

DISABILITIES TO EXCEPTIONAL ABILITIES: LAW STUDENTS WITH DISABILITIES, NONTRADITIONAL LEARNERS, AND THE LAW TEACHER AS A LEARNER

Jennifer Jolly-Ryan*

“THERE WILL HAVE TO BE RIGID AND IRON DISCIPLINE BEFORE WE ACHIEVE ANYTHING GREAT AND ENDURING, AND THAT DISCIPLINE WILL NOT COME BY MERE ACADEMIC ARGUMENT AND APPEAL TO REASON AND LOGIC. DISCIPLINE IS LEARNT IN THE SCHOOL OF ADVERSITY.”

—MAHATMA GANDHI

I. INTRODUCTION

Law schools and the legal profession have teaching and hiring disabilities. Legal educators often suffer from disabling intellectual paralysis and lack of vision when it comes to teaching students with disabilities and nontraditional learners. They fail to accommodate the variety of learners and learning styles presented in the classroom. The legal profession also suffers from disabling stereotypes and prejudices regarding lawyers with disabilities, and particularly those with learning disabilities. Students with disabilities, lawyers with disabilities, and nontraditional learners face many barriers in law school and the legal profession. Among the most significant barriers are the disabling intellectual paralysis, lack of vision, stereotypes, and prejudices that prevent legal educators from teaching to a variety of learners and law firms from hiring lawyers with disabilities. Many of these individuals would greatly benefit the profession.

Legal educators and the legal profession must overcome their own teaching and hiring disabilities and allow students with disabilities and nontraditional learners to benefit our classrooms, our teaching, and the legal profession, with their diverse learning styles and unique potential. In many ways, legal education has been stuck in a time warp. For years, educators at almost every

* Professor of Legal Writing, Salmon P. Chase College of Law, Northern Kentucky University. I wish to thank my students, family, and friends with disabilities, who have given me a new vision for teaching. Thanks also to Sybil McFadden and the Olympus Center in Cincinnati, Ohio, for their positive approach to helping all students with learning disabilities. Thank you to Academic Support Directors, Adam Todd and Adrienne Noble Nacev, and Professor Rick Bales, for their support and review of drafts of this Article. Thanks to Robert Martina, Kristin Messer, Stephanie Ogg, Christine Lawhorn, and Wendy Bauer for their research and technical assistance.

level of education have discussed modern teaching methods and strategies designed to reach students with disabilities and a variety of learning styles. However, despite this discussion, little has changed at the law school level. But students with disabilities may provide the impetus for legal educators to abandon teaching tools that are useless for teaching many learners and encourage legal educators to explore new teaching strategies that benefit a greater number of law students. Students with disabilities, and particularly those with learning disabilities in law school, are the prescription for change in teaching strategies for the benefit of all students in the classroom. They may help their teachers become exceptional. The inclusion of students with disabilities within our classrooms will undoubtedly help teachers learn new ways to present material to the entire class. These students will provide their classmates with new insights about people and the law.

Today, teaching law involves much more than talent as a legal scholar and lawyer. The effective teacher will possess a commitment to developing new teaching styles, methods, pedagogy, and a more inclusive learning environment that accommodates many different learning styles and learners. In addition, the effective teacher will have knowledge about learning styles, disabilities, and how students receive and process information. In short, effective teachers must be learners.

The aim of this Article is to help teachers, as learners, turn current teaching disabilities into exceptional teaching abilities. Section II of the Article provides a brief overview of the legal requirements for students with disabilities, including an overview of federal law most frequently invoked in civil rights cases involving law students and lawyers with disabilities. Next, Section III confronts the paralysis, lack of vision, and stereotypes that cause legal educators to focus upon the deficits and disabilities of students, rather than upon their unique abilities and talents. Section IV addresses the prejudices in law teaching and in the legal profession, which are significant barriers to students and lawyers with disabilities, and particularly to those with learning disabilities. Section V highlights the exceptional abilities and assets of law students and lawyers with disabilities. Some of the more common disabilities presented in the law school classroom are described in Section VI. Section VI also discusses how all students pay attention in class, retain information, and learn. Finally, Section VII of this Article advocates that accommodations for students with disabilities result in good teaching for all students. It emphasizes that there are "many roads to learning" and reiterates a well-known principle for good teaching; good teaching requires a respect for "diverse talents and ways of learning."¹ Section VII also offers possible compensations, accommodations, and teaching strategies for diverse learning styles and a more inclusive environment, including law students with disabilities.

¹ Paula Lustbader, *Principle 7: Good Practice Respects Diverse Talents and Ways of Learning*, 49 J. LEG. ED. 448, 458 (1999).

II. THE LEGAL REQUIREMENTS AND THE NUMBERS

There can be no doubt that our law schools are filled with a variety of learners with diverse learning styles. Some students have special learning needs as a result of their physical disabilities or learning disabilities, either diagnosed or undiagnosed. A law teacher becomes a learner and a better teacher by meeting the diverse needs of all students in the classroom. But regardless of whether a law teacher views students with diverse learning needs as a burden or a blessing, we can expect many more law students with physical and learning disabilities in the future. Under disability law, law schools must accommodate students with disabilities. As a first step, the law teacher as a learner must become familiar with the legal rights of law students with disabilities and appreciate their increasing numbers.

A. *Brief Overview of Disability Statutes Affecting Law Students with Disabilities*

1. *The Rehabilitation Act of 1973*²

Section 504 of the Rehabilitation Act of 1973 ("Section 504") affects the educational rights of law students with disabilities. Section 504 provides: "No otherwise qualified individual with a disability . . . shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."³ Section 504 is broad in coverage, including all people with disabilities, and all programs and activities receiving federal assistance.⁴ Since Section 504 applies to public and private recipients of federal aid, most public and private law schools must comply with Section 504. If any department or portion of the institution, including an undergraduate school, receives federal aid, including grants or other funding, the law school will be subject to the coverage of Section 504.⁵

"Otherwise qualified" in the law school setting means that the student is able to meet the essential eligibility requirements of a law school, with or without reasonable accommodation, in spite of the restrictions imposed by the disability.⁶ In the law school setting, a qualified student with a disability is one who is able to meet the law school's admission and academic standards with or without accommodations. Although a law school must afford an otherwise qualified student reasonable modifications and accommodations, the law school

² Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355 (codified as amended at 29 U.S.C. §§ 701-797 (2000)).

³ 29 U.S.C. § 794 (2000).

⁴ *Id.*

⁵ *Id.*

⁶ *Southeastern Cmty. Coll. v. Davis*, 442 U.S. 397 (1979). An "otherwise qualified" individual is one "who is able to meet all of a program's requirements in spite of his handicap." *Id.* at 406 (no reasonable accommodation could be made in nursing program's clinical program for hearing impaired applicant). Only Section 504 actually contains the "otherwise qualified" language. See 29 U.S.C. § 794(a). The ADA specifies only that the person with a disability be "qualified." 42 U.S.C. § 12112 (2000).

is not required to lower essential standards.⁷ It is clear that law schools are not required to lower standards in making their admissions decisions. Law schools are not required to have special admission programs.⁸

A law school can also determine what courses are necessary for the completion of a law degree, and in its professional judgment, can refuse to make any modifications in degree requirements if it determines that a modification is not a viable option.⁹ For example, a law school may decide that oral and written communication is an essential skill required of an attorney.¹⁰ In its discretion and professional judgment, a law school may decide that a particular required course in the curriculum is essential for developing those skills. Therefore, for example, a waiver of the first year writing course may not be a reasonable accommodation for a student with a disability.

2. *The Americans with Disabilities Act*¹¹

The Americans with Disabilities Act of 1990 ("ADA") also prohibits discrimination and affects the educational rights of law students with disabilities.¹² It builds upon the Rehabilitation Act of 1973 and uses similar language. However, unlike its predecessor, the Rehabilitation Act of 1973, Congress intended the ADA to reach beyond the "non-discrimination principles required of institutions receiving federal funds . . . to a much wider array of institutions and business."¹³ The ADA provides:

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodations by any person who owns leases (or leases to) or operates a place of public accommodation.¹⁴

All law schools, regardless of funding or federal assistance, or private or public status, must consider the requirements of the ADA, as Congress considers law schools places of public accommodations under the ADA.¹⁵

The ADA defines discrimination as:

A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, priv-

⁷ See *Pottgen v. Missouri State High School Ass'n*, 40 F.3d 926, 931 (8th Cir. 1994); *Bowers v. NCAA*, 974 F. Supp. 459, 466 (D.N.J. 1997).

⁸ See Laura Rothstein, *Higher Education And Disabilities: Trends And Developments*, 27 STETSON L. REV. 119 (1997) (citing opinion letters of the Office of Civil Rights of the Department of Education).

⁹ See American Bar Association Standards for Law Schools § 304, <http://www.law.umaryland.edu/studres.asp> (last visited Feb. 14, 2005). See also Scott Weiss, *Contemplating Greatness: Learning Disabilities and the Practice of Law*, 6 SCHOLAR 219, 231 (2004).

¹⁰ See Susan Johanne Adams, *Leveling the Floor: Classroom Accommodations for Law Students with Disabilities*, 48 J. LEGAL EDUC. 273, 292 n.50 (1998).

¹¹ Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (codified as amended at 29 U.S.C. § 706, 42 U.S.C. §§ 12101-12213 (2000)).

¹² 42 U.S.C. § 12101.

¹³ *Guckenberger v. Boston Univ.*, 974 F.Supp. 106, 133 (D. Mass. 1997) (quoting *Easley v. Snider*, 841 F. Supp. 668, 672 (E.D. Pa. 1993)).

¹⁴ 42 U.S.C. § 12182(a).

¹⁵ 42 U.S.C. § 12181(7)(J). See also *Rothman v. Emory Univ.*, 828 F. Supp. 537 (N.D. Ill. 1993).

ileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, privileges, advantages or accommodations.¹⁶

Despite its broad scope, Congress never intended the ADA to give people with disabilities more opportunities than individuals who have no disability.¹⁷ "The purpose of the ADA 'is to place those with disabilities on an equal footing and not to give them an unfair advantage.'"¹⁸ "The ADA is not designed 'to allow individuals to advance to professional positions through a back door. Rather, it is aimed at rebuilding the threshold of a profession's front door so that capable people with unrelated disabilities are not barred by that threshold alone from entering the front door.'"¹⁹ The ADA defines a qualified individual, as a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of impairment, or is regarded as having such impairment. Regardless of his or her disability, the individual must be able to meet "the essential eligibility requirements for the receipt of services or the participation in programs or activities," with or without reasonable accommodations.²⁰

For a person to qualify as disabled, the disability must substantially limit a major life activity. Learning is a major life activity that may be substantially limited by physical or mental disabilities.²¹ A learning disability may affect a person's ability to take in, remember, process, or communicate information.²² Congress defines a learning disability as "a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Such disorders include such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and development aphasia."²³ A learning disability is a handicapping condition because it results from neurological impairments affecting specific brain functions.²⁴

Although there are many varieties of learning disabilities, and severity is unique to the individual, learning disabilities have common characteristics.

¹⁶ 42 U.S.C. § 12182(b)(2)(A)(ii).

¹⁷ Leah Bensen Lipskar, *Learning Disabilities and the ADA: A Guide For Successful Learning Disabled Students Considering a Career in the Law*, 3 U. PA. J. LAB. & EMP. L. 647, 648 (2001).

¹⁸ *Id.* (quoting *In re* Petition of Rubenstein, 637 A.2d 1131, 1137 (Del. 1994).

¹⁹ Price v. Nat'l Bd. of Med. 1 Exam'rs, 966 F. Supp. 419, 421-22 (S.D. W. Va. 1997) (quoting Jamie Katz & Janine Valles, *The Americans with Disabilities Act and Professional Licensing*, 17 MENTAL AND PHYSICAL DISABILITY L. REP. 556, 561 (Oct. 1993)).

²⁰ 42 U.S.C. §§ 12102(2), 12131(2). The determination of whether a law school applicant is qualified for the study of law will largely depend upon the reasonable accommodations a law school can offer.

²¹ 28 C.F.R. § 35.105 (1999).

²² Lisa Eichhorn, *Reasonable Accommodations and Awkward Compromises: Issues Concerning Learning Disabled Students and Professional Schools In the Law School Context*, 26 J.L. & EDUC. 31, 37 (1997).

²³ Susan Johanne Adams, *Because They're Otherwise Qualified: Accommodating Learning Disabled Law Student Writers*, 46 J. LEGAL EDUC. 189, 192 (1996); 20 U.S.C. § 1401(a)(15); see also 34 C.F.R. § 300.541.

²⁴ *Id.*

They cause "difficulties in the acquisition and use of listening, speaking, reading, writing, reasoning, or mathematical abilities."²⁵ Individuals with learning disabilities are characterized and usually diagnosed by the "dramatic discrepancy between their educational aptitude and their actual education achievement."²⁶ Discrepancies between educational aptitude and actual educational achievement may be caused by "visual, hearing, or motor disabilities."²⁷ Despite their deficits in some areas of performance, "learning disabled persons are usually of average or superior intelligence."²⁸

B. *The Increasing Number of Law Students with Disabilities*

Before adoption of Section 504 and the ADA, few students with disabilities were admitted to undergraduate school, and even fewer to law school. "Most institutions of higher education were conforming participants in a society that, by indifference, prejudice, or structure, excluded individuals with disabilities from nearly every aspect of human endeavor."²⁹ There were few students with disabilities in law schools so legal educators easily ignored their struggles and circumstances. Legal educators have had the luxury of teaching the same way in which they were taught. They expect their students to learn in the same way that they learned. This paralysis in law teaching has negatively affected a wide range of learners and groups of students. However, with a gradual influx of students with disabilities who have achieved academic success before reaching law school, legal educators can no longer ignore the diverse needs of their students and the benefits they bring to the classroom and to teaching.

The numbers of people with disabilities and the laws that assist them in achieving access to a legal education are growing. Recent census data reports that there are approximately 54 million people with disabilities in America,³⁰ or roughly one in five Americans.³¹ More students with documented disabilities are attending college than ever before. In 1996, over nine percent of all college

²⁵ Eichhorn, *supra* note 22, at 34.

