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8-9-2021

### Disabled Perspectives on Legal Education: Reckoning and Reform

Lilith A. Siegel

Karen Tani

*University of Pennsylvania Carey Law School*

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#### Repository Citation

Siegel, Lilith A. and Tani, Karen, "Disabled Perspectives on Legal Education: Reckoning and Reform" (2021). *Faculty Scholarship at Penn Carey Law*. 2532.

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## Disabled Perspectives on Legal Education: Reckoning and Reform

*Journal of Legal Education* 69(4) (forthcoming)

Lilith Siegel and Karen M. Tani\*

The idea for this symposium took shape in 2020, a year of contradictions. As national media outlets celebrated the thirtieth anniversary of the Americans with Disabilities Act of 1990, the two of us—a newly minted lawyer and a law professor—talked about how many of that year’s law school graduates were “post-ADA.” Never having known a time before this landmark civil rights law, this generation recognized disability discrimination as a problem worth addressing, but the non-disabled students, at least, could slot that problem into comfortable narratives of progress and inclusion.<sup>1</sup> Simultaneously, the COVID-19 pandemic was making those narratives untenable. As the virus raged in institutional settings and policymakers talked of healthcare rationing, it was clear that disabled people remained vulnerable, excluded, and, in the eyes of many decisionmakers, expendable.<sup>2</sup> A disability lens remains conspicuously absent from most discussions of how to respond to, and rebuild from, the virus’s social and economic wreckage.<sup>3</sup>

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\* Lilith Siegel, J.D., is a disabled lawyer who sat on the board of the National Disabled Law Students Association during 2020-21. Karen M. Tani, JD., Ph.D. (History) is the Seaman Family University Professor at the University of Pennsylvania. The authors thank Amanda Smith for her assistance with background research and Robert Dinerstein for his generous feedback and support.

<sup>1</sup> Disabled activist Rebecca Cokley popularized the notion of the “ADA generation” and helped make this framing salient to us. See Andrew Pulrang, *31 Years Later, 31 Things About The Americans With Disabilities Act*, FORBES, Jul. 31, 2021, <https://www.forbes.com/sites/andrewpulrang/2021/07/31/31-years-later-31-things-about-the-americans-with-disabilities-act/?sh=7bdac4763d68> (crediting Cokley with coining the phrase).

<sup>2</sup> Richard E. Besser & Rebecca Cokley, *Disabled Americans Can't Be a Covid-19 Afterthought*, CNN, Apr. 23, 2020, <https://www.cnn.com/2020/04/23/opinions/disabled-americans-need-help-covid-19-cokley-besser/index.html>.

<sup>3</sup> Disability scholars and activists admirably stepped into the breach. See, e.g., Ari Ne’eman, *I Will Not Apologize for My Needs*, N.Y. TIMES, Mar. 23, 2020, <https://www.nytimes.com/2020/03/23/opinion/coronavirus-ventilators-triage-disability.html>; Deborah Hellman & Kate Nicholson, *Rationing and Disability in a State of Crisis* (Apr. 16, 2020), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3570088](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3570088); Andrew Pulrang, *The Disability Community Fights Deadly Discrimination Amid The COVID-19 Pandemic*, FORBES, Apr. 14, 2020, <https://www.forbes.com/sites/andrewpulrang/2020/04/14/the-disability-community-fights-deadly-discrimination-amid-the-covid-19-pandemic/?sh=162a5b16309c>; Samuel R. Bagenstos, *Who Gets the Ventilator? Disability Discrimination in COVID-19 Medical-Rationing Protocols*, 130 YALE L. J. FORUM 2020, <https://www.yalelawjournal.org/forum/who-gets-the-ventilator>; Rabia Belt, Celina Malavé &

This contradiction—between the nation’s inclusive, progressive self-image and its neglect of disabled Americans during times of crisis—demands a reckoning. One important place for that reckoning to occur, we urged the editors of this journal, is with the legal profession itself and with the disabled people who have struggled to gain entry to it. This symposium brings you their voices, alongside commentaries from law professors who have served as mentors for disabled students and who have elevated disabled perspectives in legal education.

