Robey, *supra* note 50.

125. Paris, *supra* note 18.

### C. “Thinking like a lawyer” and exclusion of different ways of learning in the law school pedagogy

Scholars Andrew Arroyo and Marybeth Gasman have attempted to create a framework that applies HBCU-based educational approaches to all institutions.<sup>126</sup> As part of this research, they emphasized that exclusion is at the foundation of higher education institutions that are modelled on and perpetuate white norms.<sup>127</sup> As a result, historically marginalized populations will never be served by these institutions.<sup>128</sup> Further, as discussed above, studies have shown that feelings of marginalization, invisibility and exclusion can impact students’ academic success, “sense of belonging,” and graduation rates.<sup>129</sup>

Exclusion from the dominant model of academia and disability go hand-in-hand. As argued by Jay Dolmage in his book *Academic Ableism*, universities and academia generally “exhibit and perpetuat[e] a form of structural ableism,” through both their pedagogies and learning environments.<sup>130</sup> This is because universities are built upon and value exclusion to keep “certain bodies and minds out.”<sup>131</sup> The exclusion of certain “bodies and minds” includes not only those who do not meet the academic norms of whiteness (as highlighted by CRP scholars), but also those who do not meet the academic norms of being non-disabled, neuro-typical, or do not meet the norms of socializing and communication.<sup>132</sup> Dolmage emphasizes that the “dominant pedagogies [in academia] privilege those who can most easily ignore their bodies, and those whose minds work the most like the minds of the teachers.”<sup>133</sup> Many disabled students cannot ignore their bodies, or may learn differently to their teachers, and this exclusion of disabled people from academia is evident in the statistics discussed above relating to graduation and enrolment rates.<sup>134</sup>

The exclusion of disability also underlies law schools and their pedagogies. The common description of the law school pedagogy is to

---

126. Arroyo & Gasman, *supra* note 119.

127. *Id.* at 61.

128. *Id.*

129. Beasley et al., *supra* note , at 11; Williams et al., *supra* note 18, at 5.

130. DOLMAGE, *supra* note 12, at 53.

131. *Id.* at 42 (terming this the “steep steps” metaphor).

132. *Id.* at 70.

133. *Id.* at 80.

134. See ABA Report, *supra* note 14, at 5.

teach students how to “think like a lawyer.”<sup>135</sup> But who is this lawyer that students are being taught to think like, and how does this lawyer think? Feminist theorists like Lani Guinier et al, have argued that this “lawyer” is:

“a man who uses rights-based reasoning to analyze legal problems in terms of competing, mutually exclusive claims. He can argue all sides of an issue because he has no personal stake in any of his arguments. In form, the model lawyer also demonstrates characteristics traditionally associated with maleness: aggression, willingness to fight, emotional detachment and exaggerated bravado.”<sup>136</sup>

This lawyer is also white and non-disabled.<sup>137</sup> As emphasized by Guinier et al, the style of lawyering that law schools’ value is based on “techniques of lawyering that were developed at a time when no women or people of color were part of the profession.”<sup>138</sup> These “techniques of lawyering” were also developed at a time when it was likely there were no lawyers with disabilities in the profession. Although there do not appear to be laws restricting disabled people from entering the profession, as there were for women and people of color,<sup>139</sup> the long history of exclusion of disabled people from civic society suggests that

---

135. Wendy F. Hensel, *The Disability Dilemma: A Skeptical Bench & Bar*, 69 U. PITT. L. REV. 637, 648 (2008).

136. Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1, 46 (1994).

137. See Harris, *supra* note 90, at 16 (stating that legal institutions have long been run by “white, able-bodied, neurotypical men who did not design these institutions to serve disabled people, but rather, others like them.”).

138. Guinier et al., *supra* note 136, at 67.

139. See Cynthia Grant Bowman, *Women in the Legal Profession from the 1920s to the 1970s: What Can We Learn From Their Experience About Law and Social Change?*, 61 ME. L. REV. 1, 3 (2009) (demonstrating that women were allowed to practice as lawyers in 1920); *ABA Timeline*, A.B.A., [https://www.americanbar.org/about\\_the\\_aba/timeline/](https://www.americanbar.org/about_the_aba/timeline/) (last visited Dec. 14, 2022) (demonstrating that the ABA restricted membership to white lawyers in 1912 and did not allow black lawyers to enter the profession until 1943).

it is unlikely disabled people were part of the legal institutions.<sup>140</sup> If disabled people were historically part of legal institutions, it is unlikely that their perspectives on different ways of lawyering were valued, given the dominant social understanding of disability (both historical and current) was that having a disability is a deficit.<sup>141</sup>

The non-disabled and neuro-typical prerequisites for “thinking like a lawyer” are also evidenced by the learning tools used by law professors. As discussed by Elizabeth Mertz in her book, *The Language of Law School: Learning to Think Like a Lawyer*, Socratic teaching is the primary method of law school pedagogy.<sup>142</sup> Socratic teaching is where the professor calls on a student in class (usually on the spot, without pre-warning), and the student is required to engage in an oral argumentative discussion with the professor.<sup>143</sup> The idea is that this discussion leads the student, and the rest of the class, to some better understanding of legal concepts.<sup>144</sup> This approach is also intended to emulate the fast-paced environment of lawyering and the courtroom experiences of lawyers.<sup>145</sup> However, this teaching method relies on various assumptions about the student. It assumes the student: can quickly understand the question asked, remember certain doctrines or cases, and synthesize this knowledge (in seconds) to answer the question;<sup>146</sup> the student can articulate and defend their position orally and in public;<sup>147</sup> and the student speaks oral English fluently.<sup>148</sup> Law

---

140. Disabled people were subjected to eugenics legislation and policies from the late 1800s, early 1900s, which meant many disabled people were institutionalized, sterilized, and otherwise excluded from society. See NIELSON, *supra* note 76 (providing more detailed information on the history of disability and the treatment of disabled people).

