

Am I Disabled? Disability Identity and Law Faculty

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As Joan Howarth observed in 2008, “[F]ew law professors identify themselves as disabled.”¹ While no systematic efforts have been undertaken to study the numbers of disabled² law professors, this observation is amply substantiated by the everyday observations of most of us within our own institutions.³ Openly or visibly disabled law professors are exceedingly rare in legal academia—even more so than other underrepresented groups, such as women, people of color, and members of the LGBTQ community.⁴ Indeed,

Katie Eyer Professor of Law, Rutgers Law School. This article builds on a longer academic article on the subject of disability identity and disability rights. See Katie Eyer, *Claiming Disability*, 100 B. U. L. REV. 547 (2021). Many thanks to Karen Tani, Lilith Siegel, Katherine Macfarlane, Bob Dinerstein, Julie Lipkin, and Emma McArthur for their valuable feedback, editorial comments, and support of this project. Many thanks also to Doron Dorfman for helpful leads on sources, and to several of the participants in this symposium for sharing drafts of their essays. Finally, my profound gratitude to the legal academics with disabilities whose presence in the legal academy, and disclosure of their disabilities, has helped pave the way for others. See, e.g., James T.R. Jones, *Walking the Tightrope of Bipolar Disorder: The Secret Life of a Law Professor*, 57 J. LEGAL EDUC. 349 (2007); Katherine Macfarlane, *Owning Up to My Reality: I’m Disabled and I Always Will Be*, Ms. JD (Aug. 27, 2018), <https://ms-jd.org/blog/article/owning-up-to-my-reality-im-disabled-and-i-always-will-be> (2018).

- 1 Joan W. Howarth, *Recruiting Sexual Minorities and People with Disabilities to Be Dean*, 31 SEATTLE U. L. REV. 751, 757 (2008).
- 2 There is a diversity of opinion in the disability community about whether people-first language (“person with a disability”) or identity-first language (“disabled person”) is more empowering and respectful. See, e.g., Erin E. Andrews, et al., *#SaytheWord: A Disability Culture Commentary on the Erasure of “Disability,”* REHAB. PSYCH. 2–3 (2019); Anjali J. Forber-Pratt, *Yes, You Can Call Me Disabled*, QUARTZ.COM (June 3, 2019). In this piece, I move between both conventions. As others have observed, when possible (e.g., when discussing subcommunities or individuals), observing and following the conventions preferred by particular individuals or communities is the ideal approach. See, e.g., Cara Liebowitz, *I am Disabled: On Identity-First Versus People-First Language*, THEBODYISNOTANAPOLOGY.COM (Mar. 20, 2015).
- 3 Cf. Joseph Grigely, *The Neglected Demographic: Faculty Members with Disabilities*, THE CHRON. OF HIGHER ED. (2017) (noting generally the paucity of information about how many faculty members at universities have disabilities).
- 4 One obviously imperfect metric of this lesser presence of law professors with disabilities is that the Association of American Law Schools (AALS), the major professional membership organization for law faculty, has had affinity sections for minority law professors and women

within many institutions, there may be no members of the law faculty who openly identify as people with disabilities.⁵

This dearth of identifiably disabled law professors has important consequences. Law schools remain unwelcoming spaces for many people with disabilities—a phenomenon that no doubt is perpetuated by the dearth of openly disabled law faculty.⁶ In contexts where there are no identifiably disabled law faculty, students with disabilities—themselves a substantial but mostly hidden group within law schools—may feel especially stigmatized or unwelcome.⁷ Such stigmatization can further have material costs, as students may not seek needed accommodations because of the actual or perceived stigma of doing so.⁸ The type of mentoring and support networks that we know are important to students of all underrepresented backgrounds are also unavailable where faculty of such backgrounds are not present or not identified.⁹

The cost of the absence of identifiably disabled law professors does not extend to students with disabilities alone. Law professors teach those who will go on to be the gatekeepers of disability equality: judges, law clerks, lawyers, and policymakers—and legal employers and supervisors. To the extent law students of all backgrounds are not exposed to exemplars of successful people with disabilities in law school, this experience is likely to buttress—rather than

since the early 1970s, but launched its affinity section for people with disabilities only in 2021.

5 This is no doubt due in part to fear of stigma on the part of those with hidden or invisible disabilities. Cf. Vera L. B. Dolan, ‘*But if you Tell Anyone, I’ll Deny We Ever Met: The Experiences of Academics with Invisible Disabilities in the Neoliberal University*,’ INT’L J. QUAL. STUD. ED. 1 (2021).

6 See *infra* notes 30–33 and accompanying text.

7 *Id.* While better data is needed, and numbers may depend on the definition of disability used, a commonly cited estimate is that “at least ten percent of law students have a disability.” Arlene Kanter, *The Law: What’s Disability Studies Got to Do With It or An Introduction to Disability Legal Studies*, 42 COLUM. HUM. RTS. L. REV. 403, 452 (2011). If the civil rights definition of disability is used, it seems likely that the real numbers are actually far higher. See, e.g., 29 C.F.R. § 1630.2(j)(3)(iii) (recognizing that a variety of conditions, including major depressive disorder, autism, cancer, diabetes, and PTSD, will “predictably” constitute disabilities under the ADA). Reflecting many of the themes discussed in this article, the number of law students actually self-identifying as people with disabilities remains much lower than any of the available estimates. See, e.g., Stephanie Villinski, *It’s Time to Remove Professional Barriers for Lawyers with Disabilities*, 2 CIVILITY (Jan. 30, 2020), <https://www.2civility.org/its-time-to-remove-professional-barriers-for-lawyers-with-disabilities/#:~:text=This%20is%20down%20slightly%20from,percentage%20of%20lawyers%20with%20disabilities>.

8 While accommodations are supposed to be kept confidential, they often become known to others, and stigma continues to surround seeking such accommodations as a student and as an employee. See, e.g., Katherine Macfarlane, *Testing Accommodations Are Not a Gift of Extra Time*, Ms. JD (Jan. 10, 2019), <https://ms-jd.org/blog/article/testing-accommodations-are-not-a-gift-of-extra-time>; Katherine Macfarlane, *Making Peace With Testing Accommodations*, Ms. JD (Jan. 28, 2018), <https://ms-jd.org/blog/article/making-peace-with-testing-accommodations>.