²⁶ *Id.*

²⁷ *Id.*; Joseph F. Smith, Jr. & M. Kay Runyan, *How Private Secondary Schools Can Meet Their Obligations to Accommodate Students with Specific Learning Disabilities*, 17 W. NEW ENG. L. REV. 77, 80 (1995).

²⁸ Adams, *supra* note 23, at 191. This article discusses successful attorneys and judges with learning disabilities, who were "substantially impaired" in a specific area, but learned to compensate for those impairments and in fact had great talents in other areas. In the non-legal world, there are many individuals with exceptional intelligence and talents, but who are "substantially impaired." It is thought that Edison, Woodrow Wilson, and Einstein suffered from a learning disability. *Id.* at 191 n.5.

²⁹ Paul D. Grossman, *Making Accommodations: The Legal World of Students with Disabilities*, 87 ACADEME: BULL. OF THE AM. ASS'N OF U. PROFESSORS, NOV.-DEC. 2001, at 41, 42.

³⁰ See Tony Coelho, *Our Right to Work, Our Demand to be Heard: People With Disabilities, The 2004 Election, and Beyond*, 48 N.Y.L. SCH. L. REV. 729 (2004).

³¹ ABA Commission on Mental and Physical Disability Law, *Goal IX: A Report on the Status of the Participation of Persons with Disabilities in ABA Section, Division and Forum Leadership Positions* (2005). The exact number of Americans with disabilities is difficult to obtain for a number of reasons. First, the definition of disability varies, depending upon the context. In other instances, people do not self-identify or over-identify. See LAURA R. ROTHSTEIN, *DISABILITY LAW, CASES, MATERIALS, AND PROBLEMS* 4 (1998).

freshmen documented a disability.³² Thirty-five percent of college freshmen reporting a disability have a learning disability.³³ With advances in knowledge about education, including knowledge about different learning styles, appropriate accommodations, strategies, and compensations for both students with physical and learning disabilities, many students are matriculating through undergraduate programs with a high degree of success. We can expect many of those successful students with disabilities to consider attending law school and becoming lawyers.

Many highly successful students in undergraduate school, accustomed to compensations, accommodations, and strategies for learning that meet their academic needs, desire a legal education, and expect law schools to accommodate their needs for learning. The everyday challenges students with disabilities face make them more determined to participate fully in a legal education.³⁴ A recent American Bar Association law school enrollment survey revealed that as recently as 2002, law schools provided accommodations for both physical and learning disabilities for 2,655 law students out of a total of 132,885 students, or 1.9%.³⁵ Law students with learning disabilities are now the largest group of students with disabilities.³⁶ They possess significant learning differences and are part of a diverse law school environment.³⁷

III. TEACHING DISABILITIES: SOME CAUSES OF PARALYSIS AND LACK OF VISION

Although students with learning disabilities do possess significant weaknesses if their disabilities are not compensated for, or accommodated, they often bring great strengths to the law school. Some students' greatest strength is the ability to retain information. Other students are strong in processing the information.³⁸ But the student's strengths may not benefit him or her across

³² Stephen B. Thomas, *College Students and Disability Law*, 33 J. OF SPECIAL EDUC. 248, 248 (2000).

³³ *Id.* The numbers of physical and learning disabilities may overlap. In some cases, students with a physical impairment also suffer from a learning disability.

³⁴ See Donald Stone, *The Impact of the Americans with Disabilities Act on Legal Education and Academic Modification for Disabled Law Students: An Empirical Study*, 44 U. KAN. L. REV. 567, 593 (1996).

³⁵ ABA Commission on Mental and Physical Disability Law, *supra* note 31, at 2.

³⁶ M. Kay Runyan & Joseph F. Smith, Jr., *Identifying and Accommodating Learning Disabled Law School Students*, 41 LEGAL EDUC. 317, 317-21 (1991). By 1991, six percent of all disabled law students reported learning disabilities and were the largest group of disabled students.

³⁷ See Gerard A. Gioia & Peter K. Isquith, *New Perspectives on Educating Children with ADD: Contribution of the Executive Functions*, 5 HEALTH CARE L. & POL'Y 124 (2002).

³⁸ Grossman, *supra* note 29 (Professor Grossman describes his disabled brother whose cancer had reached his spine in 1991, entered Rutgers School of Law in 1992 and died shortly after his admission to the New Jersey Bar in 1996. Professor Grossman begins his article by asking rhetorical questions; whether it was unfair that his brother received accommodations including extra time for examinations and exclusive reliance on the Internet and computers to do legal research because he was physically unable to pull a book down off of the shelf. He questions the reader to consider whether a seat at a competitive law school was wasted on his brother, or "had he exemplified for students and faculty alike the most inherent and fundamental value of engaging in higher learning?").

the law school curriculum. A brilliant student in Torts and Trial Advocacy may struggle in a Contracts class. The brilliant oral advocate may not be the strongest legal writer in the class. A student's deficits will often result in some academic difficulty in one or more subjects. However, once in practice, the student will often be able to maximize strengths and minimize weaknesses through careful choice of work. Self-awareness and recognition of one's own strengths and weaknesses in practice areas will allow the lawyer with a disability to compensate for deficits.

Yet law schools, and the teacher with a teaching disability, are significant hurdles to the person with a disability, and too many students with nontraditional learning styles. Variations in learning styles, and strengths and weaknesses, have always been present among the student body. But it has been easy for legal educators to blame all students' academic difficulties, and the high attrition rate of law students, on a tradition of competition and a narrow view of the ideal law student. Bright students with attractive admissions statistics, both with disabilities and without disabilities, fail to succeed in law school each year. It has always been easier to blame students than focus upon one's own deficiencies as a teacher. The legal educator faces a most difficult task when choosing to confront her or his own intellectual paralysis and lack of vision requiring a change in approaches to teaching all of the students in the classroom. But with students with disabilities in the classroom, the teacher must confront teaching disabilities in order to benefit all students in the classroom, including those with physical and learning disabilities. The inclusion of students with disabilities challenges law teachers to rethink and reflect upon traditional methods of teaching.³⁹

A. *Maintaining the Status Quo Through Paralyzed Hiring, Promotion, and Tenure Practices*

Rethinking on the part of legal educators will not come easy. Law professors, as a group, resist any changes in the way that they teach. This resistance is not surprising, given a number of factors designed to maintain the status quo in legal education. Very few law professors were effective educators before setting foot in the classroom. Nor is it likely that they had any formal training in education, including recognizing and accommodating their students' learning styles. However, they were successful law students and expect their own students to learn the same way that they learned in law school: through competition and rigor. It is well known in law school academics that there are approximately one dozen "gatekeeper" or "producer" law schools, forming the pool of applicants from which most new law school faculty members are drawn. Most law professors graduated from one of these elite schools.⁴⁰ Schooled in the Socratic Method, law teachers were the survivors of their law schools. They read the texts, attended their professors' lectures, took copious notes, constructed outlines, and took tests at the end of the semester with little or no feedback from their professors during the course. They were the survi-

³⁹ *Id.*

⁴⁰ See Richard E. Redding, "Where Did You Go to Law School?" *Gate Keeping for the Professoriate and the Implications for Legal Education*, 53 J. LEG. EDUC. 594, 600 (2003).

vors of a rigorous and very competitive law school experience. Current law professors model their teaching methods after their own law school professors who hail from elite law schools. Current law professors, much like their predecessors, know one teaching method and prepare to teach students, who much like themselves, thrive in the traditional and competitive law school environment.⁴¹ Under traditional law school teaching, the student receives a grade at the end of the semester and there has been little concern for the student's individual learning style.⁴²

Paralyzed by legal educators' lack of formal training in education and a tradition of competition, the learning atmosphere in law schools continues to be one of survival of the fittest, and in many respects, elitist.⁴³ The "fittest" students in law school, or the "survivors," just as their professors were, are very select law students. Until recent years, the "fittest" category was limited to white males.⁴⁴ Today, the "fittest" transcends race and gender, but remains an insular group of law students. Students who survive under traditional teaching techniques are the lineal thinkers and verbal learners who benefit the most from traditional law school teaching and study methods. Many other students are excluded.

The Socratic Method is often the litmus test for determining who qualifies as the "fittest" in a competitive and rigorous law school environment. For over 130 years, law professors have engaged their students in the time honored Socratic Method and benefited few students in the process. The professor using the Socratic Method, stands at a podium in front of the class and engages students in one-on-one dialogues, questioning about the facts and legal principles contained in an appellate decision. While the Socratic Method may engage and benefit the verbal learner who is the subject of the questioning, by talking through a legal problem in class, it does little for the majority of the class. Except for the student who is "on," all other students in the class are passive participants. The verbal learner, who learns through engaging in dialogue with his or her professor, perhaps benefits from the method. However, the dialogue may be of little benefit to the majority of nonverbal learners in the class, such as the visual, auditory, or kinesthetic learners.⁴⁵

Scholars now criticize the Socratic Method as a primary teaching tool, despite its long reign in law schools.⁴⁶ It is ineffective for most types of learners. Some scholars describe it as "mystifying and patriarchal, persisting

⁴¹ Robert P. Schuwerk, *The Law Professor As Fiduciary: What Duties Do We Owe to Our Students?*, 45 S. TEX. L. REV. 753, 762 (2004) ("Law professors are self-perpetuating elite, chosen in overwhelming part for a single skill: the ability to do well consistently on law school examinations . . . taken at elite 'national' law schools.").

⁴² Teresa Godwin Phelps, *The New Legal Rhetoric*, 40 SW. L.J. 1089, 1093, 1097-98 (1986).

⁴³ See Paula Gaber, "Just Trying to Be Human in This Place": *The Legal Education of Twenty Women*, 10 YALE J. L. & FEMINISM 165 (1998).

⁴⁴ *Id.* at 167.

⁴⁵ Adams, *supra* note 10, at 286. See also Paul L. Caron and Rafael Gely, *Taking Back the Law School Classroom: Using Technology to Foster Active Student Learning*, 54 J. LEGAL EDUC. 551, 554 (2004).

⁴⁶ See Morrison Torrey, *You Call That Education?*, 19 WIS. WOMEN'S L.J. 93, 105-06 (2004).

because of large classes and professors too lazy to adopt new teaching methods."⁴⁷ It has been particularly ineffective for teaching women,⁴⁸ minorities,⁴⁹ and students with a wide variety of learning styles.⁵⁰ However, law professors cling to the Socratic Method as their primary teaching tool.⁵¹ A survey of teaching techniques in American law schools revealed that the Socratic and lecture methods are alive and well in law schools. Ninety-seven percent of law professors report that they use the Socratic Method in the first year and thirty-one percent say they use the lecture method, characterized by the professor imparting knowledge and the law student passively listening. There was little decrease in the percentage of professors reporting that they use the Socratic or lecture method in upper level courses, seminars, and skills courses.⁵² The status quo is maintained in the classroom, despite the fact that the law school has changed from a white man's world, where "teachers and students looked alike, talked alike, and communicated easily with one another," to an environment characterized by gender, racial, ethnic, and cultural diversity.⁵³

The status quo is further preserved under hiring, retention, and promotion practices that value scholarship over a more difficult to measure, teaching effectiveness.⁵⁴ The focus of most faculty development efforts is upon how to encourage more scholarship. The wise assistant or associate professor knows that the most direct path to tenure is to write law review articles. Devoting time to teaching at the expense of producing scholarship is risky business. The new professor who uses creative teaching methods, designed to reach a greater variety of learners and accommodate a variety of needs, may be viewed by some tenured members of the faculty as less rigorous than a professor who uses a sink or swim approach to teaching law students. Even professors inclined to teach to the variety of learners in their classrooms are at a severe disadvantage without formal training in education, or the support of a learning specialist in the law school.⁵⁵ The law professor perhaps practiced law for a few years

⁴⁷ *Id.* See also Alice K. Dueker, *Diversity and Learning: Imagining a Pedagogy Difference*, 19 N.Y.U. REV. L. & SOC. CHANGE 101 (1991-92).

⁴⁸ Torrey, *supra* note 46. See also Nancy E. Schurtz, *Lighting the Lantern: Visions of a Virtual All-Women's Law School*, 16 HASTINGS WOMEN'S L.J. 63 (2004).

⁴⁹ See Carole J. Buckner, *Realizing Grutter v. Bollinger's "Compelling Educational Benefits of Diversity"—Transforming Aspirational Rhetoric Into Experience*, 72 UMKC L. REV. 877, 887 (2004).

⁵⁰ Steven I. Friedland, *How We Teach: A Survey of Teaching Techniques in American Law Schools*, 20 SEATTLE U. L. REV. 1, 2 (1996); Christopher T. Matthews, *Sketches for a New Law School*, 40 HASTINGS L.J. 1095, 1102-03 (1989).

⁵¹ *Id.*

⁵² See Friedland, *supra* note 50.

⁵³ See Filippa Marullo Anzalone, *It All Begins With You: Improving Law School Learning Through Professional Self-Awareness and Critical Reflection*, 24 HAMLINE L. REV. 325, 330, 368 (2001).

⁵⁴ See Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO L. REV. 347, 360-62 (2001) (Resistance stems from pressure to maintain the status quo in hiring, retention, promotion, and tenure practices that value scholarship more than teaching.).

⁵⁵ Adams, *supra* note 23, at 191. See also DEBORAH RHODES, *IN THE INTERESTS OF JUSTICE* 196-97 (2000).

before joining the academic world, but probably devoted little time to learning how to teach law students with diverse learning styles.

B. *Disdain for Accommodating Students with Disabilities*

Perhaps the most disabling symptom and cause of law professors' intellectual paralysis and lack of vision in teaching the variety of learners in the classroom is a disdain for accommodating students with certain types of disabilities. A disdain for the student with a learning disability is often shared by "law school administrators, legal educators, and non-disabled law students."⁵⁶ It evolves from a number of sources.