141. See Pfeiffer, *supra* note 76 (discussing how “disabled people were stereotyped from colonial times as defective and thus not being able to participate as citizens” and that if disabled people did try to participate in civic society, they were often stopped by laws or being placed in institutions).

142. ELIZABETH MERTZ, *THE LANGUAGE OF LAW SCHOOL: LEARNING TO “THINK LIKE A LAWYER”* 26 (2007).

143. *Id.* at 28, 50-51, 59.

144. Sarah E. Thiemann, *Beyond Guinier: A Critique of Legal Pedagogy*, 24 N.Y.U. REV. L. & SOC. CHANGE 17, 20-21 (1998); MERTZ, *supra* note 142, at 59.

145. Thiemann, *supra* note 144, at 20-21; MERTZ, *supra* note 142, at 59.

146. Peter Dewitz, *Legal Education: A Problem of Learning from Text*, 23 N.Y.U. REV. L. & SOC. CHANGE 225, 243 (1997); Ruggero J. Aldisert et al., *Logic for Law Students: How to Think like a Lawyer*, 69 U. PITT. L. REV. 1 (2007).

147. Thiemann, *supra* note 144, at 21; DEBORAH L. RHODE, *IN THE INTERESTS OF JUSTICE, REFORMING THE LEGAL PROFESSION* 197 (2000).

148. See MERTZ, *supra* note 142, at 28 (describing the law school pedagogy as an “oral genre”).

school pedagogy also uses case-method teaching, where students read and synthesize case law, identifying the legal doctrines and how these doctrines were developed.<sup>149</sup> It also requires students “to convey information rapidly, succinctly, thoroughly and readably” in exams, and draft lengthy, error-free, legal writing assignments.<sup>150</sup>

Multiple scholars criticize the law school pedagogy, from its reinforcement and valuing of stereotypical maleness to its failure to actually teach students how to be a lawyer.<sup>151</sup> It can also be criticized for its failure to consider or value different types of learning and speech. As emphasized by Harris, the law school pedagogical focus on “thinking like a lawyer” “exacerbates existing mental or psychosocial disabilities; privileging those without learning or speech disabilities as well as those who communicate well orally.”<sup>152</sup> The exclusion of disability is evidenced in multiple aspects of the pedagogy, for example: Socratic method values those who can think lineally or are verbal learners, excluding many students with learning disabilities who may learn better visually and kinesthetically (and, importantly, this excludes non-disabled or neuro-typical students as well who are not verbal learners);<sup>153</sup> Socratic method also excludes those who speak American Sign Language (ASL) or have other speech impediments; and case-method teaching and examinations can be difficult for students who have ADHD or other learning disabilities that may affect their ability to organize, synthesize and memorize large amounts of information.<sup>154</sup>

---

149. Martha Minow, *Marking 200 Years of Legal Education: Traditions of Change, Reasoned Debate and Finding Differences and Commonalities*, 130 HARV. L. REV. 2279, 2283 (2017); MERTZ, *supra* note 142, at 83, 132; Thiemann, *supra* note 144, at 22.

150. Susan Johanne Adams, *Because They're Otherwise Qualified: Accommodating Learning Disabled Law Student Writers*, 46 J. LEGAL EDUC. 189, 190 (1996).

151. Guinier et al., *supra* note 136; Jerome Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303, 1303 (1947); BENJAMIN H. BARTON, *FIXING LAW SCHOOLS: FROM COLLAPSE TO THE TRUMP BUMP AND BEYOND* (2019); Charles J. Ogletree Jr., *The Challenge of Providing “Legal Representation” in the United States, South Africa, and China*, 7 WASH U. J. L. & POL’Y 47, 71 (2001); Scott Weiss, *Contemplating Greatness: Learning Disabilities and the Practice of Law*, 6 SCHOLAR 219, 234 (2004).

152. Harris, *supra* note 90, at 17.

153. Jolly-Ryan, *supra* note 55, at 124-25.

154. See Adams, *supra* note 150, at 193 n.11 (noting ADD generally has three key characteristics: hyperactivity, distractibility, and impulsivity, which are usually present in higher intensity than for a person without ADD); Robin A. Boyle, *Law Students with Attention Deficit Disorder: How to Reach Them, How to Teach Them*, 39 J. MARSHALL L. REV. 349, 352,

Law students with disabilities describe precisely this kind of exclusion in their accounts of their experiences at law school. In Engel and Konefsky's article on barriers in law school, one law student with a learning disability described how she processed and understood oral information immediately, especially when pictures or charts were used.<sup>155</sup> However, she had difficulty reading written text.<sup>156</sup> Occasionally she could not recognize familiar words, sometimes having to guess entire passages, and her gaze would jump around the book.<sup>157</sup> Ryan Wullschleger, a blind law student, described that his approach to legal analysis was different, requiring him to "reorient" himself and find more creative solutions.<sup>158</sup> A lawyer with a visual impairment argued in Court that he needed more time to provide documents because it took him "twice as long to write and read and absorb material as a non-disabled attorney."<sup>159</sup> Harben Girma, a deafblind attorney, believed that the only way she could survive law school would be because she was doing the readings, but had little ability to hear her lectures (as her interpreters had to sit at the back of the classroom, whispering into a microphone).<sup>160</sup>

Law students with disabilities can request and receive accommodations under the Americans with Disabilities Act (ADA) and Rehabilitation Act to ameliorate some of the difficulties caused by the law school pedagogy and teaching methods.<sup>161</sup> However, accommodations do not reduce feelings of exclusion or marginalization. Instead, they can exacerbate the idea that the "lawyer" that law students are trained to think and be like is not and cannot be disabled. This is because accommodations reinforce the medical model of disability by

---

354-55 (2006); Kevin H. Smith, *Disabilities, Law Schools, and Law Students: A Proactive and Holistic Approach*, 32 AKRON L. REV. 1, 108 (1999) (noting learning disabled students may have deficits which will make the "Socratic Method" of learning difficult for them).

