MAKING RIGHTS IN THE WORKPLACE: WORKERS’ PERCEPTIONS OF THE AMERICANS WITH DISABILITIES ACT

by

Paul R. Durlak
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ABSTRACT

Do legal rights produce meaningful social change? Sociolegal scholars have long been interested in understanding the impact of legal rights on society. The Americans with Disabilities Act (ADA), our nation’s most recent major civil rights law, proves a useful case for testing the relationship between law and social change. Drawing on 40 semi-structured interviews with workers with a disability, this dissertation asks how workers experience, understand, mobilize, and at times, forswear their ADA rights. In general, I find that workers understand their ADA rights as ultimately social in nature, and therefore, subject to the stereotypes, perceptions, judgments, and approval of others. To construct a socially acceptable and non-threatening expression of ADA rights that meets the approval of others, workers in this study mostly drew on the frames of fairness, hard work, and opportunity. In this sense, workers with a disability understand their ADA rights from the perspective of others. While this framing strategy is successful for many workers, it also limits the potential of ADA rights to create meaningful social change. In addition, this dissertation addresses the role of emotions in understanding how and when workers with a disability use their ADA rights. I find that emotional states influence how individuals respond to rights violations and discrimination. Specifically, emotions—such as indignation, fear, shame, and embarrassment—refined workers’ legal decision-making when handling disputes involving ADA rights violations. This dissertation contributes to the fields of sociolegal studies and disability legal studies in several ways. First, by focusing on the experiences and understandings of workers with a disability, this dissertation contributes to the sociolegal study of law and social change, legal mobilization, and legal consciousness. Second, by focusing on the role of emotions, this dissertation challenges traditional rational models of legal decision-making. Finally, this dissertation contributes to the growing field of disability legal studies by focusing on how workers with a disability actively construct the meaning of the ADA in the workplace.
CHAPTER ONE: INTRODUCTION

“With today’s signing of the landmark Americans with Disabilities Act, every man, woman, and child with a disability can now pass through once-closed doors into a bright new era of equality, independence, and freedom” –President George H. W. Bush

“But I mean, I think, it [ADA] means to me opportunity, but still opportunity with strings attached.” –Lindsey Jensen

In his speech immediately following the signing of the Americans with Disabilities Act (ADA), then-president George H. W. Bush proudly declared the dawn of “equality for people with disabilities” (Burgdorf 1997). His declaration was followed by similar endorsements, such as Senator Ted Kennedy’s claim that the ADA was a “bill of rights” and “emancipation proclamation” for people with a disability (Burgdorf 1997). Such lofty expectations and promises, however, have proved to be more elusive than anticipated. The years since the passage of the ADA have been filled with successes and failures, progress and setbacks. Perhaps it is unsurprising that a law regulating an estimated 600,000 businesses, 5,000,000 places of public accommodation, and 15 percent of the U. S. population has not completely achieved its goals (Barnes and Burke 2006; Harlan and Robert 1998). However, the manner in which it has struggled certainly requires greater explanation and analysis.

Many scholars blamed the ADA itself for some of these failures, arguing that employment rates for people with a disability actually declined following 1990 as employers became wary of potential lawsuits, costs for reasonable accommodations, and complications that might stem from hiring workers with a disability (Acemoglu and Angrist 2001; DeLaire 2000; Jolls 2000). Other scholars blamed the courts for interpreting the provisions of the ADA in an extremely narrow and limiting way, leading to continual losses for plaintiffs with a disability seeking legal protection (Bagenstos 2000, 2006; Diller 2000; Emens 2008; Rovner 2001; Smith 2007). Alternatively, some scholars pointed to the workplace itself, arguing that employers
routinely denied and resisted requests for reasonable accommodations and subjected workers with a disability to continued stereotypes (Albiston 2005, 2010; Harlan and Robert 1998; Robert 2003; Robert and Harlan 2006).

Lost in this debate are the experiences and understandings of workers with a disability themselves, individuals like Lindsey Jensen, whose comment about the ADA opens this chapter. Lindsey was born with congenital glaucoma. She grew up in a very rural community and did not meet another person with a visual impairment like hers until she was at least sixteen. In many ways, Lindsey’s life and work experiences mirror the ADA—a mix of progress and setbacks. Most notable among these was Lindsey’s choice to quit her job as a middle school teacher after her supervisor subjected her to persistent disability discrimination. In reflecting on her experiences and her understanding of the ADA, Lindsey remarked, “It’s like, we want to believe that people are good and that they’ll be accepting and whatever, but it’s almost like we have to have the Americans with Disabilities Act to make people do the right thing, and, sometimes even then it’s not, it doesn’t always, you know, work. But I mean, I think, it means to me opportunity, but still opportunity with strings attached.”

Like many workers with a disability, Lindsey is largely ambivalent about the impact of the ADA in her life. She is aware that the ADA gives her the right to reasonable accommodations, public accessibility, and protection from workplace discrimination. However, her experiences suggest that such a wide-ranging set of protections and rights do not easily translate to the workplace. While Lindsey’s understanding of ADA rights in the abstract suggests a certain level of opportunity, her workplace experiences suggest limitations, complexities, and strings attached. In this sense, Lindsey acknowledges the importance of the ADA to her career as
a middle school teacher, while simultaneously feeling “hopeless” that it might have actually protected her from discrimination.

Despite the importance of the ADA for the working lives and employment outcomes of people with a disability, there is little research chronicling their understanding, experiences, and perspectives. This dissertation contributes to such a gap by analyzing qualitative interview data with workers with a disability. In doing so, this dissertation makes contributions to the field of sociolegal studies and disability legal studies. In general, this dissertation largely focuses on how and when people with a disability use, or mobilize, their ADA rights. Specifically, this dissertation addresses how workers with a disability understand their own rights under the ADA; the manner in which individuals choose to mobilize those rights; the limiting social nature of rights mobilization; the impact of emotions on rights mobilization; and, the continuing impact that disability stereotypes have on how individuals use and enact their ADA rights. Taken together, the interview data analyzed in this dissertation provides a more complex understanding of the success and failures of the ADA; or, in Lindsey Jensen’s words the “opportunities with strings attached.”

The Americans with Disabilities Act

On July 26th, 1990, then-president George H. W. Bush signed the Americans with Disabilities Act as our nation’s first comprehensive civil rights law protecting people with a disability. Support for the ADA was widespread on both sides of the political spectrum (Bagenstos 2009). Liberal politicians celebrated the ADA as an expansion of the civil rights movement. Conservative politicians, meanwhile, championed the ADA in the hopes that it would encourage employment and reduce welfare-dependency among people with a disability (Colker 2009).
ADA. In particular, the business community expressed fear over the potential costs that might stem from the ADA. Additionally, some groups predicted an avalanche of ADA-related lawsuits that would further clog the legal system.

The text of the ADA acknowledges that people with a disability have historically been excluded from society and subjected to various forms of discrimination. Understandably, Congress recognized that such discriminatory treatment was still a common experience in the contemporary lives of people with a disability. However, before the passage of the ADA, people with a disability had no legal recourse to address discriminatory treatment. As a result of this continued discrimination and exclusion, people with a disability had largely become a socially disadvantaged group. For this reason, the ADA protects people with a disability from discrimination in the workplace and in most public places of accommodation.

The ADA defines disability broadly, largely borrowing language from section 504 of the Rehabilitation Act. Specifically, the ADA defines disability as:

(a) physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(b) record of such an impairment; or

(c) being regarded as having such an impairment (ADA§12102[2]).

Based on this definition, proving that one has a physical or mental impairment that substantially limits a major life activity is the primary way that an individual might qualify for protection under the ADA. Although there is no comprehensive list of major life activities, Congress included examples such as “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working” (ADA§12102(1)(2)(A)). Additionally,
individuals may qualify for ADA protection by proving that they are substantially limited in a “major bodily function,” which might involve “functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions” (ADA§12102(1)(2)(B)). The emphasis on proving that one is limited in performing a major life activity has often discouraged and prevented many people with a disability from seeking protection under the ADA. For many individuals, proving that one has a substantial limitation seems to contradict one’s ability to work and live independently.

The ADA is divided into several major titles, or sections, each specifying a particular area of life where people with a disability have historically been discriminated against: Title I addresses employment; Title II addresses public services; Title III addresses public accommodations; Title IV addresses telecommunications; and, Title V addresses other miscellaneous provisions. Taken together, these provisions regulate an impressive amount of public and private life. Specifically, the ADA regulates private employers with 15 employees, all state and local governments, and most places of public accommodation and businesses.

Title I of the ADA is most relevant for this dissertation as it specifically addresses discrimination in the workplace and employment for people with a disability. Title I specifically prohibits discrimination against people with a disability in hiring, promotion, and firing. Furthermore, Title I mandates that all covered employers provide people with a disability with any reasonable accommodations that are necessary. The text of the ADA suggests that reasonable accommodations might include “‘making existing facilities…readily accessible’ and restructuring work schedules, acquiring or modifying equipment or devices, exam modifications, and providing readers or interpreters for employees with disabilities” (Engel and Munger 2003:6-7). All covered employers are required to provide employees with a reasonable accommodation
unless doing so would cause an “undue hardship”—or “significant difficulty or expense” stemming from the cost of the accommodation (ADA §12111(10)). Much like earlier civil rights statutes, an employee who feels their ADA rights have been violated may bring a claim to a federal or state agency, or file a lawsuit once they have exhausted other administrative remedies.

The inclusion of the reasonable accommodation provision makes the ADA unique, among other things. This provision is largely reflective of the social model of disability, the dominant theoretical model within the disability rights movement and disability studies. The social model frames disability as the result of interaction between an individual with an impairment and the physical or social environment (Oliver 1990; Scotch 2000). Framed in this manner, disability is not an inherent physical or biological trait; rather, disability is created through interactions with a disabling and inaccessible environment. In this sense, a building without Braille signage is disabling for an individual with a visual impairment. Much like the reasonable accommodation provision, the social model suggests that changes to the physical environment would mitigate the disabling effects of impairment. The inclusion of the reasonable accommodation provision also seemed to represent a departure from the traditional medical model of disability, or, the tendency to view disability as a physical or mental deficiency that is located within the individual, much like a biological sickness (Areheart 2008; Scotch 2000).

The ADA was amended in 2008 when Congress passed the ADA Amendments Act (ADAAA). The major purpose of the ADAAA was to address several notable Supreme Court decisions that had limited and narrowed the ADA definition of disability. Critics noted that the courts had seemingly relied more on the medical model of disability in deciding crucial ADA cases (Areheart 2008; Bagenstos 2009; Diller 2000). In passing the ADAAA then, Congress sought to reemphasize the original intent of the ADA, which was to provide broad coverage and
protection to people with a disability. The ADAAA did not significantly alter any other major provisions of the ADA.

**Disability and Sociolegal Studies**

Sociolegal research has a rich history of engaging with the study and impact of legal rights (McCann 2014; Rosenberg 1991; Scheingold 1974). This tradition has largely focused on the ability of legal rights to create social change. Scholars working in this field have studied the potential impact of rights in many different contexts, such as impacting individual identity (Engel and Munger 2003); changing the perception and response to workplace sexual harassment (Blackstone et al 2009; Marshall 2003, 2005; Quinn 2000); influencing how worker’s use the Family and Medical Leave Act (FMLA) (Albiston 2005, 2010), on the effort to desegregate schools (Rosenberg 1991); and, in social movements fighting for pay equity (McCann 1994). In general, these studies have found that the impact of legal rights is often muted, failing to usher in major social change in society, social institutions, or individual lives (McCann 2014). Despite this long-standing interest in legal rights, sociolegal scholars have rarely addressed the impact of the ADA in the lives of people with a disability. This is notable, especially considering that the ADA represents the most recent major piece of civil rights legislation extending comprehensive legal rights to a minority group.

Some sociolegal research has investigated the impact of the ADA, most notably the work of Engel and Munger (2003), and Barnes and Burke (2006, 2012). Engel and Munger’s study, *Rights of Inclusion*, stands out as the premier sociolegal analysis on the impact of the ADA. Based on sixty interviews with workers with a disability, Engel and Munger found partial support for the argument that legal rights generally do not bring about significant social change for individual rights-holders. Indeed, although all sixty interviewees in their study reported
experiencing disability discrimination, none had ever filed a formal complaint invoking the ADA protection. However, by focusing on the life-narratives and identity of workers with a disability, Engel and Munger argued that ADA rights did matter in subtle, but important, ways. Most notably, Engel and Munger presented a recursive theory of rights, whereby the presence of ADA rights influenced an individual’s identity, thus leading to a new attitude towards rights, or rights consciousness (2003). Still, the impact of ADA rights in the lives of most interviewees was uneven; individuals often believed that “‘rights’ are right,” but were reluctant to formally invoke them (Engel and Munger 2003:252).

While the work of Engel and Munger (2003) largely focuses on Title I of the ADA, Barnes and Burke (2006, 2012) address Title’s II and III, which have received considerably less attention by sociolegal scholars. Both Title II and III mandate specific changes to the physical environments of businesses and public places of accommodation. For this reason, Barnes and Burke relied on inspections, and interview data, to empirically measure the impact of ADA rights in creating social change to the built environment. Similar to previous studies regarding the impact of legal rights, they found that ADA law had a limited and variegated impact on increasing public accessibility. Specifically, different levels of exposure to the law and organizational attributes combined to create particular “rights practices” guiding ADA compliance with public accommodations (2006, 2012). While notable for its ability to empirically measure specific outcomes, neither of these studies did not address the attitudes and experiences of people with a disability.

There are many questions that researchers have yet to explore. This dissertation addresses one gap in the sociolegal literature regarding the impact of the ADA. Specifically, I analyze how people with a disability understand and mobilize their ADA rights to affect social change. Like
much previous sociolegal research, social change is understood to include many possible outcomes, including, changes to an individual’s identity, strategically using the ADA to handle disputes, invoking the ADA to reframe the meaning of disability in the workplace, and, many other non-court methods for mobilizing one’s rights. This approach has the major advantage of highlighting the actual understandings and actions of people with a disability as they grapple with their own legal rights. Such a focus on the legal understandings and actions of everyday individuals has become a hallmark of much sociolegal research (Ewick and Silbey 1998; Silbey 2005).