1. *The Invisible Nature of Learning Disabilities*

Legal educators cannot easily recognize a learning disability or understand its impact. Unlike the physical or medical disability, for example blindness or hearing loss, an educator cannot see a learning disability. A learning disability is an "invisible" disability.⁵⁷ Kathy Allen, an expert on nonverbal learning disabilities ("NLD"), describes the paradox between educational services provided to college students with physical disabilities as compared to learning disabilities:

Many of these students are very bright academically, and it is easy for professionals and teachers to be confused or annoyed by the gap between their high academic skills and their poor organization abilities. Unlike blindness or other sensory disorders, this disability is invisible. While students with cerebral palsy are routinely provided with note takers or computers, it is very difficult for college students with NLD to receive services. Frequently, these students are told they are irresponsible and should try harder. But since NLD is a serious condition, the student is only able to achieve success when specific interventions are in place.⁵⁸

2. *Professors' Misplaced Focus Upon Students' Deficits*

Legal educators tend to focus on the deficits of the law student with a learning disability, regardless of average or high intelligence. Learning disabilities "usually involve one or more of the mental, communicative, or organizational skills which are related to being a competent attorney."⁵⁹ Without understanding learning disabilities or how the legal educator can help students with diverse learning styles and needs in the classroom, the legal educator may conclude that the student with a learning disability cannot succeed in law school and is not "cut out" to be a lawyer.⁶⁰ But this conclusion is often misplaced and is usually the result of a failure of the professor to understand that

⁵⁶ Kevin H. Smith, *Disabilities, Law Schools, and Law Students: A Proactive and Holistic Approach*, 32 AKRON L. REV. 1, 18 (1999).

⁵⁷ *Id.* at 19. See also Kathy Allen, *Success for Young Adults with NLD*, <http://www.nldline.com/> (follow "Articles on NLD" hyperlink; then follow "21. Success for Young Adults with NLD" hyperlink) (last visited Sept. 25, 2005). The legal educator relies upon the judgment of a third party in providing a diagnosis for the student with a learning disability. Unlike the physical or medical disability, they are not directly observable. See Smith, *supra* note 56, at 18.

⁵⁸ Allen, *supra* note 57.

⁵⁹ Smith, *supra* note 56, at 18.

⁶⁰ *Id.*

some students simply do not learn the material in the same way as the majority of students in the classroom. The teacher may not understand the importance of taking a multi-sensory approach to teaching. For example, a student with a learning disability may appear grossly under prepared for class when he or she has difficulty with verbal responses to questions posed by the professor using the Socratic Method. Yet the student may be quite prepared to give thoughtful written responses. The student may be very "cut out" to be an attorney, despite deficits, if he or she chooses a practice which "does not require a significant amount of spontaneous verbal communication."⁶¹

3. *Skepticism About the Diagnosis of Learning Disabilities*

Legal educators and administrators view learning disabilities with suspicion because learning disabilities are often diagnosed for the first time in law school. The legal educator may ask, how is it that a successfully admitted student is claiming a learning disability for the first time in law school? A student may have been very successful during undergraduate school and performed well on the LSAT. However, previous academic success does not always equal success in law school. Some students with learning disabilities are not identified until they attend law school because they attended elementary, high school, and perhaps even undergraduate school when testing and academic support programs were not in place.⁶² Many students continued through high school and college, undiagnosed. Moreover, students may obtain a belated diagnosis of a learning disability during law school because, for the first time, they find themselves intellectually challenged like never before. Previous coping mechanisms fail them. They hit the wall during the first year of law school despite their efforts and find the cause of their academic difficulties in a diagnosis.

It is not unusual for students to be identified as having learning disabilities after they enter professional school. These students are generally very bright and possibly gifted. They have learned to compensate for and mask their disabilities. Their ability to compensate may diminish with the pace and demands of professional school, and their undiagnosed learning disabilities might then impede their academic progress. The underlying problem may be diagnosed only after students face academic probation or dismissal.⁶³

Finally, skepticism may arise because of the inconsistent academic performance of a student with disabilities. It is sometimes difficult to understand that the student may have great aptitude in one area of study, while having significant deficits in other areas. It is difficult for legal educators to understand how a bright student can struggle in some areas and not in others. It is easy to simply conclude that the student is simply not applying herself.

In essence, many legal educators suffer from what may be called teaching disabilities. They focus on the deficits and disabilities of students, instead of recognizing the abilities of students. They fail to develop teaching methods to

⁶¹ *Id.* at 19.

⁶² *Id.* See also Beth Grennbaum, et al., *Adults with Learning Disabilities: Educational and Social Experiences During College*, 61 *EXCEPTIONAL CHILDREN* 460, 462 (1995) (many undergraduate students' learning disabilities remain undiagnosed until they reach college).

⁶³ Runyan & Smith, *supra* note 36, at 323.

give students the opportunity to demonstrate their abilities. There are many casualties in the law school student body and ultimately in the legal profession. Casualties include qualified law students with both physical and learning disabilities who cannot make the grade without effective teaching and accommodations. Casualties also include many students without disabilities who would likewise benefit from the more innovative teaching techniques created by a more inclusive law school environment. Law firms and the profession are ultimately deprived of lawyers with exceptional problem solving skills, fresh perspectives, talents, and perhaps a unique position to represent members of the disability community.

IV. THE LEGAL PROFESSION'S DISABILITIES: FACING STEREOTYPES AND PREJUDICES

The attitude in the legal profession is "survival of the fittest;" "a competitive attitude that can leave qualified lawyers with disabilities in the cold . . . and law firms lacking the benefit of their talents."⁶⁴

Like legal educators, many lawyers suffer from a lack of vision when it comes to employing new associates with disabilities, and particularly those with learning disabilities. Time and speed are considered to be central in the practice of law, and the ability to work under pressure seems to be the litmus test for who can enter the profession. To those administering the bar exam and hiring attorneys out of law schools, the ability to work under intense time pressure is considered to be an essential "skill needed to be a competent lawyer."⁶⁵ Lawyers equate the ability to read with speed with the ability to read complex legal authority.⁶⁶ Perhaps the most frequent concern expressed about a lawyer with a disability is whether he or she can be a competent lawyer. Specifically,

⁶⁴ *Accommodating Attorneys with Disabilities*, 67 WIS. LAW. 13, 13 (1994) [hereinafter *Accommodating*] (quoting attorney Alan Post, a 1972 University of Wisconsin graduate who has a severe hearing impairment and entered solo practice in Wichita, Kansas).

⁶⁵ W. Ray Williams, *Hand-Up or Handout? The Americans With Disabilities Act and "Unreasonable Accommodation" of Learning Disabled Bar Applicants: Toward a New Paradigm*, 34 CREIGHTON L. REV. 611, 658 (2001) (Authors cite surveys of 1,661 practicing lawyers and five New York Bar Examiners, presumably all or mostly nondisabled lawyers unfamiliar with strategies or compensations for disabilities, commissioned by the New York Supreme Court. At the same time the survey was conducted, in 1994, applicants to the New York Bar with both learning and physical disabilities, took the New York Board of Law Examiners to court multiple times over its failure to afford them accommodations.) See *Argen v. New York State Bd. of Law Exam'rs*, 860 F. Supp. 84 (W.D.N.Y. 1994); *Christian v. N.Y. State Bd. of Law Exam'rs*, 899 F. Supp. 1254 (S.D.N.Y. 1995); *D'Amico v. New York State Bd. of Law Exam'rs*, 813 F. Supp. 217 (W.D.N.Y. 1993) (upholding accommodations for visually impaired applicant); *Pazer v. New York State Bd. of Law Exam'rs*, 849 F. Supp. 284 (S.D.N.Y. 1994). See also Diana C. Pullin & Kevin J. Heaney, *The Use of "Flagged" Test Scores in College and University Admissions: Issues and Implications under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act*, 23 J.C. & U.L. 797, 824 (1997) (noting that the Law School Admission Council's policy of using flagged scores may stigmatize students with learning disabilities as being incompetent).

⁶⁶ Pamela Coyle, *What Sylvia Law, Jonathon Pazer, and David Glass Confront When They Read or Write. When ecitsuj is denied to some, it is taken from the luos of the people: So how could anyone with dyslexia succeed as a lawyer?*, ABA J., Sept. 1996, at 64, 65.

the concern is whether he or she can meet the scheduling demands of the courts, when required to read and digest cases, or write a brief.

It is true that a disability may require a lawyer to devote more time and effort to a task. However, the ability to work under severe time pressures, as the litmus test of who can and cannot practice law is stereotypical, narrow minded, and at best, misguided. A lawyer's reading speed and reading capacity are not synonymous. For example, some lawyers and law students with learning disabilities such as dyslexia, do have difficulty with the initial decoding required for reading, which slows their reading down. Their dyslexia inhibits their "ability to separate written words into phonetic parts" and some words "appear 'jumbled up' or backwards."⁶⁷

But despite these decoding and processing problems, a dyslexic reader's higher functions of language and reasoning remain intact and it is even thought that dyslexics may have superior conceptual abilities.⁶⁸ "Lawyers with dyslexia say concerns about their competence stem from a narrow, oversimplified vision of the legal field."⁶⁹ One dyslexic lawyer, confronting the stereotype, stated:

If you are looking for somebody to read quickly and volumes, I am not the person If you are looking for somebody to do a meticulous, good job, I am the man for you [Reading] is not all I am doing. I am reasoning out and constructing arguments and explanations, and I do that as fast as everyone else.⁷⁰

The dyslexic lawyer, in many ways, is in a unique position to meet the demands of the modern practice of law. The dyslexic lawyer is often a visual, rather than linguistic thinker. The modern practice of law is becoming more visual, with the use of computers and visual aids in courtrooms. Clients and jurors today are most likely visual learners.⁷¹ Although the majority of law teachers and lawyers today are most likely left brain dominant thinkers, the majority of the population is not.⁷² Law schools, using traditional teaching methods and graduating limited types of learners, may not meet the needs of a modern law practice who serve visual learners. Lawyers who cannot relate well to the public and understand the visual learner, will likely be unsuccessful. The dyslexic lawyer may be able to think outside of the box and find creative solutions to clients' problems.

Other learning disabilities affect writing. But the fact that a student suffers from a learning disability does not mean that he or she will not be able to communicate effectively in writing. For example, while Attention Deficit Disorder (ADD) does affect a student's attention span, it does not affect her ability

⁶⁷ Weiss, *supra* note 9, at 226.

⁶⁸ THOMAS G. WEST, IN *THE MIND'S EYE* 1-43 (1991) (stating that the disability of dyslexia is associated with unique gifts in imagination and three-dimensional thought).

⁶⁹ Coyle, *supra* note 66, at 65.

⁷⁰ *Id.*

⁷¹ See DONALD E. VINSON, *JURY PERSUASION: PSYCHOLOGICAL STRATEGIES & TRIAL TECHNIQUES* 185 (1993). See also Frederic I. Lederer, *The Road to the Virtual Courtroom? A Consideration of Today's—and Tomorrow's—High Technology Courtroom*, 50 S.C. L. REV. 799, 814 (1999). See generally STEVEN LUBET, *MODERN TRIAL ADVOCACY* (2000), and THOMAS A. MAUET, *TRIAL TECHNIQUES* (2002).

⁷² See M.H. Sam Jacobson, *Learning Styles and Lawyering: Using Learning Theory to Organize Thinking and Writing*, 2 J. ALWD 27, 39 (2004).

to write.⁷³ The student can often compensate for her disability by spending more time on a project or assignment. While some students may complain that classmates with disabilities have the upper hand with extra time and that they should be given the same advantages, research shows that this accommodation gives students with a disability only equal footing. Students without disabilities generally do not benefit from extra time.⁷⁴

Law schools, as the gatekeepers of the profession, need to learn new ways to integrate lawyers with disabilities, including learning disabilities, into the profession. The profession “needs to confront its own prejudices, stereotypes and ignorance, recognize the contributions and qualities that these attorneys bring to the Bar, and consider the best ways to integrate learning disabled attorneys into the profession.”⁷⁵

V. THE EXCEPTIONAL ABILITIES OF STUDENTS AND LAWYERS WITH DISABILITIES

“One who gains strength by overcoming obstacles possesses the only strength which can overcome adversity.”⁷⁶

A disability can be a positive attribute in law school and the legal profession. A disability can turn into an exceptional ability. A law student or lawyer, who has gained the discipline to overcome, or compensate for, his or her learning disabilities, will likely possess the strength and discipline to overcome the adversity he or she will face in law school and in the legal profession. Moreover, he or she will likely possess the core skills and abilities of a very competent attorney.

A. *In Law School*

A law student with a disability will likely have the self-determination, self-advocacy, self-knowledge, and negotiating skills to be a successful law student. The law student’s disability may result in exceptional abilities, partly

⁷³ Weiss, *supra* note 9, at 243.

⁷⁴ *Id.* (At least two students diagnosed with ADD were members of law review and obtained membership through writing competitions. ADD is a disorder that affects an individual’s attention span and not the ability to write.) See Eichhorn, *supra* note 22, at 57 (citing several studies that show students with disabilities do not benefit when given extra time).

⁷⁵ David B. Goldstein, *Ethical Implications of the Learning Disabled Lawyer*, 42 S. TEX. L. REV. 111, 118 (2000).

⁷⁶ Daily Celebrations, <http://www.dailycelebrations.com/011403.htm> (last visited Aug. 26, 2005) (quoting philosopher Albert Schweitzer). Wikiquote.com, Albert Schweitzer, http://en.wikiquote.org/wiki/Albert_Schweitzer (last visited Sept. 17, 2005); Online Scholars Community, Albert Schweitzer, http://www.tscholars.com/quote/Albert_Schweitzer (last visited Sept. 17, 2005); Quotesplace.com, Albert Schweitzer, http://quotesplace.com/i/b/Albert_Schweitzer (last visited Sept. 17, 2005); Knowledgefun.com, Albert Schweitzer, http://www.knowledgefun.com/quote/a/al/albert_schweitzer.html (last visited Sept. 17, 2005); Quickly find.com, Albert Schweitzer Quotes, http://www.quicklyfind.com/quote-albert_schweitzer.html (last visited Sept. 17, 2005); United States Air Force Academy Today, Removing the Pressure, <http://www.usafatoday.com/?story=60> (last visited Sept. 17, 2005); American Success Institute, Lesson 2: Master Goals, <http://www.success.org/MasterSuccess/2.shtml> (last visited Sept. 17, 2005).

because of the very nature of the disability. Many of the negative behaviors of children with learning disabilities in the early years of education, turn into positive attributes during adulthood. Stubbornness and willfulness which is often criticized in children with disabilities, often results in the attributes of perseverance and determination that lead these students with learning disabilities to great achievements in adulthood.⁷⁷ Hyperactivity and high energy in childhood may later turn into great productivity. Some students with disabilities may have what is called "perseveration," a condition which goes beyond perseverance. They may persist "beyond the reasonable point where most people will stop in the dogged pursuit of a single goal."⁷⁸ That determination may serve them well in law school. Because of their early struggles, students with disabilities may have more discipline and drive to achieve success in higher education than many nondisabled students.⁷⁹ They have self advocated and negotiated through decades of their own difficult lives. They are most likely well aware of their strengths and weaknesses. They have reached a level of self-awareness that most first-year law students do not likely possess. Many first year students without disabilities have not worked as hard as their peers with disabilities and are not as self-aware as students with disabilities who have been tested and counseled about their strengths and weaknesses throughout their education. In many ways, students with disabilities come to law school better prepared than their classmates who have no disabilities.⁸⁰

While legal educators tend to focus upon how a student's disability will negatively affect the student's performance in the classroom and on the bar examination, disabilities often result in exceptional abilities.⁸¹ And those exceptional abilities of students with disabilities can produce exceptional abilities in their teachers and non-disabled classmates. By providing equal educational opportunities to students with disabilities, we will gain new insights about the art of teaching, which will benefit everyone.