To our knowledge, this journal symposium is the first to foreground the experiences of disabled law students, as told in their own words.<sup>4</sup> This first-person narration is vital, as we have learned from other essays and collections that have centered non-dominant voices in legal education. These previous writings—filtered through the authors’ experiences of race,<sup>5</sup> gender,<sup>6</sup>

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Camila Strassle, *Disability and Health in the Age of Triage*, HARV. L. REV. ONLINE, Jul. 1, 2020, <https://blog.harvardlawreview.org/disability-and-health-in-the-age-of-triage/>; Lydia X.Z. Brown, *How to Center Disability in the Tech Response to COVID-19*, TECHSTREAM, Jul. 20, 2020, <https://www.brookings.edu/techstream/how-to-center-disability-in-the-tech-response-to-covid-19/>.

<sup>4</sup> An important forerunner to this project is the edited collection *Lawyers, Lead On: Lawyers with Disabilities Share Their Insights*, published by the American Bar Association Commission on Mental and Physical Disability Law. In the form of short letters to disabled prospective law students, the collection’s diverse set of disabled lawyers shared memories and wisdom. LAWYERS, LEAD ON: LAWYERS WITH DISABILITIES SHARE THEIR INSIGHTS (Rebecca S. Williford, Carrie A. Basas & Stephanie L. Enyart, eds., 2012). We see this symposium as an update to, and an expansion on, this groundbreaking effort.

<sup>5</sup> See, e.g., Virginia Taborn, *Law and the Black Experience*, 11 NAT’L BLACK L.J. 267 (1988); Carolyn Jin-Myung Oh, *Questioning the Cultural and Gender-Based Assumptions of the Adversary System: Voices of Asian-American Law Students*, 7 BERKELEY WOMEN’S L.J. 125 (1992); Kendra Fox-Davis, *A Badge of Inferiority: One Law Student’s Story of a Racially Hostile Educational Environment*, 23 NAT’L BLACK L.J. 98 (2009); Jane Tanimura, Helen Tran & Annette Wong, *The Case for an Asian American Law Professor: An Epistolary Among Three Asian American Student Activists at the University of Southern California Gould School of Law*, 21 S. CAL. REV. L. & SOC. JUST. 469 (2012); Nary Kim, *Too Smart for His Own Good? The Devolution of a “Model” Asian American Student*, 20 ASIAN AM. L.J. 83 (2013); Kristymarie Shipley, *Should I Be Shipley or Flores Callazo Today: The Racialization of the Law Student and the Legal Workplace Candidate*, 31 BERKELEY J. GENDER L. & JUST. 183 (2016); Marcus Lind-Martinez, *Latinidad, White Supremacy, and Reforming First-Year Moot Court Competitions to Confront Racial and Ethnic Bias*, 23 HARV. LATINX L. REV. 125 (2020).

<sup>6</sup> See, e.g., Michele Stolls, *A Feminine Perspective of Law School*, 59 N.Y. ST. B.J. 30 (1987); Catherine Weiss & Louise Melling, *The Legal Education of Twenty Women*, 40 STAN. L. REV. 1299 (1988); Suzanne Homer & Lois Schwartz, *Admitted but Not Accepted: Outsiders Take an Inside Look at Law School*, 5 BERKELEY WOMEN’S L.J. 1 (1989); Lani Guinier, Michelle Fine & Jane Balin, *Becoming Gentlemen: Women’s Experiences at one Ivy League Law School*, 143 U. PA. L. REV. 1 (1994); Paula Gaber, *Just Trying to Be Human in This Place: The Legal Education of Twenty Women*, 10 YALE J.L. & FEMINISM 165 (1998); Autumn Mesa, *A Woman’s Climb Up the Law School Ladder*, 9 CARDOZO WOMEN’S L. J. 379 (2003); Felice Batlan, Kelly Hradsky,