9 See, e.g., MEERA DEO, UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA 58–59 (2019) (describing the important role that law faculty who are women of color play in supporting and mentoring law students of all kinds, but especially students of color).

reduce—existing disability biases that may situate people with disabilities as less competent or capable, or as a drain on their institutions.¹⁰ In contrast, experiences with law faculty with disabilities—as mentors, respected teachers and role models—could serve a de-biasing function, something that is critical not only for transformation of the legal profession, but for stakeholders’ understanding and application of disability law itself.¹¹

What can we do about the paucity of identifiably disabled law faculty? Perhaps most obviously, law schools ought to make hiring openly disabled law faculty a priority—and should abandon ableist practices that are currently built into the law hiring process.¹² But transforming law schools through the hiring process is likely to take time (indeed, if the struggles of other groups are any indicator, decades), and this essay suggests that it is not the only step that we can take to address the important absence of identifiably disabled law faculty within our institutions. Rather, this essay suggests that one important first step to deconstructing disability bias within law schools—and within the legal profession itself—may lie in the set of individual choices that law faculty make about whether to claim a disability identity, and whether to disclose such identity publicly. As described at greater length in the sections that follow, such a step may be an important part of ensuring that the benefits of identifiably disabled law faculty are felt by students and the legal profession *now*, and that future disabled law faculty can enter institutions in which they have visible allies in building a more disability-inclusive profession.

Could such a project of increasing disability self-identification among existing law faculty really be expected to produce meaningful results? While unanswerable in the abstract, it seems likely that the answer to this question is “yes.” In addition to those who self-identify as disabled but may currently choose not to disclose, many people with serious medical and mental health conditions—across all professions and contexts—do not identify in the first instance as disabled.¹³ Even among those whom outsiders would almost

10 See, e.g., MICHELLE NARIO-REDMOND, ABLEISM: THE CAUSES AND CONSEQUENCES OF DISABILITY PREJUDICE 132–34 (2020) (describing common disability stereotypes, including assumptions of dependency and incompetence).

11 See, e.g., Katie Eyer, *Claiming Disability*, 100 B. U. L. REV. 547, 580–86 (2021).

12 Currently, law faculties are unlikely to prioritize disability in their hiring (even to the extent they prioritize other forms of diversity). Indeed, on the contrary, people with disabilities have traditionally faced considerable obstacles in obtaining legal academic jobs. Among other things, legal academia’s hiring conference—historically the gatekeeper to the vast majority of entry-level jobs—was structurally inaccessible in myriad ways, including expectations that candidates will sprint up stairs and down wheelchair-inaccessible hallways to reach their next interview. While this conference has recently been discontinued, disabled job candidates are also likely to face obstacles at both earlier and later stages of the process, ranging from a lack of mentoring or steering to academia to explicit bias, and ableist structural expectations about how job candidates present their work (standing) and “perform” in callbacks (with the physical and mental stamina for continuous all-day hundred-percent performance).

13 See Eyer, *supra* note 11, at 564–68; see also Katherine Macfarlane, *Owning Up to My Reality: I’m Disabled and I Always Will Be*, Ms. JD (Apr. 27, 2018) <https://ms-jd.org/blog/article/owning->

certainly classify as disabled, such as wheelchair users, significant numbers do not self-identify as disabled.¹⁴ Such a lack of internal disability self-identification is even more common among those with invisible disabilities, precisely the group that is least likely to be identifiable except in the context of a self-disclosed identity.¹⁵ Thus, it is almost certain that there are significant numbers of *existing* law faculty who could, but do not, embrace a disability identity (or at least do not embrace such an identity publicly).

Of course, this is not to suggest that every law professor with a physical or mental health condition should internally identify as disabled, or that they should disclose such an identity in all contexts. The question of who should claim a disability identity can raise important questions of identity co-optation, resource allocation, and who ought to speak for a particular group.¹⁶ Further complicating such matters, there is no singular agreed-upon definition of disability—with the options ranging from the highly inclusive civil rights definition (under even which those with no functional limitation may be disabled if they have a significant physical or mental health condition), to the extremely restrictive social welfare approach (under which only sustained inability to work is dispositive).¹⁷ Moreover, even those who claim a disability identity internally will face an important set of further decisions about when, where, and to whom to disclose.¹⁸

But this essay suggests that this important set of dilemmas—which necessarily will be resolved differently by each individual—ought not to deter law faculty

up-to-my-reality-im-disabled-and-i-always-will-be (law professor describing her own journey to self-identifying as disabled).

- 14 See Howarth, *supra* note 1, at 757 (citing survey research finding that “[a]lmost 20% of adult manual wheelchair users nationwide do not perceive themselves as disabled”).
- 15 See Eyer, *supra* note 11, at 566 & n. 86.
- 16 See Part III, *infra*; see also Eyer, *supra* note 11, at 599-610.
- 17 Compare 42 U.S.C. § 12102 (2012) (defining disability to include those with any “physical or mental impairment that substantially limits one or more major life activities,” and specifying that that assessment includes substantial limitation of major bodily functions, must be assessed without regard to ameliorative impact of mitigating measures, and if episodic or in remission, must be viewed as it would when active) with 42 U.S.C. § 416(i)(1)(A) (defining disability to mean “inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months.”). Although the ADA in theory requires a “substantial[] limit[ation]” of a major life activity, today such limitation need not be functionally limiting, as a result of major changes made in 2008 by the ADA Amendments Act (“ADAAA”). Thus, for example, someone whose “brain function” is substantially limited by a mental health condition only when not taking medication will still be considered disabled under the ADA, even if the condition is entirely medication-controlled. See 42 U.S.C. § 12102 (2)(b), (4)(E)(ii).
- 18 See Eyer, *supra* note 11, at 594-95. As noted *infra*, tenured law faculty may be especially well situated to disclose, thus potentially opening up space for those who face greater precarity to do so.

from asking the question: Am I a person with a disability? (Under the civil rights definition? Social welfare law?) If the answer is “maybe”—as it may be for many of us both within and without the legal academy—it is important to delve further, asking ourselves what would be the consequences of embracing a disability identity, or of failing to do so. While it may be easiest—especially for those of us who construct ourselves as allies to the disability community—to avoid the uncomfortable concerns that may arise from fears of inappropriately co-opting identity (or of being perceived as such),¹⁹ the reality is that rejecting disability identity also comes with costs. Situating ourselves as outside the disability community means that we do not share the burdens of stigma deconstruction, or offer positive models of disability to others, disabled and nondisabled alike. And it may mean that we are not most effectively situated to transform our institutions in other ways, from hiring practices to universal accessibility to deconstructing biases.