Another major strand of sociolegal research regarding the impact of legal rights focuses on legal mobilization, sometimes referred to as rights mobilization. In its most expansive understanding, legal mobilization refers to the manner in which individuals perceive problems as rights violations and take various forms of actions to resolve such violations, covering actions ranging from filing a formal lawsuit to negotiating with an employer over legal entitlements (Albiston 2010; Morrill et al 2010). In general, studies of legal mobilization have found that the majority of individuals who suffer from rights violations or injuries will avoid formally mobilizing the law (Bumiller 1987, 1988; Engel 1984, 2016; Ewick and Silbey 1998; Felstiner et al. 1980; Nielsen and Nelson 2005). Sociolegal scholars often focus on the conditions and influences that suppress legal mobilization. Previous research in this area suggests that various types of inequalities tend to discourage mobilization, such as race (Bumiller 1987; Morrill et al 2010), gender (Marshall 2003, 2005; Quinn 2000), disability (Engel and Munger 2003), and income (Sandexfur 2008). In addition, employers often reconceptualize rights violations as personality clashes or management issues, thereby suppressing and redirecting potential legal mobilization (Albiston 2005, 2010; Edelman et al 1993; Marshall 2003, 2005).
Although there is considerable research regarding legal mobilization, there is a scarcity of research specifically analyzing workers with a disability and the ADA. The work of Engel and Munger (2003) remains the most significant and notable exploration of legal mobilization among workers with a disability. I build on this work by focusing on how and when workers with a disability mobilize their ADA rights. In addition, this study focuses on the role of emotions in legal mobilization, an understudied, but growing, field of sociolegal analysis (Abrams 2011). This field emphasizes that legal actors do not typically make decisions, including rights mobilization, as rational actors (Abrams 2011; Abrams and Keren 2010; Engel 2016). Instead, the choice to mobilize or avoid the law is influenced by powerful emotional states, such as indignation or fear (Abrams 2011). In this way, this dissertation makes contributions to sociolegal studies of legal mobilization by focusing on how the emotional states of workers with a disability influence their choices to use or avoid ADA rights.

Still other scholars have approached the study of legal rights by focusing on how everyday individuals think about the law, a field of study known as legal consciousness. Legal consciousness research is based on the fact that the vast majority of individuals will encounter the law outside of the formal legal system. For this reason, legal consciousness researchers focus on the commonsense understandings of the law that everyday individuals construct (Ewick and Silbey 1998; Merry 1990; Silbey 2005). Put differently, legal consciousness research studies how individuals both participate in and interpret the everyday meanings of law (Silbey 2005). Legal consciousness research has often focused on how individuals understand their own legal rights, and, how that understanding shapes their responses to discrimination or rights violations. Research taking this approach has studied various legally protected groups, such as people with a disability (Engel and Munger 2003), undocumented immigrant youths (Abrego 2008, 2011), and,

In general, this dissertation contributes to the field of legal consciousness by focusing on how everyday workers with a disability understand their own ADA rights, and, what types of action their legal consciousness leads to take (or not take). More specifically, I focus on the social dimension of individual legal consciousness; something that has largely been downplayed in the research (Young 2014). By analyzing how workers with a disability engage in a social performance of disability that influences when and how they use the ADA, I address how stereotypes and social identity influences an individual’s understanding of their own legal rights. Taken together, this dissertation contributes broadly to the sociolegal study of legal rights, social change, legal mobilization, and legal consciousness by analyzing the experiences of workers with a disability.

Data and Methods

The analysis in this dissertation draws from semi-structured interviews conducted with workers with a physical disability regarding their experiences in the workplace. The core of this analysis is derived from the stories and experiences of 40 workers with a disability. I solicited their participation through a variety of methods. First, I posted several flyers describing my research at local high traffic businesses. Second, I sent an e-mail message to a national listserv that specializes in disability related topics. This message was later forwarded—without my knowledge—to additional listservs and groups. Finally, the same e-mail message was sent to the listserv of a local major university. The majority of respondents learned about my research through the national listserv and the places it was forwarded to.
In the message, I asked for respondents with a “physical disability” with work experience if they were interested in talking about their time in the workplace. I deliberately left the definition of disability broad and open to individual interpretation. People with a disability are one of the largest minority groups in the United States. However, disability is also an unstable social construction with boundaries that are continually subject to debate and contestation (Linton 1998). For example, the definitions for disability according to the ADA differs from those used by the Social Security Administration (Heyer 2015). Furthermore, when viewed from a more medical perspective, there is very little that people with various disabilities share in common with each other. Indeed, medically speaking, there is no clear basis for placing someone with a visual impairment and a wheelchair user—for example—in the same group. Disability is a social category that different individuals relate to, experience, identify with, and define in a variety of ways (Engel and Munger 2003; Heyer 2007). For this reason, I provided no clear definition for the meaning of “physical disability.” Instead, I chose to let individuals self-identify in responding to my call for research.

Of the 40 individuals who participated in this research, 14 identified as having some degree of visual impairment, ranging from legally blind to total blindness from birth. Another 20 individuals identified as having various mobility related impairments that necessitated the use of a wheelchair, such as spina bifida, cerebral palsy, or spinal cord injuries. Finally, 6 individuals identified as having other various disabilities with physical symptoms. This included individuals with Asperger’s Syndrome—who spoke about the physical nature of certain symptoms—and an individual who frequently experienced severe migraines. Unlike other research on people with a disability, this study does not focus on one particular disability, or make a comparison between visible and invisible disabilities (Engel and Munger 2003). Furthermore, this sample was not
designed to be statistically representative of the prevalence and distribution of disability within the United States. Instead, this research focuses on workers with a self-defined physical disability who are protected by the ADA and who share similar experiences as a historically marginalized and stigmatized group (Linton 1998).

The demographics of the respondents in this study were relatively diverse, although by no means representative of the general population of people with a disability in the United States. Respondents were most evenly split by gender, with 24 women respondents and 16 men respondents participating in interviews. The majority of respondents were in their 40s or 50s at the time of the interviews, with the remaining participants almost evenly split between the age groups of 20 to late 30s and early 60s. Individuals who were more than 5 years beyond the official age of retirement were not included in this study. The majority of participants identified as white, although two individuals identified as Mexican-American and Hispanic, and one individual identified as Vietnamese-American. Although some research suggests that race and gender influence how individuals understand and mobilize the law, the primary focus of this study is the experiences of people with a disability (Bumiller 1987; Nielsen 2000; Sandefur 2008).

Finally, many other qualitative studies of people with a disability often draw participants from a particular geographic region, such as a metropolitan area (Engel and Munger 2003) or a particular state (Robert and Harlan 2006). Since my primary interest centers on disputes and discrimination involving the ADA, I chose not to limit my study based on geography. The ADA is a federal law that applies to any private employer with 15 or more employees, all federal workplaces, and all places of public accommodation. Some research suggests that there are important state-level variations in terms of employment and earnings for people with a disability
(Maroto and Pettinicchio 2014). However, my approach is largely focused on factors relevant to individual disputes, rather than geographic variation at the macro level. The majority of the participants in this study (25) were from New York State, with the remaining individuals from various other states, mainly on the east coast.

The majority of the interviews were conducted by phone. I chose this approach to accommodate for the needs of my respondents, many of whom had a mobility related impairment. Most of the interviews were one hour in length, although some were as short as thirty minutes or as long as two hours. The interview script was open-ended and semi-structured, following a basic trajectory about each individual’s life and work experiences. In general, I moved through each interview by asking respondents about their disability; experiences with education; experiences with medical doctors; experiences in the workplace; and finally, their specific opinions and knowledge about the ADA. The resulting interviews largely took the form of narrative stories, with an additional focus on each individual’s workplace experience.

I structured the interviews in this way for several reasons. First, previous research suggests that identity—and its relation to disability—is formed over the course of an individual’s life; this relationship is unstable and subject to change over time (Engel and Munger 1996, 2003). At different points in one’s life, an individual may view experiences of inclusion or exclusion based on their disability in different ways. Additionally, life experiences and new knowledge about the ADA influence how individuals expect to be treated, what they believe they are entitled to, and the emotions that they bring to bear on specific disputes. Secondly, many scholars studying the law of everyday life deliberately choose to avoid any specific mention of the law during interviews (Engel and Munger 2003; Ewick and Silbey 1998; Marshall 2005). This method is designed to reveal the presence or absence of law in people’s everyday lives by
allowing individuals to describe situations, experiences, and disputes in their own words (Engel and Munger 2003). This approach is often preferred by sociolegal researchers because it allows research participants to determine when and how they viewed a situation as meriting a specifically legal response (Engel and Munger 2003; Ewick and Silbey 1998). Following this approach, I only mentioned the ADA when each interview was nearly concluded, although some participants brought it up earlier than that.

Each interview was recorded and transcribed. I coded and analyzed interview transcripts using Atlas.ti qualitative software. This software allows researchers to analyze and identify codes inductively as they emerge from the interviews. In addition to general coding for themes, I coded each interview for disputes that an individual had dealt with in a variety of settings, such as the workplace, the medical field, the educational field, or in public places of accommodation. This process yielded 115 separate disputes. Some interviewees recalled more than one dispute during the interview, while others recalled none. My analysis of the experiences of people with a disability regarding the ADA is based on both general coding of interviews and specific analysis of these 115 disputes.

**Organization of the Dissertation**

In Chapter Two, I analyze the social performance and legal consciousness of workers with a disability. Most of the workers in this study were confronted by the difficulty of conforming to the expected social roles of both worker and person with a disability. These social roles are informed by both ADA law and long-standing negative stereotypes regarding people with a disability. For most of the workers with a disability in this study, there is a tension between their ADA rights and the behavior they think is expected from them by their fellow coworkers and managers. In addition, most workers in this study scrutinized their own workplace
performance from the perspective of long-standing stereotypes, such as malingering. To resolve this tension, I find that many workers with a disability distance themselves from a reliance on ADA rights, specifically to avoid having their behavior stereotyped. In doing this, respondents preferred to conform to an imagined ideal of disability that emphasized the importance of hard-work and overcoming one’s perceived limitations. I analyze this social performance of disability as an example of second-order legal consciousness; or, the way that individuals adjust their understanding of law based on how they perceive the legal consciousness of those around them (Young 2014). Here, I argue that the second-order legal consciousness of many workers with a disability involves harmful stereotypes, thus leading to an avoidance of legal rights and the ADA.

In Chapter Three, I focus on how workers with a disability understand the meaning of the ADA in their lives and workplaces. Here, I argue that workers with a disability often understand and frame the ADA as meaning fairness, equality, and opportunity. This appeal to fairness is useful in navigating the unequal power relationships that exist in the workplace. Typically, managers and employers control both how and when work is completed by employees. The ADA, however, gives workers with a disability the right to a reasonable accommodation. For some workers with a disability, this right to a reasonable accommodation is potentially threatening to the typical control over the workplace enjoyed by employers. For this reason, workers frame the ADA as primarily meaning fairness, a strategy that introduces legal rights into the workplace without disrupting existing power differentials. Finally, I suggest that although this strategy may help workers successfully mobilize their rights, it does come with significant limitations. Specifically, this strategy largely seems ineffective when dealing with disputes over legal rights in the workplace.
In Chapter Four, I analyze how workers with a disability handle various disputes involving their ADA rights. I find that emotions exert a powerful influence on a worker’s decision to mobilize or avoid their ADA rights. Specifically, for some workers, their dispute brought feelings of shame, pain, exhaustion, or embarrassment. These emotions mostly led individuals to turn inward and avoid using the ADA. For other workers, they experienced emotions like indignation—a kind of justified anger—in response to some experience of discrimination. This emotion was positively linked with both formal and informal mobilization of the law. In both these cases, an individual’s actual knowledge of the law proved to be less influential on their choice to mobilize or avoid the law. In this sense, an individual’s emotional reaction to discrimination often proved to have a significant influence on their likelihood to mobilize their ADA rights.

Finally, in Chapter Five, I demonstrate how this dissertation contributes broadly to the fields of sociolegal studies and disability legal studies. Specifically, I show how this study adds to existing research on legal rights, legal mobilization, legal consciousness, and disability legal studies. I also emphasize the contributions that this dissertation makes by highlighting the social nature of legal rights and mobilization. I conclude by addressing several limitations of this study, and potential future directions for research regarding the use and understanding of ADA rights for workers with a disability.
CHAPTER TWO: THE SOCIAL PERFORMANCE OF DISABILITY IN THE WORKPLACE

“Individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society.” –ADA

“I really believe that, because I am very disabled, I mean, I am very disabled; at least I don’t go around acting like that. I don’t sit around with a puss on my face.” –Julie Walton

One of the major stated goals of the Americans with Disabilities Act (ADA) was to end various forms of discrimination against people with a disability that result from “stereotypic assumptions.” In doing this, Congress acknowledged that discrimination and stereotypes had contributed to the widespread social exclusion and economic marginalization for people with a disability. The passage of the ADA was viewed by disability rights activists and scholars as a major victory in the right for greater inclusion of people with a disability into all areas of social life (Bagenstos 2009). Even a significant majority of conservative politicians celebrated the ADA in the hope that it would reduce welfare-dependency and encourage greater self-reliance and individualism among people with a disability (Bagenstos 2009; Colker 2004). At the same time, scholars and activists celebrated the law because of its endorsement of the social model of disability and potential to radically transform the structure of the workplace by providing workers with a right to reasonable accommodations (Bagenstos 2009; Colker 2004; Kirkland 2008; Oliver 1990).

