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Perfectly Imperfect: Law Students with Non-Apparent Disabilities and Disability Law

By

Angélica Guevara

A dissertation submitted in partial satisfaction of the

Requirements for the degree of

Doctor of Philosophy

in

Education

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Graduate Division

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University of California, Berkeley

Committee in charge:

Professor Lisa García Bedolla, Chair
Professor Kris Gutiérrez
Professor Bertrall Ross

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Abstract

Perfectly Imperfect: Law Students with Non-Apparent Disabilities and Disability Law

By

Angélica Guevara

Doctor of Philosophy in Education

University of California, Berkeley

Professor Lisa García Bedolla, Chair

How does disability rights law map on to the lives of law students with non-apparent disabilities? This case study uses legal analysis of case law to show how the law maps on to the lives of two law students with non-apparent disabilities. The study takes place in one public law school in California. It explores the prevalence of the stigma surrounding disability in law school compelling law students to continue trying to pass as able-bodied, sending a constant message that their unique gifts and perspective do not matter, as long as they continue to pass. The Department of Justice's Operation Varsity Blues is prosecuting one of the largest college admission scams of wealthy students faking disabilities, makes this study all the more relevant adding to the stigma around non-apparent disabilities; viewing such students as frauds trying to game the system, not smart, and a drain of resources.

The challenges in recruiting for the study highlighted the deep-rooted fear in talking about their disability all the more supported by legal precedent that acknowledged "professional stigma" if a student is found out. A normative law is proposed to help combat the environment that creates the reluctance of law students to speak out against their current marginalization. Laws are necessary but at times not sufficient. Thus this proposal cautions the reader to keep in mind that the law alone is not enough, but it is a first step in attempting to mitigate the repression of students with non-apparent disabilities in the hopes of remedying their unequal share in our democracy, in turn, strengthening it. The countless obstacles encountered by these law students at times creates a perfect legal advocate because these students have had to advocate for themselves in an imperfect world. Law students with non-apparent disabilities do not have the Varsity Blues because **they are** perfectly imperfect.

DEDICATION

This labor of love is for anyone who has ever been made to feel like they are not the right way of being.

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To Leo Trujillo-Cox, thank you for supporting my journey to become a lawyer. From the time I was a college sophomore the UCLA Law Fellows Program was there for me. I want you to know that your life's work has made a difference!

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PERSONAL

I have come to understand that not one person is all good or all bad. All who shape our psyche construct our compass that ultimately defines our character. I was fortunate enough to be raised by a village. I want to thank and acknowledge the following people who have contributed significantly to my journey. I was lucky enough to encounter strong women not defined by gender roles and people with disabilities who are in the business of beating the odds. To you, I owe my ability to dream big and continuously strive to grow in all the depths of my being.

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My biological father Alberto Guevara, who taught me the following sayings (*dichos*) to live by: 1) *Cada cabeza es un mundo*, 2) *Preguntando se llega a Roma*, 3) *Di me con quién andas y te diré quién eres*, 4) *Una jaula de oro no deja de ser jaula*. (Translation: 1) Every mind is its own world, 2) Asking questions can get you to Rome, 3) Tell me whom you surround yourself with, and I will tell you who you are, 4) A golden cage does not cease to be a cage.)

My brother, Jesus Guevara, who was my protector and personal comedian as kids, who became the support I needed to defy the limiting beliefs imposed on me by poverty, tradition, and familial obligations. Thank you for championing my decision to cross the border into higher education and never demanding anything of me but instead showing me that degrees do not provide true wisdom.

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TABLE OF CONTENTS

PART II: LITERATURE REVIEW

PART III: THE STUDY

PART I: THE LAW

CHAPTER 1

INTRODUCTION AND OVERVIEW

"Democracy arose from men's thinking that if they are equal in any respect, they are equal absolutely." - Aristotle

Students with non-apparent disabilities struggle to *matter* in academic spaces, as academics themselves try to forge their way in these same settings by distancing themselves from being seen as "incompetent," a description often associated with some non-apparent disabilities. Simultaneously, these students have to overcome their fear of being seen as "frauds" as wealthy students have been known to fake disabilities to game the elite university system. These students have to continually tackle institutional barriers while fighting for their rights, evidenced by the lamentable disability demographics in post-secondary schooling. Through lawsuits that set a precedent, they have tried to gain the equity necessary for equal democratic participation. To begin addressing this social phenomenon, the focus of this study used the frameworks of Disability Studies and Critical Race Theory (DisCrit) and democracy as described by Iris Young. By using various relevant legal precedent, a legal case study analysis was conducted, observed, and highlighted in two key interviews with law students attending a California, public law school. The recent scandal dubbed by the FBI as "Operation Varsity Blues" only highlights the relevance of this study and the greater need for more research in this area of law.

Operation Varsity Blues

Recently in March of 2019, under a racketeering indictment (18 U.S.C. § 1962(d)) the Federal Bureau of Investigation (FBI) indicted 50 people making this one of the largest college admissions scams ever prosecuted by the Department of Justice (Johnson & Kiefer, 2019; Medina, Benner, & Taylor, 2019). The Department of Justice formally charged three people who organized the scams, two exam administrators, one exam proctor, one college administrator, nine coaches in colleges and 33 parents who paid millions of dollars in bribes to gain admission for their child into elite universities (Johnson & Kiefer, 2019; Medina, Benner, & Taylor, 2019; the *United States of America v. Gordon Ernst, Donna Heinel, Laura Janke, Ali Khosroshahin, Steve Masera, Mikaela Sanford, Martin Fox, Igor Dvorskiy, Lisa "Niki" Williams, William Ferguson, Jorge Salcedo, and Jovan Vavic,* 2019). Charges include cheating on college entrance exams such as the Scholastic Aptitude Test (S.A.T.) and the American College Testing (A.C.T.), having doctors diagnose the student with a disability to obtain extra-time on exams (Johnson & Kiefer, 2019; Medina, Benner, & Taylor, 2019;

United States of America v. Gordon Ernst, Donna Heinel, Laura Janke, Ali Khosroshahin, Steve Masera, Mikaela Sanford, Martin Fox, Igor Dvorskiy, Lisa "Niki" Williams, William Ferguson, Jorge Salcedo, and Jovan Vavic, 2019). These accommodations allowed for a higher Grade Point Average (G.P.A.) and higher S.A.T. scores that are at times required to gain admission into elite schools, some universities affected by the scam were Harvard, Stanford, and the University of Southern California (U.S.C.) (Johnson & Kiefer, 2019). Accommodations such as the provision of extra-time on exams were originally intended to assist a gamut of disabilities some of which includes but is not limited to different types of disabilities; thus, this abuse of the system hurts the credibility of those with actual disabilities regardless if they are attending a public or private school. Such acts of entitlement and disregard by the wealthy for those with actual disabilities compel many who have non-apparent disabilities to stay in the closet fearing the stigma associated with such fraud. In the year 2000, the college board knew about the discrepancies in the rise of wealthy white students being diagnosed with disabilities to gain the extra-time on exams but stopped documenting the discrepancies allowing many students to game the system (Johnson & Kiefer, 2019).

In the initial investigations of those indicted, authorities found that a parent instructed his daughter "to be stupid, not to be as smart as she is" when being tested for a learning disability (Johnson & Kiefer, 2019). When a person with a learning disability hears that people pretend to be "stupid" sends the erroneous message that those with actual learning disabilities are "stupid." When learning disabilities have nothing to do with intelligence, it has to do with processing speed. It is challenging for students with learning disabilities not to internalize the stigma, and further studies should be conducted to verify this sentiment. Thus, anyone would not want to be associated or perceived as "stupid" or committing "fraud," compelling many not to share their disability. One can infer that loaded terms also tend to create an immediate image perpetuating the hierarchy of stigma within categories and disability diagnosis. For example, a person with a psychiatric disability or Human Immunodeficiency Virus (HIV) would much rather associate with having a learning disability or an immune deficiency disability reducing the level of stigma imposed upon them as being "crazy" or a "leopard."

Non-Apparent Disabilities Explained

It is hard enough for students with any disability to forge their way enough to *matter* in an academic system that readily dismisses their presence, but it is compounded when the disability is not readily apparent because it is not easily conceptualized as a "real disability" which is often associated with the tangibles of a physical body; thus believability is scarcely dispensed. The reason why we use the term non-apparent versus invisible is that the term invisible carries a close connection with "visible," an ableist connotation, embedded in the idea that only those with eyesight can see when perception is also another form of seeing. Non-apparent signals that the disability may not be readily perceived, or it can appear at any point in time depending on the disability, but especially when having to disclose for accommodation purposes (Price, 2011, p.18). A common saying using "sight" to describe an occurrence impacting the disability community is the saying, "out of sight, out of mind." Individuals with non-apparent disabilities fall into this paradox because their disability is not

readily evident. Non-apparent disabilities are not observable to the public in the same way as a physical disability. Depending on the need for either accommodation, medication, medical attention, or social understanding, non-apparent disabilities may or may not become perceivable. Thus, for the most part, these disabilities are not in the present consciousness of the general populous. Some examples include but are not limited to: diabetes, human immunodeficiency virus (HIV), a range of learning disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Attention Deficit Disorder (ADD), autism, epilepsy, depression, anxiety, chronic fatigue syndrome (CFS), multiple sclerosis (MS), hard of hearing, Amyotrophic Lateral Sclerosis (ALS) and many more. Therefore, in an arena as competitive and demanding of smarts, such as the legal profession, law students are compelled to hide any attribute that may place them at a disadvantage from the competition due to the stigma surrounding disabilities. Having a disability has been perceived by some academic ableists as the antithesis in higher education, seeing students with disabilities as a drain and often a problem to be solved in the classroom or an illness to be fixed (Dolmage, 2017). These archaic views in higher education are all the more reason to stay silent about a non-apparent disability in law school, an option not afforded to those with apparent disabilities. Law students with non-apparent disabilities can pass as able-bodied since their condition cannot be readily seen and thus have the option of not disclosing their disability to anyone. While significant progress still needs to be made in the field of disability, especially for those with apparent disabilities, this study will mainly focus on non-apparent disabilities.

Some law students with non-apparent disabilities may desperately need accommodations, but they delay in asking for help for fear of not being like everyone else in their class. Those law students who eventually manage to ask for accommodations have already missed out on valuable time, and resources, that would have assisted them in their courses had they spoken up earlier, possibly impacting their future since performance in law school is often considered for internships, fellowships, and employment. Thus, even if a law student with a non-apparent disability manages to obtain equitable gains in law school, by working twice as hard as those without a disability, shying away from their needs may be a high price to pay not just for the student but also for the broader legal community. *This then begs the question, how does disability rights law map onto the lives of those law students with non-apparent disabilities?*

Disability Demographics

Currently, according to the United States (U.S.) Census Bureau, 19% of our population has a disability, that means one in five Americans are disabled (ABA, 2011; U.S. Census Bureau, 2012). It results in having approximately 56.7 million individuals with disabilities navigating the fabric of our society (ABA, 2011; U.S. Census Bureau, 2012). Individuals with disabilities are known to be the largest minority group in the country (ABA, 2011). Some of these individuals with disabilities managed to break through many barriers to earn admission into law school.

Unfortunately, the number of lawyers with disabilities in the legal profession is low given the pipeline problem; because rarely do students with non-apparent disabilities make it through the educational system and attend college (Murray, Goldstein, Nourse, & Edgar, 2000; Newman et al., 2011). College degree completion rates are low among students with

disabilities who graduate from high school and attend a post-secondary education program. The majority of students with disabilities fail to graduate or to receive a degree from their program up to eight years after high school. Only 34.2 percent of students with disabilities working toward a four-year degree graduate within eight years, compared to 51.2 percent of the general population (Newman et al., 2011). Thus, individuals with disabilities are less likely to apply and gain admission to law school. In fact, 12.3% of working age persons with disabilities held a bachelor's degree or higher, compared to 30.6% of non-disabled persons, which is an 18.3 percentage point gap. The gap partly explains why so few persons with disabilities become lawyers, lacking the educational prerequisites to even apply to law school. As of 2010, in the United States, 6.87% of lawyers reported having a disability, significantly lower than the national average of Americans with disabilities (ABA, 2011). The number of hurdles a student has to undergo may explain such a small number of lawyers with disabilities willing to disclose or assert their disability whether openly or in confidence given the social stigma. However, outing an individual with a disability is still against the law because the individual has the potential of experiencing harsh social ramifications based on that stigma. Thus, the law protects individuals from being outed making it illegal to disclose a student's disability as in the case of the LSAC lawsuit.

Law School Admission Council (LSAC) Lawsuit

In 2014, law school applicants filed a class action lawsuit against the Law School Admission Council (LSAC) testing services in regard to *reasonable accommodations* and their discriminatory "flagging" practices that indicated to law schools if the student took the Law School Admissions Test (LSAT) under "non-standard conditions" when these accommodations should have been kept confidential (U.S. Department of Justice, 2014). This "flagging" practice is just one example as to the struggles a student with disabilities has had to endure, further marginalizing them from the legal profession and in turn limiting diverse views in the legal arena (U.S. Department of Justice, 2014). However, even though this topic garnered attention in the admissions phase with the lawsuit, not much mention or research was conducted regarding students with disabilities once they enter law school. The brief media attention did not garner much movement to explore the struggles of this population further.

Furthermore, even if individuals with disabilities manage to enter law school, they still have to deal with passing a state bar, the debt from law school, and having limited employment opportunities to pay that debt. Law students in general graduate with significant debt and law students with disabilities are no exception (Kowarski, 2018), the only difference is that workers with disabilities earn 63 cents for every dollar their non-disabled colleagues earn (Ibogle, 2015). In 2009, the National Association for Law Placement (NALP) conducted a survey entitled *Jobs & J.D's Employment and Salaries of New Law Graduates*, demonstrating that the employment rates of law graduates which include those with disabilities do not fare well, with 7.6 percentage points lower than their entire class (ABA, 2011). Not to mention that during a recession, those with disabilities suffer greater levels of unemployment. According to the Department of Labor's Bureau of Labor Statistics, it released a labor force characteristic summary in August 2010 stating that the employment-population ratio was 19.2% among those with a disability and 64.5% for those without a

disability. This difference is a 45.3 percentage point gap which means eight out of ten individuals with disabilities were not in the labor force during the recession compared to three out of 10 of those without disabilities (ABA, 2011). In some states, the pay gap is even more significant. For individuals who hold a master's degree and above, the following three states seem to have the most significant pay gap for people with disabilities: Nevada, Connecticut, and Hawaii (Ibogle, 2014).

The Focus of the Study

Therefore, for this dissertation, the main focus will be a case study using legal analysis and an interview with two law students at one public law school in California. The state of California was selected because since 1996 some law schools in California actively created pipeline programs to assist undergraduate students of diverse backgrounds to enter law school, influencing the diversification of the legal community (UC Davis School of Law, 2019; UCLA Law, 2017). Such diverse backgrounds also included students with disabilities. The California Bar has also been known to be one of the more challenging bars to pass in the United States, with a 40.7% passage rate in the July 2018 exam (Cal. St. B., 2018). Low bar passage rates impact a student's ability to obtain gainful employment to pay off law school debt. Also, California is one of the few State Bars that has taken an interest in investigating the status of lawyers with disabilities to shed light on the various issues surrounding this community, one of which is unemployment. In the past, unemployment appeared to be the primary concern for law alumni with disabilities according to a survey conducted by the State Bar of California (Cal. St. B., 2004).

Furthermore, a public school was chosen because public schooling was created to serve the populous and strengthen our democracy; thus, this study prioritized it as such (Streep, 2001). Given the strong disability-poverty correlation (ABA, 2011), the current poverty percentage gap of people with disabilities versus those without is 45.3, which means eight out ten people with disabilities were not in the labor force compared to 3 out of 10 who did not have disabilities (ABA, 2011). Thus, many students with disabilities are not able to finance law school let alone sustain the debt (ABA, 2011), making public schooling all the more appealing since public law schools are slightly more affordable than private ones because they receive more public funding by the federal government and state subsidies with the ultimate goal of serving the public (Kraus, L., Lauer, E., Coleman, R., and Houtenville, A., 2018).

DisCrit

The disability theory and critical race theory in education (DisCrit) approach contains seven tenents which will be presented and described at length in Chapter 4. This theory helped frame the study, acknowledging the socially constructed concepts of race and ableism that shape ideas of normalcy directly impacting the way students with non-apparent disabilities are perceived. This social perception not only impacts the way laws are applied and interpreted, but it also influences the way law students with disabilities view themselves. The theory recognizes the importance of being able to embrace the multidimensional notions of identity in disability that may entail race, class, and gender. The tenant embracing the

concept of "nothing about us without us" made it paramount to include in the study interviews with law students who had non-apparent disabilities since the study was about them. These students not only provided their lived experiences but also offered insights as to how might they improve the law school experience for future students with disabilities given the hurdles they encountered in law school. DisCrit acknowledges how law, ideology, and history have been used to deny people their rights using tools to "other," a reoccurring theme throughout the study. Students with disabilities struggle to *matter* in predominantly white spaces that is the legal field; DisCrit helps because the theory acknowledges Whiteness and ability as property that places those who are not White or not able-bodied at a disadvantage in our society. Lastly, since the theory calls for activism and resistance linking academic work to the community, a normative law is proposed at the end as a form of resistance so that what is learned through this academic work directly impacts this community (Connor, Ferri, & Annamma, 2015). By not addressing the issues surrounding this sector of the population it is not a true democracy. Thus, this research aims to explore what may be happening to students with non-apparent disabilities while attending law school to answer the overarching research question of how disability rights law is mapping onto their lives.

Democracy (Iris Young)

The renowned political theorist, Iris Young, focused on an inclusive democracy. The inclusive democracy she advocated for was to stand a chance at having real social justice that hears all voices, especially those of the historically marginalized such as individuals with disabilities (Young, 2011). By answering whether or not our society is hearing the voices of students with disabilities, one can then begin exploring options whether those be legal or institutional to assist this populous best and prevent their further marginalization. The ultimate objective of the study was to learn and be open to what may be discovered in the course of the research while checking and monitoring possible unconscious bias occurring as a result of the researcher being a former law student with a disability. The end goal is to consciously be striving for social justice placing this population at the forefront of this dissertation in the interest of a stronger democracy that would allow everyone an equal opportunity to the American Dream. The American Dream has meant different things for different people, thus in the context of this dissertation it represents what it has represented to other leaders in the disability community; equal opportunities in education and employment to have the ability to exercise self-determination to obtain life, liberty and the pursuit of the desired job or career that brings fulfillment and happiness.

Value of the Dissertation

For now, at least the dissertation will add value and insight to assist future research on this sector of the population. The awareness raised by the analysis of the case law and the interviews with these law students has the potential to assist current and future law students with disabilities and law schools who are seeking to serve its students best by exploring whether these similar incidences are occurring in their law school. To learn and begin talking about the current state of things for these students is a step in the right direction allowing for possible solutions in demolishing the social and legal trappings that may be preventing this

sector of our population from advancing in their careers. To open the dialogue around these issues students with disabilities are facing encourages more students to speak up and step out of the shadows and diminish the incidences of those suffering in silence. In essence, the current state of affairs for students with non-apparent disabilities weakens the democratic participation of a minority perpetuating their marginalization. Also, by focusing the attention on this population signals to these law students that they do *matter* and their voices have every right to be not only heard but counted in this American democracy.

Road Map of Dissertation

Therefore, if we are to learn how disability rights law maps onto the lives of law students with non-apparent disabilities, we first have to describe relevant concepts and define terms as well as explain what disability rights entail and how do disability laws apply to this population. Thus, Chapter 2 of this dissertation will describe and define the concepts of "stigma" and "smartness," " to show the reader how they interlink and afflict law students with disabilities. Chapter 3 will amply explain all the laws that are relevant to law students with disabilities attending a public law school in California which is both federally and state funded, and therefore susceptible to both federal and state law. A literature review will be provided in Chapter 4 addressing the relevant frameworks of capitalism, disability, and democracy. Chapter 5 will describe the study and methodology used to conduct the research. Chapter 6 presents the findings of the case study legal analysis, and Chapter 7 provides the interview findings touched upon in the previous chapter. Chapter 8 discusses the themes, concepts, and findings in conversation with the literature along with the study's limitations and future recommendations. In Chapter 9 a normative law is proposed as a starting point to address the findings of the research while highlighting limitations when only focusing on a legal apparatus.

CHAPTER 2

CONCEPTS AND DEFNITIONS: STIGMA AND SMARTNESS

ABLEIST VIEW: "Students who require extensive aid to succeed at the college level may not be prepared for college work in the first place, and […] the college need not make accommodations to assist them" (Rath & Royer, 2002).

Derogatory terms like feeble-minded or retarded are powerful words evoking images of individuals incapable of taking care of themselves let alone formulate significant thought to be deemed smart. To avoid being othered through stigma associated with having a disability or not being seen as smart, many try to pass without questioning how society disables and accept this dynamic as the norm. Prejudices and discrimination have thus created smartness as property similar to whiteness as property, and whoever is deemed smart possess a greater level of freedom, autonomy, and power to influence their social positioning.

Stigma Defined

It is a common sentiment that one does not like to feel less than, otherized, marginalized, and excluded under a sense of differentness. Stigma ascribes insiders and outsiders, a purposeful social mechanism shaping the power dynamics producing the social landscape according to the sentiments of the time. Stigma surrounding smartness or lack thereof, have played a significant role in the lives of law students with disabilities. Therefore, in the following paragraphs, a definition of stigma will be provided, as well as a description of the construction of smartness labeling who is considered smart, and the power that such a label bestows. The leading scholar, Erving Goffman, defines stigma as, "[a]n undesired differentness from what we had anticipated. […] those who do not depart negatively from the particular expectations at issue [he calls] the normal" (Goffman, 2009). Therefore, anyone who falls outside of "normal" becomes even more stigmatized. Goffman goes on to define three types of stigma: 1) abominations of the body, 2) blemishes of individual character such as a mental disorder, alcoholism, imprisonment, homosexuality, and 3) Tribal stigma transmitted through lineages such as race, nation, and religion (Goffman, 2009). According to these categories, those students with non-apparent disabilities might have a combination of all three.

Society Disables

In the disability community, the term disability has a positive connotation although that may not be true with the community at large (Linton, 1998). It is a term often used to empower and solidify the disability group embracing the distinct difference between the illness and the social treatment, the term disability embodies the social treatment (Davis, 2013). Tom Shakespeare began to reframe disability as not a personal issue, but instead, view

society as being the one who disables. The social model embraces the idea that human variations exist and there is no such thing as "normal" or the right way of being "human." The medical model medicalizes any disability and views the disability as a personal tragedy and as a problem in need of "fixing" (Linton, 1998; Longmore, 2003; Shakespeare, 2006). According to Shakespeare, although people of the same ethnic identity may share "experiences with their family members, the majority of disabled people are often the only member in their family to have a disabled identity" (Shakespeare, 1996). At times the family itself becomes the most oppressive space for those with a disability because if you are a woman, chances are you can relate to another woman in your family. If you are struggling with race, you can go to any member of your family, but when you are disabled you are often the only one in your family; thus, you lack role models, which perpetuates the shame and burden experience by feeling alone (Shakespeare, 1996). As a student fights to receive the accommodations that will place them as closely as possible to an equal playing field to compete with their peers, the layers of stigma as previously described make disclosure to school administrators all the more burdensome. Once the student discloses the university is then obligated to provide the students with *reasonable accommodations*, accommodations that school officials do not need to provide for non-disabled students, which makes the students with disabilities feel like a burden to the school if these accommodations are not readily in place (29 U.S.C. 794; 42 U.S.C. § 12201). This sentiment of being a burden is perpetuated by the language in the law itself, which causes students not to want to be a burden, creating yet again more access barriers in post-secondary education. Shame and feeling like a burden are also perpetuated by a society that limits people with disabilities with stereotypes along with their limited understanding of disability.

Therefore, these students struggle with both the illness and the social stigma. Unfortunately, the programs that were put in place to support students with disabilities at times perpetuate the internalization of such stigma when the institutions themselves are not adequately equipped to assist the law student. Lack of preparation from these institutions signifies to the law student that law schools are not as aware of disabilities and were not expecting such a student, yet another reminder in their academic journey that they are not normal or accepted. As the larger society already perceives students with disabilities as different from the "normal" fully able student, and in turn, it is no surprise that disabled students internalize the stigma of difference (Gilbert, Fiske, & Lindzey, 1998; Kranke, Jackson, Taylor, Anderson-Fye, & Floersch, 2013; Susman, 1994) complicating the process of being a self-advocate. Providing for some non-apparent disabilities does not often require extensive structural changes demanding of substantial financing. However, even then, prompt accommodations may not be given, even though they are more readily offered than those accommodations extended to physical disabilities who may require more substantial structural accommodations.

The abomination of the body is more closely related to physical deformities, and those who have non-apparent disabilities possess a deformity not readily seen. Once the student uses the "corrective equipment" to adjust for the deformity or uses the accommodation that acknowledges the disability, the point of its apparentness becomes the point of the abomination of the body (Goffman, 2009). Mental disorders may have the same accommodations as learning disabilities and are considered non-apparent. Both mental disorders or learning disabilities signify there is something different in the student's brain

function and as such it is considered a blemish on their character (Sleeter, 2010). Hence, a number of non-apparent disabilities even within mental and learning disabilities fall into Goffman's second stigma category, the blemishes of individual character, placing the onus on the student, not the law school. The student must obtain services to diminish the effects and impact of the disability in the classroom or the effects of even being regarded as disabled (Hollins & Sinason, 2000). The law school does not have to educate its larger student body to reduce the subtle oppression experienced by those with disabilities. Non-disabled students do not have to worry about stigma related to disability, while those who have disabilities may have to mind multiple stigmas discussed by Goffman. The diagnosis of any disability can cause depression or anxiety which further compounds the primary disability (Denhart, 2008) making comorbidity a common occurrence for people with disabilities (Bonham & Uhlenhuth, 2014). Regardless, students are responsible in obtaining assistance to address the disability that creates "an abomination of the body" and a "blemish on their character" if they want to succeed in an academic setting, whether or not they know what resources or options are available. What is made abundantly clear from these types of stigma is that students with disabilities may need to obtain assistance to help dispel these beliefs that may impact the subconscious; otherwise, these beliefs become internalized if unchallenged, becoming an additional barrier to their future success in academia.

It is not surprising to find stigma around non-apparent disabilities in law schools given the social sentiments and stereotypes found in undergraduate institutions a glimpse of this stigma is seen in the case of Guckenberger v. Boston University that will be discussed in Chapter 6, were assumptions about non-apparent disabilities instill fear that prevents disclosure (Guckenberger v. Boston University, 974 F. Supp. 106, 1997). It is logical for any student, not just law students to shy away from ever openly disclosing their disability knowing these stereotypes exist. Skepticism arises when a student claims a non-apparent disability in such a competitive environment that is law school, where undeserving accommodations can make the difference in their grade and class ranking. Transcripts are required to show the class ranking of the law student when applying to judicial clerkships, some competitive fellowships, and externships. Law students by the very nature of being in such a demanding environment may perceive an accommodation given to a classmate as an unfair advantage since many students with non-apparent disabilities are often not believed as having a disability because their disability is not readily apparent.

Having to Explain

Social stigma scholars have found that when there is a negative social stigma present, some individuals tend to have a lower perception of themselves by internalizing the stigma, another possible hesitation to disclose their disability (Gilbert et al., 1998; Goffman, 2009). Some studies have shown how some people with disabilities have internalized this negative perception when stigmatized as disabled and incapable of performing the demands in comparison to a non-disabled student (Vash & Crewe, 2003). More studies should be conducted to ascertain the actual number of disabilities in law schools; however, such dynamics are mentioned to offer an insight as to the difficulty a student may have in ever acknowledging that they have a disability because they face possible rejection from those with apparent disabilities and the non-disabled individuals. When people can readily see or

perceive the disability there is no need to explain to the public its presence; however, when the disability is not apparent, the student has to educate and explain their disability to advocate for themselves with those in positions of power who influence their accommodations. The very act of explaining reinforces the internalized stigma because they are continually addressing the disability to obtain the accommodations, often placing the disability at the center stage of the student's life, constantly being reminded of their difference (Gilbert et al., 1998; Kranke et al., 2013; Susman, 1994).