Drawing on the critical race theory and disability studies traditions of narrative, the remainder of this essay offers as one example of claiming disability identity my own long and iterative experience grappling with disability identity—and the ways that I have found the claiming and disclosure of a disability identity to be important for my institutional role as a disability advocate and mentor.²⁰ In so doing, I seek not to dismiss but rather to highlight the many real dilemmas that may face those who are ambiguously disabled²¹ in deciding whether or not to situate themselves within the disability community. Such dilemmas are real, and ongoing, and require real care and thoughtfulness even after a disability identity is embraced. But I also hope to persuade that it is important for more of us who are ambiguously disabled—falling within some definitions of disability, but not others—to embrace a disability identity,

19 Many people who may be disabled under some understandings of disability but not others worry whether they are “disabled enough” to claim disability as an identity. This concern is not spurious, as policing of disability identity can come from both within and without the disability community. See, e.g., Doron Dorfman, *[Un]Usual Suspects: Deservingness, Scarcity, and Disability Rights*, 10 U.C. IRVINE L. REV. 557, 599–603, 611–13 (2020); HEATHER D. EVANS, *DISABILITY, IDENTITY, AND THE LAW: A PHENOMENOLOGICAL STUDY OF LIVING WITH ACQUIRED, INVISIBLE IMPAIRMENT* 135–36 (2016) (Ph.D. dissertation, University of Washington) (ProQuest). Nevertheless, as described *infra*, there are costs for disability rights to taking the “safe” route and disclaiming disability identity.

20 See, e.g., Alex M. Johnson, Jr., *Defending the Use of Narrative and Giving Content to the Voice of Color*, 79 IOWA L. REV. 803 (1994); Katharina Heyer, *A Disability Lens on Sociolegal Research: Reading Rights of Inclusion from a Disability Perspective*, 32 L. & SOC. INQ. 261, 277–80 (2007).

21 As used herein, I mean the term “ambiguously disabled” to refer to those who would fall within some definitions of disability (such as the civil rights definition) but not others (such as the SSI/SSDI definition). Depending on whether such individuals have aesthetic markers of disabilities, outsiders may or may not perceive such individuals as disabled and, as described herein, it may be ambiguous even to such individuals themselves whether “disability” is an appropriate identity for them to embrace. See generally Jasmine Harris, *The Aesthetics of Disability*, 119 COLUM. L. REV. 895 (2019) (describing the way that disability aesthetics, such as noticeably different speech, appearance or mannerisms, can affect who is perceived as disabled and can serve as a trigger for disability biases).

and that such claiming of a disability identity may be an important first step toward breaking down bias and other barriers to disability inclusion.

I. Am I Disabled?

This essay—and related work—began with a question that many ambiguously disabled people at some point ask themselves: Am I disabled? Under the current civil rights definition of disability, I am clearly disabled.²² I have major depressive disorder—as well as insomnia, OCD symptoms, anxiety, and occasional panic attacks. Although these are mostly well managed by medication and behavioral interventions today—and have never caused me to be unable to work—under the ADAAA definition, this does not matter. Like many others with serious medical or mental conditions that can be mitigated—like HIV, diabetes, or even deafness or mobility impairments—my impairments “substantially limit” brain or bodily function in their unmitigated state and thus meet the definition of disability.²³

But although I have had major depressive disorder for more than thirty-five years—and many of my other mental health symptoms are also long-standing—it did not even occur to me to question whether I might be a person with a disability until a few years ago. “Disabled” was my father, who had schizoaffective disorder and was on and off the streets, and in and out of jail (and who ultimately died by suicide in 2017). Or other close family members whose major mental illness renders them unable to work. Despite my going to law school in part to fight for disability rights, it was not until I was raising my own children that I began to think seriously about my own disability identity.

It is not clear why it did not occur to me earlier to question whether I might be a person with a disability. Although I have never been prevented from working (nor have I even requested an accommodation), I made suicide attempts as a teenager with untreated mental illness and engaged in numerous other forms of self-harm. During and after high school, I engaged in risky behaviors that no well person is likely to embrace, like hitchhiking and living out of my car. Still without treatment, I eventually did go to college and by

22 Under the ADA Amendments Act, any person with a physical or mental impairment that substantially limits a major life activity, including a major bodily function, is a person with a disability, even if that condition is mitigated by medication or other measures, and even if that condition is episodic in nature. See 42 U.S.C. § 12102. As the EEOC has recognized, applying these standards, mental health conditions such as major depressive disorder and obsessive-compulsive disorder (“OCD”) will “predictably” constitute ADA-qualifying disabilities. 29 C.F.R. § 1630.2(j)(3)(iii).