For some scholars and activists, however, the celebration was short-lived. According to Title I of the ADA, people with a disability are only eligible for protection from workplace discrimination if they meet the definition of “qualified individuals.” As the first ADA discrimination cases filtered into the courts, it became increasingly clear to some scholars and
activists that old stereotypes regarding people with a disability would result in a very narrow interpretation of the meaning of “qualified individual” (Areheart 2008; Bagenstos 2006, 2009; Colker 2005; Diller 1998; Emens 2012; Kirkland 2008; Rovner 2004; Smith 2007). Specifically, people with a disability were asked to “prove both that they are substantially limited enough to count as disabled, and that they are nonetheless capable enough to be ‘otherwise qualified’ to perform the essential functions of the job, with or without reasonable accommodation” (Emens 2012:216). Such an interpretation by the court seemed to focus on a very specific—and largely unobtainable—social performance of disability that some scholars dubbed the “Goldilocks Dilemma”; meaning, people must present as both capable enough to work, but limited enough to be considered actually disabled (Areheart 2008:180). This dilemma frames the performance and outward appearance of disability as a seemingly contradictory thing: disabled, yet also able to work. As a result, many scholars accused the courts of maintaining an almost impossible standing for people with a disability seeking protection from the law (Areheart 2008; Bagenstos 2006, 2009; Colker 2005; Diller 1998; Emens 2012; Kirkland 2008; Rovner 2004; Smith 2007). In this way, the social performance of a worker with a disability was almost never seen as “just right.”

The same dilemma was lived out by people with a disability in their workplaces. The long-standing and continued existence of stereotypes framed most workers with a disability as a seeming contradiction; as somehow able to work, but also possessing some level of limited functions that required legal protection and assistance. For workers with a disability, successfully performing as a worker, seemed to cast doubt on one’s disability, and vice versa. This placed people with a disability in the somewhat awkward and difficult role of being asked to choose between two opposite social performances: as a worker first, who does not need any assistance
provided by the ADA; or, as a person with a disability first, who does not seem fully capable of being a worker. In the workplace, then, people with a disability often live and perform the “Goldilocks Dilemma;” one must not be over- or under-disabled, the performance must be “just right.”

Julie Walton, whose quotation opens this chapter, is one of these workers. Julie has worked at an agency that serves people with a disability for 20 years. In describing herself as “very disabled,” Julie is referring to Limb-Girdle Muscular Dystrophy; a diagnosis that she was born with. Since Julie cannot walk and has limited use of her arms she uses a motorized wheelchair for mobility. Despite being “very disabled” in her physical body, Julie emphasizes that her social performance is not that of a person with a disability because she “[doesn’t] go around acting” like she is disabled. To emphasize this point, Julie recalls a time when she crawled up the stairs to a house in order to complete a home visit because she “wanted to work.” Julie is aware and generally supportive of the ADA; believing that it has played an important role in helping “to make the playing field level.” However, she worries that some people with a disability use it as a “get out of jail free card.” In this sense, Julie suggests that being a “qualified individual” with a disability at work has little to do with meeting legal standards and everything to do with having the proper social performance that does not conform to negative stereotypes; like using one’s disability and the law as a “get out of jail free card.” In this way, Julie is able to show her coworkers that she deserves to be in the workplace.

In this chapter, I analyze the tension between the social performance of disability in the workplace and ADA rights. Many legal scholars have focused on the performance of disability that circulates among the courts and in judicial opinions (Areheart 2008; Bagenstos 2006, 2009; Colker 2005; Diller 1998; Emens 2012; Kirkland 2008; Rovner 2004; Smith 2007). While
notable, these studies largely exclude the life experiences and understanding of people with a disability who must navigate and perform the social roles of worker and person with a disability. Here, I argue that people with a disability view the legitimacy of their ADA rights in the workplace from the perspective of their coworkers and long-standing stereotypes. Specifically, I find that many workers distance themselves from relying on the ADA too heavily in order to offer a social performance of disability that is convincing, avoids stereotypes, and is accepted by their coworkers. In doing this, workers often struggle to conform to some imagined ideal of disability by downplaying or hiding their disability; or, by giving the impression that they are overcoming their disability through hard work and determination. Paradoxically, by distancing themselves from an overreliance on ADA rights, workers feel confident that their social performances make them deserving of those very same rights.

I begin by first describing previous research on the legal and social understanding of what makes a ‘qualified individual;’ paying particular attention to how legal and everyday understandings of the ADA have been filtered through long-standing stereotypes about work and disability. Additionally, I discuss the sociolegal scholarship on the study of legal consciousness and how it relates to the social performance of workers with a disability. I focus specifically on the social nature of legal consciousness; a recent approach that is sometimes described as “second-order legal consciousness” (Young 2014). I then discuss my data collection strategy and methods, which were based on 40 interviews with people with a disability. Next, I present my findings and discuss the way workers with a disability understand the legitimacy of their legal rights from the perspective of their coworkers and stereotypes. I begin with a discussion of the different ways that workers construct an ideal sense of disability that is partly based off of long-standing stereotypes. I then discuss the various ways that workers with a disability feel that they
must prove themselves to others in the workplace. Finally, I discuss the implications that these findings have for the legal consciousness of workers with a disability and the reception of the ADA in the workplace.

**The Disability “Goldilocks Dilemma” in the Courtroom**

Of the five major titles that comprise the ADA, Title I, which exclusively concerns employment, is the most relevant for this paper. Title I prohibits discrimination in hiring, firing, and promotion, (§12112(a)) and mandates that covered employers provide “reasonable accommodations” to an otherwise qualified individual with a disability (§12112(b)(5)(A), (B)). Reasonable accommodations may include “making existing facilities…readily accessible,” job or schedule restructuring, providing modifying or adaptive equipment, modifying exams or training materials, and providing readers or interpreters for employees with a disability (§12111(9)). The ADA mandates that employers provide such accommodations unless doing so would cause them “undue hardship”—meaning, “significant difficulty or expense” due to the cost or nature of the accommodation (§12111(10)). A qualified individual is one who can perform the essential functions of the job with or without reasonable accommodations (§12114(a)).

Many scholars have been particularly concerned with the way the courts have narrowly defined and scrutinized the meaning of ‘qualified individual’ (Areheart 2008; Bagenstos 2009; Feldblum 2000; O’Brien 2001). Such heightened focus on membership and inclusion in a minority group is a unique departure from other previous civil rights law that the ADA is otherwise similar to (Burgdorf 1991; Diller 2000). Specifically, The ADA only extends its protections to individuals who meet its specific definition of “disability” and ‘qualified worker’ (Colker 2005). Disability, however, is not an obvious category; it is used to describe a wide range of individuals with a tremendous variety of different physical and mental conditions.
As a result, individuals with a disability who seek protection from the ADA often find themselves in the difficult position of having to convince and prove to the court that they are, in legal fact, disabled, but also, qualified to perform the essential functions of some job (Smith 2007). This type of intense scrutiny over membership and identity is rarely at issue when the courts consider civil rights laws regarding race or gender (Diller 2000). Furthermore, scrutiny regarding membership in this category is increased by long-standing stereotypes that people with a disability might be faking their impairments for some monetary or legal gain (Blanck 2001; Stone 1984).

Research suggests that most plaintiffs fail to meet these definitional standards—as the court has interpreted them—resulting in the majority of employment discrimination cases under the ADA being thrown out during summary judgment (Areheart 2008). However, individuals who succeed in convincing the court that they have a disability must then turn around and prove that they are also qualified to work. This ambiguous Catch-22 situation (Burgdorf 1997), or “Goldilocks Dilemma” (Areheart 2008:180), asks individuals with a disability to prove they are disabled enough to warrant protection under the ADA, but also not so disabled to make them unqualified as an employee in the first place (Albiston 2010; Areheart 2008; Feldblum 2000; Smith 2007). One scholar referred to the difficulty of meeting both these standards as trying to become “disabled just right” (Areheart 2008:209).

Many scholars have argued that these seemingly contradictory interpretations of the ADA stem from the tendency of judges to interpret disability law through the lens of long-standing cultural stereotypes (Areheart 2008; Emens 2012; Rovner 2001; Smith 2007). For example, one strand of scholarship analyzes how judicial interpretation of the ADA seems concerned with addressing the familiar stereotype that people who claim disability are potentially faking their
condition, inventing it, or exaggerating their symptoms; something known as malingering (Smith 2007). Legal concerns over malingering are nothing new; with some scholars pointing to the English Poor Laws in 1388 (Stone 1984) and the post-Civil War era in the United States (Blanck 2001) as early examples. Scholars have argued that concerns over malingering have contributed to narrow and limiting definitions for who actually qualifies as a person with a disability under the ADA (Areheart 2008; Bagenstos 2000; Burgdorf 1997; Emens 2012; Rovner 2001; Smith 2007). This is especially true in the way many courts have interpreted the meaning of ‘substantially limited’ in the ADA definition of disability. In the years following the passage of the ADA, courts set a very high bar when assessing whether an individual’s disability actually qualifies as a substantial limitation. In one notable, and infamous case, the court ruled that a plaintiff’s cancer was not limiting enough (Emens 2012).

Similarly, other scholars have found a tendency in many lower courts to extend ADA protection only to the “truly disabled” (Bagenstos 2000; Burgdorf 1997; Smith 2007). While not a strict doctrine, this phrase limited ADA protection to only those plaintiffs able to convince the court that they possess the most severe limitations. The vast majority of plaintiffs failed to meet this threshold—mostly during summary judgment (Befort 2013; Emens 2012)—and those who did, were largely perceived to be ‘too disabled’ to meet work requirements (Bagenstos 2000; Smith 2007). As one scholar noted, it is highly likely that courts, concerned over the stereotype of malingering, view people with a disability as “just another rent-seeking interest group who should not be allowed to obtain the slightest bit more than they bargained for in the legislative process” (Bagenstos 2000:470). These types of judicial limitations contributed to a wide variety of cases where the court declared that individuals with substantially limiting impairments were not people with a disability (Emens 2012).
Other scholars have argued that the concern over malingering plaintiffs has led to an overreliance on the testimony of medical evidence and experts during ADA cases (Bagenstos 2000; Smith 2007). Specifically, courts overwhelmingly reject the claims of plaintiffs who fail to bring sufficient medical evidence for their disability (Smith 2007). This has the perverse effect of transforming physicians into gatekeepers for the legal system (Smith 2007). Additionally, this runs contrary to a major triumph of the disability rights movement and the ADA itself; the substitution of the social model of disability over the medical model (Areheart 2008; Bagenstos 2000; Emens 2012; Smith 2007). In part, the ADA was meant to shift the locus of disability from the individual to the physical and social environments. Disability was framed in the ADA as the result of inaccessible built environments, negative social attitudes, and stereotypes. The seeming requirement of the courts that people with a disability present medical evidence to prove their disability was seen by many scholars as a return to the medical model of disability (Smith 2007). In order to succeed in court and be “truly disabled”, plaintiffs were forced to adopt a medical view of disability that further stigmatized them (Bagenstos 2000). By proving to the court that their disability is biologically located within them, individuals simultaneously signaled to the court that they were unfit to work. In this sense, becoming a ‘qualified individual’ in the eyes of the court involves balancing a set of complex and contradictory stereotypes that are meant to serve as official proof that one is “truly disabled.”

In 2008 Congress passed the ADA Amendments Act (ADAAA), which was largely aimed at rejecting the limiting interpretations of the ADA by federal courts (§12101(a)(3)-(7)). The major purpose of the ADAAA was to restate the original goals of Congress in passing the ADA. Specifically, the ADAAA endorsed a broader scope of protection for individuals with a disability (§12101(b)(1)), and also, rejected the Supreme Court’s interpretation of several
provisions of the ADA in four specific cases\(^1\) (§12101(b)(2)-(5)). The ADAAA did not significantly alter any of the major provisions of the original ADA, such as the definition of a disability. Although it may be too early to judge the full impact of the ADAAA, Befort (2013) compared federal court summary judgment decisions before and after the new law and found that plaintiffs with a disability were obtaining more favorable outcomes in court.

*The Social Nature of Legal Consciousness and Disability*

As sociolegal scholars argue, the vast majority of individuals will never find themselves in a courtroom or be involved in formal legal proceedings (Bumiller 1987, 1988; Curran 1977; Engel 1984, 2016; Ewick and Silbey 1998; Felstiner et al. 1980; Nielsen and Nelson 2005; Sandefur 2007). For most people, their encounters with the law do not take the form of legal debates, judicial interpretations, and courtroom motions. Instead, most people encounter the law as a basic category of meaning that shapes their social life and everyday experiences. Sociolegal scholars call this view of law—as a powerful tool in how everyday individuals understand and think about their social world—legal consciousness (Merry 1990; Nielsen 2000; Silbey 2005).

The study of legal consciousness is useful as a means of exploring how law matters for individuals who never interact with the formal legal system or who find themselves in courtroom proceedings, but who still rely on legal categories in their daily lives.

The emergence of legal consciousness scholarship is often traced back to the work of Merry (1990) and, Ewick and Silbey (1998). Legal consciousness has its origins in an interest for understanding how ordinary people experience and interpret the law (Silbey 2005). Thus, one of the earliest and most straightforward definitions for legal consciousness is the way “people

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understand and use the law….their commonsense understanding of the world” (Merry 1990:5). Later interpretations stressed the importance of connecting individual understandings of the law with larger structural meanings in an attempt to bridge the long-standing tension within sociology between agency and structure (Ewick and Silbey 1998; Sewell 1992; Silbey 2005). For this reason, Ewick and Silbey present legal consciousness as an individual’s participation in the construction of legal meanings that become “patterned, stabilized, and objectified” (1998:39). According to this formulation, individuals actively interpret the law to understand their everyday lives, but they do so from a limited and constrained set of preexisting cultural meanings. Further stressing the bridge between agency and structure, Silbey defines legal consciousness as “the search for the forms of participation and interpretation through which actors construct, sustain, reproduce, or amend the circulating (contested or hegemonic) structures of meanings concerning law” (2005:334).

Most scholarship in this field documents the legal consciousness of specific individuals and groups. This approach conceives of legal consciousness as something that resides within individuals (Young 2014). Scholars taking this approach have documented the legal consciousness of women’s responses to sexual harassment (Blackstone et al 2009; Marshall 2003, 2005; Quinn 2000), how race and gender influence an individual’s response to street harassment (Nielsen 2000), how sex workers in China understand abuse (Boittin 2013), and how same sex couples legitimize their unions (Hull 2003). Similarly, many scholars have studied the legal consciousness of specific groups who enjoy legal protections, such as people with a disability (Engel and Munger 2003), undocumented immigrant youth (Abrego 2008, 2011), racial identity (Fleury-Steiner 2004), and welfare recipients (Cowan 2004; Merry 1990).
While the more individual aspect of legal consciousness has been well documented, less is known about the social processes that influence the development of legal consciousness. Recently, some scholars have focused on highlighting this social aspect of legal consciousness (Hoffman 2003; Young 2014). Of particular note is Young’s (2014) description of second-order legal consciousness. This concept attempts to build on the legal consciousness literature, but primarily focuses on how the attitudes of the group influence the attitudes of the individual. Young uses second-order legal consciousness to describe “a person’s beliefs about the legal consciousness of any individual besides herself, or of any group whether or not she is a part of it” (2014:502). Second-order legal consciousness highlights the relational nature between the individual and the group, as it relates to beliefs regarding the law. This concept takes seriously the social nature of individual thought and identity (Young 2014). Young highlights the focus on the social nature of individual legal consciousness when describing second-order legal consciousness as centering on “what a group’s members believe others think, and how this belief, specifically, affects their legal consciousness” (2014:502).