B. In The Practice of Law

The lawyer with a disability will likely have the empathy and sense of justice to serve clients and the public in an exceptional manner. The legal profession, and the society that it serves, is in need of lawyers with all types of disabilities, and it is up to legal educators in the first instance to clear the path to the profession for students with disabilities. Those who "teach and write

⁷⁷ Sally L. Smith, *School Failures, Adult Success: The Negative Behaviors of Children with Severe Learning Disabilities That Often Turn Into Positive Attributes in Adulthood*, <http://www.ldonline.org/article.php?max=20&loc=11> (last visited Aug. 24, 2005). Professor Smith is the head of the graduate program in learning disabilities at American University.

⁷⁸ *Id.*

⁷⁹ *Id.* (A learning disabled student observed that most students at the college level were not used to hard work. He stated, "[t]hey don't have the discipline, the stick-to-itiveness that my dyslexic friends and I have. It sounds funny to say, but, in a sense, we were better prepared for college than they were.")

⁸⁰ *Id.*

⁸¹ For example, a visual disability "sharpens hearing, promotes memory retention and shields against intimidation." *Accommodating*, *supra* note 64 (quoting attorney Fred Wisner who became blind as an adult, graduated from law school in 1984, and became Assistant General Counsel for the state department of transportation in Madison, Wisconsin).

about the legal profession need to make the unfinished agenda of equal opportunity part of [the legal educator's] agenda."⁸² Dr. Martin Luther King recognized that members of a protected class should serve as the "drum majors for justice, using their unique abilities to lead their communities."⁸³ The disabled community is in need of leaders from its own school of adversity. Historically, lawyers of a protected class have been instrumental in helping members of protected classes overcome the barriers they face. In the dawn of the civil rights movement, black leaders such as Justice Thurgood Marshall, noted that the admission of people of color to the bar was a prerequisite to improving the equality of people of color under civil rights legislation.⁸⁴ The admission of women to the Bar also had a profound impact upon the profession.⁸⁵ Like women lawyers and lawyers of color, society needs lawyers with disabilities to help achieve the full promise of disability discrimination laws.⁸⁶

Lawyers with disabilities are in the best position to achieve the goals of the civil rights laws as they affect the disabled community. "Even though the [ADA] is in effect, disabled persons face an uphill fight to overcome the barriers they encounter in the justice system," which has had a discriminatory impact on people with disabilities for most of its history.⁸⁷

The ADA has failed to deal with issues of the disabled communities' ability to gain access to government services. Many people with disabilities are unemployed, on fixed incomes, and living below the poverty line.⁸⁸ Despite progress under the ADA, the national unemployment rate among people with disabilities is seventy-five percent.⁸⁹ The United States Bureau of the Census reported in 1995 that men without disabilities made on average, twenty-one percent more than male workers with disabilities. That gap has widened since the passage of the ADA.⁹⁰

Sadly, there is evidence that the legal profession, including the courts, judges, and law firms, both big and small, have also failed to provide equal opportunity for its own lawyers with disabilities. "More than a decade after the

⁸² Deborah L. Rhode, *Gender and the Profession: The No-Problem Problem*, 30 HOFSTRA L. REV. 1001, 1011 (Spring 2002).

⁸³ DR. MARTIN LUTHER KING, A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS OF MARTIN LUTHER KING, JR. 259-67 (James Washington ed., 1986).

⁸⁴ J. CLAY SMITH, JR., EMANCIPATION: THE MAKING OF THE BLACK LAWYER 1844-1944, 555-60, 585 (1993).

⁸⁵ See Ruth Bader Ginsberg, *Remarks on Women's Progress at the Bar and on the Bench*, 89 CORNELL L. REV. 801, 803-07 (2004) (In the early 1960's, women accounted for only three percent of the nation's lawyers, compared to thirty percent in 2004); see also Cynthia Fuchs Epstein, *Women in the Legal Profession at the Turn of the Twenty-First Century: Assessing Glass Ceilings and Open Doors*, 49 U. KAN. L. REV. 733 (2001).

⁸⁶ Teri L. Mosier, *Employment Discrimination Against the Disabled in the Legal Profession* (1996), <http://www.tlmosier.4t.com> (follow "Accomplishments" hyperlink; then follow "Unpublished Paper" hyperlink).

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ See Amy Geiszler-Jones, *Study to Look at Why Employers Don't Hire More Disabled*, (Nov. 1, 2001), http://www.wichita.edu/insidewsu/@11-1-2001/Disabled_workers_study.htm.

⁹⁰ See Gary H. Anthes, *Disabled IT Professionals: Better Equipped Yet Shortchanged*, (Sept. 7, 1998), [http://www.cabln.org/articles.htm#Disabled IT](http://www.cabln.org/articles.htm#Disabled%20IT).

American With [sic] Disabilities Act became law . . . lawyers with disabilities . . . [report that] they routinely face discrimination.”⁹¹

The California State Bar Committee on Lawyers with Disabilities surveyed lawyers and reported that forty-five percent of lawyers with disabilities had been denied employment opportunities because of their disabilities. Sixteen percent reported that they had encountered negative comments about their disabilities from judges, and twenty-two percent reported that they faced physical barriers to the courts.⁹²

The courts still struggle with the basic definition of the term disability and people with disabilities are quickly losing ground. For example, the courts now take the mitigating effects of “corrective measures” such as eyeglasses and medication into account in determining whether a worker is disabled under the ADA.⁹³ Perhaps lawyers with disabilities are in the best position to help take disability laws in the direction intended by Congress and demonstrate to the legal profession itself, the contributions of people with disabilities.

In addition to advancing the cause of equal opportunity for people with disabilities, lawyers with disabilities are “cut-out” to be lawyers on a more fundamental basis. The core skills and values commonly expected of a competent attorney are consistent with what the lawyer with a disability, and particularly one with a learning disability, has developed throughout his or her education and practice as an attorney. A competent attorney must possess good problem solving, communication, task organization, and management skills. The lawyer with a disability has been forced to overcome adversity and problem solve throughout his or her education. He or she has learned to self-advocate and communicate to others about disabilities and legal requirements. While executive functioning is difficult for many students with learning disabilities, those achieving success in school have often learned to compensate through special attention to organizational tasks, use of technology, and scheduling.

The lawyer with a disability will likely possess values that will allow him or her to make unique contributions to the legal profession. The core values of a competent attorney include “serving faithfully the interests of others while also promoting justice.”⁹⁴ The competent attorney is expected to help clients work through difficult experiences in their lives and empathize with clients in regard to the difficulties they face. While every lawyer has experienced his or her own unique trials and adversity, the lawyer with a disability has likely worked harder and faced more doubters about his or her abilities, on the road to obtaining a license to practice law. A lawyer with a disability directly knows the importance of the civil rights laws and how the laws promote justice. A

⁹¹ Nancy McCarthy, *Attorneys with Disabilities Face Tough Job Market*, CAL. ST. B.J., August 2004, at 1.

⁹² *Id.*

⁹³ Coelho, *supra* note 30, at 733. See Sutton v. United Airlines, 527 U.S. 471 (1999); Albertson’s Inc. v. Kirkingburg, 527 U.S. 555 (1999); Murphy v. United Parcel Serv., 527 U.S. 516 (1999).

⁹⁴ WENDY MARGOLIS ET AL., OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS 4 (Wendy Margolis et al. eds., 2005).

lawyer with a disability, who has overcome adversity and relies upon the civil rights laws in his or her own life, is well equipped to help a client in this regard.

A competent attorney is able to educate people about the law and dispel unjust misconceptions in a clear and concise manner. Like the law, disabilities are often misunderstood. Throughout his or her education, the student with a disability has probably explained a disability, the difficulties it causes, the compensations and accommodation required, and why accommodations must be provided, many times over. Over a lifetime, the lawyer with a disability has learned to persuade difficult audiences, including those who doubt the very existence of disabilities. Those skills of persuasion will serve the lawyer well in the practice of law.

A lawyer should be willing to work very hard. Although some things do not come easy to the lawyer with a disability, he or she has learned to compensate by working very hard. A lawyer must possess abilities to advocate and negotiate.⁹⁵ The lawyer with a disability is likely to possess exceptional abilities when it comes to hard work and negotiating.

In addition to the lawyering skills and values a lawyer with a disability may bring to the profession, hiring a lawyer with a disability can actually improve the efficiency of a law office. The new lawyer with a disability most likely developed and used learning strategies that incorporated technology to maximize academic potential. This technology may have included such aids as computer technology, organizational software, voice synthesizers, and voice recognition software.⁹⁶ Computer and electronic technology is classified as "assistive technology" to accommodate special needs.⁹⁷ The Assistive Technology Act of 1998 defines "assistive technology device" as "any item, piece of equipment, or product system . . . that is used to increase, maintain, or improve the functional capabilities of individuals with disabilities."⁹⁸ Much of this same technology also increases the efficiency of a law office. For example, electronic organizers have significantly changed the way information is managed and stored, from court appointments and client meetings with notes, to scanned legal documents. The skillful use of technology not only places the lawyer with a disability on a more equal footing with lawyers with no disabilities; it improves the efficiency of the office.⁹⁹

By employing "slightly different methods of working" and advancements in technology, the lawyer with a learning disability can "generate the same work product as non-learning disabled people."¹⁰⁰ They simply "take alternate routes to arrive at the same destination as non-learning disabled people."¹⁰¹ Lawyers who recognize that they have a learning disability, and know how to work to maximize their strengths and minimize their weaknesses, are highly

⁹⁵ *Id.* at 1.

⁹⁶ *Accommodating*, *supra* note 64, at 13 (quoting attorney Fred Wisner who became blind as an adult, graduated from law school in 1984, and became assistant general counsel for the state department of transportation in Madison, Wisconsin).

⁹⁷ 29 U.S.C. § 3002(4) (2000).

⁹⁸ *Id.*

⁹⁹ *Accommodating*, *supra* note 64. See also Barry E. Katz, *Disabled, Not Disqualified*, 8 *STUDENT LAW*, 20, 21 (April 2002).

¹⁰⁰ Eichhorn, *supra* note 22, at 37.

¹⁰¹ *Id.*

successful.¹⁰² They often think outside of the box to accomplish success in the competitive worlds of law school and the practice.

C. *Success Stories of Lawyers with Exceptional Abilities and Learning Disabilities*

Many successful lawyers with learning disabilities faced the challenges of learning disabilities. They prove that “how people process information does not affect their abilities, only the way in which they accomplish a task.”¹⁰³

The Honorable Jeffrey H. Gallet, a family court judge in New York, attributes his success, despite his learning disabilities, to the chance Brooklyn Law School took on him. The judge was not a high achiever in elementary school and high school. However, with the support of his professors, family, and a close friend, he achieved his highest academic performance in law school. In addition to serving as a family court judge, he writes about the Juvenile Code and is a frequent speaker about how to address juvenile justice and the impact learning disabilities can have on juveniles.¹⁰⁴ The judge suffers from dyslexia, a severe learning disability that causes reading difficulties, and dysgraphia, a learning disability that causes handwriting difficulties.¹⁰⁵ Despite his disabilities, the judge is an author of a law review article which describes his work as a dyslexic and dysgraphic lawyer and judge: “The Judge Who Could Not Tell His Right from His Left and Other Tales of Learning Disabilities.”¹⁰⁶ He reports that his disability does not affect his ideas, so he greatly compensated for his disability through the use of a Dictaphone, rather than putting pen to paper.¹⁰⁷

Another success story involves Benjamin Foss, a graduate student at Stanford University. He pursued a Masters of Business Arts (MBA) and law degree. He was diagnosed at an early age with dyslexia. Like many dyslexics, his nonverbal, visual intelligence was in the superior range. Although his weakness was with written language, he learned to capitalize on his visual intelligence in graduate school and “think outside of the box.” He competed for and won multiple scholarships, and was a national Rhodes Scholarship finalist. In addition, he won a World Masters Debating Championship, worked on the National Economics Council at the White House, and worked for the Children’s Defense Fund.¹⁰⁸

Lawyer Peter Wright is a nationally known special education advocate, author, and lawyer.¹⁰⁹ Diagnosed with dyslexia and attention disorder at a young age, “he was once labeled borderline mentally retarded” by his teach-

¹⁰² Weiss, *supra* note 9, at 258.

¹⁰³ Jacobson, *supra* note 72.

¹⁰⁴ Jeffrey H. Gallet, *A Judge’s Story* (1996), <http://www.ldonline.org/article.php?max=20&id=560&loc=11>.

¹⁰⁵ Jeffrey Gallet, *The Judge Who Could Not Tell His Right from His Left and Other Tales of Learning Disabilities*, 37 BUFF. L. REV. 739, 743 (1989).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 750.

¹⁰⁸ Learning Disabilities OnLine, First Person Essay of Benjamin Foss (Nov. 7, 2002), http://www.ldonline.org/first_person/foss.html.