sexual orientation,<sup>7</sup> indigeneity,<sup>8</sup> class,<sup>9</sup> and, of course, the intersections of these characteristics<sup>10</sup>—teach us that, historically, legal education has been far from neutral and that many law students today do not experience it that way. They remind us that being invited into the room is not the same as having a seat at the table. They show us how getting a law degree can simultaneously fill an aspiring lawyer with a sense of power and instill in them lasting feelings of inadequacy and alienation. Professor Angela Gilmore’s reflections on her law school experience, as a Black (then closeted) lesbian, capture a theme of the first-person accounts that we build on: she describes a “sense of dissonance, of being an outsider, of not connecting.”<sup>11</sup> She writes from a position of professional success, showing that success is possible for people from historically marginalized backgrounds, but she is candid about the costs of that success—in her case, fear, loneliness, anger, silence. Which aspiring lawyers bear these kinds of costs? Gilmore and other first-person narrators have encouraged us to ask. Which, instead, are allowed to march into the legal profession oblivious and free?

The disabled lawyers who have contributed first-person essays to this symposium—Matthew Cortland, James Fetter, Shain M. Neumeier, Katherine Perez, Lilith Siegel, and Britney Wilson—capture similar themes and questions, while also exposing some of the under-recognized ways in which legal education can be exclusionary (or, on the other hand, can be inclusive) with respect to disability. Contributors emphasize the lack of acknowledgment of

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Kristen Jeschke, LaVonne Meyer & Jill Roberts, *Not Our Mother’s Law School: A Third-Wave Feminist Study of Women’s Experiences in Law School*, 39 U. BALT. L.F. 124 (2009); Denise Brogan-Kator, *Inching Toward Equal Dignity*, in *WOMEN & LAW* 71-79 (2020).

<sup>7</sup> G. Kristian Miccio, *Closing My Eyes and Remembering Myself: Reflections of a Lesbian Law Professor*, 7 COLUM. J. GENDER & L. 167 (1997); William B. Rubenstein, *My Harvard Law School*, 39 HARV. C.R.-C.L. L. REV. 317 (2004).

<sup>8</sup> See, e.g., Angelique Townsend EagleWoman, *Balancing between Two Worlds: A Dakota Woman’s Reflections on Being a Law Professor*, 29 BERKELEY J. GENDER L. & JUST. 250 (2014); Maggie Blackhawk, *On Power & Indian Country*, in *WOMEN & LAW* 39-54 (2020).

<sup>9</sup> See, e.g., John Goodyear, *Traveling Down an Unpaved Road: My Experience as a First Generation College Graduate*, 89 J. KAN. BAR. ASS’N. 66 (2020).

<sup>10</sup> See, e.g., Angela D. Gilmore, *It Is Better to Speak*, 6 BERKELEY WOMEN’S L.J. 74 (1990); Lani Guinier, *Of Gentlemen and Role Models*, 6 BERKELEY WOMEN’S L.J. 93 (1990); Margaret E. Montoya, *Mascaras, Trenzas, Y Grenas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 17 HARV. WOMEN’S L.J. 185 (1994); Rachel Anderson, Marc-Tizoc Gonzalez, & Stephen Lee, *Toward a New Student Insurgency: A Critical Epistolary*, 94 CAL. L. REV. 1879 (2006); Deborah Waire Post, *Contested Meanings: Achievement and Ambition at an Elite Law School*, 78 UMJC L. REV. 1075 (2010); Angela Mae Kupenda, *Challenging Presumed (Im)Morality: A Personal Narrative*, 29 BERKELEY J. GENDER L. & JUST. 295 (2014). Many of the essays cited in the previous notes also demonstrate an awareness of what Kimberlé Crenshaw famously dubbed “intersectionality.” Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 6 (1991).

<sup>11</sup> Gilmore, *supra* note 10, at 77.

disability in the academic curriculum, and what it felt like to perceive a problem that few classmates seemed to notice. They document how, through informal learning, organizing, and community building, they were able to make their legal educations feel more complete and affirming. But they raise questions about whether they should have had to work so hard to supplement and enrich their law school experiences, and whether laws schools themselves ought to have shouldered more of that burden.

A theme running across these essays is the significant, under-acknowledged labor required to navigate the inaccessible built and social environments of law school and the legal profession. Contributors cite buildings with frequently broken elevators; inflexible expectations around classroom engagement; lesson plans that ignored disability or normalized its devaluation; professors and administrators who handled accommodation requests ineptly or with skepticism; and non-disabled peers who blithely centered their own needs and perspectives. Contributors also describe laboring to navigate job placement and career services opportunities that were not designed with them in mind. In many instances, experiences with disability enhanced their skills as lawyers, but contributors did not feel institutionally supported in leveraging those abilities in their search for permanent employment. The eventual successes of these contributors do not diminish the hardships they encountered or obviate the need for a more inclusive approach to job placement.