The workplace experiences and attitudes of workers with a disability are an excellent case for studying second-order legal consciousness. People with a disability represent a socially marginalized group that has largely been excluded from meaningful workplace participation in the United States (Bagenstos 2009; Colker 2005; Stone 1984; Engel and Munger 2003). Indeed, as some scholars have pointed out, disability has frequently been defined as the inability to work (Albiston 2010; Stone 1984). The ADA represents a radical departure from this history by attempting to redefine the historical meaning of disability in the workplace. Workers with a disability often find themselves struggling against this legacy of exclusion from the workplace and the persistence of harmful stereotypes. This struggle is often felt as the perception that they
are subject to greater scrutiny and monitoring by their coworkers. Indeed, many workers with a disability in this study reported feeling as if they had to prove themselves to others in their workplace. In this way, workers form a legal consciousness and social performance of disability based on the perspectives and expectations of others. In this chapter, I outline the various stereotypes that influence how workers with a disability understand what it means to deserve ADA rights.

The Social Performance of Disability in the Workplace

For most people with a disability—and most of the workers in this study—being subject to stereotypes is a common experience, which often occurs on a daily or weekly basis (Harlan and Robert 1998; Robert and Harlan 2006). Many of the individuals in this study told stories about being stereotyped on a frequent basis, although there was no specific question in the interview protocol designed to elicit these stories or to ask about stereotyping. Nevertheless, experiencing stereotypes was a common theme for many individuals. There were 74 separate instances where individuals experienced stereotyping that was related to their disability. These instances were reported by 25 of the 40 individuals who were interviewed for this study. Some individuals shared only a single instance of dealing with stereotypes, while others shared as many as 5 or 10 instances of stereotyping because of their disability.

These stories were not confined to any specific location. Individuals in this study were subject to stereotypes in educational settings, in interactions with medical professionals, in their workplaces, and in their daily interactions in public settings. One individual even recalled being told that she “didn’t sound blind,” during a phone conversation with her father’s physician; this was presumably a comment aimed at her intelligence because she was so comfortable discussing complex medical conditions that her father was dealing with over the phone. In many cases,
these stereotypes directly relate to doubts over the workplace capabilities of people with a
disability. While some individuals report being able to ignore these stereotypes at times, their
implicit message likely has a powerful impact on how workers with a disability view themselves,
and how they imagine others view them. One respondent named Matt, who has been blind since
birth, recalled how frequently people ask him about his ability to use the phone. While this
question may seem trivial—and Matt has grown tired of answering it—he clearly stated the
powerful message that this stereotype implies, saying, “if the general public doesn’t think that a
person who is blind can use a phone, how could they possibly think you could use a computer, or
do a job, or be a receptionist or whatever?” In general, then, the stereotypes that most people in
this study recalled implied a belief that people with a disability have some level of diminished
capacity and were therefore unsuitable to work.

In this section, I analyze how the second-order legal consciousness of people with a
disability is influenced by stereotypes in the workplace. Specifically, I find that many workers
view their ADA rights through the perspective of their coworkers; imagining how they are
judged, accepted, or rejected as workers. For this reason, workers perform and adopt an attitude
that downplays the effects of their disability and avoids relying too heavily on the ADA. It is
only by embodying and performing this ideal balance between worker and person with a
disability that one comes to feel they truly deserve ADA rights. For many of the individuals in
this study, ADA rights are filtered through the perspectives of others in this way.

Malingering: The Perception of Legitimate and Illegitimate Disabilities

In some ways, workers with a disability encounter the same “Goldilocks Dilemma” that
scholars studying the legal interpretation of the ADA have lamented. From this perspective,
disability is either so severe that it prevents meaningful workplace participation or it is so mild
that it doesn’t warrant legal protection at all; it is rarely ever “just right” (Areheart 2008). In the courtroom, the determination of disability hinges on meeting complex legal requirements and providing sufficient medical proof of disability. However, in the workplace, having the “right” amount of disability is largely based on how others judge an individual’s social performance of disability. Workers must act and look disabled enough to gain the benefits of the ADA, but must also distance themselves from disability so that they are perceived as independent and capable individuals.

An important influence on the social performance of disability and the second-order legal consciousness of workers with a disability is the stereotype of malingering. As previously stated, malingering is the belief that an individual is faking or exaggerating their disability in order to gain some legal protection or workplace benefit (Linton 1998; Smith 2007). Concerns regarding malingering date back to the post-Civil War era in the United States (Blanck 2001). Interestingly, only one respondent—Barbara Robinson—recalled an experience where she was clearly accused of malingering by a supervisor. Barbara was born with spastic cerebral palsy and had just been hired as a supervisor in a state agency that works with people with an intellectual disability. Shortly after starting in her new position, Barbara slipped and severely sprained her ankle, leading her to miss a considerable amount of work. Barbara then returned to work after being told that she would be fired if she missed any more time. She recalled the following exchange during a particularly tense meeting with her supervisor, “the comment she made was, ‘we both know that you didn’t fall on something,’ and I got so angry. I said, ‘what do you mean? You weren’t even here when I fell.’ And she was like, ‘we both know you didn’t fall!’” This exchange had enough of an impact on Barbara that she continued coming to work even though she did not feel like she had fully recovered from her injury and was supposed to be on limited
duty. Additionally, at the time of the interview, Barbara cited her supervisor’s concerns as a reason that she was considering leaving this position for another one. It is notable that here, doubt is cast on the legitimacy of Barbara’s social performance of disability, leading her to considering resigning. Instead of considering a request for some reasonable accommodation, Barbara’s understanding of her options is filtered through the stereotype of malingering. Because the social qualification of her disability is seen as illegitimate, Barbara—like her supervisor—concludes that any recourse to her ADA rights would also be illegitimate and would frame her as a poor worker who is hiding her disability.

Like Barbara, other employees worked through considerable pain and difficulty out of fear that their disability would not be seen as legitimate, and would subject them to the malingering stereotype. In most of these instances, accusations of malingering did not come from a single individual; they came from how a worker with a disability imagined they would be perceived by others. This led many individuals to alter their behavior, appearance, or performances out of fear that their disability would not be considered legitimate. In these instances, the second-order legal consciousness of workers is based on an imagining of how the use of ADA rights would look from the perspective of their managers and coworkers. In many cases, workers concluded that using their ADA rights and asking for some form of reasonable accommodation, for example, would look illegitimate to their coworkers and managers. As a result, many of these individuals tried to hide their disability, its impact on their bodies, or any visual references to it.

This strategy was most clear in the narrative of Jon Thomas, a veteran with a service-connected disability that sometimes results in the onset of powerful migraines. Jon works as an advocate for people with disabilities; a position that formally requires him to have a disability.
However, in his daily workplace routine, Jon went to great lengths to hide his disability from his employers; or, at least to hide its severity. On most occasions, Jon would simply tell his employers that he was feeling sick or take a longer lunch than usual to deal with a migraine. He viewed this strategy as preferable to revealing to his disability to his employers saying, “It’s better to get written up for a letter, a reprimand for, you know, taking a long lunch or whatever, than to say, ‘yee, my brain doesn’t always work that well.’ It doesn’t seem to get any compassion for it from anyone really; except from doctors, you don’t get it at work. You might be better off just concealing it like I’ve done for years, you know.” For Jon, it is better to be a normal employee who occasional deviates from the rules than to be an employee with a disability; the latter has greater potential to cast suspicion over one’s work performance and disability. Part of Jon’s strategy for hiding his disability is based on the assumption that others will view it as illegitimate and possibly something that he is faking. Later in the interview Jon worried, “You know, there is so much ambiguity involved with something like a headache….everybody gets headaches you know.” Jon’s concerns seem to be exacerbated by the nature of his injury, which occurs in a very unpredictable way. Jon was also motivated by a concern that presenting as a person with a disability would be inconsistent with his general social identity; something that might be suspicious. Specifically, the fact that Jon has competed in the senior games and won several medals doing so.

Like Jon, other individuals imagined that their performance of disability could be potentially inconsistent with their social identity, and therefore would likely be viewed as malingering from the perspective of others. Catherine Wright, a secretary who was born with multiple sclerosis, has also hidden her disability on a number of occasions. Catherine claimed that she had hidden her disability from almost every major employer that she has had. She
largely worried that employers would assume she had a diminished capacity to perform in the workplace if they learned of her disability. Catherine also recalled a different experience where she altered her behavior in order to create a more convincing display of disability. Specifically, Catherine took a seasonal job with a toy company one year. On her application, she self-declared as a person with a disability. When she began working at this position she was using a cane on a daily basis to help with some trouble walking. After some time, she realized that she no longer needed the cane, but continued to use it, explaining “let’s not get people confused here and start to try and ask questions about what’s going on.” For Catherine, removing the visual symbol of her cane would have disrupted what was an otherwise convincing and legitimate social performance of disability. This had the potential to raise the suspicion of her coworkers about the legitimacy of her previous performance and identity as a person with a disability. Managing the social performance of disability in a convincing way is a difficult task that many workers in this study struggled with and proved to be a significant influence on their second-order legal consciousness. Specifically, concerns over malingering led many workers to alter their behaviors and forfeit potential rights claims in order to better embody a cultural expectation of what disability in the workplace should look like.

Who Are the ‘Truly Disabled’?

As previously noted, one of the many criticisms aimed at the legal interpretation of the ADA was the tendency of courts to only extend ADA protections to the “truly disabled” (Bagenstos 2000; Burgdorf 1997; Smith 2007). In practice, this limited ADA protection to only those plaintiffs with the most severe limitations, who, incidentally, were also among the least likely to work. In addition, this interpretation of the ADA implied a crude ranking of various disabilities, with some being severe enough to warrant legal protection and others being no
worse than a simple headache or sore back. Critics were quick to point out that this view placed the emphasis on the individual and their disability, rather than the social environment; an approach that would be out of place with the spirit and purpose of the ADA. However, this implied ranking of various disabilities as more or less severe was often raised by many of the participants in this study. This comparing and ranking functioned, in part, as a way to speak about which disabilities look like they deserve legal protection and which do not. Much like malingering, comparing oneself to the “truly disabled” is one lens through which individuals speak of their own disability as legitimate and deserving legal protection, or not. In addition, this comparing and ranking of other disabilities is one way that individuals express their second-order legal consciousness. In ranking disabilities, workers were implicitly describing how they imagine others see them and their disability.

This comparison, or ranking, of disabilities was evident in the words that some respondents chose to describe themselves and others. Julie Walton, whose story opens this chapter, referred to herself as “very disabled” several times during her narrative. Similarly, Aaron Turano, a motorized wheelchair user with muscular atrophy, referred to himself as “severely disabled” and “hardcore disabled” throughout our interview. These descriptors indicated a belief about the types of treatment that these individuals believe they are entitled to, not as people with a disability, but as people with a severe disability. Julie Walton stressed that despite being “very disabled,” she still chose to work for a living; implying that her level of disability would make it perfectly acceptable and legitimate for her to complain, demand easier tasks at work, or simply not work at all. In addition, this comment suggests Julie’s belief that this is how other people see her and assume she will behave. Similarly, Aaron Turano described himself as “severely disabled” while he recalled his early difficulties in finding employment. In
this instance, Aaron was surprised that he was unable to find a job given his qualifications and level of disability, saying “I felt like they were going to welcome me with open arms. Here’s a person who is severely disabled and wants to work.” In saying this, Aaron implies that being severely disabled entitles him to receive greater support and protection at work. In addition, Aaron seems to suggest that based on the obvious severity of his disability, most people would assume that he would not want to work. Therefore, he is surprised that his efforts to demonstrate a strong work ethic were not rewarded with stable employment.

Other respondents relied on a ranking of disability when suggesting other individuals that might be appropriate for this study. Erin Sampson, an accountant born with spastic diplegia cerebral palsy, suggested several individuals for this study with disabilities that she classified as more severe than her own. Erin described one individual as one hundred percent dependent on personal aids, while her other friend could only communicate and type using a dynabox. In suggesting these individuals for the study, Erin stressed that they were very successful and motivated, saying, “it really depends on the person and how successful you are, in my mind, because I have some severely disabled friends that are very successful people.” In describing these two friends she would later say, “you know, there are people that sit back and say they are too disabled to work, I don’t believe that.” Here, Erin’s comments seem to support the stereotype and expectation that people with severe disabilities are more entitled than other people with less severe disabilities to “sit back” and choose not to work. The fact that Erin’s friends do work, and are successful, is offered as proof that positive attitudes matter more than ADA rights in the lives of people with a disability. This belief was also clear in Erin’s narrative of her own workplace experiences.
Finally, many respondents in this study engaged in a comparison of visible and invisible disabilities. For some respondents, the apparent visibility and obviousness of their disability created expectations about how they should be treated and what they were entitled to. For Julie Walton, the visibility of her disability led her to expect that she would receive certain reasonable accommodations in a straightforward manner. Discussing the new formal requirements that her workplace implemented, Julie said, “It’s just, it makes me, like before if you needed a reasonable accommodation, something simple, you could just say, ‘oh.’ I mean, it’s quite evident; I can’t hide my disability.” For Julie, a wheelchair user, the obviousness of her disability should entitle her to uncomplicated and easy access to reasonable accommodations. Similarly, Aaron Turano recalled the resistance he encountered when he tried contacting the local department of education in hopes of getting hired as a school guidance counselor. Aaron wanted to make sure that he was placed at a school that was accessible by wheelchair, considering the lack of reliable alternative transportation options. The department of education refused, claiming that Aaron was asking for special treatment. Aaron responded by saying, “well I don’t consider it special treatment, I mean, I think my disability explains itself.” For Aaron, the visual aspect of his disability is so obvious and unavoidable that it “explains itself.” In recalling this story, he seems genuinely surprised that the department of education did not understand how the nature of his disability requires certain treatment. For Aaron, that treatment takes the form of an entitlement to be placed at a school that he can commute to in his wheelchair. In these examples, both Julie and Aaron imagine that, from the perspective of others, their disability is obvious enough that it cannot be faked and clearly entitles them to some basic ADA rights.