¹⁰⁹ See PETER W.D. WRIGHT & PAMELA DARR WRIGHT, *WRIGHTSLAW: SPECIAL EDUCATION LAW* (1999).

ers.¹¹⁰ Among his many accomplishments, Mr. Wright successfully argued *Florence County School District Four v. Carter*, before the United States Supreme Court.¹¹¹ Wright successfully argued that school districts must provide appropriate education for students with disabilities, and that parents could be reimbursed for sending their children to private schools which would provide disability services for their children.¹¹² Mr. Wright maintains a web page and provides national workshops about special education advocacy for parents of children with disabilities.

Yet another highly successful attorney, Paul Grossman, compensates for his learning disability, which affects the speed of his reading, by photo-enlarging the text and taking the extra time to read on evenings, holidays, and weekends.¹¹³ After graduating from the University of Wisconsin Law School, Paul Grossman eventually became the Chief Regional Attorney for the United States Department of Education Office of Civil Rights.¹¹⁴

VI. THE TEACHER BECOMES A LEARNER

Convinced of the benefits that students with disabilities will bring to the law school classroom and legal profession, or at least prompted by the disability laws, the law teacher can become a learner. The law teacher will become "more self-conscious about the learning process and about how . . . [he or she] performs the act of teaching."¹¹⁵ The teacher will become educated about the many types of disabilities and learning styles represented in the classroom and will strive to help all students achieve academic success. This section is devoted to that endeavor.

A. *What is a Disability?*

There are three primary categories of disabilities: 1) physical/medical; 2) learning related; and 3) emotional disabilities.¹¹⁶ Although each individual is affected differently, it is important for the legal educator to remember that the student with a disability will bring certain strengths and weaknesses to the classroom and to the study of law. Despite their deficits, people with disabilities have unique assets. Their disabilities can result in exceptional abilities if the teacher can learn to tap into those abilities. A basic scientific concept may be helpful to understanding how a disability can result in an exceptional ability. Energy can be neither created nor destroyed, but is transferred from one place

¹¹⁰ Nancy Averett, *Lawyer Advises Educators* (Jun. 26, 2001), <http://www.wrightslaw.com/news/2001/mcall.leigh.keynote.0626.htm>.

¹¹¹ *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993).

¹¹² *Id.*

¹¹³ See Eichhorn, *supra* note 22, at 37 (discussing the remarks of Paul D. Grossman, Chief Regional Attorney, Region IX, U.S. Dept. of Education Office of Civil Rights, Remarks at the Joint Conference on Disability Issues, St. Louis, Mo. on April 7, 1995).

¹¹⁴ See Eichhorn, *supra* note 22, at 37. The attorney was a member of the Order of the Coif and a member of the law school's law review. *Id.* at 37 n.39.

¹¹⁵ Anzalone, *supra* note 53, at 326 (advocating that introspection of pedagogical methods and an understanding of one's own learning styles and preferences leads to improvements as a teacher).

¹¹⁶ Smith, *supra* note 56, at 5.

to another.¹¹⁷ It is like that for many students with disabilities. For example, the student with a physical visual impairment, or a student with a learning disability impeding visual-spatial skills, may possess keenly developed verbal and logical reasoning skills because of the disability. Loss of vision may result in a gain in exceptional hearing and memory retention. "It is as if the energy" the "brain would have used for spatial navigation, visual memory, and decoding nonverbal signals has gone" to the "verbal, logical part of [the] brain."¹¹⁸ This transfer of brain energy may strengthen skills needed for success in school. The student may have exceptional abilities in law school, if the teacher will provide an opportunity to capitalize on the students' strengths in the classroom. It is up to the legal educator to make the most of students' assets, and help students minimize deficits.

1. *What is a Physical/Medical Disability?*

Physical/medical disabilities "result from a disease or condition that is primarily physical and medical in nature."¹¹⁹ These disabilities include:

[G]ross and fine motor impairments due to such factors as spinal cord injury (e.g. paraplegia and quadriplegia); cerebral palsy and neuromuscular diseases (e.g. muscular dystrophy and Lou Gehrig's disease); diabetes; autoimmune diseases (e.g., rheumatoid arthritis, lupus, and multiple sclerosis); chronic fatigue syndrome; general physical trauma (e.g. broken limbs and neck or back injuries); thyroid disorders; epilepsy; and HIV/AIDS.¹²⁰

They also include visual, auditory, and communication impairments. While the types of physical/medical disabilities and their severities are as diverse as the individual students in the classroom, the effects of these physical/medical disabilities may include loss of fine or gross motor coordination, loss of mobility, fatigue, loss of ability to concentrate over a period of time, and interference with the ability to "read, research, write and edit written work, and participate in class and moot court activities" in the law school setting.¹²¹ Many of these effects can negatively impact a student's ability to learn complex material in the law school classroom, if the school does not accommodate the disability and its impact upon learning.

2. *What is a Learning Disability?*

Similar to many physical or medical disabilities interfering with a student's ability to learn in the law school classroom, a student with a learning disability suffers from a "deficit in the processing of visual and/or auditory information."¹²² Although students with learning disabilities successfully admitted into law school are usually very bright, their learning disability results

¹¹⁷ 1st Law of Thermodynamics.

¹¹⁸ *Tera's NLD Jump Station: A Resource on Nonverbal Learning Disabilities by an NLD Person*, <http://www.geocities.com/HotSprings/Spa/7262/> (Student with a nonverbal learning disability explains how a person with a nonverbal learning disability ("NLD") perceives things and describes his or her unique assets.) (last visited Sept. 8, 2005).

¹¹⁹ Smith, *supra* note 56, at 6.

¹²⁰ *Id.* at 7-8.

¹²¹ *Id.* at 9-10.

¹²² Runyan & Smith, *supra* note 36, at 319.

in a “discrepancy between aptitude and achievement,” despite a high level of intelligence.¹²³ In short, the law student with a learning disability is “much brighter than his or her grades would indicate.”¹²⁴

The Individuals with Disabilities Education Act and regulations define a “specific learning disability” as:

[A] disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations. . . . [The] term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.¹²⁵

Although there are many recognized learning disabilities, and ideas for accommodating them, some of the more common ones are discussed below.

a. Dyslexia

Approximately eighty percent of individuals with learning disabilities are dyslexic.¹²⁶ Approximately 25 million Americans have dyslexia. “Albert Einstein and Winston Churchill were among the D-students whose minds would stumble on the letters ‘b’ and ‘d’ and silent vowels.”¹²⁷ Tom Cruise and Whoopi Goldberg are dyslexic. So are Don Winkler, CEO of the Ford Motor Company, CEOs Craig McCaw, Charles Schwab, and Cisco System’s John Chambers. It is thought that Hans Christian Anderson, Thomas Edison, Leonardo da Vinci, George Patton, Woodrow Wilson, and Nelson Rockefeller, also had some form of dyslexia or learning disability.¹²⁸

Also known as Developmental Reading Disorder, dyslexia affects a student’s ability to read quickly and understand some content. Although the dyslexic law student’s deficits are in the linguistic area, the student will likely have great strengths when it comes to visualization skills. The dyslexic student will likely be more intuitive and inventive than the average person.¹²⁹ Likely a visual learner, the dyslexic student’s deficits can be greatly overcome through the use of technology.¹³⁰ Reading software can read text aloud from a scanned document or text, or through a word processor. The student can manipulate reading speed and highlight words and sentences for enhanced reading comprehension or editing and revising of the student’s written work.¹³¹ Voice recog-

¹²³ Suzanne Wilhelm, *Accommodating Mental Disabilities in Higher Education: A Practical Guide to ADA Requirements*, 32 J. LEGAL EDUC. 217, 229 (2003).

¹²⁴ *Id.*

¹²⁵ 20 U.S.C. § 1401 (2000); 34 C.F.R. § 300.7(b)(10). The Court adopted this definition in a case involving a request for accommodations on the New York State Bar Examination. *See Argen v. N.Y. Bd. of Law Exam’rs*, 860 F. Supp. 84, 87-88 (W.D.N.Y. 1994).

¹²⁶ *See Guckenberger v. Boston Univ.*, 974 F.Supp. 106, 131 (D. Mass. 1997); *see also* California Business Leadership Network, *Articles on Employment & Disability*, <http://www.cabl.org/articles.htm> (last visited Sept. 8, 2005).

¹²⁷ California Business Leaders Network, *supra* note 126.

¹²⁸ *See* WEST, *supra* note 68, at 18.

¹²⁹ Sharona Hoffman, *ADA Obligations of Employers*, 42 S. TEX. L. REV. 59, 68 (2000).

¹³⁰ *See generally* Elizabeth M. Mckenzie & Kathleen E. Casey, *Using Adaptive Technology to Provide Access to Blind, Low-Vision and Dyslexic Patrons*, 90 LAW LIBR. J. 157 (1998).

¹³¹ *See* Jennifer Smith, *Managing Graduate School with a Learning Disability: A Profile of Judy Risch*, *UW-Madison*, TEACHING WITH TECH. TODAY NEWSL., April 17, 2000, <http://www.uwsa.edu/ttt/articles/frisch.htm>.

dition software and spellcheckers can mitigate the effects of learning disabilities.¹³² As technology advances, it will likely reduce the negative effects of dyslexia even more.¹³³

In addition to the use of technology, professors can use teaching strategies and accommodations geared to capitalize upon his or her dyslexic students' excellent visualization skills and conceptual abilities.¹³⁴ Teaching strategies include using multi-sensory approaches to teaching, beyond reading and writing. Time extensions on tests are a common and appropriate accommodation for the dyslexic student.¹³⁵

b. Attention Deficit Disorder ("ADD")

Attention Deficit Disorder is a neurologically based condition characterized by inappropriate levels of distractedness, inattentiveness, and impulsiveness.¹³⁶ It affects between two percent to four percent of adults.¹³⁷ The law student with ADD may be the student who blurts out the answer in class without being called upon. The student becomes distracted and restless if asked to attend over a long period of time. In order to enhance the attention of all students, including those with ADD, the professor should incorporate brief break periods into any class that lasts much more than an hour.¹³⁸ The process approach is the best approach for teaching writing skills to all students, including those with ADD. The professor should break up all writing assignments into multiple steps for all students and give frequent feedback to students.¹³⁹ The professor should ask the student to look at substantive content, organization, legal vocabulary, grammar, and citations, separately. The professor should provide the student with feedback on each of these items. In the doctrinal class, going over the questions at the end of each chapter is helpful to all students, including those with ADD.

The ADD student, unlike students with some other learning disabilities, often lacks good memorization skills. The ADD student will need to work harder than most students on memorizing the underlying rules before learning how to analyze them. This student would probably do better with intermittent testing on chapters throughout the semester, as handling too much material at one time may be difficult.¹⁴⁰ Accommodating students with intermittent test-

¹³² Adams, *supra* note 10, at 289-90.

¹³³ Weiss, *supra* note 9, at 253.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ PAMELA B. TANGUAY, NONVERBAL LEARNING DISABILITIES AT HOME 212 (2001).

¹³⁷ The Disorder Named AD/HD: CHADD Fact Sheet #1, <http://www.chadd.org/fs/fs1.htm> (last visited Sept. 8, 2005).

¹³⁸ See AMERICAN PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 83-85 (4th ed. 1994) (setting forth several factors to be weighed in making the diagnosis). See also DAVID A. SOUSA, HOW THE SPECIAL NEEDS BRAIN LEARNS 56 (2001) (providing general guidelines for working with ADHD and ADD students which include modifying the classroom environment to provide frequent breaks).

¹³⁹ The process approach to teaching writing, with frequent feedback to students, is recommended for teaching all students. See Jo Anne Durako et al., *From Product to Process: Evolution of a Legal Writing Program*, 58 U. PITT. L. REV. 719 (1997).

¹⁴⁰ See CAROL DOWDY, ET AL., ATTENTION-DEFICIT/HYPERACTIVITY DISORDER IN THE CLASSROOM: A PRACTICAL GUIDE FOR TEACHERS 133 (1998). See also MARILEE B.

ing, or quizzes throughout the semester, will require legal educators to rethink the traditional method of administering one test at the end of the semester. It may benefit all students, because they will receive more frequent feedback about what they have learned and about what they still need to learn for success in the course and on the final examination.

c. Asperger's Syndrome ("AS")

Asperger's Syndrome (AS) is a developmental disability characterized by normal and superior intelligence, motor clumsiness, and eccentric interests. Difficulties are in the area of nonverbal communication, dealing with chaos, and following directions.¹⁴¹ One scholar described AS as a "dash of autism" with many AS individuals exhibiting exceptional skills or talents in a specific area.¹⁴² They typically have excellent vocabularies. In adulthood, AS students' preoccupation with certain subjects can help them become successful in their careers.¹⁴³ The law student with AS is likely a student who prefers structure in environment and assignments. The AS student will not adapt well to change in the schedule or assignments. The professor can keep specific teaching strategies in mind to help the student with AS achieve success in the classroom. The professor should break down directions in steps, be predictable and consistent as a teacher, and provide structure for the AS student. Because it may take some time for the AS student to formulate an answer to oral questions, it may help to pause for some time before expecting a response. Indeed, giving time to all students in the classroom to formulate answers to questions will most likely enhance the discussion and promote class participation.

d. Non Verbal Learning Disability ("NLD")

Similar to a visual impairment, the nonverbal learning disability is a disability that impairs the ability to process and learn nonverbal information. In many ways, NLD is just the opposite of dyslexia. Dyslexia, a linguistic disability, is often accompanied by strengths in nonverbal visual skills. In contrast, NLD individuals have impaired nonverbal visual skills, often accompanied by strong linguistic and verbal skills. NLD students have "impaired abilities to organize the visual-spatial field, adapt to new or novel situations, and/or accurately read nonverbal signals and cues."¹⁴⁴ If it is not said, it likely does not exist for the NLD student. NLD students may be incapable of interpreting diagrams, maps, illustrations, symbolic figures, and designs, but be quite capable if the same information is presented in an oral or other linguistic form.

Because all communication is two-thirds nonverbal and only one-third verbal, the inability to understand nonverbal information in the law school

SPRENGER, BECOMING A "WIZ" AT BRAIN-BASED TEACHING 119 (2002) (ADD student may have limited short-term memory).

¹⁴¹ TANGUAY, *supra* note 136, at 212.

¹⁴² Barbara L. Kirby, *What Is Asperger Syndrome?*, <http://www.udel.edu/bkirby/asperger/aswhatisit.html> (last visited Sept. 8, 2005).