The discrimination that results from prejudice beliefs about people with disabilities is prevalent in many forms not just in the use of private language as in the case of the parent instructing the student to act "stupid." Everyday language commonly accepted as the norm is just as prejudice and damaging. Normalized expressions showing disdain in having a life with a disability is evident when people say, "well at least it is better than being blind," or "at least I still have my legs" this assumes that people who are blind or paraplegic cannot live a good quality of life, or with any disability for that matter (Hahn, 1988). When people say I am "paralyzed" with fear, or that person looks "abnormal" perpetuates this negative sentiment towards having a disability.

Harlan Hanh in *The Politics of Physical Differences: Disability and Discrimination* discusses aesthetic anxiety and existential anxiety when being around people with physical disabilities (1988). She mentioned protecting these individuals as a "suspect class" under the equal protection clause of the 14th Amendment given the level of prejudice and discrimination experienced by those who have apparent disabilities. This social-political approach arose from the public attitudes in placing individuals with disabilities as inferior and perpetuating anxiety. The appearances of people with disabilities impacts employment whether we realize it or not under the Halo Effect, first coined by social psychologist Edward Thorndike. Social scientists have described the Halo Effect as a bias, attributing good character traits based on overall impressions, Thorndike first described the Halo Effect as seeing a person with a halo, it has since evolved to seeing the person as attractive (Thorndike, 1920). The Halo Effect unravels both in the classroom as well as in the workforce, making assumptions of a student or a worker. For instance, " a teacher who sees a well-behaved student might tend to assume this student is also bright, diligent, and engaged before that teacher has objectively evaluated the student's capacity in these areas. When these types of halo effects occur, they can affect students' approval ratings in certain areas of functioning and can even affect student's grades" (Salkind, 2008).

Those with aesthetic anxiety causes them to feel uncomfortable around a person with a disability. For those wanting to enter personal relationships they may experience "aesthetic-sexual aversion" where men and women have a hard time forming relationships. This is also true for people with non-apparent disabilities because even if they are deemed initially physically attractive when others discover the disability, they may no longer desire being around that person in fear of what the impact will have on their quality of life. Following this line of reasoning, a disability is not attractive often confronted with discrimination (Hahn, 1998) the same with an undesired individual that becomes unattractive not by physical appearance but by behavior due to a non-apparent disability. For example, a person can be diagnosed with autism and be highly functioning but is viewed as anti-social and hard to get along with deemed undesirable to collaborate with; instead of focusing on their skill set, the focus becomes on how they make others feel, uncomfortable. Public attitudes then become

negative experiences for people with disabilities affecting their social and working environments. This is why given the aesthetic consideration, Hahn suggests citizens with disabilities should be considered a "suspect class" within the protection of the equal protection clause of the fourteenth amendment. The legal concept "suspect class" applies to those historically marginalized. Thus, if this were to be implemented one has to raise awareness and be very specific as to whom this law will be protecting to ensure it is those individuals with disabilities who have been historically marginalized otherwise one will get into the argument of what is "beautiful" or aesthetically pleasing. Is beauty not in the eye of the beholder?

Passing

Friends and family often praise and celebrate the student when being accepted into a nationally recognized law school disability or no-disability, given the hurdles the student had to overcome to gain admission. However, it is unfortunate that people erroneously equate admissions with meritocracy, a common misconception, given that one student may have worked harder than the other if their social starting points were vastly different (Golden, 2007; Liu, 2011). As a result, social perception mistakenly assumes that someone who has a non-apparent disability could overcome that disability through hard work because if they were able to enter such an elite institution, they must not be that disabled. The student feels greater pressure to perform to pass as a traditional able-bodied student. Passing as an able-bodied student helps legitimize the presence of students with disabilities in elite institutions because they are not different, at least not different enough to be *othered*. At times "one's professional survival may depend upon passing" (Price, 2011, p.139). Even those who are considered severely disabled try to pass as non-disabled (Cureton, 2017). However, of course, this comes at the cost of not disclosing their disability, unless it becomes necessary to do so, and even then, there is hesitation to disclose (Cureton, 2017). Some students develop a self-consciousness embarrassment about their disability by not feeling good enough, mistakenly believing that they are not trying hard enough (Stage & Milne, 1996) as if they could remedy the disability by working hard.

Thus, students with non-apparent disabilities, perform less well than expected in post-secondary education in comparison to their high school performance (Wilczenski & Gillespie-Silver, 1992). To expand, these non-apparent disabilities are permanent and include but are not limited to dyslexia, dysgraphia, dyscalculia, reading or writing disability. Other non-apparent disabilities may include but are not limited to HIV/AIDS, cancer, arthritis epilepsy, Post Traumatic Stress Disorder (PTSD), psychiatric disorders, asthma, brain injury, ADD/ADHD, chronic fatigue syndrome, diabetes, cystic fibrosis. Learning disabilities are highlighted here since they are increasingly found in law schools and the readily available data on learning disabilities in post-secondary education (Jolly-Ryan, 2005). The accommodations provided to learning disabilities are often given to other non-apparent disabilities erroneously using a one-size fits all accommodations approach. However, there are more disabilities and ranges within those non-apparent disabilities that go beyond what is mentioned here.

Even though the law and institutions currently allow for individualized accommodations, it still becomes challenging for professors, peers, and the disabled student's

department to believe that the student has a learning disability because they cannot readily see the disability, thus jeopardizing the individualized accommodation practice through the invisibility of disability (Brueggemann, White, Dunn, Heifferon, & Cheu, 2001). It is already hard enough for some students to feel worthy enough to attend such elite institutions; it becomes all the more burdensome to muster up the courage to reveal their disability given the stigma. Once the student gathers the courage to disclose their disability to the school, they have to educate them and convince the law school, that they are disabled. Since learning disabilities are not the same as learning problems but are often confused as such given the lack of education around these issues, the student is not only responsible for educating the academic institution but also has to struggle and overcompensate for the perceived limitation. Moreover, learning disabilities are neurologically based processing problem with no remedy (Hallahan et al., 1999; Torgesen, 1999), it becomes all the more insulting and taxing for a student when a school official insists that they try harder in hopes that the disability will improve. A learning disability can only be accommodated for, to perform as optimally as possible (Hallahan et al., 1999; Torgesen, 1999); once again, perpetuating and reinforcing the three types of stigma, highlighting the abomination of the body, the blemish of individual character, and tribal stigma. On the other hand, learning problems are more closely related to anything that becomes an obstacle to learning such as seeing or hearing but can still learn through a hearing aid, braille, or sign language. These nuances matter to gain a broader understanding as to how the lack of awareness on the range of non-apparent disabilities in these educational institutions impacts the student, entrenching yet another barrier in their academic success.

Smartness

Another barrier that may keep law students with non-apparent disabilities in the closet or instilling hesitation in them from advocating for their rightful accommodations may be the prevalent concept of smartness and who gets to possess it. Like in the case of race and gender, disability has been used to deem a group as inferior in intelligence (Hayman, 2000). Hayman Robert articulates the myths of inferiority in his book The *Smart Culture: Society, Intelligence and the Law* (2000). The White population was historically deemed as knowledgeable and as such intellectually advanced. Fredrick Douglas countered this argument positing that the "very crimes of slavery became slavery's best defense" because to enslave individuals who are deemed ignorant stems from being deprived of education (Hayman, 2000). Douglas offered a critique of this "natural order" which deem some as superior to others based on intelligence. To counter the ideology of "natural order," we turn to the words of Congressman James A. Ashley. He addressed the flawed reasoning in the "natural order" theory as "no social arrangement could be understood apart from the educational system" that sustain civil liberties because "civilization and education are inseparable" (Hayman, 2000). Congressman Ashley was in staunch support of public education to sustain knowledge, which he equated with power (Hayman, 2000). To deprive individuals of said education would deprive them of the access to the power that would influence their stations in life as well as their quality of life. Hayman explains the flawed reasoning in placing racial superiority of whites over people of color as intellectually superior citing the flawed reasoning in the theories of eugenics of the time, laying out how defining a group of people as smart endows them with power. In

essence, Hayman amply debunks the myth of inferiority often ascribed to people with disabilities.

Smartness as Property

Smartness became a form of property, and those who were deemed as smart perpetuated the idea that they were superior legitimizing the oppression of those who were not as smart. A smart culture was constructed closely associating smartness with Whiteness. Since whiteness has been socially constructed as it is well established that Whiteness is separate from White people, yet they benefit from the social construction of race assigning grater social significance to Whiteness also known as "white-skin privilege" (Guess, 2006). Similarly, smartness has been socially constructed with the advent of eugenics. The 1994 publication of *The Bell Curve: Intelligence and Class Structure in American Life* intended to show that intelligence was influenced by environmental factors emphasizing racial differences in intelligence (Herrnstein & Murray, 2010). The same has been done to women to exclude them from positions of power stereotyping women as not being good at math (Spencer, Steele, & Quinn, 1999).

In 1993, Cheryl Harris published in the Harvard Law Review an article entitled *Whiteness as Property*. While this work primarily calls out the relationship between racial identity and property by citing to the history of slavery and segregation, Harris posits that Affirmative Action is a start to reduce our possessive investment in whiteness (Roediger, 1999, 2007) by providing access for people of color in predominantly White spaces in universities and employment. It is no coincidence that in her article, *Whiteness as Property,* Cheryl Harris cited six cases to make her point, four of which were regarding education. She simultaneously takes a critical view as to how Whiteness as property has a material impact on our society highlighting how race and the law operate to exert power as access to Whiteness impacts the education of students of color. This brief historical overview of Whiteness as property is useful to explain how then smartness has also become a form of property used to exclude those not deemed smart and how this ableist view has become embedded in our educational structures. She explained how Whiteness could be seen as property, reinforcing the belief that education is one of the equalizing tools historically denied to marginalized groups. Education has the potential in arming a populous into political and social autonomy that will help them maneuver and participate fully in a democratic system that can shape their stations in life. The denial of education has been a way to subjugate a population and not much has changed evidenced by the passage of California's Proposition 209 in 1996 which eliminated affirmative action in California.

Scholars Zeus Leonardo and Alicia Broderick in *Smartness as Property* (2011) and *What a Good Boy* (2016) laid out, similar to the Halo Effect, assigning attractiveness, cultural values place good behavior in the hierarchy of ideologies that embrace an able-body as the norm were good behaviors in the classroom are glorified and posited as the right way of being. Anything that falls outside of this norm is deemed "not smart" or a "bad student" (Broderick & Leonardo, 2016). The authors emphasize the expansion of the term smartness by broadening the definition to include people with neurological disabilities to also be considered smart. However, this would be the same as saying I too am "White." Instead of wanting to be smart or wanting to be White, why not embrace the idea that "I too matter?" By

making this statement, one steps outside of the prescribed standard way of being by both Whiteness and smartness and instead embrace the deviance from both of these concepts and acknowledging that those who fall outside of these paradigms are just as equally valuable in our society but especially in an academic setting embracing diverse thought. Therefore, the quickest way to legitimize the exclusion of a populous to take part in equal opportunities not allowing for their own self-determination is to deem them not smart enough to independently dictate their future denying social and political equality. Such beliefs of the disabled are taking a paternalistic approach over their livelihoods. Denying equal access to the knowledge, an education legitimizes the idea that such a populous is not smart enough to invest. Smartness as did Whiteness, given its social power, became property, benefited from the historical capital gained from generational privileges. Society was able to construct what behavior was going to be deemed as smart in schooling. Those who behaved followed and obeyed accommodating to the model of an ideal student which entailed a homogenous way of being. Anything falling outside of this behavior deemed "normal" would be depicted as not the right way of being inferior to the rest of the class perpetuating smartness as a form of property that would help and individual advance if the student conformed.

In academia, scholars have to navigate the waters surrounding inclusion and exclusion constructed by whom is deemed as smart by the academy —at times, inadvertently trying to distance themselves from what historically has been deemed less than as has been the case with disabilities. In 2012 a group of women of color scholars published a book entitled *Presumed Incompetent,* to highlight the stories and narratives that women of color in academia experience embracing the idea of a "smart" culture (Hayman, 2000; Muhs, Niemann, González, & Harris, 2012). To assert their place in a predominantly white academic space, they had to distance themselves from the stereotype of being incompetent and being smart enough to belong in academia inadvertently perpetuating smartness as property. However, the title of this work ignores those in the disability community who are "incompetent" according to the measuring stick of an able-body. Some scholars with mental disabilities may not be able to neurologically function in ways that would qualify them as "competent," be that in their forgetfulness due to severe anxiety or the side effects of medications treating a range of disabilities, or whether the very disability is in reading and writing paramount to what an academic setting requires. In 2011, Margaret Price addressed mental disabilities and the struggle academics have encountered in becoming tenured or even employed in her 2011 book entitled *MAD at School: Rhetorics of Mental Disability and academic life* (Price, 2011). Instead, why not say "Presumed Inadequate," placing the focus on the institution rather than the individual, which simultaneously establishes the idea there is something to be adequate for, rather than making the individual defective.

Value to Society

In the following pages examples of people with disabilities will be provided to demonstrate how people with severe disabilities have been able to produce and perform in the highest of expectations in post-secondary education, and even then, they were not equally valued or given the same opportunities as those who are non-disabled. These stories indicate how society has managed to disable individuals and control their prospects regardless of the hurdle's students have had to encounter to obtain an education and not let themselves be

disabled by social expectations. Currently, in the disability community there is a divergent view on whether to say, "I am" or "I have a disability" is the difference between identity-first or people-first language. It has been posited that those with physical disabilities would more readily want to say "I am a person with a disability" to indicate that they have the disability, the disability does not have them, not wanting to embrace the disability as part of their primary identity. On the other hand, some with non-apparent disabilities tend to want to embrace their disability by saying "I am disabled," "I am neurodivergent," or "I am autistic" (Collier, 2012), instead of perpetuating the idea that a disability is something to be ashamed of. For those with non-apparent disabilities this gives more visibility to the disability and credibility as a whole in being disabled. Regardless of how people choose to identify, the disability itself inadvertently shapes an individual's world view whether in positive or negative aspects by providing value to the world by their mere existence because they are forcing anyone around to witness another way of being.

Society misses out on talent and insight when those with disabilities are made to feel inferior causing them to shut down and give in to their circumstances. Few manage to overcome such low-expectations enough to stay alive. The limitation society places up on people with disabilities and countering this messaging and stereotypes, demonstrating that an individual with a disability can go on to live a fulfilling life because the disability is not a limitation, it is a gift. We limit our own imaginary future when we limit others. People with disabilities have shaped our quality of life, at times unbeknownst to us. All people with disabilities bring unique gifts to the world no matter the disability, yet we only hear about the famous ones. James Madison, Harriet Tubman, Abraham Lincoln, Vincent Van Goh, Franklin Roosevelt, Ray Charles, John Nash, Sonia Sotomayor, and Steve Jobs all had disabilities, yet the disability was not at the forefront of their narrative often times hiding or diminishing the severity of the disability. The only reason we know of these famous people with disabilities is that they had enough grit and a strong sense of self to overcome social expectation and multiple forms of oppression by a society who did not readily see their value. Fighting countless obstacles, they beat the odds. We are doing ourselves a great disservice if we are settling for the morsel of people who manage to get through and rise to the top for us to benefit from their gifts. We should be aspiring for the day we can move away from defining people with disabilities by what they can materially produce, and instead place value on what their existence contributes to the meaning making of our own existence. People with disabilities are providing a priceless gift to us all, the gift of having a deeper understanding of humanity.

A limited understanding of disability is what causes our society to dictate whom or what disability is considered of value or reverence regardless of their levels of education. Regrettably, our society more readily recognizes those people with severe and apparent disabilities who have significantly contributed in a notable way to the larger society because those individuals are seen with awe and astonishment that such an individual with such perceived limitations could contribute despite their illness. Nevertheless, not to diminish those with severe apparent disabilities, some disabilities are not given as much reverence because they are not apparent and thus not at the forefront of the social psyche. Having a limited representation of people with disabilities in the public eye and not being able to talk about disability openly creates a narrow image of disability. The image of Stephen Hawking is a good example. This famous theoretical physicist had the apparent disability Amyotrophic

Lateral Sclerosis (ALS) which rendered him wheelchair-bound using a sensor to type on a keyboard when needing to communicate. He was seen, valued and readily accommodated to given his level of importance to our society, his contribution to the field of physics, and was revered as being one of the modern geniuses of our time. In contrast, Paul Longmore was also a wheelchair-bound White male who was disabled as a result of polio. He required breathing assistance from a ventilator. Longmore was not readily given the same respect and value as Stephen Hawking. Like Stephen, Longmore also graduated with a Ph.D., though Longmore was not a famous scientist producing groundbreaking scientific theories such as Hawking. Intelligence and smartness have been historically associated with people such as Albert Einstein and Isaac Newton. Their brilliance have improved our daily lives, and we can see the result of their contributing ideas in some tangible form.

Longmore, on the other hand, graduated from Claremont University with his Ph.D. in History. He embodied the limited access people with disabilities have to the American Dream both structurally and institutionally. People with disabilities in general encounter many disincentives to live, get married, and become employed. Outside the Federal Building in Los Angeles in 1988, Longmore burned his book in protest. He burned the book he wrote during his Ph.D., that took him a decade to write by only using a pen in his mouth and a keyboard. Even though the University of California Press was ready to publish his book, he could not publish without losing his Supplemental Security Income (SSI) benefits because the royalties earned would be considered income and the salary he would make as a professor would not be enough to keep him alive (Longmore, 2003). He needed the SSI benefits because it paid for his ventilator, but he needed to publish the book to become a history professor. Even though he had graduated with his Ph.D., he was having a hard time gaining employment as a professor. Institutions wondered how he was going to move around campus and teach the students with such an obvious disability, limiting his employment options and thus disabling him (Longmore, 2003). Instead of embracing his talents and attempting to come up with solutions or becoming informed enough to realize that to teach one does not need to walk, just talk. He called the media, and on national television, he burned his book demonstrating how this society treats people with disabilities, turning their American Dream into ashes (Longmore, 2003). Republicans in Texas took notice and the law was changed, allowing him to eventually become a history professor at San Francisco State University (Longmore, 2003). Like many others, Longmore had to fight and advocate for his opportunities not readily offered. Those with grit and determination manage to overcome great obstacles exposing the great power that lies in the human spirit.

Similar to Paul Longmore, Martin Pistorius did not give up despite being faced with insurmountable challenges. At the age of 12 Martin suffered from cryptococcal meningitis (NPR, 2015). He lost the ability to move, make eye contact, and speak. He was in a vegetative state and doctors told the family to take him home and make him comfortable until his death. For the next twelve years, his father took him every morning to a special care center and would leave him there for eight hours and start the routine all over again the next day. This routine life went on for years. The parents did not think Martin was present in his body even though he was breathing, so at one point the mother said to him "I hope you die" (NPR, 2015). Little did she know that Martin's mental functions returned after the second year of being in that state and heard every word. He was left for hours on end in front of a television every day with the purple dinosaur, Barney, playing in front of him. Nurses would pour

scolding hot tea down his throat and unable to move or say anything he endured the pain. His thoughts were his only source of company. He quickly realized that the only thing he had control over was his thoughts. Martin learned how to communicate with his eyes and slowly was able to use a program to communicate (NPR, 2015). Martin went on to live a full life, getting married and obtaining a job fixing computers.

On the other hand, Elizabeth Bouvia was a woman with cerebral palsy who filed suit for the right to die under medically assisted suicide given the quality of life she was relegated to live in this society. She attended Riverside City College and then transferred to San Diego State University (SDSU) earning her bachelor's degree. She then began her Master's Program at SDSU but was having a very difficult time obtaining accommodations in her field study placements. It is alleged that the university saw her as unemployable and unwilling to invest in accommodations for her and stated that they "would have never accepted her into the program if they had known how disabled she was" (Longmore, 2003). The ACLU wanted to protect her constitutional rights of privacy and self-determination while disability activists wanted to prevent a court ruling that would say to the world, people with severe disabilities have no reason to live given their disability, reducing their existence to a worthless state. Instead, activists argued that Elizabeth wanted to die because she was depressed given all she had endured with her parent's divorce, her brother's death, the loss of her child, a broken relationship and lack of accommodations in her program all compounded by her disability. The average individual would also be depressed if they had to endure all of these life challenges.

A person in a similar life circumstance had a different outlook on life. The Irish writer and painter Cristy Brown also had cerebral palsy, and all he could move was his left foot. He was determined to make the most of his life by getting married and having a career even if that meant doing everything while only being able to move his left foot and toes (Brown, 1882). One may never know what causes one individual with severe disabilities to want to live despite the struggle while others would much rather die, but it is important to note these two perspectives indicating that not all people who are severely disabled share the same sentiment as Bouvia and do see their life being of quality despite the severity of their disability. If anything, Bouvia's story provided an insight into assisted suicide offered to people with disabilities, highlighting how society, not the disability, drives people to want to die and the courts are keen to oblige.

Activists argued that had Bouvia lived in a more progressive time, accommodating and accepting society that acknowledges how our society disables, her outlook on life may have been different. Activists placed the onus on society vocal about the need for society to change instead of rendering a person useless. In the end, the Los Angeles Superior Court declined to grant Bouvia her wish, so she filed a petition for a writ of mandamus with the California Court of Appeals. The court of appeals did order the Superior Court to grant Bouvia the preliminary injunction instructing the hospital to remove the feeding tube that was keeping her alive (Fisher, 1987). Limited views of people with disabilities, which judges are not immune from, find it reasonable for a person who is severely disabled to want to die instead of questioning what caused this individual to want to die in the first place. Is it the disability itself or the way society has treated the severely disabled? Bouvia was having a difficult time obtaining employment. She did not want to be a burden and succumbed to the belief of many that "life as a disabled person was a fate worse than death" (Owen, 1984).

Notice that she, unlike Paul Longmore, Martin Pistorius, or Christy Brown was overpowered by this internalized feeling, only seeing despair rather than opportunity. These stories of severe physical disabilities were used acknowledging that any reader in this society will still equate severity with the physical body and a disability they can see. While all the individuals mentioned had severe disabilities, that is not to say they are better or worse in severity to those with non-apparent disabilities because someone with a severe mental disability may not be able to move at all, and those with both severe mental and physical disabilities may still face countless obstacles and still find meaning in their lives.

Although post-secondary education has been marketed to the masses as an investment allowing for a greater level of autonomy in the workforce; a higher level of education may give people credibility of possessing a higher level of intelligence, but it does not guarantee employment. In the case of Elizabeth Bouvia and Paul Longmore having a post-secondary education was not enough to overcome the stigma that preempted the discrimination they experienced. The abomination of the body proposed by Goffman was readily seen in Bouvia and Longmore and thus they struggled to gain employment in the field they studied in. If this is the way students with apparent disabilities are treated, imagine those with non-apparent ones. It may be harder for students with non-apparent disabilities because once their disability becomes apparent they may be treated as those with apparent disabilities, the only difference is that they, unlike those with apparent disabilities would not necessarily have a readily available support from the disability community because since their disability is non-apparent they are not believed and may not have suffered the structural barriers. It is not uncommon for those with non-apparent disabilities to try to pass as non-disabled to avoid such discrimination from both main stream society and those with apparent disabilities. Moreover, Bouvia and Longmore's stories are examples on the selectiveness of whom gets to possess smartness despite higher levels of education, it is no different for those who have non-apparent disabilities, especially those with mental illness. Once the mental illness is apparent or discovered, accolades and degrees are not enough to protect from the abomination of the body associated with the stereotype of a defective brain or a defective mind (Stefan, 2001).

Owning smartness has the potential of overcoming stigma as seen with Stephen Hawking who was known more for his theories rather than his disability, but society still controls and determines what type of smartness is good enough. So far, a post-secondary education has not been enough. As a result, people with disabilities have had to define their own worth and value in this world despite what society chooses to see in them, especially those who are severely disabled and still choose to live a fulfilled and joyful life not allowing the stigma to get the better of them. Such a character trait may not be readily valued in a world so focused on production with insiders and outsiders, determined by the property in smartness, yet it is a priceless gift of humanity rarely seen. The human spirit is powerful, and we are yet to learn all of its wonders because we limit our learning to a socially constructed limited view of people with disabilities. Martin Pistorius was not a famous theoretical physicist, but he offered the world a gift by providing insight in demonstrating how the universe is not the last frontier, the mind is.

CHAPTER 3

HOW DOES DISABILITY RIGHTS LAW FUNCTION?

"Law and order exist for the purpose of establishing justice, and when they fail in this purpose, they become the dangerously structured dams that block the flow of social progress."
- Martin Luther King Jr. April 16, 1963. A Letter from a Birmingham Jail.

By not questioning our current disability rights laws and condoning the rationale behind its current limitations placing maximum production and profit above the equal rights of a minority speaks volumes as to what we currently hold most important in our society. However, as such, we can change that value to be a democracy rather than profit by ensuring that all in our social systems are equally participating and benefiting in a democratic society. Otherwise, a utilitarian argument that uses *lack of resources* will continue to be used as an excuse not to provide accommodations to a disabled individual, thus perpetuating their disenfranchisement in a democracy (Kelman et., 1997). To commonly accept that one should not adequately accommodate a human deemed defective, because of high costs, shaping and perpetuating a narrow view of production, inevitably adversely affects the quality of life for those with disabilities who are equally deserving of democratic participation (Schneider & Ingram, 1997; Steele & Wolanin, 2004). The lack of motivation to accommodate a human being who is disabled, signals that an able-body is preferred where accommodations are assumed not to be necessary. In reality, accommodations to able-bodied individuals are made often when they adjust their work in any capacity not afforded to others. Several examples include adjustment to their work schedules, extended time on an assignment, or being provided an air-purifier due to their allergies etc. Somehow when a person with a disability asks for an accommodation, the ask seems like a considerable demand making the narrow assumption that had it been anyone else they would not have asked for such an accommodation. Therefore, prioritizing and placing a higher value on immediate and tangible returns that an able-body is assumed to produce creates disembodiment of the disabled that reduces or eliminates the value of people with disabilities. Such an ableist view in treating people with disabilities as dispensable and unworthy of being invested on; erroneously assumes they will not garner valuable production in the broader community let alone the workforce. This chapter uses various theoretical lenses to examine the treatment of people with disabilities influenced by capitalist and ableist ideologies that often marginalize people with disabilities. These ableist ideologies are embedded and legitimized by denying equal treatment twice over; first by limiting equality to *reasonable accommodations as long as* it does not present an *undue burden* on the party providing the accommodations. Secondly, leaving the institution to determine what is reasonable depending on what they believe to be an *undue burden* on their institution. These legal concepts are touched upon and explained throughout, but in particular both in this chapter and in Chapter 6.

In the book *Law and the Contradictions of the Disability Rights Movement,* prominent scholar in disability rights, Samuel R. Bagenstos, addresses the dilemma between the goals of

the disability rights movement, as individuals with disabilities wanting independence, moving away from paternalistic laws. To achieve such equal independence and remove some of the Americans with Disabilities Act (ADA) limitations around antidiscrimination and accommodations, one has to use a form of social welfare according to Bagenstos. Bagenstos is one of few scholars to question and challenge current disability rights law unwilling to settle for its current limitations by advocating to reform the ADA so that judges have greater leeway when ruling on a disability case because as it stands the ADA is too narrow. The ADA currently covers people who have greater limitations unable to perform a broad class of jobs, but it does not protect those individuals "who can find other (though not as good) jobs without the ADA" (Bagenstos, 2009). The goal of the ADA was to increase the number of people with disabilities in the workforce and assist them out of poverty, but it has failed to do so since its inception in 1990 (Colker, 2005). There is a need to either reform the ADA or introduce a public policy that assists people with disabilities more effectively. People with disabilities continue to fight for equality evidenced all the more by their educational trajectory.

Educational Trajectory of Students with Disabilities

Over the centuries, societies have determined the value of human life from an ableist perspective impacting access to education for the disabled. Future opportunities are denied to a student when public schooling is limited if they are even permitted to survive in the first place. The historical treatment and educational trajectory of students with disabilities speak for itself; thus it is not surprising that such treatment has continued in American schooling. The following are historical events mapping the struggle of students with disabilities to provide the reader with a deeper understanding of their plight.

In Greece and Rome, around 200 B.C.E., people believed birth deformities (congenital disabilities) signified that the parents had displeased the Gods. Thus infanticide was common in Greece, and if the family was of financial means, lives were spared (Braddock, 2002). In Sparta, it did not matter if the family was wealthy; those put to death were the babies born with physical deformities. The prevailing ableist ideology of the time was strong enough to ignore class and social status, killing babies with disabilities of any class in Sparta. Today, there is no need to birth a child; fetuses are tested in the mother's womb to abort the child if they are likely to have any congenital disability such as down syndrome, rejecting the idea of normal human variation (Mansfield, Hopfer, & Marteau, 1999).