155. See David M. Engel & Alfred S. Konefsky, *Law Students with Disabilities: Removing Barriers in the Law School Community*, 38 BUFFALO L. REV. 551, 555-56 (1990).

156. *Id.*

157. *Id.*

158. *Law Student Spotlight: Ryan Wullschleger*, A.B.A. (Mar. 17, 2021) [https://www.americanbar.org/groups/diversity/disabilityrights/initiatives\\_awards/spotlight\\_stu/ryan-wullschleger-spotlight/](https://www.americanbar.org/groups/diversity/disabilityrights/initiatives_awards/spotlight_stu/ryan-wullschleger-spotlight/).

159. Donald H. Stone, *The Disabled Lawyers Have Arrived: Have They Been Welcomed with Open Arms into the Profession – An Empirical Study of the Disabled Lawyer*, 27 LAW & INEQ.: J. THEORY & PRAC. 93, 114 (2009).

160. HABEN GIRMA, HABEN: THE DEAFBLIND WOMAN WHO CONQUERED LAW SCHOOL 197-200 (2019).

161. 42 U.S.C. § 12132; 29 U.S.C. § 794.



requiring disabled law students to prove they are disabled (i.e. with medical documentation) and the accommodations are specific to the individual student with a disability.<sup>162</sup> Accommodations also support the medical model idea that disability is the student's problem to "fix" or "overcome", rather than a problem created by the law school.<sup>163</sup> Because disability is viewed as a "problem", disability becomes associated with stereotypes of tragedy or something to pity.<sup>164</sup> Further, accommodations create stigma for disabled law students; not only do accommodations support stereotypes about disability as problem and outside of the norm, but they also support ideas that disabled law students might be "getting ahead" of other law students because they might get more time on a test, for example.<sup>165</sup>

Accordingly, because the "thinking like a lawyer" pedagogy and its corresponding teaching methods privilege and prioritize the non-disabled and neuro-typical law student, disabled law students can be marginalized and excluded from the pedagogy, and this appears to be affecting their academic success.<sup>166</sup> Many law students with disabilities try to "pass" as not-disabled to fit the pedagogical norms of law school and they fear being "outed."<sup>167</sup> In Latoya Burrell's article on disability in law school, she says that she had many conversations with students who refused to apply for services or accommodations because they did

---

162. DOLMAGE, *supra* note 12, at 9-10, 56, 70, 73; Jasmine E. Harris, *The Aesthetics of Disability*, 119 COLUM. L. REV. 895, 961 (2019); ELLEN SAMUELS, FANTASIES OF IDENTIFICATION: DISABILITY, GENDER, RACE 13-14, 24, 51-52 (2014) (discussing the disability con and needing to prove disability); Donald H. Stone, *The Impact of Americans with Disabilities Act on Legal Education and Academic Modifications for Disabled Law Students: An Empirical Study*, 44 KAN. L. REV. 567, 576-78 (1996).

163. Hensel, *supra* note 135, at 641 (discussing the medical model of disability at law school); DOLMAGE, *supra* note 12, at 56 (discussing accommodations in relation to academia); CRITICAL DISABILITY THEORY: ESSAYS IN PHILOSOPHY, POLITICS, POLICY, AND LAW 2 (Richard Devlin & Dianne Pothier eds., 2006) (describing the medical model generally); Harris, *supra* note 162, at 903 (arguing that under the medical model there is no consideration of the non-disabled nature of spaces).

164. Harris, *supra* note 162, at 961; Mander, *supra* note 52, at 345, 350.

165. SAMUELS, *supra* note 162, at 14; DOLMAGE, *supra* note 12, at 106.

166. Alfreda A. Sellers Diamond, *L.D. Law: The Learning Disabled Law Student As Part of a Diverse Law School Environment*, 22 S.U. L. REV. 69, 76, 81 (1994); Adams, *supra* note 150, at 197-98; see also Engel & Konefsky, *supra* note 155, at 555-56 (providing the Mary W. Example).

167. Diamond, *supra* note 166, at 76-77, 81; Harris, *supra* note 90.

not want the stigma associated with disability.<sup>168</sup> Others also discuss how some disabled law students are more comfortable receiving lower grades rather than “outing” themselves and being stigmatized for not meeting the learning norms.<sup>169</sup> Further, Moss describes not disclosing her disability throughout law school and noting that adapting on your own is difficult, “especially since it can lead to feelings of internalized ableism-bleiving the stereotypes about people with disabilities like yourself.”<sup>170</sup> This is an issue across academia, and scholarship suggests that this failure to disclose disability and receive accommodations is part of the reason why disabled students do not graduate from four-year universities at the same rates as non-disabled students.<sup>171</sup>

#### **D. Pedagogical support for the medical model and the marginalization and invisibility of disability**

Learning methods are not the only way the law school pedagogy perpetuates and reinforces the medical model of disability and marginalizes disabled law students. It also does so through the teaching of the law itself. Wendy Hensel makes this link in her article, *The Disability Dilemma: a Skeptical Bench and Bar*, by arguing that the law school pedagogy reinforces to students the medical model of disability, meaning this view of disability is carried by law students into the profession.<sup>172</sup> Hensel argues that through case method, Socratic method, and the competitive nature of the law school, students are not given the opportunity to question the status quo of law or the supposed “neutrality of law.”<sup>173</sup> Instead students are taught to take certain legal arrangements (like ownership of property) as a given, or to remove morality from their justifications of their argument in class.<sup>174</sup> Through this process, students divorce law from its social context, which is exactly what the

---

168. LaToya Jones Burrell, *So What's Next – Life After the Americans with Disabilities Amendment Act of 2008 for the Learning Disabled Law Student*, 41 S.U. L. REV. 59, 62 (2013).