Disability, of course, is not a monolith. And although these authors provide a diverse set of perspectives, they do not represent the full breadth of the disabled experience. We encourage readers to supplement these essays with other recent first-person accounts of disability in legal education and the legal profession, as well as to educate themselves about activism happening at their own institutions. Law professor Katherine Macfarlane, for example, has written powerfully about the “exhausting and time-consuming process” of obtaining disability-related accommodations in law school, the shame of admitting that one needs them, and the harmful misperceptions of non-disabled classmates.<sup>12</sup> Lawyer, author, and speaker Haben Girma has eloquently chronicled her journey to become the first Deafblind person to graduate from Harvard Law School.<sup>13</sup> Law professor Adam Samaha, who lives with a disabling neurological condition, has offered nuanced reflections on the unequal experience of pandemic “lockdown” and the opportunities it has offered for questioning the workings and boundaries of our social worlds (including within legal education).<sup>14</sup> These authors follow trails blazed by Paul Steven Miller,<sup>15</sup>

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<sup>12</sup> Katherine Macfarlane, *Making Peace with Testing Accommodations*, Ms. JD, Jan. 28, 2018, <https://ms-jd.org/blog/article/making-peace-with-testing-accommodations>; Katherine Macfarlane, *Testing Accommodations Are Not a Gift of Extra Time*, Ms. JD, Jan. 10, 2019, <https://ms-jd.org/blog/article/testing-accommodations-are-not-a-gift-of-extra-time>.

<sup>13</sup> HABEN GIRMA, *HABEN: THE DEAFBLIND WOMAN WHO CONQUERED HARVARD LAW* (2019).

<sup>14</sup> Adam M. Samaha, *Opening and Reopening: Dealing with Disability in the Post-Pandemic World*, SLATE, Jul. 6, 2021, <https://slate.com/technology/2021/07/pandemic-disability-reopening-essay.html>

<sup>15</sup> Paul Steven Miller, *Coming Up Short: Employment Discrimination against Little People*, 22 Harv. C.R.-C.L. L.J. 231, 232 n.8 (1987); Paul Steven Miller, *Dear Rising Lawyer with a*

Bonnie Tucker,<sup>16</sup> Harriet McBryde Johnson,<sup>17</sup> Carrie Anne Lucas,<sup>18</sup> Elyn Saks,<sup>19</sup> and other disabled lawyers who have written and spoken candidly about their experiences navigating the legal profession.<sup>20</sup>

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*Disability*, 165 LAWYERS, LEAD ON: LAWYERS WITH DISABILITIES SHARE THEIR INSIGHTS (Rebecca S. Williford, Carrie A. Basas & Stephanie L. Enyart, eds., 2012).

<sup>16</sup> BONNIE TUCKER, *THE FEEL OF SILENCE* (1995).

<sup>17</sup> Harriet McBryde Johnson, *The Disability Gulag*, N.Y. TIMES MAG., Nov. 23, 2003; HARRIET MCBRYDE JOHNSON, *TOO LATE TO DIE YOUNG: NEARLY TRUE TALES FROM A LIFE* (2005)

<sup>18</sup> Lucas was a disabled lawyer and activist. She was well known in the disability community for her advocacy and admired for the writing she posted on her blog, Disability Pride. Sarah Kim, *Carrie Ann Lucas Dies At Age 47. You Probably Haven't Heard Of Her And That's A Problem*, FORBES, Feb. 25, 2019,

<https://www.forbes.com/sites/sarahkim/2019/02/25/carrie-ann-lucas-dies/?sh=41ba3940119e>; Corbett Joan O'Toole, *Creating a Disabled Family: The Life of Carrie Ann Lucas*, DISABILITY VISIBILITY PROJECT, Feb. 26, 2019, <https://disabilityvisibilityproject.com/2019/02/26/creating-a-disabled-family-the-life-of-carrie-ann-lucas/>; Katherine Q. Seelye, *Carrie Ann Lucas, Champion for Disabled Parents, Dies at 47*, N.Y. TIMES, Feb. 27, 2019,

<https://www.nytimes.com/2019/02/27/obituaries/carrie-ann-lucas-dead.html>.