Currently, those with physical or any apparent disability in the United States receive a specialized education. The deaf and the blind began to receive formalized special education in the 1800s in America. In 1817, the first school for the deaf was established in Connecticut, known as the American School for the Deaf. In 1864, the federal government became involved in assisting the deaf in their higher learning when Abraham Lincoln signed a law which established Gallaudet College in Washington D.C., which is known known as Gallaudet University (Gannon, 2011). To date, Gallaudet is the only deaf university in the world (Gannon, 2011). In 1829, the New England Asylum for the Blind was established, later renamed as the Perkins School for the Blind. Then, schooling evolved into assisting those deemed mentally deficient and other physically disabled students in the 1930s. In 1931, Congress passed a law requiring public schools to provide special education for students who qualify (Kunzing, 1931). This decision stopped students with slight mental variation from

being sent to asylums or hospitals without first investing in their education, although it must be noted that this practice has not been fully eliminated in our current times (Davis, 2013).

In 1942, the American Federation of the Physically Handicapped was incorporated (AFPH) to improve the economic and social position of people with disabilities. World War One (WWI) veterans with disabilities were set aside and denied economic citizenship, treated similarly as those who were born with disabilities. After WWI, only 400 veterans returned who were paraplegic, and about 90 percent of them died when they arrived home (Shapiro, 2011). With the advances in medicine, 2,000 paraplegic veterans returned from World War II (WWII), and about 85 percent were still alive in the 1960s (Shapiro, 2011). After WWII, many veterans were honorably discharged and benefited from The Servicemen's Readjustment Act of 1944, also known as the GI Bill (Katznelson, 2006; Olson, 1974).

The GI Bill offered many benefits, some of which included payment of tuition and living expenses if the veteran wanted to attend college or vocational school (Olson, 1974). Many of these individuals returned severely wounded with visible physical disabilities as well as severe cases of Post-Traumatic Stress Disorder (PTSD) (Davidson, Kudler, Saunders, & Smith, 1990). Disabled veterans were an extension of the state with a hero status that raised the visibility of disabilities. Policy makers were able to dictate and define who was deserving and undeserving in our society by creating such benefits (Schneider & Ingram, 1997). The law reframed the view of people with disabilities. The established hegemonic idea of the norm was shifting into including disabled veterans and normalizing their presence in the dominant society by creating programs for veterans. Thus, after WWII the nation began to view the humanity of the disabled and became slightly more accepting of human variation. The veterans had served the state and were recognized for their utility in serving their country. However, this is not the case with other people with disabilities who are not veterans, which the state sees as a drain on resources such as those with physical and mental disabilities.

In 1972, the *Pennsylvania Association for Retarded Children (PARC) vs. Commonwealth of Pennsylvania*, (334 F. Supp. 1257, E.D. Pa. 1971; 343 F. Supp. 279, 1972). The plaintiff brought a class action suit, combating state statutes permitting the denial of services to mentally disabled children. In those days, the courts used the word retarded which is derogatory in some spaces; however, it is used here to keep in line with the language of the courts. Students with severe mental disabilities have had to fight for their resources because they were excluded from the general student body not receiving free public education in the 13 named school districts –not being invested on because they were deemed not worth teaching –the lawsuit established a new precedent. The court approved the consent decree where the state had to give every "mentally retarded child access to a free public program of education and training appropriate to his learning capacities" (343 F. Supp. at 287, 1972). This case established due process protection for disabled students.

Later that year the case *Mills v. Board of Education District of Columbia* included a broader class of students (348 F. Supp. 866, D.D.C. 1972) such as those with behavioral problems, emotional disturbance, and hyperactivity. Many of the plaintiffs, in this case, were African-American. The school argued that it did not have the resources to provide the necessary accommodations for the students. The school did not want to accommodate due to their race, but instead used the disability to cover for such discrimination. The court ruled that the school was violating "the equal protection clause" and "the due process" clause of the 14th Amendment of the Constitution (348 F.Supp.866, D.D.C. 1972). As the courts were moving

in the direction towards protecting students with disabilities, discrimination under a financial bottom line was being used as an excuse not to provide students with disabilities the necessary resources for their full integration in schools that could lead them into their participation in the labor market. Instead, discrimination was leading them to their economic disenfranchisement. Disabilities have been used to exclude people of color and women preventing them from their equal share in the American Dream; cementing the idea that having a disability is a tragedy or being a woman is of lesser value. Women who do not conform to schooling or academia get labeled with mental or behavioral disabilities by invoking the terms "crazy" or "bitch" to exclude them (Berdahl, 2017; Campbell, 1994).

Similarly, the state determines the inclusion or exclusion of the disabled. The disenfranchisement from future schooling that would assist their next earning income potential is a key aspect of what Katznelson calls "White Affirmative Action" (Katznelson, 2006). Racial discrimination has historically intersected with disability discrimination, and thus both Disability Studies and the Critical Race Theory framework, also known as DisCrit, is used to address the analysis of this study. Institutions in higher education across the United States have the tendency to disembody people with disabilities by resisting to assist disabled students who manage to enter higher education (Steele & Wolanin, 2004). In the K through 12 educational systems, protections are in place for students with disabilities through the Individuals with Disabilities Education Act (IDEA), which are not present in the university setting (IDEA, 2004). Thus students with disabilities have to advocate for themselves in higher education because these accommodations are not as readily available for the student (IDEA, 2004; Lynch & Gussel, 1996). As a result, the student is left to fight for their accommodations in college without an *explicit* legal apparatus in place for a student with disabilities in post-secondary education. This legal gap becomes yet another barrier to overcome while staying competitive enough amongst their peers. Unfortunately, this disembodiment entrenched in higher education institutions embrace the hegemonic norm and how we view the traditional student. Resistance in accommodation either through economic or structural adjustments to any disabled student who manages to reach higher education, despite the countless obstacles they have had to overcome, speaks as to the prevalent ideology (Althusser, 2006; Gramsci, 1971) of how society views the disabled. Stigma explains the hesitation in employing people with disabilities, perceived as not "normal," but that alone does not explain the assumptions made about people with disabilities. Capitalism needs to be discussed in conjunction with the stigma to understand why schools and employers may feel people with disabilities cost too much.

Jurisprudence

The varied jurisprudence in the United States only strengthens the rigor in which we question the intent behind the formation of any body of law. From a Critical Legal Studies (CLS) viewpoint, the logic and structure of our laws grow out of the power relationships in our society with a collection of beliefs that can strive for justice as well as legitimize injustice if left unchallenged (Staff, 2007). CLS promotes social justice through an empowered democracy that respects the dignity of all (Unger, 2015). On the pretense of race, religion, political or cultural group, age, gender, and economic status, all have been used to marginalize individuals. However, with the passage of the Civil Rights Act of 1964, some of

these marginalized groups were protected because this law prevented the discrimination of individuals on the basis of race, color, religion, sex or national origin (Title VII of the Civil Rights Act, 42 U.S.C. § 2000(e), 1964). However, this law did not protect individuals from discrimination on the basis of disability. Protections for people with disabilities came later with The Vocational Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990.

Historically, marginalized groups have used legal apparatus to fight for their rights to be treated equally under the law in instances where the law may inadvertently still exclude as is the case with the concept of universal citizenship, that tends to want to treat individuals equally based on their humanity. Iris Young critiqued this notion of universal citizenship because to conceive the idea that equality equals sameness does not acknowledge individual and group differences. Under universal citizenship, "some groups still find themselves being treated as second-class citizens…[thus] extension of equal citizenship rights alone has not led to social justice and equality" (Schumaker, 2010; Young, 1989, p. 264). Extending equal rights under the law is the first step, but it is not enough because enforcement is necessary to ensure the law is accomplishing what it was originally intended to do. Neglecting to account for whether a law is operating effectively to ensure that equality is being achieved only weakens our democracy. Young believed that "a democratic public, […] should provide mechanisms for the effective representation and recognition of the distinct voices and perspectives of those of the constituent groups that are oppressed or disadvantaged within it" (Young, 1989, p. 274). Thus, in accordance with this belief, as we examine disability law and the lived experiences of some law students, Young's notion of effective representation will be at the forefront of the analysis. This chapter will first define a civil right law followed by a brief explanation of statutes that relate to disability. This legal review is necessary to understand how are the civil rights of students with non-apparent disabilities are being violated. The body of disability rights law includes but is not limited to: Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, Individuals with Disabilities Education Act (IDEA), Family Educational Rights and Privacy Act of 1974 (FERPA) and Title IX.

Civil Rights Law

Civil right law protects our civil liberties established by the United States Constitution. The Declaration of Independence defined such liberties as inalienable rights to life, liberty, and the pursuit of happiness which no government should ever infringe upon ("Declaration of Independence," 2015). Therefore, the laws that protect these liberties are just as important as the original documents that proclaimed them. The "ubi jus ibi remedium" means a right without a remedy is no right at all as noted by Chief Justice Marshall. Laws that protect civil liberties can originate from Supreme Court rulings or Federal Acts of Congress, yet are all subject to the supreme law of the land, the Constitution. Should those laws need clarification to strengthen the spirit in which they were created, lawsuits are filed as well as having subsequent acts of Congress. For example, the Reconstruction Civil Rights Acts were created with the intent to enforce the 13th and 14th Amendment of the Constitution consisting of the Civil Rights Acts of 1866, 1870 and 1871 (Lewis & Norman, 2004). These amendments and subsequent law resulted from a civil war that ultimately abolished slavery,

those who had been previously enslaved were now deemed to be deserving of such equal liberties. Passing the 13th and 14th amendments was no small feat, and the enforcement of these amendments was all the more challenging resulting in the need for these reconstruction acts. The federal constitution only allows for suits against federal actors, so it was not until the Reconstruction CRAs that individuals were able to sue the states, local officials, or private individuals acting "in concert with" the state, or sometimes just private individuals. So people could always sue the Federal government for constitutional violations, but it was not until section 1983 became law that people's lives actually changed, since it was state, local, individual people who were actually violating African American people's rights, not usually the feds. Later, the Civil Rights Movement of the early 1960s define how to provide equality calling upon the intent and spirit of this legislation to abolish the Jim Crow laws that defined equality as "separate but equal" after the Supreme Court ruling under *Plessy v. Ferguson* (Plessy v. Ferguson, 163 U.S. 537, 1896).

We turn to the law as an extension of democracy that maintains social order. The Civil Rights era is a strong example of the populace practicing civil disobedience to garner the attention necessary to change the laws that disenfranchised and segregated people of color. Following the examples seen in the civil rights movement, not marginalizing our students with disabilities in higher education as Martin Luther King Jr. once asked us to view people of color by the content of their character not the color of their skin, we too should value students with disabilities not by what they can produce but by the content of their character. Evidence by this brief evolution of the law with the goal of equality; only one thing is certain: the law is only a starting point because laws alone are not enough. Although these laws were created with the intent to help citizens gain their civil liberties afforded to any member of the republic as promised and codified under the Constitutional Amendments, they were still subject to the interpretation by those in positions of power and by the social climate of the times. Public scrutiny becomes essential to ensure democracy or risk having the majority trample on the rights of the minority. Social examination influencing the evolution of our laws, is what makes the law itself a living, breathing force that has both the potential to move forward or to block social progress.

Therefore, in keeping with the spirit of equality for historically marginalized groups, the Civil Rights Act of 1964 was galvanized and demanded by the public and was created with the intent to protect not just people of color but other groups. Unfortunately, this Civil Rights Act did not include individuals with disabilities. People with disabilities were not considered a part of these marginalized groups, and as such were socially constructed as underserving of said rights (Schneider & Ingram, 1997). The Civil Rights Act of 1964 left out people with disabilities by not being included in the first proposal. Legislators did propose a version of Section 504 in 1972 that would amend the Civil Rights Act of 1964 (Yell, 2015), but instead it became an amendment to the Rehabilitation Act of 1973. Unfortunately, the Nixon administration thought this proposed amendment to be a waste of time. President Nixon reserved a pocket veto delaying the passage of this act until 1973 (Colker & Grossman, 2013). Such an act tied their "equal treatment under the law" closer to the concept of production and as such seeping into the consciousness of our society by not viewing the humanity of people with disabilities but instead their value in relation to labor, a point that will be expanded on in Chapter Five when addressing capitalism and disability. That said, the Americans with Disabilities Act (ADA) offered greater protection not only in federally

funded institutions but spaces open to the general public, protecting the civil liberties and social benefits of the disabled.

Unfortunately, both of these laws give institutions too much discretion instead of placing more weight on the inalienable rights of those with disabilities seeking to gain equal access to the political, social, and democratic privileges afforded to the masses. Language such as reasonable accommodations are left up to the institutions to define what is reasonable to provide an individual with a disability without presenting itself as an *undue burden* either financially or structurally. Such language in the law consequently limited the access of people with disabilities to equal participation in our democracy.

Given that the ultimate intent of Civil Rights Law was meant to place individuals on equal footing and treatment by protecting their civil liberties, and any law that says or treats individuals as equal with the caveat "as long as" it does not present itself an *undue burden* to those providing the accommodation, is not a true civil right law. For one, it is not fully accepting an individual as truly equal if there are reservations. Secondly, those in the position of power who want to maintain the status quo for personal gain or beliefs will use this caveat to get around the law. Equal treatment is then limited, as such a pretext is used as a loophole to deny individuals with disabilities all the access that equality affords. Equality is then promised as long as it is not an *undue burden,* or as long as it does not *fundamentally alter* the service, program or the accommodation itself (29 U.S.C. 794; 42 U.S.C. § 12201). Thus, the end goal is not the equal rights of individuals with disabilities but the production of business as usual.

People with disabilities are then left to continually resort to these governing laws, however limited, because in the end, these laws do manage to slightly move society forward by acknowledging people with disabilities of enough value to be considered under our laws. Section 504 and the ADA protect a large portion of their rights, two of which are relevant here: rights to partake in the workforce and post-secondary education. Since institutions still get to define in large part what will be an *undue burden* to provide reasonable accommodations, under a Critical Legal Studies theoretical lens that compels us to question the inherent power dynamics a law may create. Our society is falling short in preserving the dignity of the disabled, because it is using the law to legitimize injustice when courts or the public do not challenge the laws that attempt to advocate for equal treatment but are limited by the "as long as" language. By considering the *undue burden* or items *fundamentally altering* a program prevents the establishment of universal design meant to be inclusive of all (29 U.S.C. 794; 42 U.S.C § 12201). Universal design was a concept that started in architecture with Ronald Mace who thought of designing products that could be used to the greatest extent possible by all people not just people with disabilities. A perfect example of this concept is the dropped-curb. The dropped-curb assists people in wheelchairs, women with strollers, and bicycle users. Later, Selwyn Goldsmith acquired this concept changing the paradigm to *Designing for the Disabled* (Goldsmith, 2012). This architectural concept has since been used in a fluid matter to reference social as well as physical structures. Universal design's greater inclusion allows for social participation of all, and, as long as it is not limited by profit and the *undue burden* excuse, could provide an accommodation that would not only assist the person with a disability but also potentially assist other unforeseen beneficiaries. Providing this concept of inclusion to all areas of society would push society forward and include the 20% of the population currently being readily excluded based on the narrow view

that assisting those with disabilities will not be profitable nor the best way to use limited resources as is common with a utilitarian view (Kelman, Lester, & Lester, 1997). The laws that cover and condone said rationalization and treatment of people with disabilities are defined and explained below. They are defined to help the reader to better understand the reasoning of subsequent legal precedent that resulted, to then understand how disability rights laws mapped onto the two law students with non-apparent disabilities in this study.

Section 504

The Rehabilitation Act of 1973 was considered the first civil rights piece of legislation that legally defined and protected people with disabilities as it was one of the first laws that covered this population at the federal level. The Rehab Act prohibits discrimination on the basis of disability in programs funded by the federal government (The Vocational Rehabilitation Act Section 504, 29 U.S.C. § 701-797, 1973; Yell, 2015). While the Rehab Act is broadly applicable, the focus here is on its applicability to education. Since education was never made a right under the United States Constitution, we have 50 different educational systems influenced in part by regulations and restrictions imposed by the federal government if institutions receive federal funding. This labor law intended to impact the employment sector which benefited students in higher education feeding into the workforce. Section 504 of this act was also the first instance where a law is seen providing equal access to students with disabilities in post-secondary education (Colker & Grossman, 2013). The Rehab Act defines a *disability* as any "physical or mental impairment that significantly limits one or more major life activity, [or if an individual] has a record of such an impairment or is regarded as having such an impairment" (29 U.S.C. § 794).

Under this regulation, the following are examples of a physical or mental impairment to help the reader understand the vast range of disabilities this law covers: (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as a mental retardation, organic brain syndrome; or emotional or mental illness, and specific learning disabilities (42 U.S.C. § 12102). Should a student be found to have any of these disabilities, under this law, the school is required to provide *reasonable accommodations* to help students with disabilities perform effectively (34 C.F.R. § 104). The onus on the institution starts when the institution learns of the disability, and under Section 504 regulation 34 C.F.R. § 104.42 a student does not have to disclose their disability (Admissions and Recruitment, 1973). Schools may not refuse to allow students to participate in activities without making any reasonable attempt to accommodate them (Admissions and Recruitment, 1973). These accommodations can be modifications in policies, practices, or procedures unless the school can demonstrate that making such modification in its policies, practices, or procedures, including academic requirements would *fundamentally alter* the nature of the goods, services, facilities, privileges, advantages, or accommodations involved (42 U.S.C. § 12201(f)). Additionally, if the accommodation poses an *undue burden* on the institution, it is not considered reasonable (29 U.S.C. §794). To say this another way, institutions are solely required to make "reasonable accommodations," a concept that is not defined in the statute,

and are only required to make such accommodations when their programs are not "fundamentally altered" or the accommodation does not improve "undue burdens" to the institution. Thus, the Rehab Act itself uses broad language -in practice- creates loopholes for federally funded institutions to simply refuse to accommodate disable students. Thus, to assist with the shortcomings of the Rehabilitation Act those in the disability movement mobilized to create a law that would protect people with disabilities in public spaces not just in federally funded institutions thus the Americans with Disabilities Act (ADA) was created. Unfortunately, even the ADA failed to remove language that still used the caveat "as long as."

Americans with Disabilities Act (ADA)

In 1990 Congress passed the Americans with Disabilities Act (ADA) since more needed to be done to prevent discrimination in public spaces, not just federally funded areas as initially covered by the Rehabilitation Act. The ADA adopted the language found in the Rehabilitation Act of 1973 (ADA, 1990). The ADA has five titles, but we will only discuss Title II and III since they are both tied to funding that compel institutions to follow the letter of the law. The ADA was a significant piece of legislation because it now bans disability-based discrimination in jobs, schools, transportation, and public and private places that are open to the general public. It was later amended in 2008 providing significant changes overturning two previous supreme court cases *Sutton v. United Air Lines, Inc.* and *Toyota Motor Manufacturing, Kentucky, Inc. v.* Williams (Sutton v. United Airlines, Inc., 527 U.S. 471, 1999; Toyota Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184, 2002).

The ADA defined *disability* as "a physical or mental impairment that substantially limits one or more major life activities" (42 U.S.C. § 12102(2)(A)) or as "being regarded as having such an impairment" (42 U.S.C. § 12102(2)(C)). In Sutton, identical twins with myopia brought a lawsuit against United Airlines under the ADA of 1990 when the airline did not hire them as commercial pilots because their uncorrected vision did not meet the minimum requirements to have visual acuity of 20/100 or better (Sutton v. United Airlines, Inc., 527 U.S. 471, 1999; 42 U.S.C. § 12102(2)(A)). The court held the twins were not *disabled* pursuant to the ADA because they could correct their eyesight with eyeglasses or contact lenses, and they were not *regarded* as disabled because arguing that the airline alleged they were unable to satisfy the requirements of a job was not enough to qualify as being regarded as someone with a disability (Sutton v. United Air Lines, Inc., 527 U.S. 471, 1999; 42 U.S.C. § 12102(2)(A)). In the end, Sutton held that people who could mitigate their impairments (such as wearing eyeglasses to correct poor vision) were not "disabled." Under this line of reasoning an individual with diabetes taking insulin to mitigate the disability was no longer considered disabled which was unreasonable because whether the individual took medication or not, the condition was still present. The 2008 Amendment to the ADA, now known as the ADA Amendments Act (ADAAA), rightfully overturned this case; thus, those with impairments who were mitigating the disability through any means were still considered disabled under the law (ADA Amendments Act, 2008).

In the *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams* case, Ella Williams was terminated given her poor attendance record as she was suffering from carpal tunnel syndrome as a result of performing her assembly line duties for Toyota (Toyota Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184, 2002). She filed suit under the

ADA alleging she was not given reasonable accommodations for her carpal tunnel. Toyota then filed a motion for summary judgment declaring there was no genuine issue to be tried since her carpal tunnel syndrome was not considered a disability under the ADA because it did not substantially limit any of William's major life activities as she continued to perform manual tasks. The Sixth Circuit Court of Appeals ruled in favor of Williams finding that the carpal tunnel syndrome was considered a disability because it was substantially limiting her ability to perform her work. The Supreme Court, in the end, determined that the Court of Appeals did not use the proper standard in determining what is a disability under the ADA and thus the Supreme Court said the Court of Appeals was wrong in only examining whether Williams could perform her work limiting the class of manual tasks, instead of determining whether her daily life activities outside of work were impacted, those tasks that are central to people's lives. The court went on to say that under the ADA a disability had to be permanent or long-term (Toyota Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184, 2002).

As such the Toyota case held the standard for determining whom the ADA covered, leaving people with mental or physical disabilities that "substantially limited a major life activity" mainly covered under Section 504. As a result, disabilities such as cancer, diabetes, HIV/AIDS, intellectual disabilities, amputations, epilepsy and multiple sclerosis were not readily protected. After the 2008 ADA amendment, the condition no longer had to meet such a demanding standard that required the disability to be permanent or long-term, effectively overturning *Toyota v. Williams* (ADA Amendments Act, 2008). The 2008 Amendment had a significant impact in covering more people with disabilities more easily giving people with disabilities more legal recourse and coverage moving disability rights law one step forward. Under this amendment it is easier to demonstrate that an impairment is a disability. The amendment now covered those who mitigated their disability with medication or any other means, and disabilities no longer had to be permanent or long-term to be covered under the ADA.

Title II and Title III of the ADA

Title II of the ADA applies to state-funded schools such as universities, community colleges, and vocational schools. It targets any public entity within local or state governments. Title II Section A covers all programs services and activities. Section B contains requirements for public transportation systems. Additionally, Title III of the ADA covers private colleges and vocational schools. It targets any "public accommodation," which include private entities that own, lease, lease to, or operate facilities such as restaurants, stores, hotels, theaters, private schools, doctor's offices, daycare centers, and recreation facilities including sports stadiums and fitness clubs (28 C.F.R. § 36). Such entities must provide architectural accessibility with reasonable modifications to policies practices and procedures. In buildings such as warehouses and factories, barriers must be removed without much difficulty or expense. Title II has general prohibitions against discrimination where a public postsecondary educational institution may not deny the equal opportunity to participate in its programs to any qualified individual with a disability. It also cannot impose eligibility criteria that may screen out or tend to screen out an individual with a disability or class of individuals with disabilities from full and equal enjoyment of any service program or activity offered by the institution (28 C.F.R. § 35.130 (b)(8)). Any such violations will forgo federal funding.

Regardless, if a school receives federal dollars whether it is private or public, it is also covered by the regulations of Section 504 of the Rehabilitation Act of 1973 requiring schools to make their programs accessible to qualified students with disabilities. Therefore, a university is to provide *reasonable accommodations* which include adjustments and auxiliary aids and services necessary to afford the student with a disability an equal opportunity to participate in the university's programs. However, as previously mentioned these provisions are not to result in the *fundamental alteration* of the program or impose an *undue burden* on the institution (Colker & Grossman, 2013; OCR, 2018). Equal access for disabled law students only entails providing *reasonable accommodations*, as long as the student meets the academic standards required for admission into law school (Colker & Grossman, 2013). Not providing *reasonable accommodations* would mean the student does not have equal access to the offerings of the law school.

In addition, under Title II of the ADA, students are entitled to equal communication, making auxiliary aids a requirement. Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature (34 C.F.R. § 104.44). Failure to provide these aids violates the ADA and is considered a discriminatory act under Section 504 (Colker & Grossman, 2013; OCR, 2018). Public law schools have to comply and ensure non-discrimination on the basis of disability in programs or activities because they are receiving federal funding (34 C.F.R. § 104). To understand and grasp the vast difference in institutional protections for students with disabilities in K through 12 schooling versus post-secondary education the Individuals with Disabilities Education Act (IDEA) that provides such protection has to be defined.

Individuals with Disabilities Education Act (IDEA)

In 1975, Congress passed the Education for all Handicapped Children Act (EHA) which is now known as the Individuals with Disabilities Education Act (IDEA). IDEA ramps up the protections of students with disabilities in schooling and has periodically been amended through the years (Individuals with Disabilities Education Act (IDEA), 1990). For IDEA to apply in a K through 12 school, "[a] child's educational performance must be adversely affected due to the child's disability" (Individuals with Disabilities Education Act (IDEA), 1990). Under IDEA there are 13 disabilities listed which include: Autism, Deaf-Blindness, Deafness, Emotional Disturbance, Hearing Impairment, Intellectual Disability, Multiple Disabilities, Orthopedic Impairment, Other Health Impairments (Specific Learning Disabilities), Speech or Language Impairment, Traumatic Brain Injury, Visual Impairment which may include blindness (34 C.F.R. § 300.8; Child with a Disability, 2017). Each state must provide a free public education to "any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade and is advancing from grade to grade" (34 C.F.R. § 300.101 (c)(1).

IDEA legally obligates K through 12 schools to provide an Individualized Education Plan (IEP) put in place by school officials to assist students with the necessary

accommodations. Students are tested between the age of three through twenty-one or until they graduate high school. While in high school, a student with a disability did not need to educate the school staff because it was the responsibility of the institution to guide the IEPs, however, it is not the case in college or professional school as most post-secondary educational institutions may not be as informed or equipped. This means that law schools, or law professors may not be as aware of the needs of the student or the extent of each disability. Additionally, the student does not have to disclose their disability to the professor, and thus professors have to heavily rely on the campus resources that house disability services. IEPs keep schools accountable to accommodate and maximize the student's potential. Unfortunately, such a safeguard is not available to any schooling post-high school, which is commonly known as post-secondary education. Since IDEA does not apply to post-secondary education, Section 504 and the ADA apply instead. Under the Family Educational Rights and Privacy Act (FERPA) the parent no longer has a right to the student's records without the student's consent as they once had when the student was in high school Family Educational Rights and Privacy Act (FERPA), 2018), leaving the student to advocate for themselves often for the first time. The student is then responsible for disclosing to the appropriate entities at the university to begin receiving equal access to the institution through reasonable accommodations. The disclosure in-itself can be traumatic if the institution is not informed enough to assist the student with the necessary tools to succeed in an academic environment. Comorbidity, where a student has multiple diagnosis, is not uncommon for people with disabilities. Often, the diagnosis of a disability or the social treatment as a result of the disclosure of the disability can bring about depression and/or anxiety (Bonham & Uhlenhuth, 2014).

Title IX

Title IX of the education amendments of 1972 is a federal civil rights law not often considered in relation to disability even though it can apply. This law protects students from discrimination at schools on the basis of sex, which includes consideration such as pregnancy and parental status (20 U.S.C. § 1681). Trauma that arises from Title IX discrimination at times renders the individual disabled (Parker, 2016). It is not uncommon for women who encounter sexual violence to undergo a depression or Post Traumatic Stress Disorder (PTSD). Discrimination itself can at times result in a psychiatric disability. Similarly, being discriminated against due to pregnancy can trigger the Title IX protections as well as disability law especially if the discrimination or the symptoms of pregnancy themselves are interfering with "one or more major life activity" (29 U.S.C. 794; 42 U.S.C. § 12201). While the act of being pregnant alone is not considered to be a disability, what results from being pregnant may qualify pregnant individuals for a temporary disability. Just because the law has not acknowledged the range of experiences of pregnancies some more difficult than others, does not mean these are not legitimate cases covered under the disability law because it is not uncommon for a pregnant individual to experience nausea and discomfort which may interfere with the student's ability to sit for long hours in a law school classroom. The student may have to use the restroom more frequently and have the need to have food handy because some women experience hypoglycemia during pregnancy. Most women will feel more tired than usual during their pregnancy. Thus, the fatigue, constant need for food and use of

restroom, not able to stand and needing to sit or walk, at times not able to concentrate, all can interfere with one or more major life activity of any pregnant woman (Davis, 1996). More specifically the law lists activities that would interfere with "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working or standing (42 U.S.C. 12102). The school is required to allow the student to continue participating in classes and extra-curricular activities while pregnant. Encouraging an individual to drop-out or withdraw from school instead of accommodating the student who is pregnant is considered pregnancy discrimination under Title IX and Title 34 of Education that encapsulates Section 504 in post-secondary education (34 C.F.R. § 104.43(c); 29 U.S.C. § 794). The school is required to provide "reasonable adjustments" to continue participating in the classes or extracurricular activities while pregnant (34 C.F.R. § 104.43(c); 29 U.S.C. § 794). To receive the accommodations a doctor's note is not necessary unless required by the school. The school must accommodate disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition (34C.F.R. § 106.21(c)(3)).