169. Engel & Konefsky, *supra* note 155, at 555-56; Adams, *supra* note 150, at 197-98; Diamond, *supra* note 166, at 76, 82; Harris, *supra* note 90, at 10.

170. MOSS, *supra* note 75, at 193-195.

171. JOHN WEISER ET AL., PEOPLE WITH DISABILITIES IN THE LEGAL PROFESSION: UNDERSTANDING THE BARRIERS, CHALLENGES AND OPPORTUNITIES TO IMPROVE DIVERSITY 3 (2015); Diamond, *supra* note 166, at 76-77, 81.166162, at 76-77, 81.

172. Hensel, *supra* note 135, at 647-49.

173. *Id.* at 647.

174. *Id.* at 647-49.

medical model promotes. Disability is something that is objectively and biologically identifiable, rather than something caused by “assumptions about human functioning and institutional arrangements.”<sup>175</sup>

This issue of law school pedagogy failing to deal with social, ethical, and moral issues has also been discussed by feminist and critical race legal theorists.<sup>176</sup> This created an entire movement of interpreting the law from a critical perspective and recognizing the assumptions, norms, racism, and sexism that underlie much of the law. However, the pedagogical emphasis on the “neutral” law continues today. Alice Mander, a disabled law student from New Zealand, discussed the law school pedagogical focus on dispassion and disconnecting from morality, ethics, and social justice, in her article, *The Stories that Cripple Us: The Consequences of the Medical Model of Disability in the Legal Sphere*.<sup>177</sup> She referred to a debate set by her professor in which the class debated the “ethical and legal implications of assisted suicide for those with lifelong impairments and illness.”<sup>178</sup> The students in the class argued passionately about “showing ‘mercy’ to the weak and vulnerable” disabled people.<sup>179</sup> Mander describes leaving the class “shaking and tearful,” and wanting to argue against her classmates arguments that her “existence was of less value.”<sup>180</sup> She did not do so because she was afraid of “outing” herself.<sup>181</sup>

Further, the law school pedagogy, to the extent that it refers to disability law or cases that relate to disabled people, also reinforces the medical model of disability because this model is central to disability law.<sup>182</sup> Notwithstanding previous eugenics-based legislation that used offensive terms to described disabled people and allowed for the

---

175. *Id.*

176. See e.g., Carrie Menkel-Meadow, *Feminist Legal Theory, Critical Legal Studies, and Legal Education or the “Fem-Crits Go to Law School,”* 38 J. LEGAL. EDUC 61 (1998); Robin West, *Feminism, Critical Social Theory and Law*, 1989 U. CHI. LEGAL F. 59 (1989); Kimberlé Williams Crenshaw, *Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988).

177. Mander, *supra* note 53.

178. *Id.* at 341.

179. *Id.*

180. *Id.*

181. *Id.*

182. Daniel G. Atkins & Robert L. Hayman, Jr., *Disability and the Law: An Essay on Inclusion from Theory to Practice*, 23 WIDENER L. REV. 167, 181 (2017); Guevara, *supra* note 52, at 274.

institutionalization, sterilization, and general exclusion of disabled people from society,<sup>183</sup> current disability law still determines who and what is “normal,” who can and cannot be disabled, and how far society needs to go to include disabled people.<sup>184</sup> As highlighted by disability rights scholar Angélica Guevara, the ADA and Rehabilitation Act, define disability as a “physical or mental impairment that substantially limits one or more major life activities” or employment.<sup>185</sup> “Major life activities” include “caring for oneself,” “seeing,” “hearing,” “walking,” “speaking,” “learning,” and “communicating.”<sup>186</sup> Disability is, therefore, categorized, and the law creates a standard of certification to ensure that only the “truly disabled” can get the benefits of the Acts.<sup>187</sup> Disabled people must prove their disability, through “objective” standards like medical exams or psychiatric reviews.<sup>188</sup> If a disabled person seeks accommodations, they must be “otherwise qualified” (i.e. able to meet the program’s requirements regardless of their disability)<sup>189</sup> and the accommodations only need to be “reasonable.”<sup>190</sup> A disabled person can justifiably excluded from an institution or program if the accommodation being sought is “unduly burdensome” or “fundamentally alters” the nature of the program.<sup>191</sup> Accordingly, although the ADA and the Rehabilitation Act were introduced to eliminate discrimination and societal exclusion of disabled people,

---

183. See e.g., *Ugly Laws*, EUGENICS ARCHIVE, <https://www.eugenicsarchive.ca/encyclopedia?id=54d39e27f8a0ea4706000009> (last visited Sept. 29, 2023) (noting that “ugly laws” existed in many States which banned the appearance of people in public who were “diseased, maimed, mutilated, or in any way deformed, so as to be an unsightly or disgusting object.”); Elizabeth Wong, *A Shameful History: Eugenics in Virginia*, ACLU VA. (Jan. 11, 2013) <https://www.acluva.org/en/news/shameful-history-eugenics-virginia> (discussing the Virginia Sterilization Act 1924, which led to the sterilization of between 7,200 to 8,300 people who were, in most cases, patients at institutions).

184. Meg E. Zeigler, *Disabling Language: Why Legal Terminology Should Comport with A Social Model of Disability*, 61 B.C. L. REV. 1183, 1187-91 (2020).