¹⁴³ *Id.*

¹⁴⁴ Sue Thompson, *Nonverbal Learning Disorders*, http://www.nldline.com/nld_sue.htm (last visited Sept. 25, 2005).

classroom can cause difficulties for the students with NLD.¹⁴⁵ Students with NLD are commonly impaired in three areas, although the severity varies among individuals: 1) visual-spatial; 2) social skills; and 3) motor skills.

Because most organization is visual-spatial, poor organization can cause students with NLD significant difficulty, particularly when asked to organize their writing for law school examinations or long writing assignments. It is easy for the professor to “be confused or annoyed by the gap between [the NLD student’s] high academic skills and their poor organizational abilities.”¹⁴⁶

Despite their difficulties, many NLD students, and particularly those who are successful in the law school admissions process, are very bright academically. “[M]ost scholastic accomplishments are measured and defined through language-based communication.”¹⁴⁷ Because of NLD students’ strong verbal skills, they often possess high academic skills, which may serve them well in law school. This is an area in which NLD students excel despite their deficits. NLD students have “many wonderful traits such as persistence, reliability, honesty and a desire to succeed.”¹⁴⁸ The willing professor can help the NLD student succeed in law school, and in the process students without disabilities will also succeed.

As with most learning disabilities, there are specific teaching strategies that the professor can use to help the NLD student achieve success in the law school classroom. Many of these strategies will help all law students learn. The student with NLD may be the student in the class who seems to want to monopolize class discussions or ask too many questions. The NLD student does not always catch his or her classmate’s or the professor’s nonverbal cues. But once the professor is aware of the nature of the disability, he or she is better prepared to help the student with NLD. Students with non-verbal learning issues tend to ask many questions. Although the questions may tend to take up a great deal of the professor’s time in class, it is important that the NLD students’ questions be fully answered, because that is how he or she learns. If the students’ questions take up too much class time, arrange for another time so that questions can be answered.¹⁴⁹ This teaching strategy will also benefit the other auditory learners in the class, who must also have their questions answered by the professor.

NLD students often have difficulty understanding nonverbal communication including facial expressions, body language, and tone of voice. These students take things literally.¹⁵⁰ Therefore, it is important for the professor to be clear and avoid sarcasm.

Finally, NLD students may have difficulty with fine-motor skills, particularly handwriting. Since note taking and copying anything from the board

¹⁴⁵ *The Paradox of NLD: Nonverbal Learning Disorders in Adults and Children*, <http://www.nldline.com/paradox.htm> [hereinafter *Paradox*] (last visited Sept. 12, 2005); see also Thompson, *supra* note 144 (Sixty-five percent of all communication is conveyed nonverbally.).

¹⁴⁶ Allen, *supra* note 57.

¹⁴⁷ Thompson, *supra* note 144.

¹⁴⁸ Allen, *supra* note 57.

¹⁴⁹ Interview with Sybil Mcfadden, Olympus Center (Oct. 10, 2004).

¹⁵⁰ *Paradox*, *supra* note 145.

involves both visual spatial and fine motor skills, NLD students will have difficulty when expected to copy information from the board. Providing PowerPoint slides and handouts before class is particularly beneficial to NLD students. Again, these teaching strategies or accommodations for students with learning disabilities are simple to implement with a small amount of planning before class. They will benefit students with disabilities and students without disabilities by allowing all students to concentrate more on the class discussion.

B. *How Do Our Students Learn?*

If law schools are serious about conforming legal education and to know educational theory, law schools must do more than to take a sink or swim attitude toward student success While understanding learning styles is not a cure-all for the ills of legal education, it is a start¹⁵¹

Like students, the effective teacher is a learner. But to be an effective teacher, the legal educator must know more than the substance of the subject. The effective teacher must understand the variety of students, including the variety of disabilities presented in the classroom, and know how students think and process the information. Students cannot receive and process information through all of their senses at the same time. The brains of students with disabilities and without disabilities filter the information so that it can be understood. The brain favors information from certain senses.¹⁵² Nor do all students learn at the same pace. "Some students 'get it' right away; others struggle for a semester or more before the light bulb comes on Some students will learn best from reading the textbook; others will learn best from lectures or class discussion."¹⁵³ In short, different students learn in different ways.

To maximize students' success in the law school classroom, the effective law school professor must use teaching methods to reach all of the learning styles represented in the classroom. There cannot be a disconnect between teaching styles and the students' learning styles.¹⁵⁴ "Both law students and professors profit when they acknowledge students' different learning styles. Students become better students, and law professors become better teachers."¹⁵⁵

In any law school classroom, students representing all of the various learning styles will be present. The legal educator should teach in ways that will accommodate all of them. Since law students learn in different ways, law

¹⁵¹ Vernellia R. Randall, *The Myers-Brigg Type Indicator, First Year Law Students and Performance*, 26 CUMB. L. REV. 63, 102-03 (1995-96).

¹⁵² The Adaptive Dimension, *The Learner-Learning Styles*, http://www.saskschools.ca/curr_content/adapthandbook/learner/l_style.html (last visited Sept. 8, 2005).

¹⁵³ LAUREL CURRIE OATES & ANNE ENQUIST, *TEACHER'S MANUAL JUST MEMOS 1* (Aspen Publisher 2002) (also recommending that models of writing, written critiques on papers, and individualized teaching in a writing conference be used in the legal writing classroom to reach the variety of learners in the law school).

¹⁵⁴ Tracy L. McGaugh, *Generation X In Law School: The Dying of the Light or The Dawn of a New Day?*, 9 J. LEGAL WRITING INSTIT. 119, 143 (2003).

¹⁵⁵ Michael Korybut, *Faculty Perspective, Learning Styles and Law School*, http://law.slu.edu/brief/fall2004/faculty_perspective.html (last visited Sept. 8, 2005).

teachers should use a variety of teaching techniques.¹⁵⁶ Before that can happen, the effective teacher must have knowledge of students' different learning styles.

I. Auditory Learners (learn through listening)

"Tell me and I will understand." That is the mantra of the auditory learner. Auditory learners learn through their sense of hearing.¹⁵⁷ Approximately thirty percent of all students are auditory learners.¹⁵⁸ Auditory learners learn through their sense of hearing.¹⁵⁹ This thirty percent of students often learn through traditional law school teaching methods, including the Socratic Method, class discussion, and the use of study groups, as long as the teaching techniques are sufficiently varied so that the student can attend. Even strong auditory learners remember only three-fourths of what they hear during a fifty minute lecture.¹⁶⁰

Law is natural for the auditory learner, who not only adapts well to the traditional law school classroom environment, but who is probably an eloquent speaker as well.¹⁶¹ This can be a benefit to auditory learners, as strong oralists can often compensate for deficiencies, such as weak writing. The auditory learner often excels when asked to participate in class, or engages in oral activities such as moot court or trial advocacy, and learns well through class presentations.¹⁶² However, the auditory learner may not be a proficient note taker, because note taking may actually interfere with the ability to learn the material through listening.¹⁶³ Moreover, written information may have little meaning until the student hears the information.

Effective teaching and learning strategies for the auditory learner include class discussions, giving students the opportunity to engage in class presentations, tape recording class lectures in place of taking notes, reading text aloud, studying with a study group, explaining ideas and concepts to others, and using verbal analogies and distinctions.¹⁶⁴

¹⁵⁶ See Robin A. Boyle & Rita Dunn, *Teaching Law Students Through Individual Learning Styles*, 62 ALB. L. REV. 213 (1998).

¹⁵⁷ *Id.*

¹⁵⁸ Columbia U. Graduate School of Arts and Sciences, *Teaching Tips, Learning Styles*, <http://www.columbia.edu/cu/gsas/cs/tch-rce/pages/tch-tip/sec/learning-styles.html> [hereinafter Columbia U.] (last visited Sept. 16, 2005); see also Boyle & Dunn, *supra* note 156 (Twenty-six percent of first year law students tested had high auditory skills.).

¹⁵⁹ Boyle & Dunn, *supra* note 156.

¹⁶⁰ See Robin A. Boyle, *Employing Active Learning Techniques and Metacognition In Law School: Shifting Energy From Professor to Student*, 81 U. DET. MERCY L. REV. 1, 1-3 (2004).

¹⁶¹ Columbia U., *supra* note 158.

¹⁶² Adams, *supra* note 10, at 292.

¹⁶³ Adams, *supra* note 23, at 212 ("[T]ape recorder or Dictaphone may be indispensable to the auditory learner [A] common problem among learning disabled students is an inability to take notes during a lecture in ways that do not interfere with aural learning styles.").

¹⁶⁴ Columbia U., *supra* note 158.

2. Visual Learners (*learn through seeing*)

“Show me and I will understand.” This is the mantra of the visual learner, who learns best by seeing.¹⁶⁵ In any given year, twenty percent to forty percent of law students will be visual learners. It is likely that the number of visual learners will continue to increase rapidly as learners become conditioned “through use of computers, videos, television, and other visual tools.”¹⁶⁶ Because organization is a very visual activity, these are the students who often have organized notebooks and thorough outlines.¹⁶⁷

In teaching to the visual learners in the class, the professor must keep in mind how the visual learner processes information. The visual learner must see the big picture first, before deeply engaging in the process of learning. The visual learner learns well from reading textbooks and forming a mental image from what is read.¹⁶⁸ The student may “scroll down a textbook’s pages” in the “mind’s eye to recall an idea.”¹⁶⁹ The visual learner is a whole to part learner, absorbing information in its entirety, rather than in parts.¹⁷⁰ For that reason, if possible, give an overview of the chapter or subject before delving into the details of the cases.¹⁷¹ The professor might effectively provide overviews to the visual learner through visual bullet points and connecting the material.

During class, the visual learner needs to sit near the front of the class to avoid visual distractions such as other students’ heads. The visual learner is adept at reading nonverbal cues. The visual learner needs to be able to see the teacher’s body language and facial expressions in order to fully understand the context of what is discussed in class and remember what a professor said. Effective teaching strategies to reach the visual learner will include the use of overheads, handouts, outlines, diagrams, charts, graphs, and notes.¹⁷² For example, supplementing class discussion with a chart illustrating the elements of a tort will assist the visual learners in the class to understand the rules of battery.¹⁷³

PowerPoint is a powerful tool for teaching to visual learners in the classroom. Professors in law school lead most class discussions through a series of oral questions to be answered by the students. While oral questioning may be an effective teaching method for the auditory learners in the class, the visual learners in the class may be retaining little information. All students in the class are left to their own devices to weed out important concepts from irrelevant concepts, and the right information from wrong information, gleaned from the answers to the questions. The professor reaches the visual learners in the

¹⁶⁵ *Id.*

¹⁶⁶ Jacobson, *supra* note 72, at 34.

¹⁶⁷ Korybut, *supra* note 155; *see also* Columbia U., *supra* note 158 (Sixty-five percent of the population is made up of visual learners.).

¹⁶⁸ A visual learner told me that she even draws stick figures on the side of her exam to help her visualize the facts of a hypothetical. A few crude stick figure drawings switches the light bulb on in her mind in the midst of a law school examination.

¹⁶⁹ Korybut, *supra* note 155.

¹⁷⁰ Jacobson, *supra* note 72.

¹⁷¹ One student told me that she often reads the last case in a section first. She needs to know how it all ends before she can understand the context of the earlier cases.

¹⁷² Columbia. U., *supra* note 158.

¹⁷³ Korybut, *supra* note 155.

class and provides structure to the discussion for all students by accompanying his or her oral questions with written questions on a PowerPoint slide. Following the class discussion, the professor can reach visual learners by showing the written answers to the questions on the PowerPoint slide after a full class discussion. The professor can link discussed ideas through concept mapping. Following class discussions, the professor can use the same PowerPoint presentations to reproduce outlines on a web page for students to review.¹⁷⁴

Study strategies for the visual learner should include highlighting and flashcards. Because the visual learner's strengths lie in the nonverbal realm, the visual learner makes best use of time through independent study, rather than through traditional law school study groups.¹⁷⁵

3. *Kinesthetic and Tactile Learners (learn through moving, doing and touching)*¹⁷⁶

"Hands-on" is the mantra for the kinesthetic learner, who learns best through movement, and the tactile learner, who learns most effectively through sense of touch. Although kinesthetic learners make up only about five percent of the population,¹⁷⁷ most people, regardless of their preferred learning style, succeed in learning through kinesthetic or tactile learning methods.¹⁷⁸ Students often learn best through role-playing, simulations, demonstrations in class, and fieldwork outside of the classroom.¹⁷⁹ Kinesthetic learners may be the students who appear not to be paying attention in class. Truly kinesthetic learners do not like to sit still, and indeed, requiring them to do so interferes with learning. Clinical experiences and on-line instruction are also beneficial to the tactile or kinesthetic learner.¹⁸⁰ Because these learners must be doing something besides listening during class, they are often fierce note takers. Although kinesthetic learners may take copious notes during class, they seldom return to their notes to review them.

Movement while studying, such as pacing or walking around, and hands-on activities, promote learning.¹⁸¹ Periods of twenty to thirty minutes of work should be alternated with five to ten minute breaks. Highlighting while reading and listening to music while studying are good learning strategies for the kinesthetic learner.¹⁸²

¹⁷⁴ Boyle, *supra* note 160, at 20-21.

¹⁷⁵ Unlike oral learners who thrive in study groups, visual learners benefit from reading, highlighting text in different colors, and making focused notes in the margin of the text. See M.H. Sam Jacobson, *A Primer on Learning Styles: Reaching Every Student*, 25 SEATTLE U.L. REV. 139, 151-56 (2001).

¹⁷⁶ See Columbia U., *supra* note 158.

¹⁷⁷ *Id.*

¹⁷⁸ See Jacobson, *supra* note 175, at 155.

¹⁷⁹ Columbia U., *supra* note 158.

¹⁸⁰ Korybut, *supra* note 155.

¹⁸¹ Sprenger, *supra* note 140, at 77.

¹⁸² Columbia U., *supra* note 158.