Therefore, the key legal concepts most applicable to the study is knowing that a public law school receiving federally funds cannot discriminate against a law student with a disability by refusing to provide *reasonable accommodations* in a timely manner or making assumptions as to their ability as a student solely based on their disability defined in Section 504 and the ADA, because this would be considered discrimination. Should the law school actively discourage a student to withdraw because the school does not know how to assist that particular disability is considered illegal. The accommodations are to be provided in a timely manner, otherwise substantial delay is considered denying the student their rights whether the act be intentional or unintentional is irrelevant. Institutions receiving these federal funds should be equipped to assist law students with disabilities unless the law school can demonstrate that providing these *reasonable accommodations* would *fundamentally alter* the nature of the goods, services, facilities, privileges, advantages, or accommodations involved or pose an *undue burden* on the law school.

PART II: LITERATURE REVIEW

CHAPTER 4

CAPITALISM, DISABILITY, and DEMOCRACY

"We can have democracy in this country, or we can have great wealth concentrated in the hands of a few, but we can't have both." – Justice Louis D. Brandeis

The legal concept of *undue burden* is invoked by universities that allege they would be financially burdened in accommodating a student, a legal mechanism embraced and supported by the courts through a capitalist ideology. Thus, this chapter will explain capitalism through Marx and the ideologies perpetuating this system. One concept perpetuating an ableist ideology is that of not being a burden in school by being a "good student" which entails behaving like students that are able-bodied. Not performing as an able-bodied student jeopardizes the students placement in school and later in the job market in capitalist America in accordance with the *correspondence* model proposed by the economic scholars Samuel Bowles and Herbert Gintis. In the end, effectiveness and production become a central priority because it is what can gain an individual the most capital. Such an ideology influences the behavior that either includes or excludes people with disabilities who are associated with a lack of profits thus to understand such reasoning; Marx is incorporated in this literature review.

Marx

Karl Marx's relations of production concept provides an economic explanation on what feeds into the ideology that consists of valuing a human being according to their level of production perpetuating social inequalities. Orthodox Marxism embraces the idea that the base also known as the substructure, which consists of the division of labor or employer-employee relationships influences the superstructure such as culture, political power, or institutions such as schools. The capitalist (bourgeoisie), and the worker who is the non-owner of production (proletariat) define relations of production (Capaldi & Lloyd, 2011; Marx, 2008; Marx & Engels, 1970). Some individuals can own parts of the production process similar to owning private property which is different from a system where the government owns the means of production. The "have-nots" are those who do not own a private business/factory and must work for someone else for a wage (Capaldi & Lloyd, 2011; Marx, 2008; Marx & Engels, 1970). No longer tied to the land with the advent of capitalism, moving society away from feudalism, people were forced to find work that would pay a wage – or starve; and as production became industrialized a body's ability to function like machines became all the more valuable. The economic system of capitalism assumes that to obtain the

highest level of productivity to stay competitive in a free market place; the owner must extract as much labor from the worker at the lowest cost. Regardless of the surplus or accumulation produced, the owner pays a stagnant wage to the worker (Capaldi & Lloyd, 2011; Marx, 2008; Marx & Engels, 1970). Therefore, the owner reaps maximum benefits by profiting off the surplus (Capaldi & Lloyd, 2011; Marx, 2008; Marx & Engels, 1970).

Today an able-body is preferred in a capitalist economy to maximize production without the need to spend part of the profits in accommodating to a "dis-abled" worker. Even though "employers say 49.4 % of the accommodations have no direct cost […] most (74.1%) cost less than $500 in the first year of employment (Schartz, Hendricks and Blanck, 2006). People with disabilities can also produce, but even if they could not deliver in the traditional sense, they provide in intrinsic value encouraging society to have an eye towards universal design and third-party benefits, perhaps not easily quantified into money (Emens, 2008). Universal design accommodations offered to a disabled student or employee also benefits others. For example, as previously mentioned, although ramps and curve cuts were primarily for the benefit of wheelchair users, such a social accommodation universally assisted mothers with strollers and bicyclist (Emens, 2008).

Similarly, by accommodating to a disabled student or employee, a third-party can benefit from the increased efficiency, and in turn, on the accommodation institutions can recover any initial investment. If a person has severe asthma and requires an air-purifier, by accommodating to this individual, it improves the air quality for all. A more positive view of people with disabilities would lead to third-party benefits (Emens, 2008). Instead, even if a worker increases work morale, a human's value is still primarily limited in material form feeding into the market, continuing to buy into the stigma regardless of whether hiring a worker with a disability increased or reduce profits (Emens, 2008). For the intrinsic value to be quantified, our society would have to place greater value in the intrinsic sentiment. A person with a disability can already have the same values and ideologies as any hardworking student and worker and also bring a world view to maximize the effectiveness of any given environment improving the morale of any classroom or workspace (Emens, 2008), an added value often ignored. People with disabilities who embrace their identity and unique gifts to the world can add to the classroom conversation and office morale. Achieving this state of mind despite being in a society that stigmatizes and shames people with disabilities is not an easy undertaking. Society is the one who disables, ignoring real structural barriers and social oppression. The success stories of Martin Pistorius and Christy Brown, discussed in Chapter 2, exemplify this because they did not give up despite the insurmountable stigma and structural oppression they faced. Perhaps we can change perspective and start prioritizing work morale and third-party benefits which increases effectiveness because if more people with disabilities are hired the conversation begins to shift and people with disabilities perhaps will one day be in demand. These added benefits people with disabilities provide are used to justify their social participation envisioning their contributions under the current capitalist structure until we live in a society where human life is not valued according to what an individual may or may not be able to produce.

Cultural Marxists such as Peter McLaren and Paulo Freire believe the superstructure such as schools can influence the economic base through critical pedagogy in the classroom bringing the social consciousness necessary to have a politically engaged populous to change the current treatment of the marginalized. The schools, and in particular, the teacher-student

relationship found in the classroom, can impact labor relations when raising consciousness. The critical pedagogy makes sense of the student's lived experiences by questioning and challenging their social positioning and not only seeing the student as an empty vessel. Critical pedagogy is a form of resistance to oppression with the potential for a social transformation (McLaren, 2017). Paulo Freire called this consciousness-raising, or "conscientização" (Freire & Macedo, 2018). McLaren cautions against radical posturing, teachers or leaders doing the work in the interest of winning awards rather than real social change (Lather, 1998) and seems to understand that it is not enough to feel empowered because said consciousness needs to compel action or a movement (McLaren, 2017). Both Orthodox Marxists and Cultural Marxists believe the economy to be central to class struggle and the main issue, above issues of race, gender, sex, or disability.

In contrast, Post-Structuralists such as Elizabeth Ellsworth and Patti Lather critique this critical pedagogy as being too utopian, risking the perpetuation of domination by not taking into account oppressive dynamics that privileges one knowledge over another embedded in the classroom such as issues of race, gender, sex and ableism mostly dependent on the person in the position of authority (Ellsworth, 1989; Lather, 1998). Otherwise, the posturing is only self-serving at the expense of the subjugated student. Ellsworth and Lather seem to be taking Audre Lord's perspective that using the master's tools will never dismantle the master's house and the rationalism found in critical pedagogy only perpetuates their oppression and exclusion because the consciousness is preoccupied with the master's concerns (Ellsworth, 1989; Lather, 1998; Lorde & Clarke, 2007). Yes, utterly the consciousness is preoccupied with the master's matters under Lorde's rationale, but at least under a resistance approach, the subjugated stand a chance at liberation in their mind even if it is a facade, instead of slaving away perpetually cleaning the master's house because it has become common sense to stay oppressed.

Furthermore, even if they had no chance at structural liberation, there is agency, power, dignity and to some extent, internal liberation obtained in the *moment of resistance* when picking up the master's tools. The alternative is to stay subjugated to the broader ideological forces perpetuating the relations that oppress, garnering consent as the oppression itself becomes common sense, which makes it all the more challenging to fight against to then change it (Gramsci, 1971). While dimensions of a student such as race, gender and sexuality do need to be considered, those with disabilities face an immediate resistance as a student primarily in the accommodations phase because it is tied to the institutions economic base. Students with disabilities obtaining post-secondary education learning the master's tools do not guarantee them employment, but it does give the student that *moment of resistance*, refusing to make the oppression common sense.

Ideology

By expanding on Marx, Louis Althusser shows how ideology perpetuates these relations of production that keep students in this oppressive state and thus simultaneously perpetuate ableism. According to Althusser, the materiality of the processes of production and circulation which is the division of labor, relations of production are first reproduced, emphasizing that the ideological relations are immediately present in these same processes maintained by the physical and ideological structures that maintain capitalism (Althusser,

2006). Althusser defined ideology through interpellation, creating subjects that in turn inform how an individual interacts with all social settings, other individuals, and institutions (Althusser, 2006). Accordingly, institutions interpellate relations of production, Althusser explains that all societies have Repressive State Apparatuses (RSA) and Ideological State Apparatuses (ISA) both used to spread the dominant ideology, in this case, capitalism (Althusser, 2006). The RSA represents institutions such as government, courts, and police, owned by the ruling class, which represses the working class either by violent or non-violent means (Althusser, 2006). The ISA includes schools, churches, and family. The RSA and ISA are therefore the apparatuses that maintain the ruling class by upholding capitalism. When the RSA fails, the RSA can use force and legal tools to enact the ISA. For instance, ISA's produce the capitalist ideology deeply internalized in the worker, which keeps the worker returning to work every day, like the social belief that to be a member of society means to have a job. Criminalizing certain kinds of work or means of procuring resources is the RSA's way to ensure citizens attend a job deemed "legitimate" in the capitalist economy assisted by schooling.

Sam Bowles and Herb Gintis (1976) in *Schooling in Capitalist America* apply Marx's economic principle to their *correspondence theory* where they state that schools feed the workforce according to their educational level, purposely sorting workers into factory hierarchies and conditioning the necessary behavior in the classroom to become good followers rendering them good workers. Schools become the training ground that teaches students how to be good abiding workers as they learn how to listen to people in positions of authority like school teachers (Bowles & Gintis, 2011). Therefore, capitalist ideologies maintain themselves over time through the common modes of social interactions and communication such as school gatherings. Ableism is embedded simultaneously in our educational systems as are capitalist views. Schools marginalize those who are believed to reduce the profit margin perpetuating the idea that they are unworthy of schooling which informs how society is to interact with people with disabilities, favoring able-bodied people (Goodley, 2014). Even if opportunities for students with disabilities improve in post-secondary education affording the higher pay, the stigma against the disabled at times excludes and marginalizes them from employment opportunities. Therefore, it becomes as equally if not more essential to raise the consciousness of our populous to address the marginalization of students with disabilities in schooling and the employment sector to achieve their full integration.

The government, courts, and police dictate whom they will deem deserving of non-marginalization depending on whom they choose to bestow legal protection of their civil liberties constructing the social contract to follow (Mills, 2014; Schneider & Ingram, 1997). This legal protection allows for full citizenship, entitling the American dream to those deemed deserving. For instance, in Guckenberger, the court ruled that having the students with disabilities provide an evaluation every three years violated the ADA. The re-assessment denied reasonable access to accommodations while inflicting emotional distress on the disabled students. In this case, the court decided in favor of the full integration of disabled students with non-apparent disabilities by commanding the university provide the accommodations, expanding their legal protection with this precedent, increasing the likelihood of their graduation (Mamiseishvili & Koch, 2011; Pingry O'Neill, Markward, & Frensh, 2012; Sleeter, 2010). The court acknowledged the bias of the university by enforcing

their current understanding and interpretation of the law as a Repressive State Apparatus (court) and implementing it through the Ideological State Apparatus (schools) (Althusser, 2006; Colker & Grossman, 2013; Guckenberger v. Boston University, 974 F. Supp. 106, 1997).

On the other hand, as in the case of Argenyi and Wynne later discussed at length in Chapter 6, other students with apparent and non-apparent disabilities have been denied such protection as the RSA (court) and ISA (school) ultimately dictate the inclusion of students with disabilities in post-secondary education with their decisions and administrative practices. Wynne's case, a medical student with a non-apparent disability (dyslexia), and Argenyi, a medical student who was deaf, both met with either resistance from the school or the courts to be fully accepted and integrated into professional school. Unfortunately, learning disabilities such as dyslexia and many other non-apparent disabilities, are still heavily stigmatized and misunderstood because these disabilities are often not readily talked about nor seen. Similarly, apparent disabilities are also stigmatized and at times evoking anxiety in others because of the lack of education around disabilities which unfortunately seeps into the consciousness of decision makers (Hahn, 1988). Both Argenyi and Wynne are the exception because they strongly advocated for themselves and managed to reach such heights in academia, yet even then they still had to deal with the ableist ideology amongst the most highly educated in professional schools. In both cases, it did not matter that these students were good students who managed to enter medical school because the RSA (court) and the ISA (school) still determined whether they could participate in the profession through providing or denying accommodations.

Good Student

Leonardo and Broderick write about the good student who can also translate into the good worker if we follow Bowles and Gintis reasoning, mainly focusing on the student's behavior (Broderick & Leonardo, 2016). There is some truth to the exclusion of those who do not act or perform desirably according to an able-body standard whether that be a student or a worker. However, even if a student behaved desirably but had a visible deformity not limited by bodily functions our society would also find a way to exclude what it deems as unwanted. One could be excluded and marginalized from an apparent or non-apparent disability as well as any other difference not commonly accepted as the norm. The social beliefs determine the measuring stick that defines who gets to be the insider or the outsider, the smart one or the normal one.

Disability Studies and Critical Race Theory in Education (DisCrit)

One cannot strive for liberation while oppressing another (Freire and Macedo, 2018). Hence, to avoid such trappings, any analysis conducted on the study will use the inclusive and holistic disability theory and critical race theory in education known as DisCrit. Disability is often associated with special education and students of color are over-represented in this category (Gutiérrez & Stone, 1997; McDermott, Goldman, & Varenne, 2006; Oaks, 1995; Rubin & Noguera, 2004), a category that is closely associated with less intelligence or smartness, while White students are at higher rates being diagnosed with ADD or ADHD

(Froehlich et al., 2007; Hatt, 2009; Morgan, Staff, Hillemeier, Farkas, & Maczuga, 2013) which has been stereotyped with having higher levels of intelligence and/or being too smart (Charney & Legg, 2012). There has also been a an increase of learning disabilities in higher education, "the majority of students [diagnosed] are White and from families whose annual income exceeds 100,000 (Reid & Knight, 2006), signaling that being White and possessing economic means allows a student with [learning disabilities] to gain access to higher education" (Annamma, 2016, p. 15). In reality, neither learning disabilities or ADD/ADHD have anything to do with intelligence, rather these disabilities have to do with how a student is processing information (Charney & Legg, 2012).

Furthermore, since racism and ableism are interconnected in education perpetuating an idea of what is considered normal and/or acceptable this theory was most appropriate to use when exploring smartness as property prevalent in such a competitive arena such as law school. Fear of being seen as gaming the system impacts a student's ability to access their accommodations. Given the aforementioned, this theory helps to understand how then are students of color who are diagnosed with any non-apparent disability, who are not in special education, and who are coming from poverty navigate professional settings. It stands to reason, that racism and ableism would "otherize" these students at a greater extent since the student cannot disclose any non-apparent disability. These students are not able to readily disclose to their fellow classmates with disabilities in fear of not being fully accepted as having a real disability, as a result being "otherized" by the disability community. It would also be difficult to disclose the disability to the larger community for fear of being associated with either ADD/ADHD, or learning disabilities because these diagnosis have been associated with gaming the system even though the student may suffer the consequences of the disability. The only difference being that these students may not have the same financial resources to assist in advocating for themselves in these elite spaces.

This theory is revolutionary because it takes into account the different layers of an identity unescapable from social constructions that become embedded in the psyche. It simultaneously focuses on ideas and solutions developed with the disability community to create the larger social change necessary to stop the "otherizing" that results in multiple forms and spaces of oppression. Often theories are developed and discussed amongst scholars without a tangible connection to the community enough to impact change. This results in criticism of such academic spaces and conversations kept in the "ivory tower." Scholars then develop a reputation for building their careers on the struggles of the students being studied neglecting to assist in helping them either to escape or change their social plight. DisCrit takes this into account by including a tenant that addresses this very issue. The following are the seven tenents found in DisCrit: 1) race and ableism shape ideas of normalcy, 2) multidimensional notions of identity such as race, class, and gender impact disability, 3) the social construction of race and ability, 4) nothing about us without us, which is central in the disability community urging policymakers and scholars not to write about students with disabilities but instead include them in the conversation when defining the needs and experiences of the disability community, 5) describing how law, ideology, and history have been used to deny people their rights using race and dis/ability to "other," 6) Whiteness and ability are property placing those who are not white or nor able-bodied at a disadvantage in our society, and 7) DisCrit calls for activism and resistance linking academic work to the community (Connor, Ferri, & Annamma, 2015).

The Seven (DisCrit) Tenents Explained

The first tenent acknowledges that racism and ableism shape ideas of normalcy and "DisCrit recognizes that normative cultural standards such as Whiteness and ability lead to viewing differences amongst [students] as deficits (Annamma, 2016, p. 20). The second tenent embraces the idea that stigma may vary and tied to other identity components which creates complexity within multiple stigmatized identities, such as but certainly not limited to, race, class, gender, language, culture, sexuality, immigration status (Annamma, 2016). The third tenent takes a clear stance that race and ability are not biological but social constructs; constructs that are significant to peoples' lives because such constructs do have a severe material impact not just in the past, and present generations but generations to come. It is also beyond disrespectful to speak on behalf of others taking a paternalist, and at times a savior approach. When one does not include the voices of the community or ask them for solutions when they know themselves best because they are experts on their experiences and have the right to exercise their voice instead of having scholars and researchers do it for them. The fourth tenent address this very issue and embraces "nothing about us, without us." The fifth tenent rejects the "science of eugenics" indicating how law, ideology, and history have been known to deny people their rights using race and disability to "other." The six tenent acknowledges that Whiteness and ability identities do have economic benefits (Harris, 1993) recognizing that women and people of color have been known to be excluded by labeling them as disabled (Annamma, 2016; Kudlick, 2003). The last and seventh tenent does not want to keep the conversations in an ivory tower but instead link the academic work reducing any inadvertent exploitation of the communities struggles or stories. The as research is being conducted positive change is being executed in these communities not ignoring the reality of their needs. Keeping all of these tenents in mind, when thinking about the disability community it is best to have an anti-subordination approach above all rather than a strict integration approach (Colker, 2006) acknowledging an individual holistically instead of providing a one size fits all approach.

Democracy (Iris Young)

We turn to the democratic engagement theories of Iris Young (2002) to bring equity to the political processes that regulate these relations of production and larger institutions enough to influence ideology and the political hegemony maintaining these relations. She emphasizes that when not all voices are heard the political systems perpetuate systemic oppression on a marginalized populous, in this case, the marginalized are the students with disabilities in post-secondary education. As previously noted by Bagenstos (2009), our current disability laws need to change to achieve their desired effect of equality. Until the law changes, we have to operate under the current structure and know how ableism is perpetuated by capitalism to know how to change it.

Althusser expanded on Marx's ideas by showing how ideology perpetuates the relations of production. Those who tend to embrace a strictly Marxist approach embrace what Althusser emphasized as determinism, which in the last instance is the economic base (Althusser, 2006). However, this becomes too formulaic and at times too simplistic rendering

social change hopeless and at the mercy of the economy elevating the economy's importance over other social factors such as the racism that tracks many of these workers into lower educational levels relegating them to lower paying jobs reducing their earning income potential in their life span (Oakes, 2005; Young, 2011). Issues of race, gender, and disability all influence economic relationships. Viewing our systems through an economic lens alone also ignores the stigma previously mentioned, the stigma that results in separate systems of oppression that discriminate, track, and sort people within the capitalist system (Young, 2011). Protecting the rights of people regardless of race, gender, and disability protects our interest in the democratic mechanism in turn impacting capitalism.

In Young's (2011), *Justice and the Politics of Difference*, she defines politics as the state which includes all aspects of the institutional organization, habits, and public action subject to collective evaluation and decision making. In other words, to partake in the democratic system people with disabilities must participate in politics to some degree (Young, 2011). Thus, inclusive politics includes government and state actions, and institutions (Young, 2011). such as school systems. Group differences will inevitably exist as some are more privileged than others. To ignore these differences would be oppressive (Young, 2011). Institutions that are racist, sexist, homophobic, ageist, and ableist disadvantage these marginalized individuals in developing their capabilities disenfranchising them weakening democracy allowing for the few to have control and power over the masses (Young, 2011). Thus, Young advocates for consciousness in the political process by increasing the active participation of the marginalized through educating the communities (Young, 2011). People should not be excluded from democratic participation because of an ascribed difference (Young, 2011).

Young addresses how to strengthen democracy by first envisioning inclusive democracy as a process that incorporates all marginalized voices, highlighting the importance of addressing the five faces of oppression to safeguard against them (Young, 2011). These five faces are violence, exploitation, marginalization, powerlessness, and cultural imperialism (Young, 2011). As it relates to schooling and the disabled; marginalization and cultural imperialism become central. Marginalization is perhaps the most harmful of all the five faces of oppression because it excludes an entire group of people from social life, leading to material deprivation and extermination (Young, 2011). According to Young, "[m]arginals are people the system of labor cannot or will not use" (Young, 2011). The current system of labor undervalues and as such does not use people with disabilities at the same rates as able workers. Young explicitly points out that "[o]ld people are oppressed by marginalization and cultural imperialism, and this is also true of physically and mentally disabled people" (Young, 2011). Old people and people with disabilities become dependent on the welfare state which eliminates their agency rendering them invisible. Therefore, "while marginalization definitely entails serious issues of distributive justice, it also involves the deprivation of cultural, practical, and institutionalized conditions for exercising capacities in a context of recognition and interaction" (Young, 2011). If there is no recognition, the individuals in the group become dispensable.

As such, people with disabilities are excluded in institutions of the state significantly oppressing their voice by tracking them into little or no schooling through the decisions made by administrators that would make it all the more difficult for them to enter and graduate higher education similar to the exclusion experienced by those in slavery (Ibogle, 2014, 2015;

Oakes, 2005; Young, 2011). Those that do manage to enter post-secondary school are all the more convinced that obtaining this level of legitimacy would then provide them with employment. Unfortunately, students with disabilities who do receive schooling, should not have to settle for the lesser paying job limiting their economic participation (Livingstone, 2009) which ends up happening. Thus disabled students become economically disenfranchised as even those who do manage to obtain higher levels of education only make 63 cents on the dollar (Ibogle, 2014; Livingstone, 2009). Democratic participation, which includes full access to post-secondary education, protects the rights of the disabled, by initiating and improving democratic avenues to dismantle ableist ideologies that view the disabled as dispensable. Democracy is a viable avenue because a strong democracy can regulate the workforce and inequality in the schooling of marginalized groups. However, democracy can only regulate capitalism and its trappings not eliminating the exploitation of marginalized groups because true elimination can only occur when those who are marginalized are systemically in positions of power.

Furthermore, people with disabilities also experience cultural imperialism from an ableist perspective maintaining the status quo. Any group can be made invisible through cultural imperialism "when the dominant meanings of a society render that particular perspective of one's own group invisible at the same time as they stereotype one's group and mark it out as the Other" (Young, 2011). No other group has been "othered" and referenced to more often and in a negative light than those with disabilities. The quickest way to reduce an individual's humanity and importance in our society is by labeling them with derogatory terms used on people with disabilities some of which include words such as crazy, feeble-minded, insane, nuts, retarded, crippled, and handicapped (Dajani, 2001; Rose, Thornicroft, Pinfold, & Kassam, 2007; Sperstein, Pociask, & Collins, 2010).

Once an individual is labeled "disabled" through any derogatory term associated with a disability whether the person has a disability or not, they become stereotyped and suffer the social consequences. Legal protection is given under the Americans with Disabilities Act (ADA) under the term "regarded as" having a substantially limiting impairment whether or not the individual has a disability and was discriminated against with "stereotypic assumptions" (Bagenstos, 2000). The cultural imperialism is so powerful and prevalent, it can disenfranchise people even through the mere perception of being *othered* as a non-able body; therefore these laws are in place to protect not only people with diagnosed disabilities but also perceived disabilities (Bagenstos, 2000; Mish, 1997; Shapiro, 2011). While laws are in place to protect against such discrimination, any legal apparatus that invokes a remedy for the exclusion of people with disabilities should have an anti-subordination approach above all rather than a strict integration approach (Colker, 2006) that can acknowledge an individual holistically.

Anti-Subordination

While keeping the DisCrit tenets in mind, one size does not fit all given the multi-dimensions of an individual which an anti-subordination outlook embraces. What worked for the Black community may not work for people with disabilities, and similarly what works for an apparent disability may not work for a non-apparent disability. In the case of disabilities, integration is not necessarily inherently beneficial in certain situations; since disabilities come

in all shapes and sizes as well as degrees. An individual's need should be adjusted accordingly with the end goal of educating the student while simultaneously looking out for their well-being. As students with disabilities add to the conversation with their presence through the least restrictive alternatives, one should consider what is best. It is important to not conflate separate and unequal in the case of disabilities which require some people to have a certain apparatus to stay alive (Colker, 2006). People with disabilities have a right to live (TenBroek, 1966), even those with dementia were granted habeas corpus as in the case of Lake v. Cameron (267 F. Supp. 155, D.D.C. 1967). The courts are capable of finding value in the disabled even in the most severe cases, yet public sentiment can influence the beliefs of those in the position of power to make such decisions. While integration was appropriate for Blacks to eliminate segregation, in the case of disability the student's needs have to be considered without putting anyone's life at risk. Ruth Colker points out the difference between integration and the provision of a good education (Colker, 2006). Integration may not provide a good education because the student may be struggling with the format of the program or the classroom; in some cases, jeopardizing their health. The ADA does not require integration, but the courts have associated integration with nondiscrimination. Colker prefers separate but equal services to provide more resources to those in need. She advocates to focus on the quality of the education not the integration itself and uses the Special Olympics as an example (Colker, 2006). Not doing so becomes problematic, for instance, in K through 12 schooling, special education has been used as the dumping ground for the undesirables such as immigrants, people of color, or those with a disability clumping everyone together and not meeting the true needs of each individual populous (Colker, 2006). Unfortunately, some with mental disorders have been placed in prisons instead of hospitals. Some may benefit from deinstitutionalization, and some may not because depending on their disability they would die or end up in jail; thus we have to be careful not to paint with a broad stroke in wanting traditional forms of integration for people with disabilities, but instead take the anti-subordination approach (Colker, 2006).

These chapters have discussed structural and institutional barriers in accessing a full democracy for a student with disabilities in post-secondary education and the challenges of integration, yet there are also more obvious examples of exclusion from democracy in the form of voting. Currently, people with cognitive or emotional impairments are excluded from voting (Colker, 2006). Only ten states allow people to vote irrespective of mental disability, Vermont and Main being one of the first to exclude people with intellectual or developmental disabilities. In 1878, early cases of individuals with disability voting rights issues arose as a result of a contested election where the candidate lost by 16 votes and was contesting five (Colker, 2006). These politics created an incentive in subjectively labeling a person as disabled by accusing anyone of being an "idiot," influencing the vote. Furthermore, in 1973 under Title II of the ADA, the court found that you did not need braille ballots for the blind, but instead, the blind could have an individual assist them in the voting booth. Only one district court disagreed and required a secret ballot for the visually impaired honoring the sanctity of private voting. This district court understood that democratic participation is sacred and should be equally accessible to all, private voting ensures the anonymity to choose a candidate freely. Denying said privacy denies equal participation in a democratic system.