185. 42 U.S.C. § 12102(1); Fact Sheet: *Your Rights Under Section 504 of the Rehabilitation Act*, U.S. DEP’T OF HEALTH AND HUM. SERVS. (June 2006), <https://www.hhs.gov/sites/default/files/ocr/civilrights/resources/factsheets/504.pdf>.

186. 42 U.S.C. § 12102(2); Guevara, *supra* note 52, at 279.

187. SAMUELS, *supra* note 162, at 121-30; Guevara, *supra* note 52, at 279.

188. SAMUELS, *supra* note 162, at 122.

189. 42 U.S.C. § 12131(2); *See Se. Cmty. Coll. v. Davis*, 442 U.S. 397, 406 (1979).

190. 42 U.S.C. § 12131(2). Fact Sheet: *Your Rights Under Section 504 of the Rehabilitation Act*, *supra* note 185.

191. 42 U.S.C. § 12201(f); *Se. Cmty. Coll.*, 442 U.S. at 405 (holding that the ADA did not “compel educational institutions to disregard the disabilities of handicapped individuals or to make substantial modifications in their programs to allow disabled persons to participate.”).

Guevara argues that the focus of the laws on the medical model and defining disability continues to “other” disabled people from the non-disabled norm and creates the same effects as disability discrimination.<sup>192</sup> Guevara argues that disability law:

treats disabilities as defects in need of treatment . . .  
reinforc[ing] the able body as the norm, perpetuating  
stigma and discrimination against people with  
disabilities by “othering” and limiting an individual’s  
value to “reasonable accommodations.”<sup>193</sup>

Further, as discussed by Macurdy, in relation to a Pike Institute study of law school curricula and what lawyers were taught about disability (the “Pike Institute study”), the law, generally, reinforces a medical model view of disability. This is evidenced through disabled people’s interaction with law. For example, “competency” permeates through criminal, contract, and health law, which is used to deny people with disabilities “control over their property, their living arrangements and their bodies.”<sup>194</sup>

So, it is likely that any law school teaching of disability in relation to the law is going to reinforce the medical model of disability. As noted by Hensel and Mander above, without any challenges to the “neutrality” of the law and the underlying assumptions it makes about disability, the law school pedagogy is likely to further the othering and exclusion of disabled law students.<sup>195</sup> This is evident in the Pike Institute study of the law school curriculum’s treatment of disability, where the authors found that law school curricula treats the law’s distinctions justifying different treatment for people with disabilities as “natural [distinctions], and therefore, unquestionable.”<sup>196</sup> Further, because the legal system emphasizes the “tragic” differences of disability (for example, the law categorizes disabled people by their inability to fully engage with “major life activities”), the law validates “disability hierarchy as

---

192. Guevara, *supra* note 52, at 288.

193. *Id.* at 274.

194. Macurdy, *supra* note 52, at 444.

195. Mander, *supra* note 52, at 356.

196. Macurdy, *supra* note 52, at 451.

‘natural’ and ‘neutral.’”<sup>197</sup> Therefore, law students do not question the idea that the law progressed as if there “were an identifiable standard of ‘ableness’ that describes most of us, and justifies different treatment of everyone else,” nor do they question the stereotypical concepts about disabled people being “vulnerable.”<sup>198</sup>

These issues are also compounded by the fact that disability is often not part of the teaching of law. The “most significant impression” the author of the Pike Institute study had was that people with disabilities are “invisible” in the legal system.<sup>199</sup> In the Pike Institute’s review of law school casebooks, disabled people had “no role” in the litigation, “no legal interests,” nor were they involved in cases that create “substantive law.”<sup>200</sup> The study could only identify disabled legal actors a few times, across nine different subjects.<sup>201</sup> Further, casebooks dealing with doctrinal issues of importance often left out disability-related cases that would help further explain the issue.<sup>202</sup> The Pike Institute study emphasized that this invisibility of disability leads to readers not being able to “see certain facts, understand certain points of view or hear voices certain voices” because they are unable to see value of disabled lives.<sup>203</sup> It is noted that some institutions offer elective courses that specifically relate to disability law, however, these are optional and again relegate disabled people to a specialized subset of legal education rather than incorporating them into the educational system itself.

In sum, law schools’ pedagogical focus on teaching the law as something “neutral” and separate to ethics, morals, and social justice, means that it simply perpetuates and reinforces the medical model of disability and ableism. This not only leads to othering of disabled law students, but also can lead to internalization by disabled students of the norms and that law school and lawyering does not include them.<sup>204</sup> This is then compounded by the teaching methods described above, which

---

197. *Id.*

198. *Id.* at 444, 449.

199. *Id.* at 449.

200. *Id.*

201. *Id.* at 447.

202. *Id.* at 449.

203. *Id.* at 450 (citations omitted).

204. See Diamond, *supra* note 166, at 81. Guinier et al., *supra* note 136, at 66 (further discussing this concept of internalization created by law school norms in relation to women at law school internalizing male norms).

suggest that all law students are the same and learn in the same way.<sup>205</sup> Further, this pedagogical approach is also problematic for non-disabled students, because it does not expose them to disability issues or an understanding of disability that is outside the medical model. As noted in the Pike Institute study, this impacts their ability to understand disabled points of view and value their lives, which links back to the previous discussion around inadequate legal representation.<sup>206</sup>

### **E. Centering Disability in the Pedagogy to Increase the Number of Disabled Students**

A pedagogy that does not support or even contemplate disabled law students is not a pedagogy that is welcoming to disabled law students. As discussed above, culturally-sustaining pedagogies tend to support black students, and HBCUs attract high numbers of black students, despite HBCUs occupying only a small sector of the University market.<sup>207</sup> Although, HBCU's are not a direct comparison to law school, and carry different historical contexts that may impact why black students enroll in HBCUs at higher rates, exclusionary pedagogy is unlikely to attract or support the students being excluded. Therefore, to make law school more accessible to disabled law students and in turn, potentially recruit more disabled law students (and thereby increase the number of disabled lawyers) law school deans and administrators should change the law school pedagogy so that it centers disability and disrupts the non-disabled and neuro-typical norms of law school and lawyering.