The act of comparing and ranking various disabilities implies that some disabilities have a greater negative impact on one’s function and ability to work. This, in turn, frames those
individuals with the most severe disabilities as the true victims; the ones who are most
disadvantaged and expected not to be working. The fact that these individuals often do work, and
work successfully, is offered as proof that hard work and determination are more effective in
overcoming stereotypes than the use of ADA rights. In this sense, ranking the severity of
disabilities and the way one has overcome that severity, is one way in which individuals frame
themselves as independent and capable workers who deserve legal protection should they ask for
it. This ranking is also an expression of these workers second-order legal consciousness, as they
imagine how various disabilities would look from the perspective of others. In this way,
individuals adopt a certain orientation towards ADA rights that is largely based on a view of
themselves from the imagined perspective of others, their coworkers, and potential stereotypes.

Proving Oneself: Hard Work and Disability as an Attitude

Hard work and determination were by far the most common themes regarding the correct
performance of disability in the workplace that emerged from individuals. It is clear that many
individuals adopt the perspective of their coworkers when extolling the importance of personal
work ethic. Many individuals in this study stressed the idea that ultimately, the biggest barrier to
meaningful participation in the workplace for people with a disability was simply a lack of
motivation. As one respondent, Erin Sampson, simply put, “If you want to work bad enough you
will find a job.” The frequency and strength with which individuals articulated this theme was
surprising. In part, this theme runs counter to the message of the ADA; that people with a
disability are subject to high unemployment as a result of discrimination and an inaccessible
environment, not a lack of motivation or work ethic. In addition, this theme frames disability as
something that individuals must overcome; a powerful stereotype that many disability studies
writers have strongly criticized for years (Linton 1998). Nonetheless, many individuals in this
study spoke of disability more as an attitude or mindset that must be overcome through hard work and determination; something they made sure to clearly perform in the workplace. In this sense, disability is less a physical impairment, so much as it is a mental choice, attitude, or weakness. In making this claim, the individuals in this study suggested, negatively, that some people with a disability are content with being dependent on the government and social welfare. Turning to ADA law for protection or help was similarly viewed as a dangerous form of dependence at times. Not only did it symbolize a personal defect in the individual, it also contributed to the negative stereotyping of people with a disability as incapable of hard work.

The idea that disability is primarily an attitude toward self-reliance and hard work is clear in the narrative of Julie Walton, whose quotation opens this chapter. As previously mentioned, Julie claimed “I am very disabled, at least I don’t go around acting like it.” For Julie, acting like one has a disability entails complaining, relying primarily on others to do things for you, and failing to work hard. For Julie, her years of paid employment in a job that has not always been easy for her are a matter of pride. Other respondents echoed this basic message that is most clearly articulated by Julie. Barbara Robinson, who was born with spastic cerebral palsy referred to the “mentality of a disabled person” during her narrative, saying “Like I was, again, like I said, I’ve, although I have a disability, I didn’t have the mentality of a disabled person, where it’s like, ‘oh well, you know, my leg hurts today; I’m going to stay home’ or something like that, you know? I was always like, ‘I can do it, I got it.’ And I would suffer, and suffer in silence.” Like Julie, Barbara associates a particular mentality and attitude with disability, rather than some physical impairment. Barbara largely frames this attitude as lacking in determination and self-reliance. She even seems to imply that the “mentality of a disabled person” includes malingering. In some sense, this endorsement on hard work seemed to be aimed at convincing an individual’s
coworkers that they are capable workers. Here, the adoption of the values of hard work and
determination influence the second-order legal consciousness of individuals by moving them
away from ADA rights. The fear is that relying on the ADA will simply confirm to others that
they lack the qualities and characteristics of a normal worker.

For some individuals, this attitude was based on how their parents treated them during
childhood. For Deanna DiCarlo, a full-time wheelchair user with spinal muscular atrophy, her
parents set very clear expectations for her from an early age. Deanna recalled, “I didn’t know this
life of letting someone else take care of me. From day one I was groomed to do well in school,
get a good job, go to college, get an education, you know, and, and find a way to manage on your
own. That’s just what was expected of me.” In this sense, disability is an attitude that someone
learns—or is prevented from learning—during their early experiences in childhood. This idea
was best represented in the narrative of Julie Walton. Speaking about the expectations of her
parents, Julie recalled, “I didn’t grow up disabled. I grew up, so I was expected to go to school,
go to college, and get a job. A lot of my [inaudible] like that’s the way I am, you know, like
that’s why I still go to work every day. I don’t sit home. Like, there’s a lot of people my age,
y they grew up disabled. That’s how their parents, you know, how their parents allowed them to be
disabled.” These comments are striking in their emphasis on the idea that disability is more of a
learned behavior that an individual is taught during childhood. It is also notable that Julie
connects her childhood experiences with her current desire to continue working for a living. In a
similar fashion, Aaron Turano described disability as a “mindset” that individuals are
“conditioned” into living with. For others, like Tracy Merrill, some people “let their disability
define them,” which ultimately damages their job prospects.
Similarly, Brent O’Donnell, who was legally blind by age four, described the impact that his mother’s choice to keep him in an integrated school setting had on his life outlook. Speaking about the influence of his mother, Brent recalled, “She wanted me to, like I said, associate with sighted people and not let my blindness define me, that was very important. So even when I got older, I never, I never wanted that to define me, my blindness….I just, so many people, like, they have a disability and then every part of their life is about that disability. I didn’t want that to be me. You know what I mean? And my mother didn’t either.” For Brent, the actions of his mother prevented him from developing an attitude in life that was totally centered around his disability.

Kerry Sanchez, who gradually became blind shortly after high school, made a direct link between childhood experiences, work outcomes, and the attitude of some people with a disability. Reflecting on why she had such a strong work ethic, Kerry explained, “I think a lot has to do with how a person, for blind anyways, is brought up with their blindness. I think too many people are dependent on social security….I have another friend who was a computer tech, I said, ‘you can do that,’ and no, they don’t, they choose not to do that and they choose to collect.” By framing the refusal to work as a distinct and conscious choice, Kerry reiterates the idea that disability is as much a social performance and attitude that one learns during childhood, rather than a physical condition. When disability is not performed correctly, or, it becomes the central focus of an individual’s performance, it prevents the individual from being seen as a worker.

For many individuals in this study, distancing themselves from the “mentality of a disabled person” was a vital step in creating the proper social identity as a worker. In general, this required an individual to demonstrate a commitment to hard work, determination, independence, and self-sufficiency in their workplace. Adopting and embodying these values
became the preferred and correct performance of disability for many of the individuals in this study. However, the desire to distance oneself from the “mentality of a disabled person” did present a problem. People with a disability are often subject to the stereotype that they are mentally deficient and, therefore, incapable of working (Linton 1998). In this sense, it is often assumed that an individual with a disability is incapable of being independent, self-sufficient, or committing to hard work. This was an all too familiar experience for a majority of the people in this study. Almost every individual in this study shared one experience where they were subject to this stereotype of dependence and diminished mental capacity. These experiences often occurred throughout an individual’s life and across a variety of settings. Individual’s reported being stereotyped in this way as students, medical patients, workers, and individuals in public settings.

Disproving Others: The Impact of Continued Stereotypes on Worker Identity and Performance

In some cases, individuals reported being met with the surprise of others when they completed the relatively routine and mundane tasks of daily life. This was the case for Matt Carlson, who routinely has to explain to individuals that he is able to successfully use the phone and fulfill all the job requirements of an office secretary job even though he is blind. Similarly, Hue Tuyet, who is legally blind and worked as a teacher for many years, recalled, “People ask me, you know, in school, in my job, they ask really stupid questions, like, ‘who dresses you in the morning?’ What am I? A baby?!” Other respondents experienced similar reactions simply because they were employed as a person with a disability. Carla Seyda, a full-time wheelchair user, frequently works with members of the public or other businesses through her job as a community organizer. Carla recalled how often people who she has only talked to on the phone, greet her by saying “oh, I didn’t know you were in a wheelchair.” Julie Walton recalled very
similar experiences, as her job frequently requires her to interact with other businesses and
government organizations. Julie lamented, “I have to tell you, I still get the same, I still get when
I go out somewhere, I’ve been to social services and I still get, ‘oh, they sent you down here?’
Like, to apply for need. Like, ‘isn’t it nice that you work.’” In this instance, Julie is stereotyped
both as a dependent welfare client and as someone who is incapable of working. Although it was
likely intended as a compliment—this was Julie’s opinion—congratulating a stranger for being
employed still reveals the assumption that they were incapable or mentally deficient in the first
place. These comments suggest a general awareness that respondents have regarding how they
are viewed by others and the need to enact a social performance that disproves such assumptions.
Additionally, these comments serve as an often daily reminder that individuals with a disability
are largely still viewed with negative stereotypes.

Other respondents told stories of being deliberately ignored in workplace or public
interactions. This was often the experience when individuals had an aide present with them, or
were somewhere with another able-bodied person. In some cases, people would address the aide
first. This was especially true for individuals interacting with medical professionals. One
respondent, Ashley Vargas, a full-time wheelchair user with cerebral palsy, learned to avoid this
by sending her aide into the waiting room during her doctor’s appointments. She explained this
tactic as a way to force physicians to speak with her directly. Tracy Merrill shared a similar story
regarding her workplace experience. Tracy works as a professor at a large research university.
She recalled the same types of interactions when she attends academic conferences, explaining,
“So you have the group of people who kind of veer away and then you have the group of people
who sit and talk [with you] because they’re like, ‘wow, are you really mentally capable?’ Like I
hate to put it that way, but that’s exactly what they’re doing, you know. They want to basically
see how intellectually competent I am, like not that my work sucks or anything, but they’re just not used to seeing someone like myself, you know, because I have to bring an aide with me and they have to physically cut up my food.” This common experience of being stereotyped as dependent, mentally deficient, and incapable of work was a major barrier for most individual’s in this study striving to be seen as capable workers.

The widespread experience of being stereotyped as dependent and mentally deficient seems to have impacted how many of the individuals in this study approach their work identity. Specifically, many individuals expressed feeling like they needed to prove themselves as capable workers or overcome their perceived limitations. In the case of both Erin Sampson and Tracy Merrill, feeling the need to prove themselves as capable workers influenced their career choices. Both of these women successfully entered careers that were largely closed off to women with disabilities. Looking back on her choice, Erin recalled, “When I, when I first came to college there was a belief that, you know, disabled students don’t major in accounting. Well guess what, I’m gonna! You know.” Two other respondents—Lindsey Jensen and Hue Tuyet—shared similar experiences in their roles as teachers. For Lindsey, this experience largely occurred while she was a student in her teaching program. Lindsey recalled being told by one professor, “well, you, you don’t belong in this program’ So he told me that he didn’t think that I would ever actually be able to be a teacher because of my vision, and so, he told me that he thought that I should reconsider my situation and go into elementary education….So I felt like I was already going in under the microscope and so I felt like I had to overachieve always. In that class, if there was, you know, we had to be in the classroom ten hours a week, but I went twenty, you know. Because I’m like, ‘oh, I better show him that I can really do this.’” In a similar fashion, Hue
recalled feeling like she needed to work ten times as hard as her coworkers just to be at the same level, since the teaching profession was a “sighted world.”

Other individuals experienced similar feelings once they found themselves in the workplace. Beth Drummond, a full-time wheelchair user born with spina bifida, was currently working at an independent living center at the time of our interview. However, she recalled some of her earlier job experiences where she was often the only worker with a disability. She often felt like people thought she had a “diminished capacity to succeed” and frequently felt like she had to “prove herself” when interacting with other workers. Similarly, Barbara Robinson claimed that she “always felt like I had to prove myself” in her workplaces. For some individual’s, like Barbara, this feeling influenced how they approached their own ADA rights. The implication of focusing on proving that one is capable and self-sufficient is to avoid relying on ADA rights too much. Barbara talked about “pushing myself to the limit,” even leading to her own detriment or physical discomfort at times. In one such situation, she deliberately avoided asking for a reasonable accommodation, instead opting to prove that she was capable of meeting job expectations, saying, “I never talked about it. I didn’t complain about it because I felt like I had to prove myself and that I didn’t want to lose my job.” Barbara later described this approach as “suffering in silence.” In a similar fashion, Julie Walton reported crawling up the steps of homes that she needed to do visits for, rather than asking for some form of reasonable accommodation. Julie justified this by saying, “So I’m just saying, if you, if you want to work I think, you know what I mean, I mean that’s my decision to do that…I used to crawl up the stairs and then, because I wanted to work, do you know what I mean?.... it all depends on how much you want to work.” At the time of our interview, Julie was no longer able to use this solution to conduct her home visits. However, her new solution did not involve using her ADA rights, instead, she
simply scheduled her home visits when she could get help from her boyfriend or father. In these examples, the social performances that would prove that one is a capable and self-sufficient worker are incompatible with the use of ADA rights. In other words, because many stereotypes leave people with a disability with the experience that they are perceived by others as incapable, they often deliberately avoid using the ADA in an effort to prove their independence and self-sufficiency.