Policies and precedents have dictated who is deemed to be deserving of participation in democratic dealings based on what society is willing or unwilling to accommodate

(Schneider & Ingram, 1997). Viewing the accommodations of a disabled individual as a costly burden rather than an added benefit to our democracy devalues them through an ableist ideology that views them as dispensable and unworthy of investment. Investing in the accommodations is seen as not garnering as high a profit in the workforce and a waste of funds in democratic systems such as schooling and voting. Considering intrinsic value that increases efficiency and productivity in the work environment such as universal design and third-party benefits would see people with disabilities as a benefit rather than a burden in our democracy, schools and the workforce. One day students with disabilities in post-secondary education will no longer be oppressed and free from the marginalization, however, this will require raising critical consciousness that does not ignore a person's race, gender, sexuality, and disability by exercising inclusive democracy that embraces the voices of all and addressing the five faces of oppression as discussed by Iris Young in the following section. Nelson Mandela once said, "For to be free is not merely to cast off one's chains, but to live in a way that respects and enhances the freedom of others." The freedom of others benefits all because the human race is one and confined to Mother Earth. Until we as society DIS-ABLE the ideology that devalues and prevents students with disabilities to fully partake in the economy and equal democracy free of stigma, students with disabilities will not be free from social marginalization and will be continually viewed as dispensable.

According to Gramsci "ideas and opinions are not spontaneously 'born' in each individual brain: they have had a center of formation, or irradiation, of dissemination, of persuasion –a group of men, or a single individual even" shaping their current reality (Gramsci, 1971). Therefore, the prevailing beliefs any society has toward people with disabilities were formulated and maintained over time shaping our current reality. The ableist ideology is profoundly unconscious through generations of social conditioning pitying the disabled (Shapiro, 2011). As such, it will take time to undo these misconceived notions of disabled students and should begin with the very institutions that disseminate information, knowledge, and social conditioning to the masses, *schools* (Foucault, 1980).

This social movement can be mobilized by schools and by what Gramsci in *The Prison Notebooks* calls "organic intellectuals," these are individuals in each social group/class that understand the more substantial goings on and have the potential to galvanize their group (Gramsci, 1971). These organic intellectuals are not defined by their professions but by the influence they have on the class they belong to in directing their aspirations (Annamma, 2016). The cultural hegemony is what made the values of the bourgeoisie the common sense of all (Gramsci, 1971). To dismantle this belief through democratic participation of the marginalized, it must disrupt the commonly accepted hegemonic political control over the oppressed. However, this change needs to co-occur in the institutions like the government, courts, and police as well as schools, churches, and the family for the dominant ideology to shift and empower students with disabilities (Gramsci, 1971). Fully providing access to post-secondary education and increasing the likelihood of graduation for disabled students allows them to have access to the ISA to then enter the RSA to impact their social treatment and full democratic participation. Also, by changing the value system placed on what society deems to be valuable production and instead emphasizing the importance of democracy with an eye toward anti-subordination rather than strict integration the populous only helps itself. Any member of our society can find themselves disabled at some point in life and find themselves a member of this marginalized group if they are not already.

The recent events with Operation Varsity Blues made the following study all the more relevant. News of the FBI indictment occurred moths after the study was closed, yet the findings highlight the reasons why students with non-apparent disabilities fear disclosing their disability with anyone. Those who do share, do so out of dire necessity in need of the reasonable accommodations that will significantly assist their academic journey instead of continuing to bare through the hardship. In the next Chapter the study and the methodology used will be described.

PART III: THE STUDY

CHAPTER 5

THE STUDY AND METHODOLOGY

"Research is creating new knowledge" – unknown

The study was designed to address the overarching question; how does disability rights law map on to the lives of law students with non-apparent disabilities. Two intentions throughout the study were primary. First, proceed with caution given that the subject matter of disability may be sensitive for some. Secondly, have an open mind, while documenting observations throughout the research processes, to allow the research, not the researcher to lead towards the ultimate answer. This chapter first lays out the school policies and procedures, then the literature on the methods used to collect and analyze the data.

School Policies and Procedures

The law school receives services for their law students through the disability services located on the main campus. The university has its policies and procedures listed on their website. The following requirements are listed here for the reader to understand the extent to which each student has to advocate for their accommodations. Every student requesting accommodations has to submit an online application. They then have to schedule an intake appointment with a Disability Specialist and provide verification of the disability before this meeting. The school asks that the student produce the documents 48-hours before the initial meeting so that the specialist has time to review the documentation. The initial meeting is a discussion of the proper accommodations and services for the student. If the specialist does not receive the medical documentation 48-hours before their meeting, a follow-up meeting is scheduled. It is unclear whether the school provides accommodations in the interim through preliminary approval depending on the current need of the student. However, it is clear that once a student is approved for the services by a Disability Specialist, the student is to actively request accommodation letters and auxiliary services online at the beginning of each semester in which accommodation letters and auxiliary services are needed. These services are not automatically in place once the student submits medical verification of the disability; therefore, students have to continually advocate for themselves every semester throughout their years in law school.

The more documentation provided the higher likelihood of being approved for services. The documentation preferred is as follows depending on the type of disability. A person with the Autism Spectrum Disorder (ASD) is to provide a Certification of Psychological Disability completed by either a psychiatrist or mental health professional. The student may also submit a psychoeducational evaluation which includes the ASD diagnosis.

Those who are visually impaired or are legally blind are to provide a recent eye examination results from an ophthalmologist or optometrist verifying the disability. Applicants utilizing conductive lenses must have a corrected vision of not less than 20/200 to be eligible for services. Not meeting this requirement does not prevent the student from receiving services for a present visual impairment. Students who are deaf or hard of hearing are to present an audiogram administered within the last two years by a physician, audiometrist, or audiologist that verifies the extent of the hearing loss. Students with learning disabilities and Attention Deficit Disorder (ADD) are to provide a psycho-educational evaluation performed by qualified professionals. For those with ADD, they are to provide a psychiatric or other qualified professional fill out the Certification of ADD/ADHD.

The school has additional guidelines addressing these two disabilities acknowledging that "students with learning disabilities typically have average to superior ability" and are entitled to *reasonable accommodations* as *qualified* students under Federal and State law. Disabilities that warrant accommodations are those that cause difficulty in *one or more academic areas* as a result of a significant information processing disorder and *must limit a major life activity.* Throughout their policies, they provide the student with the legal and Diagnostic and Statistical Manual of Mental Disorders: Fifth Edition (DSM-5) references for students to access the information (Association, 2013). The documentation must be comprehensive containing tests on aptitude, achievement, and information processing to receive accommodations. The test instruments used to diagnose must be statistically valid and reliable, and standardized accounting for age-appropriate norms. The test score data must be included in the report to document and understand the basis of the diagnosis. The data must contain standard scores and percentiles based on national norms. Last but not least, the testing must be current and done by qualified professionals.

The reports are to have a written summary of the student's educational, medical, and family histories, with learning concerns. The documentation and report must rule out factors such as educational under-preparation, sensory impairment, serious emotional disturbance, cultural differences, or insufficient instruction, and point out to a lifelong history of learning difficulties. The written report must contain the testing procedures as well as providing clear and specific evidence of the student's learning disability. Learning or processing differences do not, on their own, constitute a learning disability. The accommodations provided are not intended to remediate but provide students equal access by reducing the negative impact of their disabilities. Extended time is usually offered but determined on an individual basis since students with learning disabilities process information slower than other students.

For ADD/ADHD in most cases, the diagnostic evaluation is valid if performed within the past three years similar to the ruling in the case of Guckenberger discussed in Chapter 6, which ruled that those with disabilities that periodically change are monitored and tested more frequently, unlike learning disabilities. Students with psychological disabilities are to submit a Certification of Psychological Disability and documentation must be current and dated generally within the past six months. The document should answer whether the student has a diagnosable mental disorder if so it needs to list the DSM-5 diagnosis and its subtypes. The report should include psychosocial stressors and environmental stressors as well as any historical data pertinent to the disability with evaluation procedures used to make the diagnosis. The symptoms and severity of disorder must be listed as well as the medication and its possible side effects. The report is to contain the functional limitations imposed by this

disorder and its prognosis. Students with mobility impairment, speech impairment, acquired a brain injury, chronic illness, or other disabilities not listed are to provide the Disability Documentation Form from a physician or an appropriate professional. Once the accommodations are approved, the students not the department, have to continue advocating for themselves by meeting with each faculty member of each one of their courses to ensure the accommodations are understood and provided. A method design was constructed keeping the research literature, policies and procedures of the law school in mind.

Case Study Literature

The case study research method may use various sources such as legal cases, policies, critical ethnography, and interviews. A case study method allows for the use of multiple sources of data bounded by time and space, specific enough to make deductions and construct a theory that may be useful today and in future research in this case conducted for the ultimate benefit of law students with non-apparent disabilities (Doodley, 2002). In particular, this study used the Case Study Method as described by Robert Stake in *The Art of Case Study Research* (Stake, 1995). This approach was most appropriate because Stake's case study method was sensitive to the idea of flexible design which allows researchers to make significant changes even after they proceed from design to research (Yazan, 2015). Given the stigma component surrounding disabilities, this approach accommodated the study to move forward with data collection, where hurdles and stumbling blocks were seen as substantial information for future research. This method allowed the process to dictate the next steps instead of limiting possible findings due to any possible rigidity in research design thus capturing valuable information. Since this research was open to discovering how the law maps onto the lives of these students, the study had to take a broader approach to capture as much participation from law students whom already form a small portion of the law school populous, which made this method all the more appropriate to use. The interpretation and analysis of the data were bounded to this method using the data which included Supreme Court Cases, Federal and State Law, California Bar Statistics, a law schools policy and procedures, and interviews with law students.

Stake's (1995) case study approach entailed holistic, empirical, interpretive, and emphatic components. He takes a holistic approach by considering the interrelationship between the phenomenon and its contexts, in this case, the phenomenon is the law students with disabilities, in the context of attending law school (Stake, 1995; Yazan, 2015). In addition, the research memos captured observations in the field necessary to collect the empirical data to conduct an analysis (Yazan, 2015). The permissible interpretive component of this method allowed for the researcher's intuition to guide the research-subject interactions. Lastly, the emic perspective proposed by Stake as primary, emphasizing and prioritizing the thoughts of the law students (Stake, 1995; Yazan, 2015).

Most contemporary qualitative researchers believe that knowledge is constructed rather than discovered (Stake, 1995) allowing the researcher to mainly interpret the information collected. The researcher's notions of knowledge and reality ultimately create the research presented (Stake, 1995). Those who follow Stakian's qualitative case study have constructivism and existentialism epistemologies that inform and guide their study (Stake, 1995; Yazan, 2015). Following a Stakian viewpoint, it requires rendering reports on the

constructed reality gathered throughout the observation and investigation. By the end of the study, another *level of reality or knowledge* (Yazan, 2015) is expected as there are " multiple perspectives or views of the case […], but there is no way to establish, beyond contention, the best view" (Stake, 1995). However, for this study, it is not up to the researcher to establish the best view, only to use the new level of knowledge gathered from the data to conduct an analysis using a legal backdrop.

Similar to Stake, Merriam's (1998) epistemological stance believes the "key philosophical assumption upon which all types of qualitative research are based, is the view that reality is constructed by individuals interacting with their social worlds" (Merriam, 1998, p. 6) and "reality is not an objective entity; rather, there are multiple interpretations of reality" (Merriam, 1998, 2015). Therefore, by incorporating this perspective the goal of this study is to understand the meaning of knowledge constructed by the students with disabilities in a public law school and document how they are making sense of their world and their experiences to inform how the law is mapping on to their lives (Ravitch & Carl, 2016; Yazan, 2015). Merriam's conception of meaning-making in the research process aligns with Stake's multiple-layered reality or knowledge construction, but Merriam does not expect the readers to get involved in this construction or interpretation (Yazan, 2015). Which is why this study also incorporates Merriam's perspective as she lays out how the researcher brings a construction of reality interacting with other people's constructions or interpretations of the phenomenon; therefore the final product of this type of study is yet another interpretation by the researcher filtered through his or her views (Merriam, 1998; Yazan, 2015).

Using both Stake and Merriam's approach, collecting information and observations guided the collection of data to inform the reader of possible dynamics occurring within law students and in law schools as they navigate post-secondary education. Conducting interviews was the most appropriate method to use because it provided an insight into the way a subject is making meaning of their world giving the research a glimpse into their inner thoughts briefly showcasing the ways disability rights law was impacting their lives. Stake and Merriam's prediction of the rendition of the constructed reality resulting from interpreting the observations made throughout recruitment and interviews brought the construction of reality necessary to attempt in conducting a legal analysis associated to this reality.

Critical Ethnography

Since the case study approach proposed by Stake and Merriam rely heavily on that new constructed reality based on the meaning-making of the subjects, it is important for the researcher to be all the more critical when gathering the data. Being hyper-aware of possible bias influencing the study is essential. While every researcher enters a study with their own biases and views, Critical Ethnography takes this reality into account and views it as critical to expect the researcher to account for their thoughts while conducting the ethnographic research (Carspecken, 2013). This type of research requires the researcher to monitor their thoughts through either journaling, fieldnotes or memos that account for the transparent thought process. Taking fieldnotes was the preferred method used only noting significant interactions into memos. The researcher in this study also went to law school and also has a non-apparent disability; thus, the critical approach was most appropriate to account for bias and observe new knowledge formation in the creation of a new reality.

The critical ethnography method was chosen because of its contention in defining what constitutes immersion, culture, and participant observation (Hammersley & Atkinson, 2019; Ravitch & Carl, 2016). The method relates to ethnography enough to collect data but departs from general ethnography allowing more leeway for both the researcher and the reader to create the construction of knowledge necessary to account for a multi-layered reality present in research and the interpretation of the law based on any given time and place. This approach acknowledges that researchers are not detached nor neutral participant observers which is why researchers ought to be more mindful of biases embracing an emancipatory rather than just a descriptive intent; in essence a self-referential form of reflexivity that aims to criticize the ethnographers *own* production of an account (Carspecken, 2013; Schwandt, 2014). This approach emphasizes the in-person field study interviews as law students negotiate their identity when advocating for their *reasonable accommodations* (Hammersley & Atkinson, 2019).

Interview Method

Interviews provide a deeper understanding of an individual's thought process. It also allows for the individual to describe their narrative allowing greater agency and control over how they want to be perceived which is also data. Since stigma surrounds disability, interviews in a case study reflect possible language and beliefs embedded in their answers reflecting said stigma. Observing the answer to the interview questions as well as how they answer the questions contribute to the constructed reality necessary to conduct an analysis that would indicate whether the law is mapping onto their lives. To strengthen the rigor and validity of the interview process, documentation through field notes and memos accounting for reflexive thoughts and analysis acknowledging biases and social positioning kept transparency in the study (Carspecken, 2013; Ravitch & Carl, 2016).

Method Design

The case study research encompassed extensive recruitment at a public law school in California through email, while using field notes, research memos, and interviews to document data. The field notes and research memos were kept throughout the study to account for the thought process of the researcher following the guidance of the critical ethnography method. In the interviews conducted 18 open-ended questions were asked allowing the students with non-apparent disabilities being interviewed to define and describe their own narrative through the telling of their lived experiences while offering insights on how to make the law school experience better for future law students with disabilities. The questions were designed to allow the participant to share the process in requesting their accommodations and their interactions with the institution. Questions regarding disclosure revealed the state of mind of the participant in regards to their disability. Questions of race or disability were omitted to protect the confidentiality of the participants. Given the small legal community and the lack of people of color in the disability community at the law school, it would not be difficult to figure out who participated in the study had the race or disability data been collected.

Recruitment

It is important to note that the Institutional Review Board (IRB) of the Committee for Protection of Human Subjects approval process was extensive. The heightened protection offered to this population both because of the harm done to their career if outed, known as "stigma in the profession," and because the law recognizes the severity of stigma surrounding disabilities enough to legally cover those that may not have a disability but are "regarded as" having one. Many of the initial proposals offered to IRB, such as having the law students keep a journal of any kind (written or electronic) to collect the data were rejected because of aforementioned. Thus, the follow method was designed and chosen to still help answer the overarching research question while respecting the parameters set by IRB.

Email messaging was primarily used to recruit considering that in recent years email has been the preferred method used by universities to reach its student body effectively. Every major student organization officially listed on the law school's website received the recruitment email under the understanding that there may be many students with disabilities who do not participate in any disabled student organization or receive services from disability services for any number of reasons. In particular, these emails were sent to the heads of each organization not only asking that the recruitment email is disseminated to their listserv but also asking for permission to recruit in person at their monthly meetings. The law school Dean of Students and the disability services (housed in the main campus) received an email kindly asking them to distribute the recruitment email to their current listserv. Disability services forwarded the request to the same Dean of Students at the law school that the researcher contacted. The recruitment email stated that the study was in no way related to the law school, disability services, or any student group, and therefore participating in the study would not hinder their ability to receive services. Response or no response to these emails were considered data. The Dean of Students at the law school explained that the email could not be sent to their listserv since they receive these requests a couple of times a year and quote: "Our students have told us that they are overwhelmed with emails and opportunities, so we have a policy not to send emails out about studies. I am sorry not to be able to help you with this request."- Dean of Students

Exhausting all avenues of recruitment through email, the researcher decided to reach out to the disabled law students organization and allies recently formed, to see if anyone would be interested in participating and asked that they distribute the recruitment email to others they thought might be interested. Once the first participant became involved, the *snowball recruitment method* was employed asking participants to refer and encourage other law students to participate (Noy, 2008; Sadler, Lee, Lim, & Fullerton, 2010). The snowball effect was useful because it encouraged participation from those who may not have built a relationship with the researcher but trusted a friend's reference to participate.

Fieldnotes and Research Memos

Amendments to the Institutional Review Board (IRB) to include alumni were submitted and approved to attempt to garner participation from those who may not feel safe talking about their services at an institution they were currently attending in fear of risking their student standing. After talking to an alumnus that said they were willing to participate if it were open to alumni, and the pool of participants were expanded to increase confidentiality,

the rational being that with a greater pool, it would be less likely to identify participants in such a small legal community. Even though all recourse and resources were used through the IRB, requesting amendments to expand the target group to include alumni, not just students, it did not help in increasing the number of participants. Upon approval, I reached out to the same alumnus, and received no response after three attempts. I then spoke to another alumnus who upon disclosing the disability was willing to participate in the study and scheduled a time and place to meet yet had to reschedule three times and in the end became unresponsive.

During the recruitment phase, it was evident that expecting 10-20 participants became too ambitious because while those with apparent disabilities are willing to talk about their disabilities because they are apparent, that is not the case with those with non-apparent disabilities. Those with non-apparent disabilities may participate in helping the disability cause by passing off as an ally not as a student with a disability. It was at this point in the recruitment phase that students began to share off the record why they would not feel comfortable participating in the study even if it were confidential. The field notes were telling showing why many did not feel compelled to participate in talking about their experiences. One student scheduled a meeting to meet but backed out of doing the interview because since the disability was as a result from a sport injury, the student had not yet made peace with the disability. The student's feelings of uneasiness was readily apparent. The researcher was able to document the twelve insights that were offered by some students. Records were kept through email communication of these insights, which was also telling, that students more readily offered these insights through email or in person but often times it was after the researcher had gained their trust, which took some time to cultivate. Thankfully, the Stakian case study method employed allowed for the research to be adjusted.

Originally, the field notes were written in a journal to transport easily. However, this became challenging for the researcher to read and review, thus they were transferred onto a word document in an encrypted laptop built with the accessibility technology that would electronically read the material, allowing for easier access to the information and the ability to quickly find the necessary items to conduct an analysis. The field notes documented the number of reasons students and alumni with non-apparent disabilities did not want to participate in the study. They are listed in the interview findings in Chapter 7, with immense gratitude to the brave students that were unwilling to participate in the study but came forward to offer the following insights and confirmed some initial concerns.

Interviews

In the end, two law students participated in the structured interviews (Given, 2008; Gubrium, Holstein, Marvasti, & McKinney, 2012). As previously mentioned, as a highly protected class, IRB only allowed for recording of the interviews on an encrypted computer, no other recording mechanism were allowed. The participants signed a consent form stipulating that quotes from their interview may be used for future publication. However, their main concern was not having identifiers when selecting quotes. Their minds were put at ease once notified that none of the materials including the recordings would have their name except for the consent form which would be locked up in a vault at a safe location. The researcher promised confidentiality when selecting the quotes, being considerate to select quotes that mainly represented the thought of the participants while being cautious that quotes

used would not have enough information to make that student identifiable to the broader legal community including the disclosure of their gender through grammatical terms. Each was assigned a number that attached to all of their materials including electronic files with recordings. Both Participants participated separately in a one-hour interview. Eighteen probing questions were asked allowing the participants to engage in the answers, authoring their experiences and their narrative (Gubrium et al., 2012). Soon after, the interviews were then transcribed and coded to conduct the analysis.

The interview questions addressed critical events in their journey before law school and during law school. The questions were open-ended to gather as much of their thoughts to help identify the possible unanticipated phenomena (Manen, 2018). Questions were allotted for the participants to reveal the meaning-making of their lived experiences (Manen, 2018; Smith, 2012) as well as help the researcher developing analysis relating to the current case law based on their social positioning as a law student with a disability. The critical ethnographic approach helped bring together process and product (Madison, 2011; Schwandt, 2014). This method helped translate fieldwork into written form providing greater insight into the disabled law student culture and experiences (Madison, 2011; Schwandt, 2014) while accounting for the researcher's association to those being studied who were inseparable from their current context (Madison, 2011). Setting boundaries of time and space to analyze this phenomenon, the study was limited to law students with an official diagnosis of disability whether that be an apparent or non-apparent disability. Diagnosis allows for legal standing when requesting accommodations in schooling allowing to map on the law to their lived experiences. The interviews provided a snapshot of their lives while in law school advocating for their *reasonable accommodations.* The study was kept to non-apparent disabilities given that both participant has non-apparent disabilities and the majority of the students encountered throughout the study had non-apparent disabilities. It was all the more serendipitous and relevant to focus on non-apparent disabilities given the recent events of Operation Varsity Blues as discussed in the opening of this dissertation. The researcher only encountered one student with an apparent disability, but this student was not in California; therefore, an in-person interview, necessary for the study was not possible.

Under the case study research umbrella, the following interviews were analyzed using a critical ethnography methodology. According to Stake and Merriam's case study research accounts for a new constructed reality based on the meaning-making of the subjects, in this case it is the students who were interviewed making meaning of their experiences in law school. The critical ethnographic analysis accounted for any bias on the part of the researcher when gathering and analyzing the data (Carspecken, 2013). Documenting the answers to open-ended questions acknowledging what the participants perceived as a critical event. As the participants made meaning of their experiences the researcher monitored thoughts through notes documenting what the researcher believed was a "critical incident." By demonstrating what the student believed to be a critical event and what the researcher believed to be a critical incident allowed for transparency in acknowledging the participants narratives while accounting for what the researcher observed as important. Acknowledging these two lenses only adds depth to the research when gathering and analyzing data.

This chapter explains the coding method used and the meaning behind each assigned code, followed by an analysis of the interviews. The quotes for this analysis were selected after coding the responses from the in-person interviews who at the time of their request for

accommodations had non-apparent disabilities (Saldana, 2015). For one student the disability later became apparent. Only quotes that would demonstrate their formulated thoughts were selected, any potentially identifying facts including names, race, gender, sexuality, or diagnosis were purposely left out to protect their confidentiality since they are both entering a profession that recognizes potential "professional stigma" if their disability is discovered and possibly used against them (Enyart v. National Conference of Bar Examination Inc., 630 F.3d 1153, 2011).

Simultaneous Coding

The methodological needs of the study called for the use of an *elemental method* like *simultaneous coding*, that would account for *multiple meaning* in *one unit of quantum datum* (Miles, Huberman, & Saldaña, 2013; Saldana 2015). When analyzing the data, it was quickly surmised that two separate issues in *one unit* was being described and thus needed a method to account for *descriptive* and *inferential* meaning from the participants' interviews (Miles et al., 2013; Saldana, 2015). The simultaneous method is used sparingly amongst researchers because it requires the researcher to have a clear focus on the research question instead of being heavily exploratory. Multiple meanings can be deduced from a qualitative datum unit, however, the significance of each unit is vastly narrowed when the research question is clear.

Thus, to answer the question how does the law map onto the lives of law students with non-apparent disabilities in law school; codes were divided into four sections known as: accommodations, institution, critical event narrated by participant, and critical incident observed by the researcher. The researcher had to adjust to the coding process by adding color to the process. Anytime a code word or thought was heard through the assistive technology used to read the transcriptions, a color was assigned to that word or thought. This technique was necessary to employ since documenting the written word presented a cognitive processing challenge for the researcher. Pink was assigned to the code "accommodations," green was assigned to the code "institution," blue was assigned to "critical events" and purple was assigned to "critical incidents." The decision to use the simultaneous coding method was decided after the interviews were completed once two meanings in one thought were observed making this method all the more useful. The following explains the reasoning behind each of the codes.

Receiving accommodations for disability is the most obvious indication that the law is protecting the rights of students with disabilities. Therefore, access or lack of accommodations is the clearest way to understand if the law is assisting students with non-apparent disabilities. Thus, availability, access, type, and reaction to accommodations were coded and documented to include in the analysis. The actions of the "institution" reflects the awareness and willingness or lack thereof in assisting students. As previously mentioned in Chapter 5, the code "institution" was used to document these institutions that represent ideology perpetuated through what Althusser called Repressive State Apparatus (RSA) and Ideological State Apparatus (ISA) and were coded as such. As a refresher, the RSA represents courts, government, police, or armed forces. The law itself being an extension of the ideology found in courts. The ISA is represented by entities such as schools, churches, media, and family. School officials being an extension of the educational institution. Thus, any thought or

words representing either RSA or ISA were documented to account for ideology discussed in Chapter 8.

The critical events narrated by the participants, were explicitly stated. The participants expressed and narrated the critical event that first came to mind when asked the question. The quick recall of the event was an indicator that such an event was at the forefront of their consciousness, regardless of how much time had passed since the event, enough to consider it being critical. Once the critical event was documented, the researcher could not help but notice that both concepts of "accommodations" and "institution" were present in each critical event. These two codes represent access to institutional support expected by the law. These events represented the most impact in the narrative of these participants.

On the other hand, the critical incident observed by the researcher was any expression of an ideology that demonstrated their reasoning behind wanting to stay in the closet in regards to their disability. Staying in the closet is the resulting effect of the stigma. Hiding, pretending, or trying to "pass" as able-bodied, does not allow students to access services let alone advocate to obtain these services. Thus the law is not able to protect any student unless they are willing to come forward and access the legal recourse to enforce their rights. The following quotes were simultaneously coded as both accommodations and institution, yet in the table, they have been placed according to what code was selected as a primary code when observation and analysis was completed. The simultaneous codes allowed for efficient and effective extraction of data from the transcribed interviews. Separating each quote into their dominant code helped to analyze each in isolation.

The first two codes assigned complimented the concepts in the law allowing for a more clear example of how the law mapped on to the lives of the students interviewed. The last two codes were useful to bring out concepts in the student's thought process. A student with a chronic disability did not believe their disability was a disability because it was not as severe as those of a family member reveal the depths of this phenomenon found within non-apparent disabilities, not readily conceptualized by those who do not encounter such experiences. In the following chapter, the law explained in Chapter 3 is used to do a case study analysis in post-secondary schooling, providing the findings in case law, needed to analyze the findings in the interviews.

CHAPTER 6

LEGAL CASE STUDY FINDINGS

"Education is the most powerful weapon which you can use to change the world."
– Nelson Mandela

Post-secondary education is subject to Section 504 and the ADA, to be more specific; this includes the gamut of colleges, universities and professional schools including medical schools and law schools, as long as the student is considered to be a qualified individual. First, the court needs to determine who is considered a qualified individual with a disability in the realms of post-secondary education. For educational institutions, a "qualified person with the disability" must be able "to achieve the purpose of the program or activity without modification to the program or activity that fundamentally alters the nature of that program or activity" (29 U.S.C. 794; 7 C.F.R. 15(e) 103). As previously stated an "individual with a disability is a person who has a physical or mental impairment that substantially limits one or more major life activities" (42 U.S.C. § 12102; ADAAA of 2008). In regard to school admissions this means that a "qualified [disabled] persons may not, on the basis of [disability], be denied admission or be subject to discrimination" 34 C.F.R. § 104.43(c). Once admitted the individual is to be provided *reasonable accommodations* as long as these accommodations do not impose an *undue burden* on the institution. Not providing these *reasonable accommodations* to a qualified disabled student admitted into an educational program would be a violation of Section 504 which prevents this type of discrimination against disabled students in any program or activity receiving Federal financial assistance (29 U.S.C. § 794).