This section of the paper sets out the possible ways law school can center disability in the pedagogy. However, these are just suggestions, and this should not be viewed as an attempt to override the lived experience of those with disabilities. It is important that any changes to the law school pedagogy include the voices of law students with disabilities and disability educators.

---

205. See Diamond, *supra* note 166, at 81.

206. Macurdy, *supra* note 52, at 448-50.

207. Ndumu & Walker, *supra* note 20, at 222.

*i. Centering Disability in the Pedagogy*

Harris emphasized, in her article *Debating Disability Disclosure In Legal Education*, that discussions of disability legal education always presume that the professors and students do not have a disability, and “[t]his baseline shapes the design (and accessibility) of legal education.”<sup>208</sup> This is despite the fact that “ability” is as much a social construction as disability.<sup>209</sup> To change this framing and the preference for “ability”, the pedagogy therefore needs to be considered from a disabled person’s point of view and view disability as a “positive identity.”<sup>210</sup>

This approach has been termed the “multiple consciousness . . . method,” by Seller Diamond, and the “universal design” method by Dolmage.<sup>211</sup> These theories focus on centering and valuing disabled law students’ voices and experiences from law school and using this information to create a program that is “responsive to their needs” and builds upon difference.<sup>212</sup> Seller Diamond emphasizes that this approach gives disabled law students an “opportunity . . . to articulate the facts or tell stories which compose their lives.”<sup>213</sup> As discussed above, the pedagogy currently perpetuates a medical model of disability, which leads to stigma and othering of disabled law students. However, valuing disabled students’ voices can help reduce this stigma and exclusion because disability is viewed as a positive difference, rather than as a defect.<sup>214</sup> This approach then allows for disabled law students to claim disability as a positive identity, rather than conceal it.<sup>215</sup> As discussed by Harris, claiming disability as a source of pride has been found to correlate with “reductions of stigma,” “greater self-confidence in social and educational situations, and greater mental health and wellbeing” for disabled students.<sup>216</sup> Further, it brings

---

208. Harris, *supra* note 90, at 97.

209. See TOBIN SIEBERS, *DISABILITY THEORY* 8-9, 53-54, 57-58, 67 (2008) (discussing the “ideology of ability”).

210. See *id.* at 4, 8, 11.

211. Diamond, *supra* note 166, at 85; DOLMAGE, *supra* note 12, at 115, 118.

212. Diamond, *supra* note 166, at 86.

213. *Id.* at 84.

214. *Id.* at 84-85; see SIEBERS, *supra* note 209, at 4.

215. See SIEBERS, *supra* note 209, at 118-19.

216. Harris, *supra* note 90, at 108 (citing Tara Wood, *Rhetorical Disclosures: The Stake of Disability Identity in Higher Education*, in *NEGOTIATING DISABILITY DISCLOSURE: DISCLOSURE AND HIGHER EDUCATION* 83 (Stephanie Kershbaum et al. eds., 2017)).



disability into the broader law school consciousness, allowing for non-disabled to see disability not from a medical model perspective, but as a shared social identity.<sup>217</sup>

Centering disability also increases accessibility for all learners.<sup>218</sup> As discussed by Dolmage, the implementation of “universal design” means that a program is designed so that it can be used by everyone, without modifications.<sup>219</sup> Designing pedagogy for multiple “users” will also establish a more “open-minded and inclusive” academy because it allows for tolerance of different ways of understanding and synthesizing information.<sup>220</sup> In contrast designing a pedagogy for just “one body” will always mean that accommodations are required to supplement a disabled person’s learning.<sup>221</sup>

ii. *What This Might Look Like*

Applying this model to the law school pedagogy and flipping the lawyer from non-disabled to disabled is not easy, especially when the current paradigm for lawyering is so embedded with ableism. “Simple”<sup>222</sup> changes may include having ASL interpreters in each law school classroom (or better yet, all students learning sign language) so that Deaf students can engage in oral discussion. Multiple scholars have also argued for law professors being trained to teach to different learning styles (visual, oral and kinesthetic), noting that this will not only benefit disabled law students, but all law students (as most law students learn visually).<sup>223</sup> In practical terms, teaching to different learning styles

---

217. Harris, *supra* note 90, at 109-10.

218. DOLMAGE, *supra* note 12, at 122.

219. *Id.* at 115.

220. *Id.* at 120, 124.

221. *Id.* at 124.

222. *See infra* p. 55 (explaining the reason for using the word “simple”).

223. Jennifer Jolly-Ryan, *Bridging the Law School Learning Gap Through Universal Design*, 28 TOURO L. REV. 1393, 1400 (2012) (arguing this is because most students have grown up using and continue to use technology and emphasizing that many students also benefit from kinesthetic and tactile teaching methods). Other scholars separately advocate for law school professors amending their teaching practices so that they teach to multiple learning styles. *See* Jolly-Ryan, *supra* note 55, at 146-48 (highlighting that accommodating students with disabilities will benefit all students); Boyle, *supra* note 154, at 372-73 (noting that research has shown law students have diverse learning styles so identifying learning styles will benefit all

might involve a combination of: explaining to the class how to read assessments and what to focus on or providing an overview of the subject before beginning the case;<sup>224</sup> effectively using technology;<sup>225</sup> using PowerPoints, diagrams, and outlines;<sup>226</sup> providing note-taking guides;<sup>227</sup> changing individual assignments to group work;<sup>228</sup> more one-on-one teaching;<sup>229</sup> and demonstrations in class about cases, role-playing or quizzes.<sup>230</sup> For students with writing difficulties, professors may need to get “students to ‘talk out’ their analysis or organizational approach,” have this transcribed, and then have it read back to the student to help them navigate their writing.<sup>231</sup>