For some workers, striving to prove themselves by avoiding ADA rights and focusing on hard work and determination was a successful strategy. However, this approach sometimes came with considerable costs. For Aaron Turano, constantly struggling to prove oneself as a worker was a clear health risk that could result in severe consequences. Speaking about his own difficulties in maintaining paid employment, Aaron claimed, “Most people with disabilities who work—and you’ll never hear people admit this, but I can tell you people will say this—people with severe physical disabilities who work are running on empty. They’re basically killing themselves because there is this need to prove yourself.” For Aaron, struggling to prove oneself as a worker might be effective as a short-term strategy, but the eventual cost on one’s health and well-being would be dramatic. To further emphasize his point, Aaron later shared the following story regarding a friend with a disability:

A friend of mine who had the same disability as me was working as a manager at Verizon. And I said, ‘Michael, you’re pushing yourself too hard.’ Michael had to prove to everyone that his disability—you notice how I’m using past tense, you know where this is going—I said, ‘Michael, you’re really pushing yourself too hard.’ I said, ‘you know, we get fatigued too easily and when you’re fatigued your defense systems are down, and you’re prone to illnesses.’ Well, Michael died last year of heart failure; just like that one morning. And that’s when I said to myself, ‘I have proof positive, I don’t have to prove myself to anybody.’”

This story featured heavily in Aaron’s decision to mostly withdraw from participation in the labor market. Unlike most of the other individuals in this study, Aaron had largely concluded
that the struggle to prove himself to others as a worker was not worth it, and that ADA rights would be of little help in changing that.

Erin Sampson, reached a similar conclusion, although she ultimately chose a different path than Aaron. Erin chose to abandon her ultimate goal of working as an accountant for a large private company. She was able to secure several interviews with prestigious accounting firms, but was not hired by any of them; something that was likely because of her disability. Erin recalled “they looked at my resume and they were excited, and then the minute I rolled into the room I could tell by the look on their face, I wasn’t what you expected, you know; they didn’t have to say it, I knew it.” While this experience was very disappointing at the time, Erin now believes it was more of a blessing in disguise. Like Aaron, she now believes that the physical demands of that job would have had a negative impact on her health, saying, “You know, before you have your CPA license they expect you to work 70 to 80 hours a week, and then once you get certified you’re not going to work that much obviously. You have to get the two years’ experience in order to sit for the exam and, it, they, they work you as much as they can. And I know physically I would not have been up for that.”

For most of the individuals in this study, performing disability in a way that also emphasized their capabilities as a worker was a very difficult task. Much like the “Goldilocks Dilemma” mentioned in the beginning of this chapter, people with a disability often find it difficult to perform both disability in a way that would fit “just right” with their identity as workers (Areheart 2008:180). Based on the narratives of the individuals in this study, the crux of this dilemma is the requirement that they perform disability largely by embracing independence, self-sufficiency, and hard work as their dominant values as workers. In other words, individuals are asked to perform disability by not acting very disabled; they are asked to prove their worth to
those around them without relying too much on something like the ADA. In many ways, these beliefs form the second-order legal consciousness of these workers and, as such, are based on their perceptions of how others view them. In addition, many of the workers in this study often view themselves from the perspective of stereotypes, and adjust their social performances and perception of ADA rights accordingly. While they do not necessarily experience this directly from coworkers, being subjected to stereotypes is certainly a regular occurrence in the lives of most of the individuals in this study.

**Conclusion: Performing and Deserving the Law**

For many of the individuals in this study, navigating stereotypes regarding disability and work powerfully shaped their second-order legal consciousness and how they understood their own ADA rights. In some sense, an individual could only feel truly comfortable in using the ADA if they had successfully avoided a variety of workplace stereotypes through their performances: malingering, dependency, and assumed incapacity. In practice, these stereotypes coalesced into a sort of disability ideal that each individual was expected to perform and embody in the workplace. Much like the “Goldilocks Dilemma,” this ideal required people to perform as a worker and as a person with a disability in a way that was “just right” (Areheart 2008). In other words, workers were asked to prove that the disability stereotypes were not true, and that people with a disability really could be capable and independent workers. In order to accomplish this, most individuals assumed that they would have to turn away from their ADA rights. Relying too heavily on ADA rights risks affirming stereotypes from the perspective of coworkers. In part, this helps answer a relevant question for the study of second-order legal consciousness: “when does a person’s perception of others’ beliefs influence that person’s relationship to the law” (Young 2014:526). One answer that is suggested by this study is when the use of law overlaps
with the presence of stereotypes that that individual is seeking to avoid. Specifically, it is
difficult to avoid the stereotype of dependent victim while simultaneously using a law, like the
ADA, that many people perceive as special treatment and special protection.

While common stereotypes regarding people with a disability as workers had an
important influence on how individuals understood their ADA rights, these are by no means the
only influential stereotypes that people encounter. Popular stereotypes of people with a disability
as malingers fit perfectly with the growing perception that the legal culture in the U. S. is overly
litigious (Haltom and McCann 2004). Media attention increasingly focuses on stories like the
infamous McDonald’s coffee case, which implicitly supports the idea that there is a torrent of
frivolous lawsuits clogging the legal system (Engel 2016; Haltom and McCann 2004). In ways
reminiscent of the malingering stereotype, many of the plaintiffs in these cases were described as
faking their injuries and exaggerating them all in the pursuit of a quick and easy payout. The ease
with which the stereotypes of malingering and the crisis of frivolous lawsuits converge likely
influences the reception of the ADA.

This was evident in the initial reception and concerns of the ADA. As many scholars
have pointed out, some of the earliest fears and critiques regarding the ADA were exclusively
focused on the beginning of a potential litigation crisis (Colker 1999; Johnson 2003; Smith
2007). Media outlets quickly reported that the ADA would be a “windfall for plaintiffs,” with
one reporter even suggesting that the ADA was a “lifelong buffet of perks, special breaks, and
procedural protections’ for people with questionable disabilities.” (Colker 1999:18; Smith 2007).
ADA litigation was also often accused of being “abusive” and plaintiffs were stereotyped as
“serial litigants” (Bagenstos 2006). Much of the criticism and fear over the ADA was aimed at
potential fakers and malingerers who would falsely claim or overly exaggerate disabilities (Smith
Congress even debated over how to prevent the same outbreak of fake disability claims before even passing the ADA (Crossley 1999). A few of the respondents in this study also held similar views about how people with disabilities abuse the law for their own personal gain. Barbara Robinson, who successfully sued a local business for being inaccessible, was quick to point out that she was not “one of those people who sues for money,” as some people with a disability are in her view. Elizabeth Garvin also framed the ADA as partly unsuccessful because of the actions of people with a disability. Chief among those concerns was her belief that people with a disability were “way too sue-crazy, as you have heard. People in chairs tend to file lawsuits more often than able-bodied people.”

Perhaps it is no great surprise that people with a disability tend to avoid the ADA in most workplace contexts. The presence of so many stereotypes regarding disability and the law suggest to people with a disability that they are viewed with suspicion and negativity by those around them. For people with a disability, there is doubt over their right to be in the workplace; their ability to perform on the job as well as other workers; the legitimacy of their impairments; and, their motivations for using the law. Taken together, these stereotypes frame most workers with a disability as not automatically deserving special legal rights. Instead, most individuals feel that they must forfeit many of their ADA rights in order to prove to others that they are legitimate workers who are deserving of those very same rights. These findings point to several issues that deserve further attention from scholars interested in studying rights in the workplace.

First, stereotypes may have a limiting effect on how individuals perceive their own rights in the workplace. Other studies have made similar claims in regards to humor (Quinn 2000), workplace norms (Albiston 2010), and managerial frames (Marshall 2003, 2005). Less attention has been given to the way that stereotypes influence how individuals conceive of their own
rights. Specifically, the convergence of existing stereotypes with an individual’s ability to use their rights. In this way, it is difficult for most people with a disability to use their ADA rights without appearing dependent, incapable, or uncommitted to the workplace. In a similar way, Bumiller (1987, 1988) has argued that individuals are often reluctant to use the law because it requires them to adopt the identity of a victim. In this study, individuals shared the same reluctance to use ADA law because it required them to adopt a stereotypical performance of disability; one that was largely incompatible with the workplace. When dependency and victimhood are preexisting stereotypes about disability, turning to the law becomes a difficult option for the individual looking to avoid stereotypes. Similarly, Engel and Munger (2003) found that individuals were often reluctant to use the ADA and request reasonable accommodations because it was incompatible with their workplace identity. In this case, stereotypes matter for individuals as a major influence on their second-order legal consciousness, in so much as they take them to represent the opinions of others.

Similarly, in her article studying the legal consciousness of fat acceptance advocates, Anna Kirkland writes that:

Law’s durability and ideological power, I suggest, comes in part from its widely accepted accounts of the deserving person as a properly functioning and responsible individual, free of disease, excess, or disablement. This is the person who can work, who looks after him- or herself so that others do not have to, who is health-conscious, and whose body and movement in the world conform to a normalized standard (2008:399).

In the same way, the deserving person of the law must perform disability in a way that avoids stereotypes. Individuals must affirm and demonstrate their sameness and conformity to the normalized standards of the workplace. For most individuals, this imperative places ADA rights beyond their reach. Gaining reasonable accommodations, for example, potentially signals that one is different in some stereotypical way. For all these reasons, the persistence of stereotypes in
the lives of people with a disability exerts a considerable influence on their understanding of how
ADA rights can and cannot be used in the workplace. For most individuals, becoming the
deserving person of the law is a paradox; an individual must largely avoid and forfeit one’s legal
rights in order to be deemed worthy of them.
CHAPTER THREE: CONSTRUCTING FAIRNESS AND THE MEANING OF THE ADA

“...but it’s almost like we have to have the Americans with Disabilities Act to make people do the right thing and sometimes, even then, it’s not, it doesn’t always, you know, work. But I mean, I think it means to me opportunity, but still opportunity with strings attached.” – Lindsey Jensen

In 2010, Lindsey Jensen left her job teaching 7th grade English in one of the largest middle schools in her home state. She had been hired seven years earlier after the superintendent of the school district heard her speak at a Lions Convention. Initially, her time at the school was typical and uneventful, but things changed during her fifth year of teaching. Lindsey needed to take time off for an important eye surgery; unfortunately, the surgery did not go as planned, so Lindsey’s time out of work extended into the time she was scheduled to take off for maternity leave. During her time away, the school principal started targeting Lindsey’s husband, who also taught at the school, and eventually wrote him up claiming that he was “...too wrapped up in your [his] wife’s disability.”

When Lindsey returned to work, the atmosphere had drastically changed. The school principal started watching her intently and sending strange e-mails concerning the quality of Lindsey’s teaching. Soon after this, an incident happened in Lindsey’s class where one particularly violent student tried to strangle another student. This sparked further criticism and scrutiny from the principal who blamed everything on Lindsey’s disability, claiming that she could have prevented the whole thing if she had her vision. Shortly after this, another teacher at Lindsey’s school with epilepsy was fired after having two seizures during school hours. Officially, the principal and school district claimed that this teacher was not keeping up on her records correctly, but Lindsey felt this was just a pretext. It was in this context that Lindsey and her husband finally decided to quit their jobs. At the time, they assumed that the principle would just keep looking for any excuse to eventually fire them as well. Speaking about the whole
experience, Lindsey said, “…it was so, like, exhausting just to go to work everyday, and I’m just like—we, we didn’t know if we just wanted a, I don’t know, a clean break just seemed like it would have, like it was the right thing.”

How do people—like Lindsey—understand the role of the Americans with Disabilities Act (ADA) in their workplace experiences? Lindsey’s initial ambivalent description of the ADA as opportunity, but with “strings attached,” points to a complex understanding of the role of the ADA. At times, Lindsey seems to believe that ADA law creates and protects an abstract notion of fairness or justice. Lindsey would later describe a similar interpretation of the meaning and power of the ADA as forcing people to simply do “the right thing.” An appeal like this to the meaning of a law as complicated and expansive as the ADA is surprising (Barnes and Burke 2012). How can a federal law which protects an estimated 15-20 percent of the US population, and regulates an estimated 600,000 businesses and 5 million places of public accommodation be so easily summed up as mandating “the right thing” (Barnes and Burke 2006; Harlan and Robert 1998)? Lindsey’s answer and experiences seem to suggest that ultimately, for many ordinary Americans, getting people to do “the right thing” is not always so straightforward and likely to become tangled with the many “strings” that “attach” themselves during real disputes in the workplace.

This chapter addresses the tendency among workers, like Lindsey, to frame the ADA as primarily mandating fairness by providing equality, opportunity, and protection. Sociolegal scholars have long described fairness, and individual commitments to the ideal of fairness, as fundamental to American law (Berrey, Hoffman, and Nielsen 2012; Ewick and Silbey 1998; Lind and Tyler 1988; Tyler 1990). However, research in this area is often based on hypothetical accounts of fairness that are largely disconnected from specific lived experiences and disputes
involving the law (Berrey et al. 2012). Here, I present an analysis of why workers with a
disability tend to describe the meaning of the ADA in general terms of fairness. In exploring this
question, I especially focus on the role that fairness plays in helping workers navigate the
unequal distribution of power that is typical in most workplaces. Specifically, by framing the
legal mandates of the ADA as ultimately meaning fairness, workers introduce legal rights into
their workplace without significantly challenging or disrupting the existing distribution of power.
In this sense, workers may appeal to fairness as a response to the unequal power relationship
between employers and employees that is characteristic of most workplaces. This analysis builds
on recent efforts to “situate” accounts of fairness and the law within the various disputes,
experiences, and institutions that people encounter in their everyday lives (Berrey et al. 2012;
Hoffman 2005; Young 2014).

I begin by first describing previous research on perceptions of fairness and law;
especially the strand of research involving procedural justice or fairness. Additionally, I discuss
previous research regarding work as a social institution that is largely characterized by the
unequal distribution of power between employers and employees. I then discuss my data
collection strategy and methods, which was based on 40 interviews with people with a disability.
Next, I present my findings and describe how individual perceptions of the ADA as ultimately
meaning fairness are a response to the cultural and structural conditions of the workplace. I begin
with a discussion of how the ADA’s mandate that workers with a disability receive reasonable
accommodations represents the most significant potential challenge to the authority and control
that employers typically enjoy in the workplace. I then discuss how workers with a disability
view the ADA in relation to their specific experiences in the workplace. Finally, I discuss the
implications that these findings have for how and when workers with a disability might mobilize their ADA rights in the workplace.