While there are many types of disabilities, creating any list would not comprehensively capture all the disabilities thus the court instead has defined major life activities to include "functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. The impairment must have a material effect on one's ability to perform a major life activity" (29 U.S.C. 794; 42 U.S.C. § 12201). For example, "an individual who has a physical or mental impairment would not be considered a person with a [disability] if the condition does not in any way limit the individual, or only results in some minor limitation" (OCR, 2018). An individual is also covered if incorrectly classified as having a disability or if the disability is no longer present. Section 504 prevents such discrimination although individuals that are "regarded as" having a disability would not be entitled to reasonable accommodations (29 U.S.C. 794; 42 U.S.C. § 12201). However, temporary disabilities as previously mentioned are covered and can be subject to protection under Section 504 if the end goal is to protect against the discrimination over a "qualified disability" however temporary if the disability significantly impacts one or more major life activity. This section first defines two important concepts in disability law, the meaning of who is a qualified individual and what is considered discrimination, using various cases that show how the law applied. These are necessary legal concepts in precedent

that demonstrate why law students are qualified individuals and what is considered discrimination on the basis of their disability.

Qualified Individual

A qualified individual with a disability must be able to fulfill the essential requirements of the program, with or without the provision of *reasonable accommodations* (29 U.S.C. § 794). The individual with a disability cannot waive essential program requirements. Soon after Section 504 regulations were issued, they were tested in the Supreme Court with the case of *Southeastern Community College v. Davis* in 1979 (Colker & Grossman, 2013). In this case, the student Francis Davis, was a Licensed Practical Nurse (LPN) who had a severe hearing disability and wanted to be trained as a Registered Nurse (RN) but was denied admissions into the nursing program offered by Southeastern Community College (Colker & Grossman, 2013; Southeastern Community College v. Davis, 442 U.S. 397, 1979). Even with a hearing aid, the student could not understand speech except through lipreading, and thus the College alleged she would not be able to participate safely in their clinical training program (Colker & Grossman, 2013). The student filed a lawsuit under Section 504 citing that admission cannot be denied to an "otherwise qualified individual solely by reason of his [disability]" (The Vocational Rehabilitation Act Section 504, 29 U.S.C. § 701-797, 1973). Southwestern Community college is a state institution receiving federal funds subject to Section 504. In this case, the Supreme Court held that the university did not violate Section 504 because the student did not qualify for admission to the program in the first place (Southeastern Community College v. Davis, 442 U.S. 397, 1979). The individual has to be qualified for the position in spite of his disability, thus if the disability would preclude the individual from performing the requirements of the program in question the individual cannot be found qualified (Bagenstos, 2014). Therefore, all of the law students who are admitted into law school are qualified individuals as they met the requisites to attend the program; otherwise, they would have been denied admission.

Discrimination: Apparent Disability

The case of *Pushkin v. Regents of the University of Colorado* is an example of discrimination in admissions. Pushkin was a doctor with an apparent disability, known as multiple sclerosis, which confined him to a wheelchair (Pushkin v. Regents of University of Colorado, 658 F.2d 1372, 1981). Pushkin was applying to a Psychiatric Residency Program at the University of Colorado Hospital. In this case, the United States Court of Appeals for the Tenth Circuit ruled in favor of the district court affirming that Section 504 was violated by the university denying admissions to Pushkin in the University's Psychiatric Residency Program. The District Court of Denver Colorado found he was discriminated in a program receiving federal funds within the meaning of the statute. The court also ruled that Pushkin was an otherwise qualified individual in spite of his multiple sclerosis and thus was entitled to admittance (Bagenstos, 2014; Pushkin v. Regents of University of Colorado, 658 F.2d 1372, 1981). The university did not dispute whether Pushkin was a person with a disability and conceded that they were a university receiving federal funds. Thus, the appeal was to argue that the trial court erroneously decided the merits of the case (Bagenstos, 2014). The

university believed that the trial court erred in finding that the university discriminated against Pushkin because of his disability instead of putting more weight on evidence that showed he truly was unqualified.

The trial court cited to the comments made by the Chairman, Dr. Carter, explaining to Pushkin that his disability was the reason for the rejection and gave no other reason. The individuals who interviewed him for the program documented the assumption that Pushkin would not be able to perform given his disability. There was an alleged concern about his emotional instability not evident in the interview sheets nor expressed in Dr. Carter's conversation with Pushkin. The reading of the case indicates the faculty did not like Pushkin's behavior and attitude thus used any excuse to keep him out of the program because perhaps the university did not want to "deal" with him. Pushkin did have the qualifications necessary to be admitted given that he held a Medical Doctorate (M.D.) and received a satisfactory dean's letter of recommendation as well as a glowing letter of recommendation from his supervisor of Psychiatric Residency at a different university. The court concluded that the denied admission was based on the low interview ratings reflecting the examiners' general knowledge of multiple sclerosis and the concern for the psychological reactions of the patients and in turn the doctor, as a result of being in a wheelchair (Bagenstos, 2014). Therefore, Pushkin's rejection was as a result of incorrect assumptions and inadequate factual grounds. The appeals court's ruling solely considered the issue of whether Pushkin was a "qualified individual" (Rothman, 2011; Southeastern Community College v. Davis, 442 U.S. 397, 1979). (Rothman, 2011; *Southeastern Community College v. Davis, 442 U.S. 397,* 1979). In the end, the court found Pushkin was a qualified individual and believed the university was trying to argue he was unqualified only after the lawsuit was filed.

Pushkin could not hide his disability; an issue that does not confront individuals with non-apparent disabilities. However, while the disability may not be readily apparent, it may become apparent upon requesting accommodations during the interview phase or after being admitted, making this legal mechanism essential to protect both people with or without non-apparent disabilities. Thus, law schools cannot make assumptions about the abilities of a law student. In this case the doctors who interviewed him for the program had their own preconceived ideas as to what patients were going to think and feel in having an apparently disabled doctor and also assumed Pushkin would be emotionally unstable, in essence making the decision to deny admission into the program under the guise of saving him from such an experience. As such, law schools or any other post-secondary school cannot make decisions based on what they believe the student is or is not capable of doing or feeling, operating under these assumptions is considered discrimination on the basis of the disability.

Discrimination: Non-Apparent Disability

A student with an official diagnosis can request their accommodations either through the law school or the university's disability office. It is not uncommon for the disability office to be housed with the university's general disability services. For Example, Yale Law, Cornell Law, and Boston College Law, to name a few, have disability centers that service the entire university not just its law students. In contrast, Loyola Marymount Law School in Los Angeles has a Committee on Disability Accommodations servicing only its law students. For institutions to accommodate each individual they have to be made sufficiently aware of the

disability. For example, in the case of *Nathanson v. Medical College of Pennsylvania* (MCP), Janney G. Nathanson's disability was non-apparent, and there was an issue as to whether the medical school knew whether she had a disability (Nathanson v. Medical College of Pennsylvania, 926 F.2d 1368, 1991). She was admitted into medical school in 1985. She had been in a car accident in 1981 and sustained back and neck injuries being treated with physical therapy. In her interview with MCP she told the university that she was unable to take the Medical College Admissions Test (MCAT) in their tables and instead took the exam in an ordinary table while stating that she would "not require special accommodations" during medical school because she "had never had a problem" before with her seating arrangements in college. The interactions between Nathanson and MCP were of particular importance to determine when and whether MCP sufficiently knew about her disability to accommodate appropriately as circumstances and severity of the disability do tend to change depending on the disability. She put forth that the difficulties began on the first day of classes when she had trouble with parking. She met with the assistant dean of medical education because she was concerned that she was having "severe" muscle spasms in her back and neck due to the seats at MCP. The student asked for help in accommodating the seating as best they could but did not ask to be given the type of seating received in her previous university. The student withdrew from MCP and enrolled in Georgetown Medical School. The court ruled Nathanson had not established a *prima facie* case that violated Section 504 since there was a dispute as to whether she had adequately communicated her needs to the university or given the university an opportunity to make said accommodations. Regardless, once the student discloses to the appropriate entities, the school has to ensure that the accommodations do not lower the academic standards of their program or that the accommodation does not present an *undue burden* on the institution. The standards are sometimes defined by the institution as well as their perception of *undue burden*. The following are two examples of such standards impacting the accommodations of students in post-secondary education. The first is Wynne v. Tufts University School of Medicine, and the second is Guckenberger v. Boston University.

Wynne v. Tufts University School of Medicine

In 1992, the court ruled on the case of *Wynne v. Tufts University School of Medicine*. Steven Wynne disclosed his learning disability, dyslexia, to the medical school (Wynne v. Tufts University School of Medicine, 932 F.2d 19, 1992). He sued the medical school because he wanted to take his biochemistry exam in a different format. He did not tend to test well under a multiple-choice format because his disability flips the letters, causing him to mark the wrong multiple-choice option even though he may know the answer. He argued that other medical schools were offering the option of taking the exam orally (Colker & Grossman, 2013). Tufts claimed that changing the format would lower their academic standards. The court allowed the medical school to use this rational and found that Tufts had undertaken the task of finding other alternatives and made the academic judgment that there were no medical schools that would lower their academic standards. Thus, "reasonable accommodations" were not given to Wynne at Tufts' Medical School (Colker & Grossman, 2013).

Later, in 2009, a deaf medical student, Michael S. Argenyi, sued Creighton University Medical School for failure to provide him with the auxiliary aids that would allow him to follow along in class and tend to his patients (Argenyi v. Creighton University, 703 F.3d 441,

2013). Instead, the medical school provided him with inadequate equipment forcing the student to assume a $100,000 loan to pay for his Computer Assisted Real Time Captioning (CART) service (Colker & Grossman, 2013). The school also did not allow him to have an interpreter when interacting with his clinical patients. While his claims were dismissed in Summary Judgment, it was later reversed by the Eighth Circuit. The federal jury believed the school discriminated against him. The school was to pay his $500,000 legal fees and give him the adequate accommodations which included the CART cost. However, the school was not responsible for the initial $100,000 reimbursement of his CART cost. Soon after, the school filed an appeal arguing "undue burden" (Colker & Grossman, 2013). This case is still being fought in the courts today. Argenyi is a perfect example of a qualified individual student with a disability who managed to get through the educational system despite the countless obstacles he had to face as a deaf student, and still continues to face discrimination under the guise of "undue burden" which also translates to lack of resources, a utilitarian argument (Kelman et al., 1997). Here, the ideology of ableism prevented the medical school from accommodating to his disabilities similar to the previous Tufts University Medical School case of the student with dyslexia. These are two cases almost two decades apart demonstrating how ableism in post-secondary education has not changed. The post-secondary educational institutions determine who gets to partake in a profession and can exclude people with disabilities by continuing to use "fundamentally alter" as in the case with Wynne where the medical school believed changing the exam would reduce its academic standards and "undue burden" and in Argenyi's case where the medical school saw the cost of the accommodations posing as an undue burden. Thus, judging from the hesitation of post-secondary educational institutions to provide accommodations for students to equally partake in the profession one can understand the fear of students that cause them to hesitate from disclosing and at times asking for their accommodations.

Guckenberger v. Boston University

Unlike students with apparent disabilities, students with non-apparent disabilities can choose to delay or never disclose their disability to a university. Wynne was not required to disclose until he requested his accommodations. Similarly, any law student does not have to disclose their disability to the law school until they request their accommodations. The university is required to have a reasonable procedure for evaluation and review of each student requesting accommodations. Given the prevalence of learning disabilities in law school, or those housed under learning disabilities and additional case addressing learning disabilities follows (Jolly-Ryan, 2005).

In 1997, the United States District Court for the District of Massachusetts heard the case of Guckenberger v. Boston University, where a class action lawsuit was filed against Boston University. The class sued under the Americans with Disabilities Act (ADA), and the Rehabilitation Act of 1973 by students with Attention Deficit Hyperactivity Disorder (ADHD), Attention Deficit Disorder (ADD) and learning disorders all housed under learning disabilities (Bagenstos, 2014; Guckenberger v. Boston University, 974 F. Supp. 106, 1997). The class claimed that Boston University discriminated against the learning disabled by 1) establishing unreasonable, overly-burdensome eligibility criteria for qualifying as a disabled student; 2) failing to provide reasonable procedures for evaluation and review of a student's

request for accommodations; and 3) instituting an across-the-board policy precluding course substitutions in foreign languages and mathematics (974 F. Supp. 106; Bagenstos, 2014). The practices of the university between 1995-1996 requiring the student to provide documentation of the disability was a significant additional burden on the students in time, money, and the student's psyche. To fulfill the documentation requirement the student had to submit documents completed within three years of the request for accommodations. Unfortunately, this can be retraumatizing for some students evident by the student who testified to the court in tears because the retesting was a reminder that she was not "normal."

The District Judge, Saris, listed thirteen findings but only five are relevant to law students with non-apparent disabilities listed here. The court found: 1) The new documentation requirements that required students with learning disabilities to be retested every three years, and required evaluations mainly come from professionals who were physicians, clinical psychologists, or licensed psychologists violated the ADA and the Rehabilitation Act because there were "eligibility criteria" that "screened" out or tended to screen out students with specific learning disabilities. Boston University did not demonstrate that the requirements were necessary to the provision of educational services or reasonable accommodations. 2) Boston University's policy concerning the qualifications of evaluators requiring that they have doctorates precluding any evaluations by persons with master's degrees unnecessarily screened out or tended to screen out some students with specific learning disorders who had been evaluated by adequately trained professionals. Boston University did not demonstrate that an evaluator with a master's degree and appropriate training and experience could not perform the testing for an assessment of learning disability as well as an evaluator with a doctorate. Accordingly, Boston University did not prove that a doctorate-level of qualification was necessary to then provide reasonable accommodations concerning students with learning disorders. 3) However, with respect to students with ADD and ADHD, Boston University demonstrated that its "bright line" policy of requiring current evaluation by a person with a doctorate is necessary because ADD/ADHD is often accompanied by co-existing physical and psychological conditions, is frequently treated by medications, and is a rapidly changing condition that usually remits over the period from adolescence through early adulthood. 4) Furthermore, the court found that the administration of Boston University's new accommodations policy during the 1995-1996 school year violated the ADA and the Rehabilitation Act because it was implemented without any advance warning to eligible students, in such a way as to have the effect of delaying or denying reasonable accommodations. It is unfortunate that Boston University President Jon Westling and his staff administered the program on the basis of uninformed stereotypes about the learning disabled. Lastly, as in the case of Wynne v. Tufts, federal law does not require a university to modify degree requirements that it determines are a fundamental part of its academic program by providing learning disabled students with course substitutions. 5) Boston University's refusal to modify its degree requirements in order to provide course substitutions, particularly in the area of foreign languages, was motivated in substantial part by uniformed stereotypes by the President and his staff that many students with learning disabilities are "lazy fakers," and that many evaluators are "snake oil salesmen" who over diagnose disabilities (Guckenberger v. Boston, 974 F. Supp. 106, 1997). Boston University was able to successfully argue that they could not modify its foreign language degree requirements for students with learning disabilities and the court affirmed reasoning not on

the basis of stereotypes but on the premise that "knowledge of a foreign language is one of the keys to opening the door to the classics and so too liberal learning. It is not the only key but [we] do judge it as indispensable" (Guckenberger v. Boston, 974 F. Supp. 106, 1997).

The first circuit crafted the following test for evaluating the decision of an academic institution with respect to the availability of *reasonable accommodations* for the learning disabled.

> Therefore, " if the institution submits undisputed facts demonstrating that the relevant officials within the institution considered alternative means, their feasibility cost and effect on the academic program, and came to a rationally justifiable conclusion that the available alternatives would result in either in lowering academic standards or requiring substantial program alteration, the court could rule as a matter of law that the institution had met its duty of seeking reasonable accommodations" (Colker & Grossman, 2013).

Under the reasoning of this court, there is a precedent to argue that law schools accept documentation older than three years from a trained professional that can diagnose learning disabilities (except for ADD or ADHD). The trained professional can have a master's degree, medical degree, or doctorate, or be a licensed clinical psychologist. A doctorate continues to be required for those being diagnosed with ADD or ADHD because it is a rapidly changing condition (Bagenstos, 2014; Guckenberger v. Boston University, 974 F. Supp. 106, 1997). Although the court in the Guckenberger case agreed with Boston University requiring a doctorate to diagnose for ADD and ADHD, that may not be the same for other universities. In California, each university may require different documentation of the disability from a medical professional especially for the disabilities that may change over time. Some require testing every three to five years because some learning disabilities, such as dyslexia, do not change over time, other disabilities such as Attention Deficit/Hyperactivity Disorder (ADHD) or multiple sclerosis may change over time depending on the environment (DRC, 2013). Based on this analysis, one could deduce that any disability that is rapidly changing would require a doctor to diagnose since reasonable accommodations were primarily established to assist the individual to be placed in equal footing as the rest of the students, not to be given an unfair advantage over their classmates.

However, in this case, the ruling is as much about what the court said as what it did not say. Thus, any individual that is housed under a learning disability can be diagnosed by individuals with professional standards that are not equivalent to those of a medical doctor. Even though they may be qualified to provide a diagnosis given their expertise they do not suffer the same professional consequences should they overly diagnose students leaving open to criticism the rigor of the diagnosis. On the other hand, those with ADD and ADHD tend to have greater credibility and believability given this standard.

Not all disabilities are equally stigmatized evidenced by the stigma attached to learning disabilities. Learning disabilities are controversial because of their association with lower-socioeconomic status and the non-white racial groups (Ahram, Fergus, & Noguera, 2011; Shifrer, Muller, & Callahan, 2011; Sleeter, 2010). The upper class is more closely associated with attention-deficit/hyperactivity disorder (ADHD). Although the reasons why those with higher socioeconomic status get diagnosed at higher rates with ADHD is unknown, we do know that students who fit the clinical criteria under ADHD are 51% White, 37% are Black, and 26% are Hispanic (Froehlich et al., 2007; Hatt, 2009; Morgan, Staff, Hillemeier,

Farkas, & Maczuga, 2013). The number of wealthy Whites being diagnosed with learning disabilities under ADD/ADHD have been growing since the year 2000 (Johnson & Kiefer, 2019). According to the 1997 and 2004 IDEA reauthorizations, those diagnosed with ADD/ADHD were not considered to have a strict learning disability. Those with ADHD could also qualify under two other categories such as "Other Health Impairment," and "Emotional Disturbance" providing additional legal protections throughout their education including their post-secondary education (U.S. Department of Education, 2016). On the other hand, diagnosis of mild retardation or disabilities with "slow to learn components" are associated with those who have English as a second language (ESL) or are of lower socioeconomic status (Ahram et al., 2011; Julian V. Heiling & Darling-Hammond, 2008; Kelman et al., 1997; Sleeter, 2010). Those who learn how to navigate the educational system with any of these disabilities and manage to enter law school may still need the accommodations afforded to them in their K through12 schooling. Under the law, learning is a "major life activity," and as such, it is against the law to discriminate or not provide the reasonable accommodations to a law student who at times may be at a level of discrimination based on the class associated with the disability. The stigma associated with the type of disability can significantly stem from the weight and credibility given to some disabilities rather than others, evidence by ADHD/ADD being more credible as the disability requires in some instances a medical evaluation while other disabilities may not need such a stringent demand. Regardless, of the disability whether that be an apparent or non-apparent disability, in general, law students have a variety of learning styles, and the onus of teaching law students primarily will always lie with the institution more specifically the law professor. If anything, the law professor is challenged to become a better educator by learning from the students because they have to at times step out of the traditional teaching styles to reach a greater number of law students, essentially accommodating to the rising number of non-traditional learners in law school (Jolly-Ryan, 2005).

Regardless of the stigma attached in law school, it is commonly accepted that learning disabilities are neurologically based processing issues with no remedy (Hallanhan, Kauffman, & Lloyd, 1999; Torgesen, 1999). In the end, accommodations themselves only ameliorate a learning disability because they do not eliminate the disability itself. There is a vast difference between a remedy and an amelioration when providing an accommodation. The remedy is equal to fixing the problem. Amelioration is equal to reducing the problem. Providing the accommodations to a deaf, blind or learning disabled person may not eliminate their limited ability to learn from their peers and interact with the professor, as those are also forms of learning, but it *does remedy* the problem of accessing the strict learning received through reading and writing prioritized in educational institutions (Rothman, 2011). Those who are deaf, blind or learning disabled can use sign language, captions, braille or alternative media to place them on par with any other student in the classroom to access the information received through reading and writing. However, those who have a learning disability can primarily use accommodations to *ameliorate* the learning problem placing the student *as closely* as possible to the general student body to access this particular learning. One would guess that given the stigma students would not want to be diagnosed as having a disability, especially those in law school, due to the potential of exclusion from prominent jobs. While this discrimination may be illegal, it still happens. Students fear being seen as the Boston University staff saw the undergrad students as "lazy fakers" evaluated by "snake oil" salesmen.

On the other hand, the school needs to know about the disability in order to provide adequate notice to students about what services are available. In accordance with the ruling of *notice* in the case of Guckenberger v. Boston University, the law schools should provide advanced notice to eligible students where it will not delay or inadvertently deny their reasonable accommodations. This means notifying the student of the resources available to assist students with disabilities before they step foot on campus as an incoming first year law student. The notice is particularly important for law students who are from out of town or have to travel away from the law school during the summer for judicial externships or legal internships. It may become difficult for the law student to decipher when and with whom they should request the accommodations from to prepare for the following semester or the following summer externships. It is unclear as to whether the law student should request the accommodations from the law school or the externship? It is unclear because most externships are paid, and some prestigious ones may not be. The payment makes a difference whether to consider the law student, an employee, an independent contractor, or strictly a student regardless of earnings. If the law student is considered strictly a student then this triggers a legal requirement for the university to provide the accommodations in the externship, however, if they are considered an employee or an independent contractor, this would require for the externship to provide the accommodations.

The law student also needs to know when they should start submitting the necessary forms to apply for the upcoming accommodations that need to be renewed every semester for certain disabilities that require alternative media. Insufficient notice often causes a delay in their accommodations, attempting to survive without the accommodations jeopardizes their summer performance that may impact their future career options. As for providing accommodations in law school that do not lower the academic standards or fundamentally change the program, it has been argued that providing law students with extended time on exams to accommodate their disability is giving them an unfair advantage. Instead of focusing whether a student is trying to get a leg up, Bagenstos highlights the importance of focusing on what the exam is trying to test and then to evaluate whether the exam itself is being changed when providing students with accommodations such as double time on exams (Bagenstos, 2009). For some, the exam may be easier if given double-time but not different because the exam is testing the knowledge the student possesses not assessing their processing speed (Bagenstos, 2009).

Enyart v. National Conference of Bar Examination Inc.

In the case of *Enyart v. National Conference of Bar Examination Inc.*, a UCLA Law Student taking the California Bar was denied the accommodation of a laptop (2011). This student had an illness that left her legally blind. The law student requested the following accommodations: Extra Time, Private Room, Hourly Breaks, permission to bring and use her own lamp, digital clock, sunglasses, yoga mat, and migraine medication during the exam, and permission to take the exam on a laptop equipped with JAWS and Zoom Text software. She was granted all of these accommodations except the use of the laptop because they did not have the exam in electronic form (Enyart v. National Conference of Bar Examination Inc., 630 F.3d 1153., 2011).

The United States Court of Appeals for the Ninth Circuit affirmed the District Court's decision to allow Enyart to take the MPRE and MBEs on a computer equipped with JAWS

and Zoom Text Software. Often times the accommodations provided to those who have an eyesight impairment are also given to a range of learning disabilities including the laptop accommodation requested by Enyart. Not having the technology is not a valid excuse. The court stated that the testing services center needed to keep up with the times. In this case, even the courts acknowledge the irreparable harm in her loss to pursue her chosen profession and not to mention the professional stigma. This court was more willing to acknowledge Enyart's irreparable harm of not being able to pursue her profession as a lawyer, as opposed to the court in Argenyi's case pursuing his profession as a doctor. Regardless, there is now precedent that acknowledges professional stigma being considered as irreparable harm regarding disability, a consideration not applied in the Argenyi's case, nonetheless a real concern for any student with a disability graduating post-secondary schooling and entering the job market. The irreparable harm in the form of stigma in the profession has been recognized but not the harm done to society when the stigma is not eradicated. Neglecting to fully protect the civil liberties of people with disabilities by keeping the caveat language "undue burden" creates an irreparable harm not just to the individual but society as a whole because we miss out on the gifts their full potential would have provided.

Based on the current reading of the law, the findings presented in the following chapter resulted from the interviews with the two law students. These students were considered *qualified individuals* covered by disability rights law because of: 1) their admission into law school and 2) their ability to achieve the purpose of the program without having to alter the program *fundamentally*. Any accommodation required for these students were of minimal costs, falling well within the *reasonable accommodation* standard not presenting itself to be a financial *undue burden* on the law school.

CHAPTER 7

FIELDNOTES AND INTERVIEW FINDINGS

Answer: "You can't talk to the judge and say hey judge I am an extern and I have a disability. You can't do that."-Participant #2

This chapter explains the twelve findings found in the fieldnotes provided as insights from the recruitment phase and some students who gave reasons as to why they were unwilling to participate in the study. It also documents the four major interview findings: accommodations, institution, critical event, and critical incident. Quotes gathered for this section from either Participant #1 or Participant #2 were housed under the relevant finding category. Throughout the presentation of the findings, please note that the names of law school officials were removed to protect the participants' confidentiality given the identifiable small legal community. The race, gender, diagnosis, and some accommodations received were also omitted to safeguard against "professional stigma" recognized by the courts. Although many poignant matters arose from the interviews, only the most important and directly relevant to the research question are highlighted in these findings, Chapter 8 also contains other significant insights.

Fieldnotes Findings: Insights

The following are twelve insights gathered from the fieldnotes during the recruitment phase. In some cases, multiple insights were observed with the same individual. Since these individuals did not want to be part of the study and thus never signed a consent form, the researcher had to keep the insights in slight general form without disclosing any identifiers but did manage to record these interactions through fieldnotes and memos, especially after email exchanges with these individuals.

Insight number one, students would be more forthcoming to provide feedback anonymously rather than confidentially to have the freedom to say anything without possible judgment. A student did not want the researcher to think any differently about this student and thus kindly declined to participate in the study. To this day, the researcher does not know what disability this student has for it was never disclosed but the researcher does note that it was not readily apparent in any way shape or form. The researcher was surprised to hear the student had a disability since the researcher had interacted with this student a few times prior to the recruitment phase.

Insight number two, some students with non-apparent disabilities have not fully embraced their disability thus cannot talk about it because the diagnosis is recent, or they are in denial even after an old diagnosis as was the case with the student that initially agreed to participate in the study but declined once a meeting time was set. The student humbly apologized and said they were working on coming to terms with their disability and would be

open to reconsider participation in the following semester. Once the researcher followed up, the student once again declined.

Insight number three, a student did not feel they were disabled enough to participate in the study because they were able to move about, narrowly associating disability with physical movement. These views only legitimate and perpetuate the notion that non-apparent disabilities are not real disabilities. This was the same student that declined to participate in the study after the meeting time was set.

Insight number four, students are still trying to pass as able-bodied regardless of when the diagnosis occurred. The student that declined to participate was attempting to diminish the severity of the disability when it was apparent to the researcher that the student was having some difficulties when meeting but tried to dissimulate as much as possible. Even though this student did not participate they did helped recruitment through the snowball method positioning his/her self as more of an ally to the cause.

Insight number five, not wanting to talk about a sensitive subject matter that is at times emotionally taxing. Two alumni were nonresponsive, and the researcher noted that the behavior of one alumnus changed immediately towards the researcher upon disclosing and later never responded to emails after the alumnus initially said they were willing to participate in the study. This insight was more of an observation because unless the alumnus is directly asked to clarify no one will ever really know why the alumnus backed out of the study.

Insight number six, not wanting to talk about a sensitive subject with someone who is still a part of the legal community even if it is confidential, because they do not want their disability to "get out." It was fortunate and unfortunate that the researcher still formed part of the legal community where this study was taking place because when generally sharing what the study was ultimately about and whom it was targeting in passing, few fellow colleagues started disclosing their diagnosis in confidence with the researcher. The research then forwarded the alumni recruitment email approved by IRB to see if they would be interested in participating. In this interaction, one of the alumnus upon sharing his/her difficult time in law school commented on the fear he/she had in classmates finding out.