23 *Id.* Notably, the ADA Amendments Act adopted a much more capacious understanding of disability than the federal courts had prior to that time, and also made it much easier and more predictable to assess whether one is a person with a disability under federal civil rights law. See, e.g., Eyer, *supra* note 11, at 554-55. As I argue at length elsewhere, this offers unique opportunities for relying on federal civil rights law as a framing construct for disability identity. *Id.* Prior to the ADA Amendments Act there are likely times in my life when I would have been considered “disabled” under federal civil rights law, but many others when I would not.

external measures “did well”—but that required tremendous effort in the face of conditions that made it exceedingly difficult to concentrate (it’s hard to write a research paper when you are actively suicidal). Even today, when my mental health conditions are mostly mitigated by medication, therapy, mindfulness, and other measures, I continue to experience periodic panic attacks (in front of the classroom, in faculty meetings, in the car)—spend precious time checking and rechecking the stove and locks—and experience low-level suicidal thoughts that are, and probably always will be, the background noise of my life.²⁴

In short, my journey to disability identity—while in some respects wholly my own—is in other respects likely typical of the identity dilemmas faced by many ambiguously disabled people. Although one model of disability—the current civil rights definition of disability—would characterize me as a person with a disability—another—the social welfare model—clearly would not.²⁵ No external observer would identify me as disabled unless I so identified myself, and even then, whether my conditions and symptoms “count” might be debatable. Does it matter that my mental health symptoms were once not well-controlled, if today they are? Does the extra work (and medication) it takes me to reach academic and professional success mean I am disabled, or do my accomplishments definitionally disqualify me from a “disability” identity? Would I be co-opting disability identity—pulling a “Rachel Dolezal”—if I self-identify as disabled?²⁶

Ironically, such concerns may loom especially large for those of us who already perceive ourselves as allies of disability rights. The rallying cry of “Nothing About Us Without Us”—the idea that people with disabilities should speak for themselves, and should be leading the organizations that purport to represent them—raises vividly the question of who should purport to speak for the movement and, by extension, of identity co-option.²⁷ And indeed, there may be very real concerns about someone like me—a middle-class white woman with major depressive disorder—purporting to speak for, or represent, the full disability community. I have not experienced the type of barriers to success—either in the form of discrimination or in the form of lack of accessibility—that those with, for example, mobility impairments or

24 Cf. Anna Borges, *I am Not Always Very Attached to Being Alive*, THE OUTLINE (Apr. 2, 2019), <https://theoutline.com/post/7267/living-with-passive-suicidal-ideation?zd=1&zi=le76oqhg>.

25 See *supra* note 17.

26 See, e.g., Doreen St. Felix, “*The Rachel Divide*” Review: A Disturbing Portrait of Dolezal’s Racial Fraudulence, THE NEW YORKER (Apr. 26, 2018), <https://www.newyorker.com/culture/culture-desk/the-rachel-divide-review-a-disturbing-portrait-of-dolezals-racial-fraudulence>; see also Lauren Lumpkin & Susan Svruga, *White GWU Professor Admits She Falsely Claimed Black Identity*, WASH. POST (Sept. 3, 2020), <https://www.washingtonpost.com/education/2020/09/03/white-gwu-professor-admits-she-falsely-claimed-black-identity/>; Sarah Viren, *The Native Scholar Who Wasn’t*, NY TIMES (May 25, 2021), <https://www.nytimes.com/2021/05/25/magazine/cherokee-native-american-andrea-smith.html>.

27 See, e.g., JAMES I. CHARLTON, NOTHING ABOUT US WITHOUT US: DISABILITY OPPRESSION AND EMPOWERMENT 3-4, 16-17 (1998).

sensory disabilities face routinely.²⁸ For those who are ambiguously disabled, and currently situate themselves as allies, not members of the community, these concerns may be enough to reject a disability identity, even if one might plausibly be claimed.

But as set out in the sections that follow, it is important to question whether this is the right approach, as opposed to simply the safest and easiest one. Even as a single individual, engaged only in my own tentative and iterative process of claiming disability identity, claiming disability has afforded numerous opportunities to work to effectuate disability change that did not present themselves during the many years that I situated myself as a disability ally. Students are hungry for disability mentors, and biases and other barriers to disability inclusion abound in legal institutions. Institution-building possibilities arise as a self-identified person with a disability that would be unlikely to present themselves, or would be far more difficult to effectively pursue, as an ally.

Moreover, the iterative process of claiming a disability identity has made clear what, in retrospect, should have been obvious—that it is possible to claim a disability identity for some purposes and in some contexts (e.g., stigma deconstruction, mentorship, institution-building, and advocacy) and not others (e.g., gaining an advantage in law review submissions, or claiming the right to speak for all people with disabilities). In short, it is possible for those of us who are ambiguously disabled to construct a disability identity that is authentic and valuable for addressing ongoing disability biases—while also being principled and thoughtful about our role in the movement and in the community.

II. The Possibilities of Disability Identity

As described in Part I, like many ambiguously disabled people, I took a long time to even contemplate a disability identity. Despite mental health symptoms dating back to the fourth grade, I first started to think seriously about the possibility of self-identifying as disabled more than three decades later, in 2017. At that time, my son, who has an autism spectrum disorder and learning disabilities, was first encountering disability discrimination (or at least was first encountering disability discrimination that was impossible for him to ignore or explain away).²⁹ As a young person who had already built a strong disability identity, he thankfully responded by rejecting the discrimination rather than internalizing it. As a parent, I regard as one of my proudest moments that he chose to speak publicly at his sixth grade graduation about the discrimination he had experienced, and about the importance of addressing disability discrimination in the wider world.

28 See, e.g., James Fetter, *The Sisyphean Struggle for Secure Employment*, 71 J. Legal Educ. 14 (2021).

29 My son is open about his disabilities, and all disclosure here of his experiences is with his permission.

In watching my son navigate this experience, I saw clearly how important my son's disability identity—that is, his self-identification as a person with a disability—was to his ability to identify what he was experiencing as discrimination, and to reject the alternative narrative of his own insufficiency. Moreover, it was apparent that what had allowed my son to craft that identity was precisely a focus on a positive embrace of his own difference, and of his own strength, rather than any notion of intrinsic limitation or incapacity. I supported my son in developing this identity, and I have long encouraged him to think of his disabilities as a positive rather than a negative part of who he is. But it occurred to me, if I did not think that my son's disabilities intrinsically entailed limitations on what he could accomplish, why did I perceive my own accomplishments as negating disability identity for myself?