Following her untimely death in 2019, Lucas's blog domain expired, but her memory and wisdom live on in the work of her admirers. See, e.g., Stacy Milbern, *On the Ancestral Plane: Crip Hand-Me-Downs and the Legacy of Our Movements*, in DISABILITY VISIBILITY: FIRST-PERSON STORIES FROM THE TWENTY-FIRST CENTURY (Alice Wong, ed., 2020) (predicting that "Carrie Ann Lucas will settle into her ancestorship," whence she will "remind people to be fierce and unapologetic in all things"); Rabia Belt & Doron Dorfman, *Disability, Law, and the Humanities: The Rise of Disability Legal Studies*, in THE OXFORD HANDBOOK OF LAW AND HUMANITIES (Simon Stern, Maksymilian Del Mar, & Bernadette Meyler, eds., 2019) (dedicating their chapter to Lucas's memory).

<sup>19</sup> ELYN R. SAKS, *THE CENTER CANNOT HOLD: MY JOURNEY THROUGH MADNESS* (2007).

<sup>20</sup> See, e.g., *And Now a Word from Our Students*, 18 AM. U. J. GENDER SOC. POL'Y & L. 103 (2009); Carrie Griffin Basas, *The New Boys: Women with Disabilities and the Legal Profession*, 25 BERKELEY J. GENDER L. & JUST. 32 (2010); LAWYERS, LEAD ON, *supra* note 4; Nicholas Gaffney, *In Conversation with Attorneys with Disabilities*, LAW PRACTICE TODAY, Jul. 16, 2018, <https://www.lawpracticetoday.org/article/attorneys-disabilities/>; Haley Moss, *I'm Florida's First Openly Autistic Attorney. Here's What That Means.*, HUFFINGTON POST, Apr. 9, 2019, [https://www.huffpost.com/entry/openly-autistic-attorney-florida-haley-moss\\_n\\_5ca65e44e4b0409b0ec5c17a](https://www.huffpost.com/entry/openly-autistic-attorney-florida-haley-moss_n_5ca65e44e4b0409b0ec5c17a); "Episode 50: Disabled Lawyers," Disability Visibility Podcast, May 6, 2019, <https://disabilityvisibilityproject.com/2019/05/06/ep-50-disabled-lawyers/> We note, as well, contributions by legal professionals who may not identify as disabled, but do identify with the experience of mental illness. See, e.g., Brian S. Clarke, *Coming Out in the Classroom: Law Professors, Law Students and Depression*, 64 J. LEGAL EDUC. 403 (2015).

This symposium also includes essays by Professors Ruth Colker, Katie Eyer, Jasmine Harris, and Jamelia Morgan, who explore other facets of disability in legal education. Professor Colker describes how we can make law school classrooms more accessible to everyone through the use of a universal design framework. Professor Eyer builds on her recent work on “Claiming Disability”<sup>21</sup> to argue that one important way to deconstruct disability bias within law schools and the profession is for law professors with impairments to openly embrace disability identity. Professor Harris explores the tension between modern notions of privacy and the values underlying disability antidiscrimination law. For aspiring lawyers, this tension manifests in various ways, including classroom rules that “out” disabled students and Character & Fitness applications that require mental health disclosures. Professor Morgan illustrates the value of a disability lens to her teaching of criminal law and criminal procedure. She also offers concrete examples of how to incorporate disability into the teaching of those subjects. These essays are welcome additions to the growing body of work on how law schools and other institutions of higher education should, and could, accommodate disability.<sup>22</sup> They also showcase the exciting ways in which insights from disability studies are infusing legal academia.<sup>23</sup>

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<sup>21</sup> Katie R. Eyer, *Claiming Disability*, 101 BOSTON U. L. REV. 547 (2021).