Further, Hensel provides some ideas in terms of changing and challenging the medical model that is embedded in the teaching of law. She suggests that where Socratic method is used, then the professor should highlight the factual narrative to show the social context, while also discussing the moral issues and challenging assumptions arising from the cases and doctrines.<sup>232</sup> Hensel also advocates for more legal clinics that allow law students (disabled and non-disabled alike) to be exposed to disabled clients, which highlights to all law students that disability is a normal part of both life and legal practice.<sup>233</sup> Other evidence supports setting up specific disability training programs for law students to help change attitudes and biases towards disability.<sup>234</sup>

However, the reason why these changes are “simple” is not because they are easy or uncostly (they are neither), but because they still play

---

law students, not just students with ADHD); Adams, *supra* note 150, at 211 (arguing that professors should use different learning approaches to support those who may have writing difficulties).

224. Boyle, *supra* note 154, at 373; Jolly-Ryan, *supra* note 55, at 144, 149.

225. Jolly-Ryan, *supra* note 55, at 147.

226. Boyle, *supra* note 154, at 373; Jolly-Ryan, *supra* note 55, at 144; Burrell, *supra* note 168, at 87-88.

227. Jolly-Ryan, *supra* note 55, 149.

228. Boyle, *supra* note 154, at 373; Hensel, *supra* note 135, at 655.

229. Burrell, *supra* note 168, at 87-88.

230. Jolly-Ryan, *supra* note 55, at 145; Burrell, *supra* note 168, at 87-88.

231. Adams, *supra* note 150, at 211.

232. Hensel, *supra* note 135, at 654.

233. *Id.* at 655.

234. See Tommy Russell & Cynthia Ann Bryant, *The Effects of a Lecture Training Program and Independent Study on the Knowledge and Attitudes of Law Students Toward the Mentally Retarded Offender*, 11 J. OFFENDER COUNSELLING, SERVICES & REHAB. 53-54, 57-58, 63-65 (1987) (finding that law students being given a separate lecture training program and an indecent study program about offenders with disabilities was helpful to changing the students' attitudes towards intellectually disabled offenders).

into the current law school pedagogical model. Although these changes allow for more learners to access law school, they are still working within the law school pedagogical paradigm of “thinking like a lawyer.” To truly center the disability experience and the experience of what it means to be thinking like a disabled lawyer, then there needs to be a re-consideration as to whether the law school pedagogy is the correct approach to teaching and creating lawyers.<sup>235</sup> As discussed by Devlin et al, the biggest limitations to change come from “mainstream society’s unwillingness to adapt, transform, and even abandon its “normal” way of doing things.”<sup>236</sup> The goal of critical disability theory is to “force dominant society to break out of the “psychic prison” of ableism and move towards a barrier free society.”<sup>237</sup> This approach needs to be applied to law school pedagogy as well, and is why disability lived experience is so important to any pedagogical changes.

#### IV. CHALLENGES TO TAKING A DISABILITY CENTRIC PEDAGOGICAL APPROACH

Changing the pedagogy to center disability is likely to be difficult and costly. It is also likely to be controversial, given societal attitudes towards disability. This section responds to counterarguments that often arise when arguments are made to increase accessibility, namely: better accommodations are required, not pedagogical changes; and changes to the pedagogy will reduce the rigor and, therefore, produce inferior law graduates.

##### A. Accommodations Challenge

The first challenge is that the changes being described (at least the “simple” ones) can just be accommodated for, rather than changing the pedagogy entirely. However, there are two issues with this argument. First is that as discussed earlier, accommodations just reinforce the medical model of disability—they are temporary add-ons that reinforce

---

235. This goes to general disability critical theory ideas—to challenge the presumptions and assumptions that the “structures for societal organization based on able-bodied norms are inevitable.” See CRITICAL DISABILITY THEORY, *supra* note 163, at 2.

236. *Id.* at 13.

237. *Id.* at 14.

and perpetuate the stigma that disability is a “defect” inherent to the individual and is the individual’s responsibility to “fix.”<sup>238</sup> Further, accommodations themselves carry stigma because disabled law students need to prove that they have disability and can be viewed as “getting ahead” of other law students.<sup>239</sup>

The second issue is that, as Dolmage argues, accommodations do not actually increase access.<sup>240</sup> By centering disability in the pedagogy, the argument is that it will increase access across the law school (for both non-disabled and disabled students), and flow onto increasing the number of law students and lawyers with disabilities. Keeping the pedagogical status quo and only changing accommodations does not lead to permanent change (because accommodations are specific to an individual and usually temporary), and does not encourage the law school to consider how to make the program more accessible generally.<sup>241</sup> For example, accommodations that allow for extra time do not encourage any “reflection on whether time pressure is essential to the examination process or whether pedagogical goals might actually be better served by eliminating such pressures.”<sup>242</sup> Accommodations, therefore, allow for reactive and mitigation approaches to accessibility because accessibility is only considered once an individual raises an issue.<sup>243</sup> The focus is on meeting the ADA requirements of “reasonable accommodations,” rather than actually trying to include more people.<sup>244</sup>

This is not to say that the pedagogical changes advocated for above would mean that no accommodations are needed. Students with disabilities may require additional accommodations depending on their disability, however, broader accessibility changes will reduce the need for seeking accommodations and will also bring disability into the law school worldview, which can help reduce stigma associated with disability.