It was also clear to me during this time how disserved my son and other young people with stigmatized diagnoses are by the continued silence of those of us who are adults with stigmatized conditions who have elected not to speak out about our own identities. My family lives in a progressive neighborhood (Mount Airy, Philadelphia), among people and institutions that purport to strongly value diversity, and yet anti-disability bias remains not only present but, to some extent, unremarkable. The same institutions and people who articulate (and, in many instances, may truly believe) that diversity in their spaces is important often could not see the value of disabled voices in their communities, and did not perceive disability discrimination as wrong. Moreover, institutions that engage in disability discrimination are not disavowed by others in our community—as I hope they would be if they engaged in comparably transparent race or sex or anti-LGBTQ discrimination.

So too in law schools, and in the wider legal community, there remains much work to be done to create spaces that embrace, rather than reject, disability. While most law schools and the wider legal community state that they value diversity, it is often apparent that any commitment such institutions might have does not meaningfully extend to disability.³⁰ As law students with visible or disclosed disabilities describe, outright disability discrimination in the legal profession remains common, causing many opportunities open to comparably

30 As just one example, I recall asking a major law firm's diversity officer, who was presenting on a panel for students, what efforts her firm had undertaken to increase disability diversity, which was by far the smallest category represented among the demographic groups tracked by her firm. Her answer to the question—essentially, “We haven't thought about it”—was telling. Cf. *2020 Report on Diversity in Law Firms*, NALP 2 (Feb. 2021), https://www.nalp.org/uploads/2020_NALP_Diversity_Report.pdf (noting that 0.69% of law firm partners, and 0.99% of law firm associates, are identified as having disabilities); Eyer, *supra* note 11, at 553 (it is likely that a majority of people in the United States qualify as people with disabilities under the ADA); Lauren DeBruicker, *Dear Rising Lawyer with a Disability in LAWYERS*, LEAD ON 142-44 (C. Basas, R. Williford & S. Enyart eds. 2010) (noting that the number of lawyers with disabilities in Big Law is “pathetically low” and describing the lack of concern of her own firm's Diversity Committee with disability issues).

credentialed students without disabilities to be foreclosed to them.³¹ Law schools and the legal profession also continue to be structurally inaccessible, incorporating gatekeeping rituals and a wider cultural perspective that leaves no space for bodies and minds that cannot produce unceasing full-bore performance.³² Obtaining needed accommodations from both employers and law schools can remain a difficult and stigmatizing process for lawyers, faculty and students alike.³³ Many states continue to employ bar application processes that assume that disability is intrinsically problematic in a lawyer, and require students to explain and justify their presence in the profession.³⁴ In short, there are many ways that the profession makes clear that people with disabilities are not a part of the diversity that is valued, but rather remain subject to the very same biases and discrimination that the ADA was supposed to address.³⁵

Obviously, claiming a disability identity will not allow me, or any other individual, to immediately transform these systemic problems. Even at the local, retail level within my own institution there are many ways that I am ill-equipped to engage with students and faculty in the ways that might be most useful or transformative. As someone who has a hidden disability, I have not faced hiring-stage discrimination, and I therefore cannot draw on personal experience in counseling our students with visible disabilities about how to navigate that critical problem in their careers. As someone who has never sought an accommodation, I can support others, but I lack personal experience with the pitfalls of the accommodation process (and with the pros and cons of requesting an accommodation to begin with). As a middle-class white woman, I do not know what it is like to experience many other intersecting axes of bias,

31 See, e.g., Fetter, *supra* note 28; Katherine Macfarlane, *Disability & The Summer Associate Gig: To Disclose or Not to Disclose?*, Ms. JD (June 3, 2018), <https://ms-jd.org/blog/article/disability-the-summer-associate-gig-to-disclose-or-not-to-disclose> (2018); Shain M. Neumeier, *Providing Effective and Supportive Legal Career Guidance for Neurodivergent Law Students and Attorneys*, 71 J. LEGAL EDUC. 24 (2021). Harassment and other forms of bias within the workplace also remain discouragingly common. See, e.g., Peter Blanck et al., *Diversity and Inclusion in the American Legal Profession: First Phase Findings from a National Study of Lawyers with Disabilities and Lawyers Who Identify as LGBTQ+*, 23 U.D.C. L. REV. 23, 46–47 (2020).

32 See, e.g., Lilith A. Logan Siegel, *How You Tell the Story: In Search of Complex Disabled Narratives*, 71 J. LEGAL EDUC. 42 (2021); Katherine Macfarlane, *What Does It Mean to Be a Lawyer? Navigating Disability and Unexpected Physical Demands*, Ms. JD (Nov. 10, 2018), <https://ms-jd.org/blog/article/what-does-it-mean-to-be-a-lawyer-navigating-disability-and-unexpected-physi>; *Making Peace with Testing Accommodations*, *supra* note 8.

33 See, e.g., *Testing Accommodations Are Not a Gift of Extra Time*, *supra* note 8.

34 See, e.g., ABA Comm'n. Dis. Rts., *Mental Health Questions: State By State Chart*, <https://www.americanbar.org/content/dam/aba/administrative/commission-disability-rights/mh-provisions-state-bar-exams.pdf> (last visited Dec. 12, 2021).

35 In law schools, many law students experience strong signals—from the subtle to the explicit—that they are not welcome in the legal profession and that people with disabilities are not expected to become lawyers. See, e.g., Matthew Cortland, *"I'm Not Supposed to Be a Lawyer"*, 71 J. LEGAL EDUC. 10 (2021); Katherine Pérez, *Full Circle: From Disabled Law Student to Law Professor*, 71 J. LEGAL EDUC. 34 (2021).

and how that might complicate thriving in law school and beyond.³⁶ In short, my claiming of disability identity will not reduce the urgency of bringing more faculty into our institutions who have visible disabilities, who have sought and rely on accommodations, and whose intersectional experiences allow them to fully understand the obstacles our students and faculty may face.