C. *How Do Our Students Pay Attention, Retain Information?*

In addition to understanding learning disabilities and styles, legal educators should also be aware of how their students pay attention in class and retain information. Traditional law school methods, such as lecturing and reading, are the least effective activities for learners when it comes to attention and retention. Traditional teaching methods, including required reading of the law textbook, reinforced with class lecture, are the least effective teaching method for maintaining students' attention during class and for retaining the information for testing or the practice of law. After ten minutes of listening to the professor, students' minds will begin to wander to the clock, a classmate's haircut, the grocery list, or anything but what the professor has to say.¹⁸³ Only five percent of learners retain information learned through class lecture after twenty minutes.¹⁸⁴ Therefore, a multi-sensory approach to teaching in the classroom will not only accommodate the varieties of learners and disabilities in the class; it will also help *all* students pay attention in class and retain the information better.

As part of teacher responsibilities, the legal educator should learn about the differences in learning styles and methods in light of how well students will be able to maintain attention in the classroom and retain information.¹⁸⁵

VII. CLASSROOM STRATEGIES: GOOD ACCOMMODATIONS = GOOD TEACHING FOR ALL STUDENTS

Armed with knowledge about the great diversity of abilities, disabilities, learning styles, and attention spans of students, even the most conscientious teacher may wonder how to accommodate the variety of learners in the law school classroom. It appears to be a most daunting task. But it is important to keep in mind that most of the teaching approaches and techniques mentioned as accommodations for students with disabilities are simply good teaching techniques for teaching law to *all* students. Accommodating students with disabilities will result in an effective teacher, and perhaps an exceptional teacher, to the benefit of all students, with or without disabilities.

Most of the classroom strategies for helping students with disabilities and those for helping students without disabilities are one in the same. For example, techniques for providing context and structure in a law school subject, to accommodate and reach students with disabilities,¹⁸⁶ including detailed course planning, preview through syllabi, and structured questions to enhance students' note taking, are also recognized as effective techniques for teaching law to the entire class.¹⁸⁷ Using a multi-sensory approach in the law school class-

¹⁸³ See Jacobson, *supra* note 72.

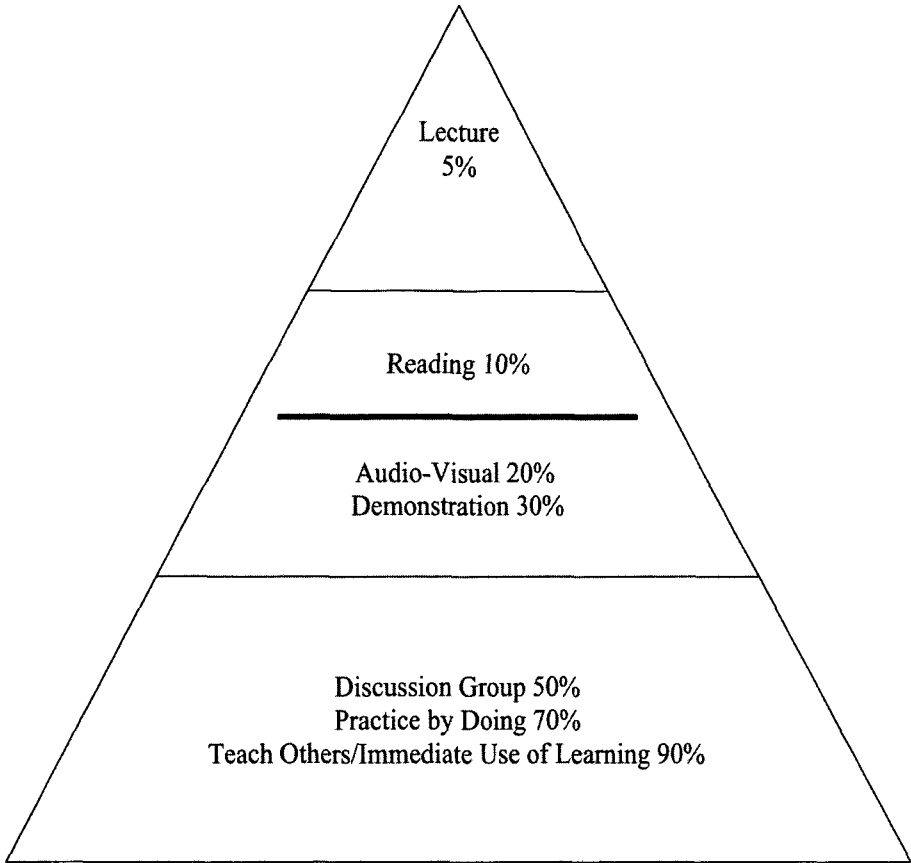
¹⁸⁴ The Adaptive Dimension, *The Learner-Learning Styles*, http://www.saskschools.ca/curr_content/adaphandbook/learner/l_style.html (last visited Sept. 8, 2005).

¹⁸⁵ *Id.*

¹⁸⁶ Laurie A. Morin, *Overview of Presentation Before the Law School Admission Council: Law Students with Learning Disabilities, Five Simple Strategies Law School Professors Can Adopt to Make Their Classrooms More Accessible*, 1996 Northeast Regional Academic Support Workshop, New York University School of Law, <http://www.tourolaw.edu/lisac/LSAC3.htm> (last visited Sept. 12, 2005).

¹⁸⁷ GERALD HESS & STEVEN FRIEDLAND, *TECHNIQUES FOR TEACHING LAW* (1999).

AVERAGE RETENTION AFTER 20 MINUTES



room to enhance students' ability to attend and learn complex material is recommended to accommodate the needs of both students with or without disabilities.¹⁸⁸ In addition, good teaching involves giving students prompt feedback.¹⁸⁹ Effective teaching involves the effective use of technology, for the benefit of all students, with or without disabilities.¹⁹⁰ A professor's use of visual tools, including PowerPoint, maps, diagrams, charts, graphic organizers, and other spatial learning strategies are useful for many students in the classroom—those with and without disabilities.¹⁹¹

¹⁸⁸ Morin, *supra* note 186; HESS & FRIEDLAND, *supra* note 187.

¹⁸⁹ See Clinical Legal Association, *Best Practices of Law Schools For Preparing Students To Practice Law*, <http://professionalism.law.sc.edu/news.html> (last visited Sept. 12, 2005).

¹⁹⁰ *Id.* See also Rogelio Lasso, *From the Paper Chase to the Digital Chase: Technology and the Challenge of Teaching 21st Century Law Students*, 43 SANTA CLARA L. REV. 1 (2002); see generally Jennifer Jolly-Ryan, *Coordinating a Legal Writing Program With the Help of a Course Web Page: Help for Reluctant Leaders and the Technologically-Challenged Professor*, 22 QUINNIPIAC L. REV. 479 (2004).

¹⁹¹ See Paul T. Wangerin, *Learning Strategies for Law Students*, 52 ALB. L. REV. 471, 502 (1988).

The reasonable accommodations requirements of the disability statutes do not require teachers to radically alter their teaching styles. But they do require a teacher to be a better teacher than yesterday. The effective teacher today, will teach to the variety of students' learning styles and will "engage as many students as possible—both disabled and nondisabled."¹⁹² Although a complete exploration of teaching techniques and strategies is beyond the scope of this Article, a few strategies that legal educators can use to help both students with and without disabilities in the law school classroom, in addition to those discussed previously in connection with specific disabilities, are discussed below.¹⁹³

A. *Preview the Course, Course Materials, and Assignments*

It is important for the visual learners in the class and for most learners, to have course objectives, expectations, course evaluation criteria, and coverage, detailed in the beginning of the semester. For both students with and without disabilities, a good syllabus can provide context and structure for the law school course.¹⁹⁴ Professors should lead students through a "subject matter in sequential steps—with the progressive introduction of more complex thinking skills and concepts."¹⁹⁵ Professors should supplement oral instructions or assignments, with written ones for clarification. Providing structure and clear instructions are simple teaching strategies that will benefit the combination of auditory and visual learners in the class.

Previewing should not end with the first day of class. It is helpful to briefly overview the text, including headings and sub-headings, or at the very least, to remind students to undertake such a review themselves. It may be helpful for the professor to begin each class with a brief overview of material covered in the previous class, and connect how it relates to the discussion of the day. At the end of class, the professor should preview the material and assignments that will be covered in the next class.

B. *Provide Students with Study and Note-Taking Guides*

In the competitive world of law school, legal educators strive to produce "rigor" in the classroom and avoid "spoon feeding" students. Many legal educators believe that if students cannot figure it out for themselves, they do not

¹⁹² Adams, *supra* note 10, at 286.

¹⁹³ See generally HESS & FRIEDLAND, *supra* note 187 (One of the author's favorite books on teaching in law school. This collaborative effort of law teachers produced 137 teacher-tested ideas for teaching law.).

¹⁹⁴ See Morin, *supra* note 186.

¹⁹⁵ Danye Holley, *Specific Course and Class Planning Ideas: #1 Using the Syllabus as Course Synthesis and Teaching Plan*, in HESS & FRIEDLAND, *supra* note 187, at 29. Professor Danye Holley uses a very detailed sequential syllabus to guide students through a criminal law course. The syllabus contains approximately two hundred questions which sequentially synthesize every topic contained in the case book. Students review the sequence of topic questions prior to reading the case book as a form of guided reading and note taking.

belong in the profession.¹⁹⁶ Therefore, anything close to a “study guide” is frowned upon in legal education. But many students, and particularly those with learning disabilities, may have difficulty generalizing information and linking isolated bits of information together in order to learn a subject area. A little “spoon feeding,” at least in the first year, may prevent students from starving for knowledge.

First-year law students ordinarily do not read and analyze cases like lawyers. They often do not read carefully and critically.¹⁹⁷ Legal reading is different from ordinary reading and students must be taught to read like lawyers.¹⁹⁸ Some guided note-taking techniques and study strategies can help struggling law students, particularly in the first year of law school. Students can learn to read cases and statutes more carefully and critically, as well as take useful notes through some handouts or note templates prepared and provided before class. It is helpful to provide some visual cues that help students identify the type or quantity of information to be included in their case briefs, outlines, and on their essay examinations. Visual cues may include highlighting, bullets, and numbers. Guided note taking may also take a very visual form of charts, graphs, concept maps, or flow charts to be completed by the student. Guided notes can help the student summarize key concepts. The prepared notes or flow charts can contain gaps or blanks into which the student fills in and completes information. Guided notes help students who have difficulty with handwriting. They help all students learn basic concepts in a course, as a foundation for more in-depth study.

Yet another idea for guided reading is to provide either written or oral questions before class to encourage students to focus upon important information. In lieu of a lengthy PowerPoint presentation, I sometimes introduce a new subject by playing a game with students called “PowerPoint Twenty Questions.” I ask students to review my prepared PowerPoint which is posted before class on TWEN. As a guide, students are given a handout with twenty questions to review and answer before class from the PowerPoint. In class, I randomly call on twenty students for the answers to the questions. After the game, the PowerPoint presentation is much faster and more active. We can then quickly proceed to the details of the subject. Additionally, my torts professor from twenty-five years ago used another simple guided study and note-

¹⁹⁶ *Id.* at 131 (“The culture of law school is a competitive one, rewarding the victors of the grading system, law reviews, moot court, and trial advocacy competitions. Competing successfully is taken as a measure of the competency of the future attorney.”).

¹⁹⁷ See generally LAUREL CURRIE OATES, ANNE ENQUIST, & KELLY KUNSCH, *THE LEGAL WRITING HANDBOOK* 29 (3rd ed. 2002).

¹⁹⁸ *Id.* at 62. Oates and Enquist use three steps in teaching legal reading:

First, we explain to our students that legal reading is different from other types of reading. For example, in reading statutes, our students need to pay attention to the words that the legislature used Second, we model for our students the process that attorneys use in reading statutes and cases. We describe for them the ‘process’ that experienced attorneys use in reading statutes and cases, and then we demonstrate that process by thinking aloud as we read a statute or case Finally, we provide our students with opportunities to practice reading. In class, we guide students through the process of reading statutes and cases, providing them with prompts and forcing them to slow down and read carefully and critically.

taking tool. He simply ended each class with a guided preview of the next class by a question that began, “query whether”¹⁹⁹ By shadowing the focus of the subsequent class, the professor enabled students to focus their reading of the cases for the following class.

C. Use a Multi-Sensory Approach to Teaching in the Classroom to Reach all Learners

In order to further accommodate students with disabilities, as well as all of the auditory, verbal, visual, kinesthetic, and tactile learners in the class, teachers should use a multi-sensory approach in the classroom. “For example, a professor might complement written assignments with visual aids like PowerPoint or the time-tested blackboard, or in-class hypotheticals, the analysis of which require a high degree of oral/aural interaction between the professor and students.”²⁰⁰ Because students learn best when material is presented in a variety of formats, it is most effective to use a combination of techniques including lecture, discussion, mock argument, and collaborative exercises.²⁰¹ Discussion groups and mock arguments allow students to simulate the practice of law and learn through doing. Collaborative learning and small group work will allow a variety of learners to accentuate their strengths and compensate for weaknesses. For example, visual learners, with strong organizational skills, might be leaders when deciding the structure of a presentation, while their verbal classmates will shine if given the opportunity to give an oral presentation. For all students, collaborative learning provides students with an active learning experience and an opportunity to take advantage of their strengths.²⁰²

In addition, it is a good idea for the teacher to vary teaching formats ever so often. Supplement lecture with visual tools. The use of visual tools will not only help the visual learners in the class, it will help all students analyze and see the connections between ideas and concepts. “Visual tools include handouts, chalkboards, flipcharts, overhead transparencies, slides, videos, and com-

¹⁹⁹ Professor David Elder, Lecture in Torts at Salmon P. Chase College of Law (1984).

²⁰⁰ Korybut, *supra* note 155. Professor Korybut teaches Secured Transactions at St. Louis University School of Law. Professor Korybut’s article, is designed to enlighten law students and law professors about how knowledge of the various learning styles can help law students become better students, and law professors become better teachers. He suggests the following exercise as an example of how to reach the kinesthetic and visual learners in the law school classroom: “I use a box of cookies around which I tie a piece of string to illustrate the ‘attachment’ of a lien to collateral. Visual learners thus can actually see a lien (the string) being attached to the collateral (the cookies), which helps them grasp the legal rules of attachment set forth in their textbook.” *Id.* Professor Korybut reports that one of his colleagues at St. Louis University School of Law reaches the tactile and kinesthetic learners in understanding trademark infringement in his Intellectual Property class, by passing around boxes of cereal during class discussion. “For tactile learners, handling and comparing the various boxes is very helpful to understand-ing [sic] the infringement doctrine of ‘confusing similarity’ between products.” *Id.*

²⁰¹ Morin, *supra* note 186.