**How People Perceive the Fairness of Law**

Many scholars propose that fairness, and perceptions of fair treatment within the legal system, are fundamental features of American law (Berrey et al. 2012; Ewick and Silbey 1998; Lind and Tyler 1988; MacCoun 2005; Thibaut and Walker 1978; Tyler 1984, 1990). Fairness, and perceptions of fairness, are said to influence Americans’ deference to governmental authorities (Lind and Tyler 1988; Tyler and Lind 1992; Tyler 2003; Weber 1968); likelihood to comply with laws (Tyler 1984, 1990; 2004); satisfaction with the legal system (Berrey et al. 2012; Lind et al. 1993; Lind and Tyler 1992; Thibaut and Walker 1978; Tyler 1984, 1990); the manner in which individuals resolve grievances (Berrey et al. 2012; Hoffman 2003, 2005; Lind et al. 2000); and, the likelihood that individuals perceive injustice (Hoffman 2005; MacCoun 2005; Sandefur 2008). These findings suggest that fairness is of crucial importance in determining how and when individuals use the law (Tyler 1990). Without a belief in fairness, individuals are unlikely to turn to the legal process to resolve disputes; this holds for both present and future behavior (Berrey et al. 2012; Tyler 1984, 1990).

Most sociolegal research on fairness focuses on how individuals perceive the legal process; an approach that scholars label procedural justice (Thibaut and Walker 1978; Lind and Tyler 1988; Tyler 1984, 1990). In general, procedural justice refers to the idea that individuals place greater importance on receiving fair treatment during an interaction with the legal process, rather than on the likelihood that they receive a favorable outcome (Tyler 1990). That is, individuals are more likely to tolerate an unfavorable outcome in a legal dispute if they view the process used to reach that outcome as fair. Tyler succinctly describes procedural justice stating
“…if people receive fair procedures, outcome is not relevant to their reactions. If they do not, it is” (1990:101). Research on procedural justice has generally confirmed this finding across a wide variety of different settings and groups, including: American students (Thibault and Walker 1975); students in Hong Kong and Japan (Lind, Tyler, and Huo 1997); convicted criminals (Tyler 1984); lawyers (MacCoun et al 1988); workers (Berrey, Hoffman, and Nielsen 2012; Bies and Tyler 1993; Hoffman 2005); in citizen interactions with police officers (Sunshine and Tyler 2003; Tyler and Huo 2002; Tyler 2004); and, even taxpayer compliance (Murphy 2004). In addition, research suggests that procedural justice is a primary concern for individuals regardless of differences in race, class, gender, and ethnicity (Tyler et al. 1997). In general, then, procedural justice research suggests that individuals willingly accept a wide range of unfavorable outcomes if they view the procedures used to reach those outcomes as fair (Tyler and Lind 2000).

Despite its importance, procedural justice research has been criticized for its reliance on an overly simplistic understanding of fairness (Berrey et al. 2012; MacCoun 2005). This, in part, stems from the methodological tendency among procedural justice researchers in using survey data derived from hypothetical encounters with the law (MacCoun 2005). Such experimental research designs typically ask participants to respond to predetermined surveys or vignettes that describe some hypothetical conflict (Tyler 1990). Critics contend that these approaches only capture the abstract views that research participants hold about fairness and separate action from its real-world social context (Berrey et al. 2012). Such views might ultimately rest on an “analytically thin conceptualization of fairness” (Berrey et al. 2012:5).

Indeed, some procedural justice research focuses on specific settings—such as the workplace—in order to better situate individual accounts of fairness (Berrey et al. 2012; Bies and Tyler 1993; Colquitt et al 2001; Hoffmann 2005; Lind et al 2000; Lind 2001; Roberts and
Markel 2001). Berrey et al (2012) argue that individual perceptions of justice are shaped by organizational and institutional context. In particular, they found that while individuals on both sides of a dispute view the process as unfair, they largely focus on processes that specifically disadvantage them. Similarly, in a study of dispute resolution in a worker cooperative, Hoffmann (2005) found that perceptions of fairness were influenced by an individual’s position within informal workplace hierarchies and networks. This positioning, in turn, influenced the manner in which individuals relied on formal or informal grievance procedures to resolve workplace disputes. Earlier procedural justice research has focused on a similar link between perceptions of fairness and dispute resolution processes (Bies and Tyler 1993; Lind et al 2000; Robert and Markel 2001). In general, then, these studies examine how individual accounts of fairness are shaped by, and situated in, the workplace setting.

From a broader perspective, the workplace can be viewed as a powerful social institution composed of historical norms and practices regarding the meaning of work (Albiston 2005, 2010). In this sense, employees are not just influenced by the specific workplace that they find themselves in, but also by the general structure of work as a social institution. As an institution, work is comprised of many seemingly natural standard practices. For example, employees are expected to work a full 40-hour week with year-round attendance (Albiston 2005). Employers expect to have control over the schedule, the actual work process, decisions regarding hiring or firing, and the company budget. Additionally, employers possess greater resources, greater access to information, and greater control over how disputes progress (Albiston 2010; Berrey et al. 2012). These seemingly natural structural conditions of the workplace conceal a significant imbalance of power between employers and employees, and especially for workers with a disability (Albiston 2010). For example, the expectation that employees conform to standard
scheduling and attendance criteria can strike workers with a disability as particularly difficult. Some workers with a disability rely on the help care workers provide in the morning to get ready for work or take alternate forms of transport to work; both these things can contribute to patterns of lateness. Additionally, people with a disability have historically been excluded from the workplace to such a degree that most social welfare laws in the United States still define disability as the inability to work (Oliver 1990; Russel 2001, 2002; Stone 1984). For these reasons, workers with a disability represent an especially vulnerable population subject to significant power imbalance with their employers. These specific features of the workplace, structure the experiences of workers with a disability and how they choose to use their legal rights.

One notable attempt that captures how structural imbalances of power influence individual assessments of fairness is the “situated justice” approach adopted by Berrey et al (2012). The situated justice approach argues that “…people’s sense of fairness is formed through their particular experiences within the legal system and in relation to the litigants’ embeddedness in institutional contexts” (Berrey et al. 2012:6). From this perspective, fairness is not some abstract and timeless individual belief; rather, individual assessments of fairness are derived from concrete experiences that occur within specific institutional settings. Here, Berrey et al (2012) take seriously the idea that individual understandings of fairness are relational in nature (Tyler 1989; Tyler and Lind 1992; Young 2014). This means that individual assessments of fairness are influenced by the particular and specific features of a dispute; including, resources, experiences, knowledge, and the nature of one’s association with a potential adversary (Young 2014). In other words, a situated justice approach focuses on the relationship between individual
accounts of fairness and the struggle over real material or symbolic resources (Berrey et al. 2012).

The situated justice approach builds upon insights from other sociolegal studies that emphasizes the role of social context and environment in shaping individual accounts of law. As sociolegal scholars have long noted, individuals do not passively take the law at face value; rather, they actively construct, reassign, and participate in shaping the meaning of the law in everyday life (Ewick and Silbey 1998; Merry 1990). This focus on the way individuals understand and participate in the “…circulating structures of meaning concerning law” is often referred to as legal consciousness (Silbey 2005:334). Legal consciousness scholars have often found that individual understandings of law are shaped by their social location and environment: This includes the workplace (Blackstone, Uggen, and McLaughlin 2009; Engel and Munger 2003; Hirsh and Lyons 2010; Hoffman 2003; Marshall 2003); the school environment (Morrill et al 2010); in interactions with law enforcement (Young 2014); and, in a public setting (Nielsen 2000). These studies reinforce the idea that legal consciousness and individual beliefs about law should be understood “…in relation to the material inequality of our social life” (Silbey 2005:359). Taken together, these studies suggest that researchers should consider the role of social context and environment when studying individual assessments of the fairness of law.

Although the situated justice approach represents a potentially important addition to studies of fairness and the law, scholars have yet to further engage with it. The situated justice approach is based on interview data with a nationally representative sample of employment discrimination lawsuits. These lawsuits were filed in federal courts between 1988 and 2003 (Berrey et al. 2012). This data has many strengths, chief among them being the link between real disputes and individual perceptions of fairness. However, as sociolegal scholars have long noted,
the vast majority of individuals who encounter harm will rarely come into contact with formal aspects of the legal system (Albiston, Edelman, and Milligan 2014; Felstiner, Abel, and Sarat 1980); this is especially true for individuals that have been subject to various forms of workplace discrimination (Bumiller 1987, 1988; Engel and Munger 2003; Marshall 2003; Nielsen and Nelson 2005; Quinn 2000). For this reason, many sociolegal scholars argue that research should focus on the legal concerns of everyday life (Engel and Munger 2003; Ewick and Silbey 1998; Merry 1990). A situated justice approach might benefit from such a focus on how individuals perceive fairness in their everyday experiences and disputes in the workplace; or, problems and concerns that individuals resolve without resorting to the formal legal system. If “…people’s sense of fairness is formed through their particular experiences” (Berrey et al. 2012:6), the situated justice approach is incomplete without accounting for the vast majority of experiences and disputes that never enter the formal legal system (Felstiner, Abel, and Sarat 1980).

In this chapter, I suggest that the situated justice approach might benefit by focusing on the everyday experiences of workers with a disability. To date, there has been very little research linking disability to the study of procedural justice and individual perceptions of fairness. In two similar studies, Colella (2001) and colleagues (2004) investigated the factors that influence how coworkers perceive the fairness of reasonable accommodations granted to other employees with a disability. However, this research failed to address the perceptions and assessments of workers with a disability themselves. More recently, Snyder et al (2010) found that workers with a disability in large university settings were more likely than workers without a disability to experience procedural injustice; that is, to perceive unfairness in the process of organizational decision-making. However, by relying exclusively on survey data, neither of these studies articulate a particularly nuanced or rich measure of fairness. Additionally, there is little mention
regarding the specific conditions of the workplace that influence the individual assessment of fairness.

The sustained presence of the ADA in the lives and workplace experiences of people with a disability makes it an excellent case for assessing the situated justice approach. Specifically, workers with a disability must routinely navigate everyday issues involving the law in their workplace, especially regarding the right to a reasonable accommodation and the right that facilities be made accessible (Engel and Munger 2003; Robert and Harlan 2006). Such sustained and daily contact with the law suggests that the situated justice approach would greatly benefit from a focus on the perceptions of fairness that workers with a disability have about the ADA. Additionally, focusing on daily encounters within the workplace provides insight into how power imbalances in the workplace shape the perception of fairness. In this chapter, I provide such an account of perceptions of fairness among workers with a disability.

**Fairness and the ADA**

Most of the workers in this study experienced a wide variety of negative and discriminatory behaviors in their workplaces, or in other settings such as restaurants, public facilities, educational settings, and even medical facilities. They often described daily encounters with inaccessible buildings; difficulties in obtaining reasonable accommodations; interactions with hostile coworkers or managers; and, a general frustration with the lack of knowledge that most individuals have regarding disability related issues. While some of these experiences were serious enough to constitute a concrete legal violation, relatively few individuals chose to respond to them by formally invoking ADA law. Most individuals in this study chose not to frame the ADA as a tool for aggressive confrontation in their workplaces. Instead, individuals in this study generally described the ADA using several dimensions of fair treatment, such as
equality, opportunity, support, protection, and leveling the playing field. This ideological commitment to fairness held true even for individuals like Lindsey, who had experiences in the workplace characterized by profound unfairness, and by the seeming irrelevance of ADA law to their situations.

In this section, I analyze why workers with a disability frame the ADA using the language of fairness and equality. I suggest that individuals emphasize fairness as a strategy to help them navigate power inequalities that are part of the structure of the institution of the workplace. Specifically, I discuss how the emphasis on fairness and equality help workers introduce legal rights without significantly challenging or disrupting employer control over the workplace. This is especially relevant when considering the ADA mandate granting workers with a disability a right to a reasonable accommodation. This provision of the ADA has the potential to disrupt the balance of power in the workplace by granting workers with a disability the legal right to have some aspects of the workplace tailored to their specific individual needs. Indeed, many employers seem to view reasonable accommodations as a form of “special treatment” (Albiston 2010; Harlan and Roberts 1998). By framing the ADA as meaning fairness and equality, workers with a disability are able to advocate for their legal right, without significantly challenging the existing power imbalance between employer and employee. Finally, I discuss some implications that this emphasis on fairness and equality have for how workers with the disability mobilize the law.

Doing the Right Thing: Framing the ADA as Fair Treatment

As previously mentioned, the ADA is a federal law comprised of five separate titles which protects an estimated 15-20 percent of the US population, and regulates an estimated 600,000 businesses and 5 million places of public accommodation (Barnes and Burke 2006;
Harlan and Robert 1998). Title I of the ADA regulates the workplace, in part by protecting people with a disability from discrimination in the hiring, promoting, or firing process (ADA §12112[a]). Additionally, workers with a disability have a right to a “reasonable accommodation” in the workplace. Reasonable accommodations may include “making facilities…readily accessible,” job or schedule restructuring, providing modifying or adaptive equipment, modifying exams or training materials, and providing readers or interpreters for employers with a disability (§12112[b][5][A], [B]). According to the ADA, employers and employees must negotiate and engage in a dialogue regarding what is an acceptable reasonable accommodation. In this way, the ADA grants a degree of power that employees may use in negotiations with employers to restructure various aspects of the workplace (Harlan and Robert 1998; Robert and Harlan 2006).

In many ways, the provisions of the ADA are unique among civil rights law for granting people with a disability the right to greater control over the structure and nature of their workplace. In this way, the right to a reasonable accommodation has the potential to shift the typical balance of power between employer and employee. Indeed, employers are sometimes resistant to this provision, seeing reasonable accommodations specifically as a potential challenge to their authority and control (Harlan and Robert 1998). Additionally, some employers resist requests for reasonable accommodations because they view them as a form of “special treatment;” a label that even workers with a disability struggle to avoid (Albiston 2005, 2010; Engel and Munger 2003; Harlan and Robert 1998). Previous research suggests that employers worry over the potential costs from providing reasonable accommodations to workers with a disability (Harlan and Robert 1998; Kaye et al 2011; Robert and Harlan 2006). Some researchers even believe that this fear has contributed to an overall decline in employment rates for people
with a disability since the passage of the ADA (Acemoglu and Angrist 2001; Burkhauser and Stapleton 2003). This fear continues, although the vast majority of reasonable accommodations cost very little, and employers would not be legally responsible to provide a reasonable accommodation that caused them an “undue burden” financially (Durlak 2017; Harlan and Robert 1998).