But as I have already found in my own slow and iterative embrace of disability identity, opportunities nevertheless abound for me—and others like me—to chip away at the conditions that make the legal profession, and law schools, so unwelcoming for people with disabilities. Claiming a disability identity has allowed me in recent years to disclose my mental health status to students at the start of each semester (“Three facts about me: I have three kids, I love backpacking, and I identify as a person with a mental health disability”)—in a way that would have been far more difficult had I not embraced such an identity.³⁷ While I have always been open about my mental health conditions with students when it has seemed appropriate or useful, I cannot imagine introducing myself to my classes with a litany of my mental health conditions. (“Four facts about me: I have major depressive disorder, panic disorder, insomnia, and OCD.”) Embracing disability as an identity has therefore allowed me to signal to students with disabilities that I am an insider and an ally in a way that was simply unavailable to me prior to my embrace of such an identity.

The responsiveness of my students to these disclosures demonstrates just how important it is to law students for identifiably disabled law professors to exist.³⁸ Almost every semester, I have close to a dozen students reach out to me

36 Although my economic class background is complicated, having been partially raised in a household in which my custodial parent was chronically unemployed because of mental illness, I also resided part-time with an employed parent and am now firmly situated within the middle class. I have never experienced class-based discrimination during my time in the legal profession, though I have certainly experienced some of the profession’s conventions as uncomfortable and inaccessible, I suspect due in part to my background. Similarly, although I have experienced some forms of professional gender bias, it has always been in contexts that have not had a substantial impact on my personal or professional success.

37 My ability to do this without fear of career consequences arises in significant part from the fact that I am a tenured full professor. For any individual faculty member, even one who self-identifies as a person with disability, subsequent decisions about whether to disclose may depend on many considerations, including the precarity of employment status. As I note *infra*, it is my hope that disclosures by those of us with the most secure job status will—by breaking down barriers and biases—offer greater space for others to publicly claim a disability identity as well. Cf. Jasmine Harris, *Taking Disability Public*, 169 U. PA. L. REV. 1681 (2021) (describing the importance of disability disclosure and publicity for addressing disability biases and stereotypes).

38 These observations echo the experience of other faculty members who have openly disclosed their disabilities, as well as those of students who have experienced such disclosures. See, e.g., Brian S. Clarke, *Coming Out in the Classroom: Law Professors, Law Students and Depression*, 64 J. LEGAL EDUC. 403 (2015); Ashley Shew, *Disability Disclosure in the Classroom*, INSIDE HIGHER ED (March 26, 2021), <https://www.insidehighered.com/advice/2021/03/26/benefits-professor-disclosing-disability-their-class-opinion> (March 26, 2021); Ben Foss, *Dear Rising Lawyer with a*

to discuss their own disabilities or those of their close family members. They disclose their own physical and mental conditions, their own struggles with disability identity, their experiences of imposter syndrome, and the difficulties of law school as a person with multiple marginalized identities. Many of them have directly articulated how important it was to them to hear my disclosure (and the subsequent more in-depth conversations it has allowed) and how much less alone it made them feel in transitioning to what many law students with disabilities may find initially to be an alienating and unwelcoming space.

So too my work in organizing around disability institution-building, both within and external to my own institution, I have found that my embrace of a disability identity has been important. In many spaces and for many people (including many law students), organizing around disability remains fraught. Especially (but not exclusively) for those with hidden disabilities, disability identity may be something that they themselves are grappling with, questioning whether they are “disabled enough” or, on the other side, questioning whether disability identity can be a positive good worth claiming. So too, realistic fears remain that participating in disability institution-building (such as disabled law students or disabled law faculty organizations) may open up participants to stigma and discrimination. While I evidently cannot resolve these issues for others (regardless of whether I embrace a disability identity), I have found that I am able to support organizing and “identity work”³⁹ efforts in a different way as someone who has openly embraced a disability identity.⁴⁰ Indeed, it is hard to imagine being similarly effective in such work had I continued to reject a disability identity myself, especially in light of the fact that I have similar or identical diagnoses to those possessed by a sizable minority of those I am seeking to support.

I hope too that my claiming of a disability identity—and my disclosures of such—are helping to address the biases of those who do not understand themselves to be disabled, though that is surely less certain. Among my students, I am generally a respected and well-liked professor, and indeed I was recently honored to be named professor of the year. Because I recently was involved in a high-profile Supreme Court case, many of my students have

Disability, in *LAWYERS, LEAD ON*, *supra* note 30, at 30.

39 I use “identity work” here to refer to the work it takes to form a positive identity around one’s own brain or body difference, and the cognitive work of navigating disclosure, discrimination and other concerns that may come with that brain or body difference.

40 For example, I am able, simply by being a person who openly identifies as a person with a psychiatric disability, to offer students the perspective that it is possible to claim disability as a positive identity, without viewing it as inherently connoting limitations on what one is able to achieve. For many students, this perspective can be important, as they may have internalized notions of disability as inherently connoting incapacity. Resisting such a negatively framed identity (for good reason), some may continue to internalize a sense of their own brain or body difference as shameful or something to be privately “overcome.” While I could offer a counterpoint to this perspective as someone who did not claim a disability identity, I doubt that it would have the same persuasive power, especially for those who have similar or identical psychiatric conditions to my own.

also become particularly aware of my accomplishments as a lawyer and legal scholar.⁴¹ I thus hope that for some of my students who may have entered law school with biases about who people with disabilities are, and whether they can be effective and accomplished lawyers, my disclosure has caused them to begin to question that perspective.

Among nondisabled faculty too, I hope, though I do not know, that my disclosures are helping to address the biases that many still carry about the capabilities of people with disabilities in the profession. I have a longer academic piece on this subject, which has given me the opportunity to present to several law faculties on this issue, and, in that context, disclose my own personal and family history.⁴² Although I have received many warm responses, and much excellent critical feedback, two regularly arising questions have concerned me. First, often someone asks a question that assumes that the embrace of disability identity would necessarily entail essentially “giving in” to limitations, or conceding incapacity, something the questioner often appears to perceive as a nonadaptive response to brain or body difference. Second, it is almost always the case that a question is asked that assumes that the embrace of disability identity necessarily entails a claim on resources—as if disability identity and resource consumption are inextricably intertwined.