<sup>22</sup> The literature on disability and legal education is substantial. For groundbreaking early contributions, see the *Journal of Legal Education*'s 1991 symposium on “Disability Issues in Legal Education.” 41 J. LEGAL EDUC. 301 (1991); see also David M. Engel & Alfred S. Konefsky, *Law Students with Disabilities: Removing Barriers in the Law School Community*, 38 BUFF. L. REV. 551 (1990). For examples from the last decade, suggesting the latest fronts in the long struggle for disability inclusion, see, e.g., Laura Rothstein, *Forty Years of Disability Policy in the Legal Education and the Legal Profession: What Has Changed and What Are the New Issues*, 22 AM. U. J. GENDER SOCL. POL'Y & L. 519, 601-608 (2014); Heidi E. Ramos-Zimmerman, *The Need to Revisit Legal Education in an Era of Increased Diagnoses of Attention-Deficit/Hyperactivity and Autism Spectrum Disorders*, 123 DICKINSON L. REV. 113 (2018); Roxanne Mykitiuk & C. Tess Sheldon, *Confronting Accessibility in Clinical Legal Education: Human Rights Law and the Accommodation of Law Students with Disabilities in External Placements*, 32 J.L. & SOC. POL'Y 67 (2020). On disability in higher education more generally, see, e.g., JAY TIMOTHY DOLMAGE, *ACADEMIC ABLEISM: DISABILITY AND HIGHER EDUCATION* (2017); NICOLE BROWN, ED., *LIVED EXPERIENCES OF ABLEISM IN ACADEMIA: STRATEGIES FOR INCLUSION IN HIGHER EDUCATION* (2021).

<sup>23</sup> For examples from just the past two years (by no means an exhaustive list), see, e.g., Belt & Dorfman, *supra* note 18; Doron Dorfman, *Fear of the Disability Con: Perceptions of Fraud and Special Rights Discourse*, 53 LAW & SOC'Y REV. 1051 (2019); Jasmine E. Harris, *The Aesthetics of Disability*, 119 COLUM. L. REV. 895 (2019); Christopher Buccafusco, *Disability & Design*, 95 N.Y.U. L. REV. 952 (2020); Elizabeth F. Emens, *The Art of Access: Innovative Protests of an Inaccessible City*, 47 FORDHAM URBAN L.J. 1359 (2020); Eyer, *supra* note 20; Karen M. Tani, *Compensation, Commodification, and Disablement: How the Law Has Dehumanized Laboring Bodies and Excluded Non-Laboring Humans*, 119 MICH. L. REV. 1269 (2021); Jamelia Morgan, *Policing Under Disability Law*, 73 STAN. L. REV. 1401 (2021); Jamelia Morgan, *Rethinking Disorderly Conduct*, 109 CALIF. L. REV. \_\_ (forthcoming 2021); Jasmine Harris, *Taking Disability Public*, 169 U. PA. L. REV. \_\_ (2021).

Disabled lawyer Victoria Rodríguez-Roldán rounds out the symposium with a review of the edited collection *Disability Visibility: First-Person Stories from the Twenty-First Century*.<sup>24</sup> Edited by disabled activist and media maker Alice Wong, this anthology of essays by disabled authors explores disabled identity, activism and community from a wide range of perspectives and has much to offer legal thinkers, administrators, and practitioners.

We close this introduction with expressions of gratitude: first, to the *Journal of Legal Education* for its support for our vision, and, second, to all of our contributors for their efforts and openness. As these essays make clear, to speak candidly about one's disability in a professional forum is a consequential and vulnerable decision. We appreciate the trust our contributors have shown in us by sharing their stories and we sincerely hope that we have done them justice.

We are also grateful to our readers. To non-disabled readers: we thank you for wanting to broaden your understanding of what legal education is and could be. To disabled readers: we know that a single collection cannot encompass every disabled experience that is worthy of our attention, but we hope that you will see some aspect of yourself represented in these pages. We also hope that this symposium will spur further efforts to consider what it means to experience disability in law school. Our law schools, and the legal profession, will be better for that. Lead on!

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<sup>24</sup> *DISABILITY VISIBILITY: FIRST-PERSON STORIES FROM THE TWENTY-FIRST CENTURY* (Alice Wong, ed., 2020).