Insight number seven not wanting to be perceived differently by anyone (including the researcher) after disclosing because it may add to the false narrative that their best is still not enough. This particular alumnus disclosed the difficulty he/she was having keeping a balance between work and personal demands at home and wondered if this was not all the more exacerbated by his/her disability. In the short process of explaining it was evident that the alumnus was trying to convince themselves that they in deed did not have a disability because they just have to try harder to make the "balance" work.

Insight number eight, some students erroneously believe they brought on their disability and thus justify the negative treatment of society unwilling to participate in the study. This was the case with the student who played a sport and after an accident playing the sport sustained a permanent injury. As a result, this student also did not feel comfortable participating in the study.

Insight number nine, some students think researchers are only in it for themselves and the research will not indeed provide larger social change. This was a huge hesitation of one of the students looking at the researcher with skepticism unwilling to trust the motives of the researcher or any researcher in general. The research does not know what disability this

student had but does know it was not apparent and knows this student's main motivation in the disability cause was to fight for people with severe physical disabilities.

Insight number ten, Since there are so many different types of non-apparent disabilities, one disability carries a different layer of stigma than another and thus students are not willing to talk about it with friends let alone a stranger. Any time the researcher was introduced to a new community member who would be willing to forward the recruitment email to their student organization the student would never disclose their disability even after the researcher disclosed her own disability.

Insight number eleven, too busy surviving law school with a disability, the study is yet another ask. Initially, the researcher submitted a proposal to IRB asking that the students have a time journal to periodically document what was going on in their lives as they navigated law school and asked for their accommodations. The journals could have been in electronic form or in paper form to suit the students' needs. The journal idea was to adjust to the demands of the students' schedules without having to meet with the researcher and for participation not to be yet another ask. IRB did not allow for journals of any kind because this population is highly protected and the harm done to the student if "outed," not only is against the law but it also has the potential to affect the students future through the "professional stigma."

Insight number twelve, a student has a family history of disabilities, with some family members having a more severe condition than theirs and thus do not believe their current chronic disability even compares enough to call it a disability. While all insights were significant, number twelve offered a rather shocking reality that even those who have a severe disability still do not consider themselves as disabled. During the recruitment phase observations were made when students came together around a disability cause, some were hesitant to openly talk about their disability even amongst others who also had a disability. Thus the researcher speculates but cannot confirm that these disabilities are not primarily the learning disabilities often talked about in law school, these are non-apparent disabilities not being accounted for nor addressed given the insights previously mentioned. Even if the students had disclosed their disabilities the researcher would not be able to disclose but it was an observation during the recruitment phase. Non-apparent disabilities unaccounted for could be intermittent, short-term, psychiatric, immunodeficiency, congenital, or degenerative. All the more reason why more research appropriate to non-apparent disabilities should be conducted to assist this population.

Interview Findings: Accommodations

Neither participant had received accommodations before entering law school. Both participants had to navigate the system when requesting their accommodations for the first time, and both were unclear about the process. The negligence on the part of the law school and disability services found in the case of Participant #2 triggered Participant #2's disability as a result of the many questions asked by the specialist who is supposed to be trained and familiar with disabilities. The student, in essence, was having to educate the specialist, instead of the specialist already possessing the knowledge of how to help the student. The student was forced to justify their disability even though the student had already submitted the required medical forms to the disability specialist. In the end, the accommodations were found to

always be one to two months late for this student, a clear violation of the law because this student did not receive the *reasonable accommodations* in a timely manner.

Participant #1 received the run-around from disability services where the student was instructed to obtain the required medical forms from a general physician when in reality the forms needed to be completed by the doctor who was familiar with the disability. Disability services also gave this student a pamphlet with erroneous information. As a result, the participant spent a month running around booking appointments to obtain the necessary documents, when in the end the law school was able to provide an immediate accommodation with a simple email without the need for a doctor's note because the need for the requested accommodations was evident. In the end, this participant out of frustration decided to conform to the idea of not relying on both the disability services or the law school and instead directly disclosed the disability to professors to coordinate the necessary support. The subsequent acts of the law school upon the student's disclosure in not providing the student reasonable accommodations on time forced this student to disclose the disability to professors.

Furthermore, Participant #1 believed a current accommodation was "crazy," to indicate the unreasonableness of the length of an exam offered as an accommodation to students with disabilities without questioning whether this accommodation would present more of a burden. The same student received an "accidental accommodation," because the proctor did not initially consider the location of the restroom as part of the student's accommodation, it so happened that the restroom was at the end of the hall from the room the proctor booked. This student was also left alone in a private room, indicating that no one was worried about cheating or giving an unfair advantage to this student, an excuse often cited by those wanting to deny services to students with non-apparent disabilities.

Interview Findings: Institution

The "institution" code represented any occurrence attached to institutions such as the institution of law, courts, law school, disability services, and governmental agencies. School officials, in particular, are included in this category since they are an extension of the law school. The institutional entities interacting with the students were important to document since enforcement of the law begins with the ability of the institution to provide accommodations. Failure to provide these *reasonable accommodations* violates the rights of students with disabilities. In the case of Participant #1, the school official notified this student about accommodations serendipitously, not intentionally.

> The student states, "this is funny, I was just talking to someone earlier today. That I wouldn't have necessarily thought that I qualified for accommodations […] but [Name of law school official #2] actually told me. [law school official's name #2] was like ohhh you qualify […] I was glad that [name of school official] had volunteered the information but it also makes me wonder if there's other things that I don't know that [school official] doesn't know, that like nobody is talking about you know."- Participant #1

Which means, this student would have missed out on the services had the student and school official not met in regards to a different matter. When both students exercised their right to request these accommodations, the students were frustrated because school officials were not clear with the student, as to what they could provide neither what to expect. Participant #1

stated, "Um, I, I had what I found to be a fairly frustrating um couple of conversations with [name of law school official #1] and [name of law school official #2 …] um so I did talk to them about it, I did not leave with a clear sense of what my accommodations were or what was possible for me." It was not just one school official; it was two representatives of the law school. This student was the same student who experienced the run around by the disability services, an indicator that this may not be an isolated incident, but perhaps an institutional occurrence. It is unclear whether these acts were intentional or as a result of the lack of information and resources on behalf of the school. Similarly, Participant #2 had no idea what to expect by stating, "But I was just not sure how, all the whole **system** works. […] No one." The delay in obtaining reasonable accommodations were consistent since his/her first year of law school and the specialist had not created a plan with the student to overcome the hurdles in requesting accommodations during the summer. The participant states, "you know how law schools are, you don't get a winter break. Even in the summer you have to do OCI so there is no planning, no time to really reach out to [disability services] and you know I was doing my summer in various places, I am not at [location of law school] and in those situations how do you get your accommodation process started? Um, yeah, I still have not figured that out."

The researcher could not provide legal advice to the participants because the researcher is a lawyer, not an attorney, and only attorneys can provide legal advice. However, it is unethical to conduct a study where the researcher observes harm and does nothing. The study was not intended to gather information to file a lawsuit but instead to help the researcher to examine how the law is or is not mapping on to their lives. Since the researcher could not tell the students what to do, nor provide legal advice; to solve this dilemma and to not influence the results of the study, the researcher upon discovering the students were not aware of their rights, provided the names of the laws that would be able to serve them. This act allowed the law students to review the laws on their own and decipher what to do next.

One student toiled with the idea of approaching the dean of the law school before graduating but was undecided at the time these interviews concluded. In the end, the students decided to wait until they graduated to tell the institution what they could do better; however, not once was there a mention of filing a lawsuit. Both students were too busy surviving law school and anything that consumed their time seemed overwhelming such as requesting accommodations let alone filing a lawsuit in the middle of law school.

Interview Findings: Critical Event

As humans, we make meaning in relation to our experiences aside from the experiences we have with others, the inner beliefs shape and construct knowledge. This knowledge is subjective and may be influenced by experiences with others but not necessarily, because the ultimate genesis of that constructivism originates with the individual (Wadsworth, 2003). That knowledge is broken down into "schemes" influencing an individual's behavior (Wadsworth, 2003). Based on the "constructed knowledge" through the meaning making of the law students who participated in the study their behavior in wanting not to disclose their disability is understandable.

Conducting the simultaneous coding provided an insight into the research, attempting to answer the research question. One cannot make generalizations and assume that many or all students in law school with non-apparent disabilities are experiencing the same barriers. What

we can assert is that the incidents experienced by these law students are not in isolation where the law is not mapping on to their lives since it is not helping them even when they do disclose to the appropriate entities. Invoking the Critical Incident method helps develop possible solutions.

Interview Findings: Critical Incident

The field of psychology has used the critical incident technique since the 1950s. It works best when using the "observation" technique or in-depth interviews with open-ended questions. Since students with disabilities often face traumatic experiences in schooling, usually confined to incidences, and since open-ended questions were used in these interviews, utilizing this technique felt appropriate to gather further insights. This technique further answers the research question as well as helps organize their thoughts to provide possible solutions.

Disclosure becomes central when requesting or implementing accommodations which is why it was important to highlight in the documentation of the critical incidents observed the many times students felt they could not disclose. A critical incident observed by the researcher in the descriptive interviews consisted of "simple types of judgment" defining the critical incident with an agreed upon purpose (Flanagan, 1954) in this case limiting any references to disclosure. Thus, the critical incident observed by the researcher was any mention by the student deciding to stay in the closet and not disclosing their disability. The researcher then coded these incidents based on these criteria. No one may be able to predict with high degree of confidence as to the most effective tool to encourage disclosure by the students, however, collecting this data using a method that was intended to foster solutions, such as this one, allows researchers to start hypothesizing.

There were a few incidences where the students did not want to disclose their disability in specific settings. With these two students in particular, while they were brave enough to disclose their disability to the law school, they both did not want to reveal their disability to their internships, judicial clerkships or any employment setting. Both would more readily disclose to classmates because classmates, according to Participant #1, held no power over this student's future. There was the only hesitation to reveal to those who held power over their career. Since Participant #2 did not disclose to the judge, the judge had to postpone one of his cases which meant the student did not end in good terms with this internship. At some point the student said he/she did not disclose the disability, "guess because my disability is invisible I think I have a strong desire to act as normal as possible like to be part of the heard."

Occurrences during the recruitment phase were just as telling. There were multiple incidences where either law students or alumni disclosed their disability to the researcher but were unwilling to participate in the study. There was a student whom initially reached out and scheduled a meeting. Once the researcher arrived at the meeting the student decided not to participate in the study but instead help recruit more students by forwarding the recruitment email. The hesitation of this student came from the idea that the student brought on the disability, through the decision to play sports, and thus had not made peace with the disability. All communication with the students and alumni who decided not to participate in the study was documented through emails.

In the end, both students became all the more adamant and persistent with school officials once the disability began to interfere with their ability to participate as law students fully. They pulled back when they were able to accommodate for their disability on their own. Thus, they only reached out to the institution when it was absolutely necessary. Once they began the process of requesting their accommodations, they were met with multiple hurdles and barriers to overcome. Although these law students had heard of the ADA, they both had not heard of the Rehab Act Section 504 and vaguely knew what they were entitled to under the law as students with disabilities. This reality made it all the more significant for school officials to explain and assist these students in ensuring they received their *reasonable accommodations* since they were not fully aware as to what they were supposed to be receiving. Neither student received their accommodations in a timely manner and suffered emotional distress in the process of advocating for themselves captured by the critical events they recollected during the interviews. It seemed as though the school officials did not know or did not want to deal with these students and as a result the students paid the consequences. Delay in the accommodations and the effectiveness of the accommodations affected their grades according to Participant #2.

Both had possible legal standing for a lawsuit against the law school for discrimination and denying *reasonable accommodations* during the delay. A school official telling a student to withdraw rather than work with the student to accommodate is a blatant violation of the law. It is alarming that two people in a small community in one law school had such egregious experiences which raises alarm, and one cannot help but wonder if there are more students afraid to speak up who are experiencing the same struggles.

In these two instances the lack of awareness as to what they were entitled to in the form of accommodations prevented these students from accessing the full extent of the law limiting the resources provided for them to succeed. A written law is not enough, it also needs enforcement for effectiveness. Both of these students are an example of what Bagenstos addressed regarding the current disability laws which cover the severely disabled more readily than those who are disabled enough to be considered under our laws, but not disabled enough for institutions to get away with not providing all the *reasonable accommodations* relying on the student to figure it out at home and in the classroom. In the end, both students wanted to graduate law school and filing a lawsuit was not in their present mind given that they were just trying to survive.

In regards to accommodations, since it was their first time being diagnosed and requesting accommodations, these students differed in ideologies as those who were born with a disability. Unlike those who are born with a disability, these students once experienced what passing for an able-bodied individual entailed possibly influencing their unwillingness to disclose earlier because they enjoyed the benefits of "passing." The law school and disability services were not working together to provide these students with efficient and accurate information costing the students precious time and money.

There seems to have been a lack of effective communication between the law school and the disability services. These incidents demonstrate that the law is not mapping on to these law student's lives effectively. These were students who decided to participate and speak-up, but even they were proceeding cautiously in fear of being discovered because the institution still held power over their degrees. One wonders, what other students are experiencing similar hurdles in obtaining their accommodations but do not know whom to

turn to for help in enforcing the law to obtain their accommodations. Unfortunately, we will not know unless students speak up to an entity that does not hold power over their degrees because otherwise the alternative will be to present lawsuits for the university to listen, but those take years and these students are just trying to graduate. These experiences showcased the lack of awareness, and accessibility to the accommodations for students with disabilities as prescribed by law.

CHAPTER 8

DISCUSSION

"Talent will get you through the door, but character will keep you in the room" - unknown

This study is not only relevant given the recent events affecting students with actual disabilities illuminated by the scandal "Operation Varsity Blues," were wealthy students faked their disabilities to gain admissions into elite colleges, but it also became important to start changing the messaging around non-apparent disabilities in demonstrating that students with disabilities in higher education *matter*. Any "imperfections" these students were made to believe they possess through the stigma of disability or the limiting view of who is considered "smart," only makes these students' perspective all the more valuable in the legal field because they provide an insight from the front lines of marginalization. These students inadvertently come with unique gifts that help to advocate for others because they have had to advocate for themselves enough to survive law school. It is that unique perspective that makes these law students *perfectly imperfect* to enter a field that challenges the next frontier of laws that can shape the landscape of the everyday American life, potentially influencing how the larger society views people with disabilities. Although stigma, smartness, and capitalist ideologies have shaped the social treatment of those with disabilities evidenced by the case law and interview findings, a DisCrit theory lens helps in signaling what society needs to change to remove the current barriers that hinder students with disabilities from equal participation in this democracy.

This chapter will discuss how stigma and smartness, framed by capitalist ideologies were apparent in the case law and the interviews with the two law students while bringing DisCrit and democracy into the conversation to highlight how to combat their marginalization. Since the findings in chapter 7 were primarily highlighted to answer the research question to understand if the law was mapping on to the students' lives, as promised this chapter will present valuable insights gathered from the data not discussed in the findings section because they mainly relate to stigma and smartness. Towards the end of this chapter limitations and recommendations will be offered. The 9th and final chapter proposes a normative law.

Stigma and Smartness

The legal case study offered in Chapter 6 and interview findings in Chapter 7, both demonstrated the concept Tom Shakespeare offered that society is the one that disables. When society disables it limits what students can achieve. In the case of Guckenberger, the court determined whether these students were being discriminated against based on their learning disabilities in essence signaling who was considered deserving of such legal protection; as in the case of Wynne and Southeastern Medical School. While Guckenberger had a positive outcome in favor of students with disabilities, it was not so for the case of Wynne and Southeastern Medical School limiting what these students were able to achieve in their chosen

career path. The American Dream for this medical student and this aspiring nurse practitioner turned into ashes.

Similarly, the law school, the participants attended, was no different. The law school dictated what was deemed a priority, making the needs of these students trivial by not being proactive in ensuring these students with non-apparent disabilities received their accommodations in a timely manner once the school was made aware of their disability. The law school also did not ensure that the accommodations they were receiving, once implemented, were adequate and appropriate for each student; nor did the law school sufficiently inform these students of their rights in regards to the *reasonable accommodations* they were entitled to receive. As qualified students with bona fide disabilities, they are entitled to reasonable accommodations thus a month's delay of accommodations each semester forced students to disclose to professors as well as not having support during internships and fellowships, all seemed unreasonable. School officials provided erroneous information and actively discouraged students verbally and through their actions by not mobilizing effectively and efficiently; instead they were shown blatant disregard for their needs expecting the student to figure the workings of the system of accommodations when they had not received services in the past.

Inadequate or no assistance impacts the student's grades igniting the match that lights the fire that continually threatens the American Dream for every student with a non-apparent disability. Students with physical disabilities encounter far more structural barriers than those who have non-apparent disabilities because they can move about without structural assistance built into the architecture of many buildings. However, regardless of the disability, students with disabilities are dammed if they do and dammed if they do not try to succeed in higher learning. They are dammed when they do not try because they then subject themselves at the whim of those in the positions of power – dammed if they do because they are viewed with skepticism as people wondering how disabled are they if they reach this high in their academic career. People with a disability are not expected to achieve much in higher education. Low expectations are the norm for people with disabilities; thus, it becomes shocking to an able-bodied individual to see a disabled student get through the system.

Disability advocates such as Paul Longmore, have used the use of ashes as symbolism, to demonstrate how the law has and continues to restrict the American dream for those with disabilities. The ADA covers people who have greater limitations unable to perform a broad class of jobs, but it does not protect those who can find other jobs (Bagenstos, 2009), ignoring that perhaps the job they have to forgo is their American Dream or the wage offered by the forgone position would assist in paying for their American Dream. Challenging current disability rights law and being unwilling to settle for its current limitations will help our society increase the number of people with disabilities in higher education, the workforce, and assist them out of poverty; finally achieving the initial intent behind disability rights laws, to have access to equal participation in the American Dream afforded by a democracy within a capitalist system.

Participant #2 had the disability manifest itself in undergrad but it was only exacerbated with the high demands and stress of law school. It was during law school that the student received an official diagnosis and requested accommodations only when the disability became unbearable. Students were not readily willing to embrace their disability fully publicly or privately unless it was absolutely necessary often as a result of needing

accommodations resulting from the disability, a recurring theme that kept showing up throughout the study.

Based on the responses of the students in the interviews, the students did not want to disclose to their professors or their internships, the fear of the stigma of being viewed as different or not capable of performing effectively. The fear of being seen as different from what was deemed normal created the hesitation in disclosing. One could argue that if not for the acts of the school, the student would not have disclosed the disability to the professors who ultimately hold power over the student's grades or future letters of recommendation significantly impacting this student's legal career.

By not disclosing their disability they still possessed "smartness" at the cost of missing out on their much-needed accommodations. Not receiving the accommodations meant they could not perform to their full capacity and thus affecting their future grades and in turn their careers. These students continue to "behave as good students" as described by Leonardo and Broderick and attempted to not be an "undue burden" to the institution (law school) to continue feeling accepted.

Also, the term smart kept coming up in the interview with Participant # 2, who stated "yeah, it was like a stigma thing, and I guess, the judge and clerks they're all like super *smart* people I guess they don't know about [disability name] maybe they just haven't seen people with [disability name] even though they might have one themselves." The term smart came up again and twice in one *quantum datum* when asked if the student felt comfortable disclosing the disability to professors in the response inferring that the disability meant he/she was not as smart because "generally I get the impression that they've all been really *smart* as students in law school, they been just really *smart* that they went through classes in all of these prestigious you know um positions before becoming a law professor and they don't, they don't really understand, you know, what your struggles are in law school and then if I say that, [I'm]disabled, it doesn't, they still don't understand."

Later when asked if the student allocated the same amount of work as other classmates to achieve the same academic goals in law school the answer was:

> "same, or sometimes I have a lot to do, I do more but I just didn't know, how other people are doing it, maybe they're just really *smart* …than I am, but in terms of, I'm, I realized that I'm getting much less sleep than other people cuz I'm, so being [name of disability], I do have some level of [name of another disability]." – Participant #2

At first, the student seemed as though he/she was trying to believe that the workload was the same but as the response progressed it seemed as though there was a recollection of the extra labor involved given the disability. Similarly, Participant #1 followed the same thought pattern when asked the same question regarding work load and said,

> "so sometimes I think it was harder but I don't know that I was necessarily putting in more work, maybe, but more emotional work in some way like more kinda effort to be present and focused and, and showing up in the same way. As I had in the past or as maybe my classmates were." – Participant #1

Neither participant initially accounted for the extra effort and time it took out of their busy schedules to advocate for their accommodations signaling that they did not readily take that labor into account. One can only assume but cannot confirm that perhaps they did and do not consider that as labor because that is effort that is expected of students with disabilities, however it was important to note that both participants had such a response in common.

Furthermore, assumptions about a student's ability were made of Participant #1's capabilities by a school official and the interview captured what the participant felt when the school official encouraged the student to withdrawal as the student stated the following, "[School official's name#1] didn't know me at all or what my situation is or like what I may or may not be capable of." (Critical Event-Table 3, Appendix D). One can infer that the student when stating "capable of" related to her ability to produce and perform in law school and decided to push back on the assumptions made by the school official regarding this student's capabilities –being met with such a noticeable resistance to accommodate by the school official, compounded Participant #1 feelings of guilt at having to request the accommodations, beginning to buy into the idea that the disability was a result of a choice. Similar to the student who originally intended to participate in the study but decided not to go through with the interview because this student had yet to make peace with the disability since the disability was brought on by playing a sport, thus the student felt they had no right to complain nor claim the disability.

Also, it is a mystery as to what happened with the two alumni who reached out and disclosed their disability to the researcher but in the end decided not to participate in the study. One can assume but cannot confirm that their interest to participate was genuine but the fear of being "found out" was more powerful. Countless, efforts on the part of the researcher to reach out to this community within the limits of IRB was not spared, yet the researcher is ultimately limited to who is willing to participate and talk about their disability. The ideology that compels an individual to continue passing is at times too powerful to overcome even in the interest of positive social change.

Capitalism

When an ideology seeps into our social structures perpetuated by what Althusser described as the RSA and ISA, the need for disabled students to pass as able-bodied becomes second nature as a means of surviving the capitalist structure that stereotype people with disabilities as a drain of resources rather than a source of production, instead of trying to explore how their gifts can actually become an asset. In the cases of Wynne, Southeastern Medical School, and Argyni the institutions avoided liability through symbolic compliance of the law and instead of exploring how might the students' unique gifts add to the profession, the institutions did just enough to show the court they were complying with the law but not enough to be inclusive of students with disabilities. The medical school in the case of Wynne believed that accommodating to Wynne's dyslexia would *fundamentally alter* the standards of their program and thus were not able to provide an alternative to a scantron testing format. In the case of Southeastern Medical School, the school argued that having a nurse with a hearing impairment could endanger the patients as the nurse is unable to quickly listen to the instructions of a doctor in an emergency, and thus argued that this student was not a qualified student, to begin with, because the student was not able to perform the requirements of the program. The medical school was unwilling to explore solutions and disabled the student by holding steadfast to the idea that the student could not perform. Necessity is the mother of invention. This challenge would have created a need for yet unimagined accommodations and a market to fulfill those accommodations.

At some point in their journeys, both participants did not want to disclose their disability for fear of loss of opportunities and fear of how they would be perceived by those who held positions of power influencing their future. Participant #2 said he/she did not disclose the disability to the internship because of fear of being perceived as [name of disability] and would not dare disclose the disability in any professional settings. Participant #1 found it nerve racking when having to disclose to professors to arrange the necessary accommodations. Both students only disclosed the disability when they believed it was absolutely necessary because they gathered based on previous reactions that once they disclosed their disability that since an able-bodied individual is more readily understood and preferred both in school and in the workforce in a capitalist economy.

Unwilling to miss out on future opportunities impacting their financial future they were selective in whom they disclosed to, and to what degree. They both demonstrated having a unique insight into their oppression as Participant #1 wanted to ensure not to embrace a space like disability if they did not belong by first checking her privilege. Although this student instinctively knew they had a disability he/she wanted to ensure that they did not claim the disability as an identity if they did not belong to such a space indicating to the researcher that he/she was hyperaware enough to "see" the marginalized of others enough not to co-op that social identity. This student also possessed great research skills to know that the disability services pamphlet was wrong, and the treatment of the law school official was inappropriate. Capitalist ideologies do not readily credit such level of high-level thought not easily quantified in immediate production. According to the rationale found in Bowls and Gintis in *Schooling in Capitalist America*, such a student does not make for a good worker that follows without question, a most desirable trait when feeding the workforce. These special skills developed and afforded by their unique station in life as students with non-apparent disabilities should be seen as an asset in the legal community rather than reducing their identity to the stigmatic *undue burden.*

Participant #2, showed great tenacity and grit even though the accommodations were always one to two months late in law school. Accommodations were not provided in the internship because disability services nor the law school every explained to the student what to do during the summers of internships regarding accommodations outside of the classroom. As a result, this student had one of the worst exacerbations of the disability ever experienced. It was so severe that the student contemplated suicide. That grit to survive and succeed should be rewarded and factored into an individual's character value in any setting instead of being made to feel weak or ashamed unable to share.

Disability

Society disables by not having structural mechanisms in place that allow people with disabilities to equally participate in our society and making assumptions about an individual's abilities. The seven DisCrit tenants are all incorporated here as follows. The first and second tenents of DisCrit embrace the notion that race and ableism were socially constructed and shape ideas of normalcy (discussed at length in Chapter 2), and being aware of such structures helps to start dismantling this ideology. There are those with disabilities who beat the odds and still manage to succeed as in the case of Paul Longmore, Martin Pistorius, Cristy Brown,

and Sonia Sotomayor, to name a few but they are the exception, and their success was as a result of their grit despite the social expectations of people with disabilities. Systemic change to eradicate racism and ableism is needed so that these stories become the norm, not the exception.

Third, an individual's identity, since it is multidimensional, the individual has the right to define what they deem as the primary component of their identity including how they choose to be named or seen. Some prefer to say, "I am disabled" others prefer to say, "I have a disability," a naming that should be left up to the individual. The fourth tenant was important to embrace, "nothing about us without us," accomplished in this dissertation by interviewing student with non-apparent disabilities and asking them what they thought would improve the experiences of future law students with disabilities. The following are some of the recommendations they offered. Participant #2 suggested making law school four years instead of three saying that it took a while to adjust to law school and wanted to have another opportunity to do it better. This student had no idea that this option was already available through a reduced course load for students with disabilities. The fifth tenant entails learning from history as laws in the past have been known to disenfranchise as well as protect a populous and as such they have the potential of creating positive social change that eliminates "othering"

The sixth tenant acknowledges that Whiteness and ability are property placing those who are not white nor able-bodied at a substantial social disadvantage. The seventh and final tenent calls for activism and resistance linking academic work to the community, which is why this dissertation suggests a normative law in the following chapter to use all that has been learned and propose a legal tool that may be effective for the disability community.

Democracy

Since, a democracy is equal participation in a society it is imperative that it hears all voices, to ignore one ignores all. No democracy will sustain the marginalization of a few. As previously mentioned, young described the five faces of oppression which are violence, exploitation, marginalization, powerlessness, and cultural imperialism (Young, 2011). One of the more damaging faces in a democracy is that of marginalization. When a student with a non-apparent disability is not provided their lawful, *reasonable accommodations* or when a student is excluded from the job market because of their disability, that marginalizes them unable to participate in our society fully, they are in essence limited in the enjoyment of their civil rights afforded to all; life, liberty and pursuit of happiness.

As people made erroneous assumptions in the eugenics era about people of color and assumptions were made of women in the sciences stereotyped as not being good at math, so too have assumptions been made of people with disabilities. To site to the physical limitations of the individual with disabilities is not advocating for equity because minds have been made up that it would be troublesome to try to accommodate. With that attitude embraced by a capitalist system that associates the body with production, nothing is ever going to change as far as providing equal participation in a democracy. Because of their difference, students with non-apparent disabilities experience marginalization not supported by institutions to succeed in higher education and, in turn, the workforce (Young, 11). It was apparent from the interviews that law students cannot publicly embrace their non-apparent disability given the

stigma. The only way to help this population out of the closet is to eradicate stigma around disabilities all together, but for that to happen the ideology perpetuating the stigma has to change. Young advocated for consciousness in the political process and increasing the active participation of the marginalized through educating the communities (Young, 2011). Following Young's reasoning and understanding Althusser's formation of ideology, I would like to propose that this education be institutionalized in our education systems to change the current ideology around disabilities and increase the consciousness of the masses of both the political process and how are people with disabilities marginalized. To do so a normative law addressing this goal is presented in Chapter 9.