Though these questions are always apparently well-intentioned, baked into them is a perspective on disability identity that is deeply problematic. The idea that the embrace of a disability identity must inherently signify a concession of incapacity—a “giving in” to one’s own presumed lack of ability—rather than a positive political identity is both ableist and untrue. While for many people disability entails real struggle—and may indeed cause pain and unhappiness, and even a wish for a cure—that does not inherently mean that those with disabilities are inherently incapable, or that an embrace of disability identity is maladaptive.⁴³ Moreover, whatever limitations or struggles that disability may impose exist regardless of whether an individual embraces or repudiates a disability identity. Indeed, contrary to the apparent assumption of the questioner—that disability must be an inherently disempowering identity—many people with disabilities find the embrace of a disability identity to be liberatory, insofar as it affords them a perspective and framework for rejecting widespread societal biases about nonnormative bodies and minds.⁴⁴

So too the assumption that the embrace of a disability identity must inherently entail a claim on resources is both ableist and false. While resources are of course critically important for human flourishing for people with disabilities (just as they are to some extent for everyone), assumptions that

41 See Masha Gessen, *Chase Strangio’s Victories for Transgender Rights*, THE NEW YORKER (Oct. 12, 2020).

42 See Eyer, *supra* note 11, *passim*.

43 *Id.* at 578-79.

44 *Id.* at 578-79, 587-595. This of course does not mean that every person will have this experience of embracing a disability identity.

there could be no reason for an embrace of disability identity other than claiming resources are obviously wrong. Just as other groups embrace identity for a multiplicity of personal and political reasons, people with medical and mental health conditions may embrace a disability identity for reasons that have nothing to do with seeking benefits or accommodations (and conversely, seeking such benefits or accommodations does not by any means guarantee a disability identity).⁴⁵ Rather, such questions appear to arise out of a particular form of disability bias: the idea that all people with disabilities are “takers” (and, as Doron Dorfman has argued, perhaps “fakers” as well).⁴⁶ Such questions also typically ignore the role that structural inaccessibility plays in creating the illusion of additional resource claims by situating current societal structures (both physical and cultural) as natural, rather than chosen and socially constructed around certain brain and body norms.

Of course, I could explain all this simply as an ally. But I hope, and believe, that being able to point to my own experience offers a heft to my arguments that would not exist if I were making them at arm’s length. I can say that disability identity can be positive and need not connote a concession of inherent limitations, because I know that to be true from personal experience. I can respond to questions about resource consumption from the perspective of someone who deeply believes in deconstructing structural inaccessibility and providing resources—but also from the perspective of someone whose own personal experience of embracing a disability identity has also been completely unrelated to such concerns. In short, by embodying a real-world example of the fallacy of these common assumptions, I hope to more effectively deconstruct the unthinking responses that so many faculty continue to have about what disability means.⁴⁷

While these experiences have persuaded me that claiming a disability identity is important—both for myself and for others who are ambiguously disabled—they have not eliminated the central question that many ambiguously disabled people face: Am I co-opting an identity that is not mine to claim? While there can be no singular answer to this question, it is a question with which many ambiguously disabled people will—and indeed should—grapple. As I discuss in the following part, while individuals will necessarily work through this set of concerns in their own way, one approach that has the potential to offer a path between rejection and exploitation of disability identity is to embrace what I refer to as the “attitude of an ally,” following tenets of allyship with respect to the broader disability community, even as one situates oneself within the community itself.

45 *Id.* at 587-595.

46 *Id.* at 604; *see also* Doron Dorfman, *Fear of the Disability Con: Perceptions of Fraud and Special Rights Discourse*, 53 L. & SOC. REV. 1051 (2019).

47 Social science strongly suggests that individuation—that is, possessing individual information about members of minority groups—is one important strategy for removing bias. *See, e.g.*, Honorable Bernice B. Donald & Erica Bakies, *A Glimpse Inside the Brain’s Black Box: Understanding the Role of Neuroscience in Criminal Sentencing*, 85 FORDHAM L. REV. 481, 500 (2016).

III. Stepping Back and the Attitude of an Ally

Am I a “Rachel Dolezal”?⁴⁸ Over the course of the past five years, this question has popped into my head often. Indeed, in thinking about disability identity—both individually and in hearing others’ feedback on my academic article on the broader issue—the critique that has always troubled me the most is that of inappropriately co-opting identity. Even as I have begun to see the ways that my embrace of disability identity is meaningful to others with disabilities within my various communities, it always produces a sinking feeling when I receive a question or response that raises this concern. I have often wished that I could ask the wider disabled community: Here is my life story, here are my symptoms; can I authentically claim a disability identity? But of course it is impossible for me—or any other ambiguously disabled person—to conduct a referendum on whether we are “disabled enough.”⁴⁹ We must decide for ourselves what our identity is, and whether we can feel comfortable situating ourselves within, rather than without, the disability community.

For me—and I suspect for many others who are ambiguously disabled—an important aspect of coming to peace with this imposter discomfort has been my own genuine belief that important tenets of allyship ought to guide my conduct and perspective, even as I have situated myself within the community with which I seek to ally.⁵⁰ I can, and do, try to step back and raise up the voices of those who have experiences of disability that are distinctive from my own, including those whose disabilities have caused them to experience much more directly issues of inaccessibility and discrimination. I do not articulate my own experience as representative of all law professors’, law students’, or lawyers’ experience of disability. I do not identify myself as a person with a disability in contexts where it could benefit me—but would not serve any stigma deconstruction purpose—such as the law review submission process.⁵¹ I recognize that my experiences are not representative of—and indeed in many ways have been far easier than—those with, say, mobility or sensory impairments, or those who come to the law with multiple marginalized identities.

As quickly becomes apparent when one attempts it, this straddling of the perspective of disabled person and ally is eminently possible. Embrace

48 There were numerous factors that made the Rachel Dolezal situation uniquely problematic, including her claiming of leadership, and centering the experience of racial disadvantage on herself—factors that I recognize make her situation not analogous with my own. However, the archetype that she represents—a tenuous or false claim of identity that could be perceived as illegitimate identity co-option—is something with which many of those who are ambiguously disabled, including myself, must contend.