---

234. DOLMAGE, *supra* note 12, at 70; Harris, *supra* note 162, at 961.

235. DOLMAGE, *supra* note 12, at 9-10, 13, & 106; SAMUELS, *supra* note 162, at 14.

236. DOLMAGE, *supra* note 12, at 79.

241. *Id.* at 70, 79.

242. Hensel, *supra* note 135, at 643 (citing Laura Rothstein *Bar Admissions and the Americans with Disabilities Act*, 32 HOUSE. LAWYER, Oct. 1994 at 34, 39 (who concluded that with respect to LSAT, law school coursework and bar examination “for most part, time limits are set as a matter of administrative convenience.”)).

243. DOLMAGE, *supra* note 12, at 53.

244. *Id.* at 48, 61, 78.

## B. Rigor Challenge

The second challenge is that centering disability in the pedagogy and making law school generally more accessible will reduce the “rigor” of law school and produce inferior lawyers. Again, there are three issues with this argument. The first is that the argument is somewhat circular. As discussed, law school pedagogy perpetuates the medical model of disability being a deficit and a problem and supports non-disabled and neuro-typical norms of lawyering. Harris argues that this then becomes the “dominant lens to qualitatively judge the individual’s competence, choices and behaviors.”<sup>245</sup> In other words, ideas about competency and “rigor” are based on ableist assumptions and so, of course, changes that increase accessibility are viewed as problematic.<sup>246</sup> Harris notes that the legal profession celebrates “the superhuman” and the idea that lawyering requires long hours to respond to time sensitive matters.<sup>247</sup> But these ideas about “superhuman” lawyering assume that this is an “accurate depiction of legal practice;” “the only way to practice law; and “the best way to practice law.”<sup>248</sup> The same could be said for the law school pedagogy. It also operates within a paradigm that assumes the current law school teaching methods create competent law school graduates, that this is the only way to teach law, and it is the best way to teach it. As highlighted by Jolly-Ryan, law professors only know one style and model of law teaching, the style and model that they were taught when they were at law school, and they model their own teaching of this.<sup>249</sup> This argument about rigor is based on norms about “rigor” that are already exclusionary of disability. As Donald Stone argues, it is dangerous to use these “arguments as a rationale for excluding disabled individuals from entering the legal profession.”<sup>250</sup> Therefore, the argument for centering disability to increase accessibility is also an argument for re-considering what it means to be a “good” and “competent” lawyer and the ableist assumptions that underlie this.

---

245. Harris, *supra* note 90, at 13.

246. Hensel, *supra* note 135, at 646; Harris, *supra* note 90, at 13.

247. Harris, *supra* note 90, at 13.

248. *Id.*

249. Jolly-Ryan, *supra* note 55, at 124.

250. Stone, *supra* note 159159, at 592; *see also* Diamond, *supra* note 166, at 97 (highlighting that “normalcy” is often used as tool for exclusion).

Further, arguments about rigor and competency fall short when there is already much discussion about law schools currently failing to produce competent law graduates.<sup>251</sup> Cercone and Lamparello highlight that many law graduate GPAs are low and they are failing the bar exam at high rates.<sup>252</sup> Other scholars discuss how law school is failing to produce graduates that can problem solve, analyze and carry out legal research or factual investigations, and have advocated for changes to the law school pedagogy to allow for more practical lawyering work.<sup>253</sup> Accordingly, it does not necessarily follow that changing the law school pedagogy to center disability and increase accessibility will cause a reduction in rigor and incompetent lawyers, given that the pedagogy, as it stands, does not appear to be rigorous enough. Instead, changing the pedagogy in this way is likely to benefit all law students and create better graduate lawyers because it allows for law schools to consider new ways of educating law students.

Finally, a more diverse class is likely to produce more competent law graduates because nondisabled law students will have experience working with and learning from disabled law students. This experience will help educate nondisabled law students about disability and ableism, and potentially allow for better representation by nondisabled law students for clients with disabilities.

---

251. See Lisa A. Eichhorn, *Reasonable Accommodations and Awkward Compromises: Issues Concerning Learning Disabled Students and Professional Schools in the Law School Context*, 26 J.L. & Educ. 31, 61-62 (1997) (arguing for weaning learning disabled students off accommodation's at law school because otherwise they might set unrealistic goals for themselves or may not get accommodation's at work); Weiss, *supra* note 151, at 239-243, 259 (arguing that students with writing disabilities should not be given extensive accommodation's given that writing is an essential skill and that law students with disabilities need to be reminded that "accommodations are not a replacement for intense study"); see also Phyllis G. Coleman et al., *Law Students and the Disorder of Written Expression*, 26 J.L. & Educ. 1, 4-5 (1997) (discussing that being able to express oneself is integral to being a law student and a lawyer and that some accommodations for learning disabilities might defeat the curriculum).

252. Charles P. Cercone & Adam Lamparello, *Assessing a Law School's Program of Legal Education to Comply with the American Bar Association's Revised Standards and Maximize Student Attainment of Core Lawyering Competencies*, 86 UMKC L. REV. 37, 38 (2017).

253. Weiss, *supra* note 151, at 234.

## V. CONCLUSION

This discussion of pedagogical change and increasing access for disabled law students needs to be considered in light of the initial discussion: that there is a high number of disabled people interacting with the legal system as clients, victims, or defendants, and barely any lawyers with disabilities to represent them. As has been noted throughout this paper, changes to the pedagogy are not going to be the only way to resolve this issue—general societal views of disability, pipeline issues, admission requirements and discrimination within the legal profession, all play a part. However, pedagogical changes that center disability are one step towards making law school more accessible to disabled law students. The changes recommended are ambitious, but ambition is needed to ensure law students with disabilities can see themselves in the “esteemed profession of law.”