Limitations

The following were limitations of the study. More participants in the study would have indicated if there is a common pattern or practice of discrimination by the institution. Although the acts documented in the interviews were tantamount to disability discrimination (which they individually can pursue) more than two examples are needed to make such a bold statement such as having a common pattern or practice of discrimination. Having more participants would help to clarify whether this is going on. One of the participants mentioned in her interview that this type of "treatment" was going on with other students, but this testimony is hearsay and cannot be taken seriously as the researcher did not hear this first hand and cannot verify this statement.

Also, given that only two students were interviewed, a generalization on this population cannot be made, and thus the study was limited to just viewing the experiences of these two law students, to show how the law mapped on to their lives. However, it is safe to say that what these students experienced were not isolated incidents. These two students were willing to confirm the inadequate service they received from the disability services of the law school housed in the university's main campus. The legal case study and interview findings allow us to infer the importance of conducting more research on this population, given that both participants were encountering similar hurdles concerning access to their accommodations and had trouble garnering the institutional support from their law school.

Also, since this study was limited to one law school, we cannot assume this is occurring in other public law schools; however, the sentiments felt by these two participants hesitating to disclose, causes anyone to wonder if such an occurrence is also taking place in other law schools. Students with non-apparent disabilities who are not receiving their accommodations may also be hesitant to speak up for any of the twelve reasons presented in the "insight section." Perhaps students have no idea what are the next steps to take once they know their rights are being violated.

Recommendations

Once can infer that when students with non-apparent disabilities do not speak up and request accommodations or there is some delay in obtaining their accommodations their grades ted to suffer, or they are not where they would have been had they been fully accommodated. I wondered if this were the case for students with apparent disabilities in terms of Alternative Media services not structural accommodations to adjust for structural

barriers. It goes without saying that someone who cannot physically enter a building cannot access the education and much work still needs to be done to assist yet since the focus in this study were students with non-apparent disabilities I could not help but wonder to what extent does "believability" impact the receiving of services. It could just be that those with apparent as well as non-apparent disabilities are both not receiving their academic accommodations but for that there would need to be a study to explore this phenomenon.

Future research will be greatly assisted if they use the twelve insights discussed in Chapter 6 as a guiding post. Listed here insights: 1) Students would be more forthcoming to provide feedback anonymously rather than confidentially to have the freedom to say anything without possible judgment. 2) Some students with non-apparent disabilities have not fully embraced their disability thus cannot talk about it because the diagnosis is recent, or they are in denial even after an old diagnosis. 3) The student does not feel they are disabled enough. 4) Students are still trying to pass as able-bodied regardless of when the diagnosis occurred. 5) Not wanting to talk about a sensitive subject matter that is at times emotionally taxing. 6) Not wanting to talk about a sensitive subject with someone who is still a part of the legal community even if it is confidential, because they do not want their disability to "get out." 7) Not wanting to be perceived differently by anyone (including a stranger) after disclosing because it may add to the false narrative that their best is still not enough. 8) Some erroneously believe they brought on the disability and thus justify the negative treatment of society unwilling to participate in the study. 9) Some think researchers are only in it for themselves and the research will not indeed provide larger social change. 10) Since there are so many different types of non-apparent disabilities, one disability carries a different layer of stigma than another and thus are not willing to talk about it with friends let alone a stranger. 11) Too busy surviving law school with a disability, the study is yet another ask. 12) A student has a family history of disabilities, with some family members having a more severe condition than theirs and thus do not believe their current chronic disability even compares enough to call it a disability.

These insights are all the more representative of how deeply rooted the stigma is surrounding disabilities. Given the recent movement in this law school around disabilities it was assumed that students would be more open to talking about disability. However, the study found that although student were organizing around disability, they were more willing to be considered allies rather than talk about their own disability. A verbal ask was made at two meetings, were students gathered on disabilities and the researcher was welcomed. By that point the recruitment email was sent out to the group and this act of announcing in person to a student group was approved through IRB. However, not much interest was shown in participating in the study and those who did show interest were hesitant. The hesitation of students to go on record even if the record was protecting their confidentiality compels this researcher to recommend that any further studies on this population of law students with non-apparent disabilities be conducted anonymously. It was made evident that in the future, those conducting research with this population should not be a part of this legal community to allow more students to come forward instead of fearing being outed or someone in their legal community learning about their disability. Future studies should be anonymous, not confidential.

Last but not least, a few concepts were brought up and should be explored in the future. Is a law school better served if disability services are not housed under main campus

because the needs of law students are vastly different than those student in the undergraduate level. Perhaps researching and exploring how do law schools that currently have these services separate function, and are they effective. Also, the surprise of those able-bodied individuals who see a person with a non-apparent disability become more successful than they were able to achieve in academia has been unexplored but was observed when law students requested accommodations from specialist who had lower levels of education. Law students receive assistance from individuals who do not possess a law degree thus one cannot help but think these sentiments are in relation to their disability. Lastly, individuals biases become institutionalized thus it would behoove us to explore what can be done to educate faculty and staff in these elite spaces now since they will not be fortunate enough to benefit from the proposed law in Chapter 9.

CHAPTER 9

PROPOSED NORMATIVE LAW

"Until we get equality in education we won't have an equal society"- Justice Sonia Sotomayor

A law is necessary but not sufficient to combat the ableism that continues to permeate higher education similar to what is happening with the ineffectiveness of sexual harassment law in graduate school. This study revealed that the law is not mapping onto the lives of the two law students with non-apparent disabilities who were interviewed for the study, because the law did not reach them effectively. In this chapter, the ineffectiveness of sexual harassment law in graduate school will be briefly summarized to help the reader understand the similar trappings that plagued the implementation of disability rights law in the confines of the law school found in this study. Moreover, while some universities have implemented courses in college to educate the student body about sexual harassment, it does not address the root of the problem which is to prevent the harassment from happening in the first place. Similarly, to ask a university to educate its student body on disability would also not address the ideology that perpetuates the marginalization of students with disabilities in the first place.

Society designs the insiders and outsiders by denoting who is deserving of being covered in the law to then benefit from democratic participation and who is deemed undesirable through stereotypes feeding into the stigma that has affected marginalized groups (Schneider & Ingram, 1997; Steele & Wolanin, 2004). Those deemed deserving and considered desirable then appear in the capitalist hierarchy through the *correspondence theory* proposed by Bowles and Gintis as previously discussed in Chapter 4, a system that dictates what form of production will be considered acceptable and valuable. Therefore if these ideologies that created the problem were man-made then so too lies the solution. One has to change the ideology to eradicate the stigma surrounding disabilities shaping the beliefs of those in positions of power who make and interpret the law as well as those in the employment sector who hire and fire, and those in college admissions who admit or deny a student. To do so, it becomes essential to target the ideology of individuals at an early age; thus a proposal is offered and found at the end of this chapter using a social ecological model impacting personal and environmental factors to create law and policy.

Sexual Harassment Law

Recently, in 2018 the National Academies of Science, Engineering, and Medicine published a consensus study report entitled *Sexual Harassment of Women: Climate, Culture, and Consequences in Academic Sciences, Engineering, and Medicine* (National Academies of Sciences, Engineering, and Medicine, Policy and Global Affairs, Committee on Women in Science, Engineering, and Medicine, & Committee on the Impacts of Sexual Harassment in Academia, 2018). This study explored whether sexual harassment laws and policies have been effective in higher education. Law schools are professional schools with similar pressures found in the graduate programs explored in this study which included Academic Sciences, Engineering and Medicine. Thus, this study was relevant and the closest in nature to compare

the environment in law school these two participants experienced; a law school environment where the idea of "smartness" is also coveted as in other graduate programs. The study revealed six significant findings but only those relevant to the parallels with disability will be addressed here. The most relevant red flags that arose during the review of case law and the interviews with these two law students in the study happen to match those found in sexual harassment law. It is important to note that further research is needed to explore whether or not these issues are affecting students with non-apparent disabilities on a systemic level. For the purposes of this parallel analysis, the shortfalls of disability law can only be applied to these two students and thus unable to make generalize to the larger population. However, if this level of discrimination so happened to affect two students in an already small legal community it is two too many. Further studies should be conducted to explore possible harms being done in the shadows to this population as well as learning how to prevent these egregious acts from happening to other students with disabilities as the law tries to catch up to remedy these wrongs in the same way the law tried and still tries to assist women in both educational settings and the employment sector.

For example, Title IX and Title VII are often invoked by women fighting discrimination on the basis of sex in higher education and employment. Title IX applies to higher education as they receive federal monies through student loans and Title VII covers those who are employed by the educational institution protecting the equal employment status of women (20 U.S.C §§ 1681-1688; 42 U.S.C. §§ 2000 e-2). Behavior or actions in the form of harassment are considered sex discrimination (20 U.S.C §§ 1681-1688; 42 U.S.C. §§ 2000 e-2; National Academies of Sciences, Engineering, and Medicine, Policy and Global Affairs, Committee on Women in Science, Engineering, and Medicine, & Committee on the Impacts of Sexual Harassment in Academia, 2018). These laws apply to law students who are at times also considered both students and employees of the university should they choose to work as a research assistant in the law school they are currently attending.

A Law is Not Enough

For women in higher education, the law is inadequate in reducing or preventing sexual harassment. As the law stands, it is too narrow and overly focused on sexualized and coercive forms of sexual harassment not on the more prevalent gender harassment which is just as harmful (National Academies of Sciences, Engineering, and Medicine, Policy and Global Affairs, Committee on Women in Science, Engineering, and Medicine, & Committee on the Impacts of Sexual Harassment in Academia, 2018, p.118). Furthermore, the sexual harassment experienced by women does not meet the legal criteria of illegal discrimination under current law.

Similarly the law is not fully reaching those with non-apparent disabilities such as the participants in the study because students are afraid to speak up in the first place regarding their disability; when they do the institution builds in mechanisms to demonstrate they have complied with the law by making an "effort" to provide disability services, without measuring its effectiveness. When discrimination is not egregious but instead subtle and covert an institution can get away with discriminating against students with disabilities. In the case of Participant #1, the discrimination that occurred by telling the student to withdraw was not readily obvious because it was masked as trying to spare the student from such troubles

assuming the student was not capable of delivering on the demands of the law school program. The actions of the school official qualifies as discrimination on the basis of the disability because, but for the disability, the school official would not have recommended the withdrawal.

As for Participant #2, the discrimination was covert because they were attempting to provide the accommodations to the student by meeting with the student and moving along the process in registering the student for accommodations, yet the accommodations were always a month late and the countless questions asked by the specialist about the disability revealed some skepticism or at least the specialist's lack of knowledge in regards to this student's disability. The institution did not say outright, "you should not be in law school because you are disabled," but the acts of the institution leads the students to believe that students with disabilities are not a priority and are made to feel as an *undue burden.* As in the case of Argenyi, if the institution, in this case, the law school, could prove that accommodating to these two participants interviewed are an *undue burden* to the law school, the law school is not required to provide accommodations. Thus, as sexual harassment law is overly focused on sexualized and coercive forms of sexual harassment, so too is disability rights law too narrow in focusing on the more obvious forms of discrimination and covertly having discretionary power as to how effective institutions will be in accommodating to a student with non-apparent disabilities.

In the case of an apparent disability such as Pushkin, even though the Medical School's Residency program did not want to admit him under the guise of being unqualified, the court viewed the Medical School's actions as trying to circumvent the law only wanting to deny his admissions after meeting the student in the interview process where they saw his disability. This is not the case for those with non-apparent disabilities because it is unclear if the institution is actively not trying to comply with the law or truly believes it is complying with the law by providing inadequate services and assume they are adequate. Regardless, discrimination is taking place and no real efforts have been demonstrated on the part of the law school to figure out how to remedy the delay in accommodations or educating the faculty and staff around disabilities at the time of the study.

Symbolic Compliance

Furthermore, it is legal for a university to keep its internal policies and procedures and any research done on their effectiveness confidential. If a university discovered it was not compliant with the law there would be no incentive to reveal the results nor would they want to take action due to possible financial restraints. The fear of legal liability creates a climate of secrecy, and if an employee or student signed a confidentiality agreement in a settlement, they are bound by that document to stay silent. Unfortunately, this limits the actions that can be taken to remedy the problem and prevent discrimination (National Academies of Sciences, Engineering, and Medicine, Policy and Global Affairs, Committee on Women in Science, Engineering, and Medicine, & Committee on the Impacts of Sexual Harassment in Academia, 2018).

Similarly, in the case of disability, institutions, in this case a law school, can get away with misconduct through symbolic compliance by having an entity such as disability services publicly publish its policies and procedures that comply with the law thus avoiding liability in

theory yet in practice these policies and procedures may not be adequately implemented. Therefore the procedures are not helping to prevent the discrimination against students with non-apparent disabilities as was the case with Participant #1 and Participant #2. Both experienced at least a month's delay in their accommodations; in one case it was every semester. There was no follow up with the student to indicate whether or not they received the adequate accommodations nor was disability services able to plan the accommodations for the following semester because the school had the policy to renew the accommodations every semester. It seems it is in the best interest of schools to avoid liability regarding sexual harassment by not effectively measuring the problem, similarly, it is in the best interest of a law school not to thoroughly investigate whether students' needs are being met.

Erroneous Assumptions

Both sexual harassment law and disability law make the erroneous assumption that students want to report the discrimination when the student is mainly trying to survive the program and fears retaliation. In reality, the 2018 study on sexual harassment demonstrated that targets of sexual harassment are unlikely to report the harassment and often do face retaliation when they report even though this is illegal (National Academies of Sciences, Engineering, and Medicine, Policy and Global Affairs, Committee on Women in Science, Engineering, and Medicine, & Committee on the Impacts of Sexual Harassment in Academia, 2018). In the case of these two participants in this study, they did not want to file a lawsuit nor report the discrimination at the closing of the study. The law cannot assist students that do not want to report the discrimination. For the federal government to step in and remedy the illegal acts of an institution receiving federal funds, the institution first needs to be made aware. Unfortunately, nothing can be done if students do not report the discrimination. Furthermore, just as graduate schools have no incentive to measure and are not actively pursuing effective evaluation of sexual harassment training for fear of liability, perhaps the law school established a recent committee on disability to do the same. Currently, there is no way to find out if the efforts are genuine or if the committee was provided in name only to avoid liability because the law school can choose to keep the findings confidential or minimize the real impact of its findings. Furthermore, the disability rights law alone is not enough to remedy the marginalization of a student with disabilities because it falls prey to the loopholes and circumventing language that makes the law ineffective such as *fundamentally alter* and *undue burden* as previously discussed in chapter 3 and 6. It is still treating disability as if it is an individual's problem. Currently the disability rights laws in place were intended to assist students and employees with disabilities in obtaining equal opportunities, but instead, these laws have failed these students with non-apparent disabilities as the law makes erroneous assumptions that students will be believed and report the discrimination as aforementioned.

Proposal

The ideology that continues to be perpetuated by those in positions of power and recreated continually through RSA and ISA. As Young highlighted, educating the community is a tool to raise consciousness in the political process to strengthen the democratic fabrics of our society, so too, I am proposing to use education to start implementing change. I

recommend a law that requires every student attending a federally funded public Junior High School to receive a course on disability in their first year. Six graders are typically 11 years old, an age that seems the most appropriate to teach students on disability since their mind has evolved enough to make sense of the world and have sufficient language and comprehension skills to develop and expand the higher cognitive functioning that will shape their beliefs as adults. The brain is continuously changing and growing as people evolve into whom they are meant to become forming part of the larger community. Experts in childhood education will know how best to execute the lessons on disability to teach those of such a young age. However, this law is needed to make those teachings mandatory. Teaching students to see the endless possibilities instead of limitations for individuals with disabilities and start fostering a social space where talking about disabilities becomes socially accepted rather than a source of shame. To teach students about disability in a student's high school, college or older adult years seems challenging because the end goal is to prevent the problem before it manifests itself instead of having to undo any negative social conditioning on disability. Research shows that the brains ability to change in response to experiences occurs early on, and it becomes difficult to change as one gets older especially after the age of 30 ("Brain Development" 2019; Levitt & Campbell, 2009; Nelson, 2000). The neural connections for different functions of the brain develop sequentially ("Brain Development," 2019; Nelson, 2000). The sensory pathways (Vision, Hearing) develop rapidly in the first year, language develops in the first five years as higher cognitive functioning develops simultaneously ("Brain Development," 2019; Nelson, 2000).

Thus, to tackle and change society's current ideology that views students with disabilities as an undue burden, and a drain on resources, students trying to game the system education around disability must take place in early childhood. The ideology needs to change since that seems to be the root of the problem; thus I propose taking a public policy approach using an socio-ecological based model (SME) (CDC, 2018). The socio-ecological model is multifaceted taking into account personal and environmental factors that determine behavior using a five-level approach to an issue affecting the public. First, by educating the individual (student), one impacts the individual's knowledge, attitudes, and behavior. Second, these attitudes and behaviors then influence their interpersonal relationships such as family, friends and social networks. Third, these relationships then influence at the community level such as organizations. Fourth, these community relationships influence organizations and other social institutions. Lastly, these organizations enable an environment to create policy at a state and national level while being embraced by the law that makes such lessons to sixth graders mandatory in essence coming full circle to sustain social change for generations to come preventing the damaging ideology that created the problem in the first place.

Conclusion

In answering the original research question: how does disability rights law map on to the lives of law students with non-apparent disabilities; it currently does not as it assumes the students will report the discrimination enough for the law to be effective. For that to happen, it also assumes that students with non-apparent disabilities fully embrace their disability, enough to want to talk about it if not in public at least to an official that could enforce the law and that did not seem to be the case with the two law students interviewed. One was

contemplating notifying the Dean of the law school, but hesitation was still lingering for fear of encountering awkwardness with the school official that initially encouraged the to student to withdraw since the student may need that official before the date of graduation.

The established disability services seem to serve as symbolic compliance to both of these law students. While generalizations cannot be made that this is happening with other students we can only affirm this happened to these two students. In the end, these students had to do without the accommodations for an extended period of time and figure out how to survive law school without the accommodations for one or two months and at times an entire summer. Law students had to both navigate law school and disability services at times forgoing fighting for their accommodations and instead overworking themselves sacrificing their sleep exacerbating the disability all the more. In this public law school, the hesitation of some students and alumni to participate raised suspicion as to how prevalent the stigma permeates throughout the student body in regards to disability. Although the prevalence could not be measured in this study, the study did capture the insights provided by some students as to their hesitation which has become invaluable for future research designs that will help gather even more data in the hopes of improving the democratic participation of students with non-apparent disabilities.

The prevalence of the stigma surrounding disability in law school compelling law students to continue trying to pass as able-bodied and shying away from their unique gifts is all the more perpetuated by people who try to scam the system contributing all the more to the social oppression of these students. It makes it harder for students with non-apparent disabilities to come out of the closet when they feel seen as frauds. The people prosecuted by the Department of Justice under the "Operation Varsity Blues" investigation did significant harm to the disability community especially to those students with non-apparent disabilities. Students with non-apparent disabilities do *matter,* and their perspectives are just as valuable in an American democracy and should be valued as such without caveats or qualifiers. Law students with non-apparent disabilities are warriors in the background and are perfectly imperfect, and the next generation of young students will have the opportunity to view them as such with this proposed law before they reach adulthood, in turn, changing the treatment of students with non-apparent disabilities in all the facets of American society thus changing how people with disabilities are treated and seen as a whole. The countless obstacles encountered by these law students at times creates a perfect legal advocate because these students have had to advocate for themselves in an imperfect world. Law students with non-apparent disabilities do not have the Varsity Blues because **they are** perfectly imperfect.

APPENDICES

APPENDIX A

INTERVIEW QUESTIONS

Question #1: Are you a current law student or an alumnus? If you are a student, what year are you in law school? If you are an alumnus, what year did you graduate law school.

Question #2: Do you self-identify as having an apparent or non-apparent disability?

Question #3: Before attending law school what type of accommodations had you received in the past?

Question #4: Before attending law school, can you name a disability accommodations-related critical event in your schooling that stands out?

Question #5: Did you disclose your disability to the law school in your application? Why or why not?

Question #6: Has any school official explained to you the process of obtaining your reasonable accommodations?

Question #7: Have you ever heard of the Americans with Disabilities Act (ADA) or The Rehabilitation Act Section 504? If so, what do you know about it?

Question #8: Can you name a disability related critical event that occurred during your first semester of law school?

Question #9: What was your experience in requesting your reasonable accommodations in law school?

Question #10: Did your knowledge of your rights as a student with a disability impact whether you asked for your accommodations?

Question #11: Do you trust disclosing your disability to your professors? Why or why not?

Question #12: Do you trust disclosing your disability to your classmates? Why or why not?

Question #13: Do you believe you put in the same amount of labor as your classmates to achieve your educational goals?

Question #14: Do you believe you received or are receiving an equal education?

Questions #15: What are your thoughts on a reasonableness accommodation standard?

Question #16: Have you had any challenges as to what someone else believed was reasonable for you?

Question #17: In your opinion, do you believe the accommodations you received or are receiving are reasonable? Why or why not?

Question #18: How would you improve the law school experience for future students with disabilities entering law school?

APPENDIX B

SIMULTANEOUS CODING TABLE 1

NOTE:
*Law school officials' names and gender were removed to protect the Participants confidentiality given the identifiable small legal community.
*Diagnosis and accommodations received were removed to protect against "professional stigma," recognized by the courts.

ACCOMMODATIONS

Code	Theme	Quotes
Accommodations	Access to Reasonableness of Type of Reactions to Delay in Accommodations	**Q #3: Before attending law school, what type of accommodations had you received in the past?** A: "Um, I had not, I have not received **accommodations** in the past."- Participant #1 A: "I didn't realize my disability until law school, so previously I, I haven't been **accommodated**."- Participant #2 **Q #9: What was your experience in requesting your reasonable accommodations?** A: "because it was my first-time getting an **accommodation** I think I was really having that imposter syndrome, […] because specialist was you know trying to understand my symptoms and I had to **talk about** them which was also **triggering**." – Participant #2 A: "I emailed my specialist but, but yeah I think, in, in every semester I was getting my **accommodations** at least a month **late,** a month or two months late." – Participant #2 A: "I got an email the next day that was like all right, here is your [accommodation]. And um I definitely was VERY angry. […] I did **run around."** – Participant #1 A: "I just need to take care of it myself. Like, I just need to figure out what I need and ask for it from the people that I, you know what… like, it's not gonna come from the university and it's not gonna come you know…like (**Name of School Official**), like dean (name) and (Name of School Official) sort of said, we'll help you deal with your classes but they were, they were so… actually like unhelpful about it that I was like forget it. I'm just gonna go directly to the professors you know."- Participant #1 A: "Like they gave me this **pamphlet that was like not very helpful** and had stuff that was wrong that I had, no, that I could tell was wrong cuz I had like done enough of my own research like it just was…" -Participant #1 A: "I feel like I have a new understanding that like simply **extending the time** is not the answer for everyone, um and I felt that like, it made one of my tests like nine and a half hours long or something, which was like insane, and **that is crazy**. No one should take a test that long you know." -Participant #1 A: "ah, hundreds of student who are stressed out you know. So I liked being in the **room by myself.** And then [proctor] had originally told me [proctor] thought the **bathroom** was down stairs. And I was kind of like well what is the point of thathahaha, (laughter) but it ended up being just at the end of the hall, so it was fine."- Participant #1 A: "[Disability Services] did not give like clear instructions about what I would expect from the **accommodations**. Um, the proctor did, in the, like once I was there. Like, [proctor] was like alright here is the deal. Um and then it was like very flexible like they were like you know, nobody was paying attention to me really. Um, yeah…" -Participant #1 [left alone in a room] A: "in my second semester, um, I think I still didn't know **the process**, I didn't know you had to reach out to them before the semester starts and I wasn't sure about the documents I needed again cuz I had it in my first semester so what happens in my second semester?" -Participant #2

APPENDIX C

SIMULTANEOUS CODING TABLE 2

NOTE:
*Law school officials' names and gender were removed to protect the Participants confidentiality given the identifiable small legal community.
*Diagnosis and accommodations received were removed to protect against "professional stigma," recognized by the courts.

INSTITUTION

Code	Theme	Selected Quotes
Institution	**RSA:** Law Courts Government **ISA:** Law School Disability Serv. School Official	**Q #10: Did your knowledge of your rights as a student with a disability impact whether you asked for your accommodations?** A: "this is funny, I was just talking to someone earlier today. That I wouldn't have necessarily thought that I qualified for accommodations […] but [**Name of law school official #2**] actually told me. [law school official's name #2] was like ohhh you qualify […] I was glad that [**name of school official**] had volunteered the information but it also makes me wonder if there's other things that I don't know that **[school official]** doesn't know, that like nobody is talking about you know."- Participant #1 **Q #6: Has any school official explained to you the process of obtaining your reasonable accommodations?** A: "Um, I, I had what I found to be a fairly frustrating um couple of conversations with [**name of law school official #1**] and **[name of law school official #2 …]** um so I did talk to them about it, I did not leave with a clear sense of what my accommodations were or what was possible for me." Participant #1 A: "But I was just not sure how, all the whole **system** works. […] No one." -Participant #2 **Q #9: What was your experience in requesting your reasonable accommodations?** A: (Diagnosis occurred in 1st semester of law school, this comment was made in the Participant's 3rd year.) "you know how law schools are, you don't get a winter break. Even in the summer you have to do OCI so there is no planning, no time to really reach out to [**disability services**] and you know I was doing my summer in various places, I am not at [location of law school] and in those situations how do you get your accommodation process started? Um, yeah, I still have not figured that out." -Participant #2

APPENDIX D

SIMULTANEOUS CODING TABLE 3

NOTE:
*Law school officials' names and gender were removed to protect the Participants confidentiality given the identifiable small legal community.
*Diagnosis and accommodations received were removed to protect against "professional stigma," recognized by the courts.

CRITICAL EVENT

Code	Quotes	Theme
Constructed Knowledge Critical Event Narrated by Participant	**Q #8: Can you name a disability related critical event that occurred your first semester of law school?** A: (Participant's Critical Event Occurred Mid-Law School) "Um, so yes, I guess it was like, it was like, the [**accommodation**] **process,** and then actually **getting** the accommodations were **kind of the most relevant moments** I guess." -Participant #1 A: "[**law school official's name #1**] basically told me [school official] thought I should **withdraw from the Spring semester**. And, and it, like [School official's name #1] was so forceful about it, that I actually felt like, and I don't think I'd ever met [school official] before. [school official's name #1] didn't know me at all or what my situation is or like what I may or may not be capable of.[…] (Sarcasm) I don't know [law school official's name] like are you going to pay my rent for the Spring semester because I don't have my student loans like… that's ahhh, that's what, I wish I had said that. I did not say that haha (laughter) you know, […], it was a really frustrating conversation and, and I left feeling very strongly that the person who was supposed to be my advocate **was like NOT (emphasis) going to be my advocate**, you know." -Participant #1 A: [**law school official's name**] was talking about the **imposter syndrome,** that and you know some other **student services** stuff um and when [school official] started talking about imposter syndrome something happened in my brain where my heart wherever (nervous laughter) haha I wasn't able to control my breathing I just started **crying** (Participant started crying, researcher provided tissue) […] everyone was staring you know and **I really remember that** cuz I, I just didn't know what was happening you know like, just hearing imposter syndrome." -Participant #2	Access to: Accommodations Receiving Accommodations from institution School Official: Institution denying accommodations

APPENDIX E

SIMULTANEOUS CODING TABLE 4

Critical Incident

Code	Quotes	Theme
Critical Incident Observed by Researcher: Not Disclosing	A: "You **can't talk to the judge** and say hey judge I am an extern and I have a disability. You can't do that."-Participant #2	Not disclosing to externship
	A: "last summer in my internship **I didn't tell anyone** at all at my internship because you know, people who have, it's like people who have power versus people who don't, like, what are my classmates going to do, they can **judge me** all they want,[…]but if like your professor is having feelings then that is about your grade or your recommendation letter." – Participant #1	Not disclosing in internships
	A: "that's the thing about invisible disabilities that they make judgments about you know, how much suffering you are going through, […] I don't think they believe me. I don't, **I don't think they'll credit my abilities**, you know, my legal abilities."- Participant #2	Not disclosing for fear of not being seen as capable.
	A: (Diagnosis occurred in 1st Semester of Law School) "now that I'm in my third year, I, I, I am **feeling like** I am at peace with my disability, so I talk about it with people who might feel comfortable with, but **I won't come out** to say my supervisor or my work place or professors or any kind of networking event. **I will never talk about it** of course."- Participant #2	Not disclosing to employers

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