49 Such an imagined referendum would, of course, be problematic for many reasons other than its infeasibility.

50 For a longer discussion of this issue, and what it might mean to take the “attitude of an ally,” see Eyer, *supra* note 11, at 600-02. As I note therein, I draw many of my ideas for principles of allyship from the work of the disability justice and racial justice movements.

51 Some law reviews request demographic information to specifically seek out demographic diversity.

of a disability identity is not a static occurrence in which one must deploy identity identically in all contexts and for all reasons. Rather, embrace of a disability identity is an iterative process in which one is constantly faced with questions of how and when to deploy identity; whether to step back or to step forward; and whether to center others' experiences or one's own. As this iterative process unfolds, it is of course very possible to keep in mind an ally's perspective rather than abandon it.

And indeed, arguably, there would be much to be gained from all those who seek to do identity work within the law (and within law schools) keeping such a perspective in mind. The disability community—as well as communities built around race, gender, LGBTQ status and other identities—includes a wide array of people of vastly different life experiences and perspectives. No singular person should assume that their experiences equip them to represent all of those vastly different life experiences and perspectives—though some surely will be better equipped than others to do so.⁵²

Even so, this concern has remained one of the most uncomfortable aspects of embracing a disability identity—as I suspect will be the case for many who are ambiguously disabled. And indeed, I believe that this concern—the potential for identity co-option and inappropriate claiming of space—is real. But so too situating oneself outside of the disability divide may come with costs for the community. In trying to recognize our comparative privilege and to respect the disability community by opting out, we may instead be reifying that privilege and rejecting the opportunities that exist for us to share the labor of addressing disability bias and building better institutions as insiders.

Ultimately, for me, I have decided that the costs of situating myself outside the disability community are greater than situating myself within it. There are still days when imposter syndrome weighs more heavily, and I wonder if a disability identity is truly mine to claim; when I feel discomfort or even shame at articulating my identity in the presence of those with “real” disabilities. But I want a future—and a present—in which both my children and all lawyers with disabilities can thrive without fear of bias. And I believe that placing myself within the disability community puts me in a better position to help create that future than placing myself outside of it.

IV. Conclusion: Imagining a Disability-Positive Future for Law Schools and the Legal Profession

We have a long way to go before our law schools, and the wider legal profession, can be a truly welcoming space for people with disabilities. Currently, the best many law students with disabilities can hope for is for their accommodations to be smoothly granted, to find a few understanding professor allies, and, if they are lucky, to find community with other disabled

52 There have long been critiques from within the disability movement of the movement's failure to adequately address, for example, issues of intersectional bias such as race and class. *See, e.g.*, SINS INVALID, SKIN, TOOTH, AND BONE: THE BASIS OF MOVEMENT IS OUR PEOPLE 13–15 (2d ed. 2019).

law students. Casual bias, lower expectations, and struggles over accessibility remain a routine part of many law students' law school experience.⁵³ Out in the legal profession, those with visible disabilities are likely to face explicit bias in hiring, even as law firms purport to include disability among the categories of diversity that they value.⁵⁴ And both within law schools and without, those with disabilities are likely to find that the structural norms of the profession celebrate exclusionary rituals of physical and mental stamina rather than value the strength and diversity of perspectives that those with nonnormative minds and bodies may bring.⁵⁵

Thus, the path to a disability-positive future for the legal profession is long and will surely involve many steps beyond the modest suggestion that more ambiguously disabled law faculty embrace disability identity. Indeed, many of the most important steps that must be taken for law schools and the legal profession to reach a disability-positive future are those that will require a more fundamental reorientation—away from a model that values ableist ideals of stamina and performance above all else—and toward a recognition of what is lost for all of us when we strip the profession of those who cannot, or do not wish to, run the gauntlet of the rituals of stamina that we impose (the 1L year, the bar exam, all-night associate hours).

But small steps matter too, and this essay suggests that one step that many law faculty can take is to consider our own identity, and whether we should situate ourselves within—or without—the disability community. For those of us who are ambiguously disabled—and who have conditions that are considered disabilities under civil rights law (like major depressive disorder, HIV, OCD, diabetes, or cancer)—it is worth considering why so many of us do not self-identify as disabled, and what may be lost as a result.⁵⁶ Especially those of us who are tenured faculty members have unique privilege, power and positional security—certainly far more than our students, staff, or even non-tenure-track faculty do. Claiming a disability identity may create space for others to do the same—or to feel fully welcomed and included in our community—or to openly advocate for change. It may change the perceptions of disability for

53 See, e.g., Fetter, *supra* note 28; Siegel, *supra* note 32; Pérez, *supra* note 35; Cortland, *supra* note 35; Neumeier, *supra* note 31.

54 See sources cited *supra* note 53.

55 Norms of unceasing and self-disregarding performance are deeply engrained in legal practice and no doubt will not shift easily, but that does not mean we should not begin questioning their utility and necessity. See also Siegel, *supra* note 32 (noting that as a person with a disability, “I felt, and still feel, caught between my desire to do law in a way that is physically sustainable, my core belief that legal spaces should expand to creatively hold people with a wide range of bodies and minds, and my understanding that it is not about me at all, but the clients whose interests I have been taught I must prize above my own.”).

56 See, e.g., 29 C.F.R. § 1630.2(j)(3)(iii) (recognizing that a variety of conditions, including major depressive disorder, autism, cancer, diabetes, and PTSD, will “predictably” constitute disabilities under the ADA, though it remains an individualized inquiry).

the better among those who will go on to be our judges, policymakers, and future lawyers.

This of course does not mean that all law faculty can or should adopt a disability identity. And it surely does not mean that those of us who do claim such an identity should ignore concerns about co-opting identity, or taking up space that is not properly ours. But by adopting an attitude of an ally, even as we situate ourselves within the disability community, it may be possible to navigate through those concerns with integrity. And in so doing, we may help to create space within our institutions—and ultimately the legal profession as a whole—for people with disabilities to be fully included, welcomed, and valued.