²⁰² See HESS & FRIEDLAND, *supra* note 187, at 137-48 (providing specific ideas on how to incorporate collaborative learning experiences in the law school classroom, and teaching ideas of legal educators across the country).

puters.”²⁰³ A variety of visual tools make the class more interesting and all students benefit.

Using a multi-sensory approach to teaching helps the professor communicate better with all of the learners in the law school classroom. When it comes to giving instructions, professors often think to themselves, “I know I told them that. Why didn’t they get it? Why didn’t they do as I asked?” Law students want to succeed in the classroom. It is unlikely that law students intentionally ignore or defy their professors. So most likely, “what we have here is a failure to communicate.”²⁰⁴ In order to accommodate the visual and auditory learners in the class, and effectively communicate with all of his or her students, a professor should reinforce what is written on the board or on overheads by reading aloud. “Give assignments both orally and in writing.”²⁰⁵ A multi-sensory approach should not end with the professor’s class presentation and instructions to students. The professor desiring to reach all of the learners in his or her classroom will allow students to use the tools they need to succeed. For example, the professor should allow the student with handwriting difficulties and all auditory learners to tape record classes. Otherwise, the student with handwriting difficulties will struggle with the formation of letters at the expense of learning. The auditory learner will be penalized as well, without the accommodation of audio taping classes, because taking notes will actually interfere with his or her learning of the class material through listening.

D. Provide Frequent Evaluation and Feedback

Law students, with and without disabilities, must learn what they know and what they do not know, in order to be successful law students. The way students learn what they know and what they do not know is through frequent evaluation and “feedback” from a variety of sources, throughout the semester.²⁰⁶

In law school, the final examination at the end of the semester is the primary evaluation and feedback tool.²⁰⁷ However, if students are engaged in active learning, they are constantly being evaluated and obtaining information about what they know and what they do not know, throughout the semester.

Evaluation and feedback can occur throughout the semester “in the form of quizzes, practice exams, short papers, and even oral exams.”²⁰⁸ Effective class discussions, questions, and answering during class, not only provide stu-

²⁰³ *Id.* at 81-103 (providing specific ideas on how to incorporate visual tools into the learning experience in the law school classroom, and teaching ideas of legal educators across the country).

²⁰⁴ COOL HAND LUKE (Warner Brothers 1967). Although the camp bosses do everything they can to break Luke, Luke refuses to conform to prison life. *Id.* The big boss explained that the problem of communication did not rest with him. *Id.* He said, “Luke needs to get his mind right.” *Id.*

²⁰⁵ Morin, *supra* note 186.

²⁰⁶ See THE SEVEN PRINCIPLES IN ACTION: IMPROVING UNDERGRADUATE EDUCATION 55-57 (Susan Rickey Hatfield ed., 1995); see also Terri LeClercq, *Principle 4: Good Practice Gives Prompt Feedback*, 49 J. LEGAL EDUC. 418 (1999).

²⁰⁷ Wangerin, *supra* note 191, at 490 (“[I]n virtually all law school classes students receive virtually no feedback regarding their individual performances until the course ends.”).

²⁰⁸ See HESS & FRIEDLAND, *supra* note 187, at 287.

dents with opportunities to engage in active learning, they give students the opportunity to gauge what they know and do not know long before the final examination.

Avoid using only one kind of assessment or evaluation tool. Students' performances vary, depending upon the tool used. To make the most of students' abilities, allow students to "demonstrate competencies through a combination of assignments" including oral presentations, group or collaborative projects, and written take-home assignments.²⁰⁹

Evaluation and feedback can come from other students in the class, in addition to the evaluation and feedback provided by the professor. Collaborative learning in the classroom can play a vital roll in teaching students a great deal about what they know and what they do not know. Collaboration can overcome deficiencies in students' self-assessment.

The individualistic approach to learning assumes that each individual hears what is said accurately, assimilates it as spoken, and then reconstitutes it in a meaningful and precise manner. If these assumptions are in error, however (and studies show they often are), collaborative learning can be used to correct any flaws in an individual's learning process. Collaboration can assist students in achieving a more accurate and more realistic understanding of what the subject matter means.²¹⁰

E. Additional Strategies for Writing Classes and Written Assignments in Doctrinal Classes

Writing is an essential skill of a competent lawyer. A competent lawyer must be able to effectively communicate with his or her clients.²¹¹ "[G]ood legal writing is a virtual necessity for good lawyering."²¹² As a matter of professional responsibility, lawyers are expected to be competent in writing, analysis, and research upon law school graduation.²¹³ For that reason, the writing class, usually in the first year of law school, is an essential course in the law school curriculum.²¹⁴ Doctrinal courses also emphasize writing throughout law school, through essay examinations and often through additional writing assignments.

For a variety of reasons, many very qualified students arrive at law school with weak writing skills and backgrounds. Excellent academic records may not reveal deficient writing experiences or abilities. Students may have avoided

²⁰⁹ Morin, *supra* note 186.

²¹⁰ See HESS & FRIEDLAND, *supra* note 187, at 132.

²¹¹ Carol McCrehan Parker, *Writing Throughout the Curriculum: Why Law Schools Need It and How to Achieve It*, 76 NEB. L.REV. 561, 562 (1997). See also Jennifer Jolly-Ryan, *supra* note 190, at 480 (2004).

²¹² John D. Feerick, *Writing Like a Lawyer*, 21 FORDHAM URB. L.J. 381(1994).

²¹³ Debra R. Cohen, *Competent Legal Writing-A Lawyer's Professional Responsibility*, 67 U.CIN.L.REV. 491, 492 (1999). The American Bar Association recognizes the importance of writing in the law school curriculum. It has moved from a standard that simply required "one rigorous writing experience" during law school (ABA Standard 302(a)(ii)(1994)) to a standard for law school accreditation which provides that "[t]he law school shall offer to all students . . . an educational program designed to provide that its graduates possess basic competence in legal analysis and reasoning, oral communication, legal research, problem solving and written communications." ABA Standard 302(a) (iii) (amended August 1996).

²¹⁴ See Weiss, *supra* note 9, at 244. A law school's writing course, or writing requirements, should never be waived as an accommodation for a disability.

writing courses altogether in undergraduate school. Some students mask or compensate for their writing deficiencies until they enter the competitive world of law school.²¹⁵ They quickly find themselves in academic difficulty during the first year of law school.

The writing deficiencies of law students with disabilities are often greater than those of their classmates. Law students with learning disabilities likely have writing difficulties, as an estimated eighty percent of all adults with a learning disability "have disorders of written language."²¹⁶ Students with learning disabilities may be very competent, but they often have great difficulty in demonstrating their competency when asked to write. "Most, if not all, students with learning disabilities have problems with some component of their writing, whether it is handwriting, spelling, written syntax, vocabulary, or written discourse."²¹⁷

Writing is difficult for many law students, and particularly those with disabilities, because it requires the "use of a number of brain functions simultaneously."²¹⁸ It is an arduous process for struggling students, involving "(1) prewriting, with its planning, researching, and analyzing functions; (2) writing preliminary drafts of the legal documents; and (3) editing, revising, and polishing the drafts."²¹⁹ Good writing results when the writer focuses upon different tasks at different stages of the writing process.²²⁰ The struggling writer will have difficulty with one or more of the three stages of writing.

The problems of adult writers with learning disabilities, and most students who struggle with writing in law school, include "organization, cohesion, and sense of audience."²²¹ These problems initially arise in the prewriting and planning stage. Struggling writers often have difficulty selecting the important points and sequencing them in a logical manner. They struggle with deciding what to write and struggle with organizing their ideas. They often fail to keep the audience's needs in mind.²²²

Strong auditory learners, and many students with visual spatial issues, have difficulty with visual-spatial-organization. They find the initial linear processes of planning and drafting a written document difficult.

Many students with writing difficulties may find the use of technological tools helpful, particularly during the prewriting phases, involving planning, researching, and analyzing. Technology may assist students with large-scale organization, structuring ideas, and the multi-step processes of writing. An

²¹⁵ Smith, *supra* note 56, at 95-96.

²¹⁶ Adams, *supra* note 23, at 201 n.49.

²¹⁷ *Id.* at 202 (quoting Stephen R. Hooper et al., *Measurement of Written Language Expression*, in *FRAMES OF REFERENCE FOR THE ASSESSMENT OF LEARNING DISABILITIES*, 69 (G. Reid Lyon ed., 1994)).

²¹⁸ Adams, *supra* note 23, at 201.

²¹⁹ See Jo Anne Durako et al., *supra* note 139.

²²⁰ See Mary Kate Kearney & Mary Beth Beazley, *Teaching Students How to "Think Like Lawyers": Integrating Socratic Method with the Writing Process*, 64 *TEMP. L. REV.* 885, 887 (1991).

²²¹ Adams, *supra* note 23, at 203 (quoting Doris J. Johnson, *Disorders of Written Language*, in *ADULTS WITH LEARNING DISABILITIES: CLINICAL STUDIES* (Doris J. Johnson & Jane W. Blalock eds., 1987)).

²²² Adams, *supra* note 23, at 203-04.

example of a software program that provides organization/outlining for the writing process is "Inspiration." The software allows students to brainstorm ideas, visually create computer-based concept maps on a computer screen, and turn them into outlines with a click of a mouse.²²³ "Draft:Builder" is another software program that can help struggling writers through all three of the key steps of writing. During the pre-writing step, this software program allows students to add concepts and ideas to an outline and creates a visual map. During the drafting step, students can type in additional notes, drag notes from the outline, and drop them into a first draft.²²⁴ The program allows writers to hear the text as they enter it, which is a great help to auditory learners or students who are visually impaired. Hearing the text as it is typed helps writers sequence their ideas. During the editing, revising and polishing step of writing, the auditory feedback may help writers who cannot see their own mistakes.

Struggling writers may not use the grammatically appropriate words. Moreover, struggling writers seldom revise their work because they either fail to reread their work or cannot visually recognize and correct errors in their own writing.²²⁵ Word prediction software, spell checkers, and word processors may be of assistance. In addition, talking word processors are available, and allow students with visual impairments or difficulties with visual processing, to hear, as well as see what they write.²²⁶

In addition to these high-tech strategies, some very low-tech strategies are also available to help struggling writers. Enlarged print and font size can help writers critique their own organization and correct their own mistakes. I stumbled upon this technique by accident while teaching writing this past year. Two of my best students had visual impairments and one of their accommodations included large font for all handouts, overheads, and law school examinations. I required all students to use a 16 point, bold font for all drafts and writing exercises so that everyone in the class could view and critique student work when projected on the large screen in the class room. Since our school has anonymous grading, I asked all students to use a 14 point font for final papers. I thought the larger font papers might be easier for my visually impaired students to edit and revise. However, I found that requiring the larger font was a great low-tech teaching strategy that benefited all of my students. The work in large font resulted in better editing, revising, and use of student work for peer cri-

²²³ Kristin. S Knight, *Using Inspiration (V.6) to Organize Reading and Writing*, LDOOnline, http://www.nldline.org/ld_indepth/technology/inspiration.html (last visited Aug. 25, 2005).

²²⁴ See Dyslexic.com, <http://www.dyslexic.com/products.php?pid=299> (last visited Sept. 8, 2005).

²²⁵ Adams, *supra* note 23, at 203 ("[W]eaknesses in self-monitoring may be attributed to high frustration levels, poor reading skills, impulsivity or inability to apply rules consistently."). Author suggests remedial writing strategies including diagnostic exercises at the beginning of the first year, to provide a base line of student writing, individualized conferences and written feedback, strong use of analytical paradigms such as IRAC, and the use of technology, including word processors, Dictaphones, and tape recorders. *Id.* at 201-15.

²²⁶ See Don Johnston Inc., *Write:Outloud Solo*, <http://www.donjohnston.com/catalog/writeoutd.htm> (last visited Sept. 8, 2005) (example of a talking word processor that helps students prewrite, draft, and correct their own writing, despite visual impairments or weakness in visual processing).

tique. I believe it also resulted in better feedback to the students and better grading, as the professor's eyes are quickly aging.

Professor Mary Beth Beazley, through her idea of a color highlighted self-graded draft, offers yet another low-tech teaching tool for struggling writers. Legal writers cannot always separate substance from organization. They become engrossed in the beauty of their own words and cannot see the large-scale organizational problems of the document. By teaching students how to do a self-graded draft, students learn to self-critique their writing's content and large-scale organization through color highlighting the analytical elements of a document and making margin notes about the focus of each part of the document.²²⁷

Perhaps the most important strategy of all for helping students with their writing, once again depends upon the effective communication between the professor and student. Writing is a complex task and novice legal writers face an even more arduous task. The professor can break most writing assignments down into smaller, more easily assimilated tasks. For example, in writing an objective office memorandum during the first year, students may be asked to hand in case briefs, a case synthesis chart, outline, and draft of each section of the memorandum at separate points during the semester. By breaking the assignment down into smaller pieces, the professor can provide feedback to the student during the entire process of writing. The professor may give more supervision at the beginning of the assignment, and provide less supervision to the student working on subsequent assignments. All students, not only students with disabilities, will benefit from teaching strategies designed to help writers throughout the writing process.

VIII. CONCLUSION

It is time for legal educators to stop resisting the idea of accommodating disabilities and nontraditional learners in the law school classroom. The exceptional abilities of all law students as learners should be developed. In the process, everyone will benefit. Many of the teaching strategies designed to help law students with disabilities are simple to implement and result in better teaching for all students. By thinking outside of the box, as students with disabilities and nontraditional learners must do, legal educators will develop their own exceptional abilities as teachers and will help more students achieve success in law school. A greater variety of learners, many with creative ideas and problem-solving skills, will enter the legal profession. The legal profession and clients will benefit from the unique contributions and qualities of lawyers with disabilities and lawyers who are nontraditional learners.

²²⁷ See Mary Beth Beazley, *The Self-Graded Draft: Teaching Students to Revise Using Guided Self-Critique*, 3 J. LEGAL WRITING INSTIT. 175 (1997).