In their narratives, many of the respondents in this study were aware of the potentially damaging and threatening belief that reasonable accommodations amount to special treatment. One respondent, named Carla Seyda, clearly demonstrated how workers with a disability are aware of the negative stigma that some employers attach to requests for reasonable accommodations. Carla is a full-time wheelchair user and works as a community organizer. She discussed the tendency of employers to feel threatened by the potential cost of reasonable accommodations, saying:

People still need a lot of education about the ADA because they don’t, the general public, they don’t see it as a civil right for us, they see it as, what they call it the unfunded mandate that’s going to cost them an arm and a leg, you know. They don’t, they don’t know that all you have to do is buy, buy a track ball for somebody’s computer and that can be a reasonable accommodation for some people. They think they have to buy this, you know voice activated blah blah blah, that’s going to cost them a lot of money. They don’t realize that it’s just a simple reasonable request from people. Of course, I, you know some, some accommodations are costly, but not necessarily and they also think that we are, people with disabilities, demand and want special treatment because the word special is always in there, but no, we just want reasonable, a life just like everyone else. Reasonable accommodations that’s why they call it reasonable.

Carla’s frustration over the misperceptions and stereotypes regarding reasonable accommodations is evident here. More importantly, Carla is aware that employers feel threatened by the belief that the ADA is going to usurp their power and control regarding how to spend money, and how to treat employees. Carla tries to defuse these potential fears by appealing to the express “reasonableness” of reasonable accommodations. Rather than choosing to stress that the
ADA grants her a legal right that employers must comply with, Carla emphasizes that she is looking for “a life just like everyone else.” This type of reframing of the ADA as mandating fair and equal treatment was often strategically deployed by workers who sought to preempt and defuse employer resistance.

Other respondents did not have to imagine how employers felt regarding reasonable accommodations because they were explicitly told that they were asking for “special treatment.” Aaron, a full-time wheelchair user with spinal muscular atrophy, had this experience during the hiring process. Aaron recalled his interactions with the local department of education where he was trying to get hired as a school guidance counselor after obtaining his master’s degree. As a full-time wheelchair user living in an urban area, Aaron’s ability to work was geographically limited. He recalled his attempts to communicate this request to his local department of education, saying:

I kept saying to them, ‘I want to work at a school near my home, within rolling distance,’ and they kept coming back and saying, ‘oh so you want special treatment,’ and I said, ‘well I don’t consider it special treatment, I mean, I think my disability explains itself,’ you know, and they were like, ‘oh, but you want to be treated special,’ I says, ‘no.’

Aaron eventually gave up on his attempts to become a guidance counselor after the local department of education told him that they would notify him if a vacancy ever opened up. Aaron interpreted this as a not-so-subtle signal that they were never going to hire him. Clearly, Aaron’s local department of education viewed his request as a direct threat to their control over the placement process, rather than as a legally supported request for a reasonable accommodation. Aaron’s own argument that “I think my disability explains itself” can be interpreted as an appeal to the seemingly obvious unfairness of the situation. For Aaron, it seemed obvious that he was asking for fair treatment, rather than something special. Similarly, a respondent with a visual
impairment named Kaylene Robertson, recalled a time when her employer refused her request to tele-commute because “they figured that, you know, they had to set up something special for me at home and this and that, which really wasn’t the case.” Stories like those of Carla, Aaron, and Kaylene suggest that employers may express resistance to reasonable accommodations requests because of the perceived threat they pose to their control over the workplace. Employers may view these requests, and those who make them, as potential problems and disruptions to the social institution of work; problems that they would choose to avoid if possible.

Such negative attitudes on the part of employers do not go unnoticed by workers with a disability. Many of the respondents in this study were careful to stress that they do not view a reasonable accommodation as special treatment; and, that they are not seeking special treatment. Instead, they frame their ADA rights in terms of fairness and equality as a means to bypass employer resistance and the stigma of special treatment. Elizabeth Garvin, a receptionist at a hospital and full-time wheelchair user, articulated this view saying, “So, I guess the more we get out there and the more people see us and understand that we are just the same as anybody else, not much different, then they usually get more comfortable with us and they learn, there is no need for any kind of special treatment, just the basic respect which you pay to anyone else.” For Elizabeth, learning how to interact with workers with a disability is not a matter of providing special treatment, but is more directly a matter of basic respect and equality. In other words, the ADA does not mandate the workers with a disability receive some special privilege over others; it simply ensures that they are treated fairly, equally, and with basic respect.

In his assessment of the ADA, Karl Gallivan—a full-time wheelchair user who works at an independent living center—was more explicit in his avoidance of the special treatment label, saying, “I guess opportunity, and independence, and equality, and making things a level playing
field. Like I don’t really like the term or idea of special treatment, I think it’s more like ensuring that people aren’t discriminated against, or, people aren’t cut out of the normal every day.” For Karl, the special treatment label is misleading because it suggests that workers with a disability are gaining some privilege over others. Instead, Karl views the meaning of the ADA as simply ensuring that workers with a disability are placed on a level playing field with others. Karl’s substitution of various dimensions of fairness—such as equality, opportunity, and making things a level playing field—serves to preempt and defuse the special treatment label. Additionally, by highlighting equality over special treatment, Karl’s statement argues for the inclusion of ADA rights in a non-threatening way. From this perspective, the ADA does not challenge the authority of employers by mandating that they treat workers with a disability in special ways; instead, it mandates something far more palatable to the existing workplace hierarchy: fairness. Karl reemphasized the centrality of fairness as the core value behind the ADA when he said, “So, I see it, yea, kind of like having a, you know, level playing field, so you know, it may not be fair to impose a financial burden on someone, but it’s also not fair for them to exclude people from their service in a way.” Here, Karl seems to echo the central argument of the situated justice approach: that perceptions of fairness are based on one’s actual position within an institution or dispute. Karl acknowledges that the ADA may be viewed as an unfair burden from the perspective of employers, but he immediately balances this view by stressing the unfairness of discrimination from the perspective of a worker with a disability. When framed in this manner, the question of who has power in the workplace is replaced by the less threatening question of who is being treating fairly or not.

It is, perhaps, not surprising that workers temper the radical potential of ADA law by focusing on fairness and equality. ADA law is unique, in that it mandates that people with a
disability be treated differently in order to achieve equality (Heyer 2015). From this perspective, the failure to grant someone a reasonable accommodation on an individual basis results in discrimination. In taking this approach, the ADA largely articulates the social model of disability. This model views disability, and the experience of disability, as the product of how one’s body interacts with the built environment (Oliver 1990; Bagenstos 2009). The social model argues that it is the built environment and taken-for-granted organization of the workplace that is disabling for individuals with a disability (Scotch 2000). In order to achieve equality in the workplace then, people with a disability have the right to special and differential treatment in the form of reasonable accommodations. The inclusion of such a provision in the ADA suggests that the norms and taken-for-granted practices of the social institution of work are ultimately arbitrary. Furthermore, the reasonable accommodation provision of the ADA suggests that all workplace practices and procedures could be better altered to meet the unique needs of employees (Albiston 2010; Engel and Munger 2003; Heyer 2015). Such a provision is radical in that it threatens the traditional authority and power of the employer over the workplace. By choosing to appeal to something as seemingly innocent as having an equal playing field, many workers with a disability attempt to successfully navigate the unequal distribution of power that is typical in most workplaces.

This is not to say that all employers described in this study view the ADA and reasonable accommodations as a potential threat to their authority in the workplace. Here, the experiences of Erin Sampson—an assistant director of accounting who has cerebral palsy—are illustrative. When Erin first started working at her accounting job she initially had trouble keeping up with required case memos, partly because her typing speed was relatively slow; something that she felt was a result of her disability. Erin was hesitant to bring this issue up, but eventually she
discussed the problem with her boss, saying, “And it ended up that I, I started to explain it to my boss at the time, ‘like, this is tough for me, I can’t crank out these memos as quickly as I used, you know, as quickly as I need to,’ and he said, ‘neither can I, here is what I use,’ and he had a little tape recorder; and he would dictate it, give the, give the tape to our secretary and she would transcribe it.” This exchange is notable for several reasons. First, Erin’s boss is quick to frame her struggles in universal terms, rather than singling her out based on her disability. Much like the social model, Erin’s boss frames the social structure of work as disabling for anyone who does not have access to a reasonable accommodation in the form of a tape recorder. As Erin explained, “Yea, when I went to explain it to my boss he’s like, ‘oh here’s how I get around that,’ and then I felt so comfortable, I was like, ‘alright, I don’t have to feel like I’m being different by saying that I’m having a hard time with this because so is he.’” Second, this shifts the matter of a reasonable accommodation away from the idea of special treatment. From this perspective, having access to a tape recorder is a matter of equality for all employees. Erin acknowledged this shift saying, “So, you know, in the beginning I was hesitant, but it was like, ‘wow,’ you know, this really isn’t a disability issue—there are people who don’t have disabilities that have the same problem, you know.” Here, it is actually Erin’s boss who mobilizes the frame of equality and fairness to downplay her fears over being seen as different and in need a special treatment. Additionally, Erin’s boss seemingly acknowledges that the structure of work can—and perhaps should—be altered to better accommodate any individual.

*Fairness as Opportunity and Equality*

Other respondents used more general terms to frame the ADA as primarily about fairness in order to avoid the label of special treatment. Amy Vargas, a research assistant at a large university who was born with a form of cerebral palsy, described the meaning of the ADA
saying, “It means having, being able to have the same opportunities as all other Americans have in everyday life.” For Amy, the equality inherent in the meaning of the ADA takes the form of access to the same life opportunities that all other Americans enjoy. Much like appeals to an even playing field, this approach downplays the idea that the ADA grants workers with a disability with some form of special treatment or privileges. Instead, the ADA guarantees that workers with a disability have equal access to the same opportunities as others. Another respondent, named Deanna DiCarlo, more explicitly made this connection between fairness, opportunity, and an even playing field. Deanna, who works with a disability services organization and was born with spinal muscular atrophy, gave an almost practiced description of the meaning of the ADA, saying, “And so, you know, the Americans with Disabilities Act is a crucial piece of civil rights legislation that grants me the opportunity for equality, and access, and privilege. It doesn’t guarantee me anything; it’s up to me to make it work for me, but it levels the playing field and protects me from discrimination because of my disability.” Unlike other respondents, Deanna distances the ADA from the label of special treatment by arguing that it does not guarantee her anything. In this sense, Deanna does not passively or automatically benefit from special privileges granted by the ADA; instead, she must work to even take advantage of her opportunities. Additionally, by framing the ADA primarily as something that grants opportunities, Deanna draws attention to the themes of fairness and equality. These themes are useful in that they pose no apparent threat to the distribution of power within the workplace.

Returning to the workplace experiences of Lindsey Jensen offers one final illustration of how workers invoke fairness in hopes of obtaining their rights without threatening the existing workplace balance of power. Shortly after offering her view of the ADA as “opportunity, but still
opportunity with strings attached,” Lindsey recalled a time while she was still working at the school and needed a reasonable accommodation for an accessible work station. At the time, the school district was transitioning towards computer based grading software. As a person with a visual impairment, Lindsey would need a computer with a particular type of audio screen reader software known as Job Access With Speech (JAWS). In an attempt to navigate this change, Lindsey had involved her vocational rehabilitation counselor. She described the events:

It was, so I was needing an accessible computer work station and, so I needed like, a JAWS on my computer to talk and, and then, but then our grading system that we used was not accessible—it wasn’t even very accessible for anybody—but it was not accessible with voice software at all. And so, voc-rehab came to talk to the school about getting a scanner attached to my computer and then putting the software on and it was expensive and, and voc-rehab wanted the school to do it because the, the, they made the case that well if they purchased the software then they would be able to use it for students too. And the school was saying, ‘well, this is one staff member and, you know, we don’t want to put this money in and we don’t have this money, and this is going to cause us financial hardship if we have to pay for all of this stuff.’ In the end the voc-rehab won and the school had to buy it, and I think that that caused some resentment toward me that they had to buy, they bought a netbook with JAWS on it even though the grading software was not accessible, and I still was not able to do my grading independently.

Although Lindsey still claimed a belief that the ADA represented opportunity, this experience signals the limits of such an approach. Here, Lindsey is caught between the need for a reasonable accommodation and the resistance of an employer who wants to maintain control over the structure of the workplace. In Lindsey’s view, the fact that she pushed for a reasonable accommodation, brought in an outside organization who advocated for her and won, caused resentment among her employers. It was also likely interpreted by her employer as an outside threat to their control over decisions in the workplace. Most significantly, even though Lindsey’s employer agreed to grant her this reasonable accommodation and purchase a computer with the JAWS software installed, she still encountered difficulty because the school’s grading software was not compatible with JAWS. Instead of going back to the school to address this problem,
Lindsey self-accommodated by hiring someone, out of pocket, to help her input grades into the computer. Lindsey remembers feeling scared to ask for anything else in this situation because she sensed that her employers were still upset about being forced to provide her with a reasonable accommodation in the first place. This experience clearly illustrates Lindsey’s description of the ADA as “opportunity, but still opportunity with strings attached.”

**Conclusion: The Limits of Fairness**

Many respondents in this study chose to frame the ADA as meaning fairness and equality. This approach can be helpful in navigating the unequal power distribution in the workplace and in tempering the potential challenge that the ADA poses to the authority of an employer. However, as Lindsey’s experiences demonstrate, there are limits to how successful this strategy can be. For example, framing the ADA as primarily mandating fairness seems ineffective once an employer feels that their authority and control over the workplace has been threatened. In the context of Lindsey’s experience, she assumes that her employers will reject any further requests for reasonable accommodations because they are trying to preserve the power and control that they still possess, and protecting their authority from outside control. Furthermore, appeals to fairness, equality, opportunity, or a level playing field are relatively ineffective once workers with a disability are involved in a workplace dispute. This is exactly the stage where Lindsey’s description of “strings attached” becomes so relevant. For individuals involved in a workplace dispute, it is the details and technicalities of law that suddenly matter; not the grand overtures of fairness and equality. In other words, appeals to fairness and equality may be particularly effective as an initial tactic of informal mobilization, but they suddenly become irrelevant when a workplace dispute reaches the formal legal stage. Lindsey seems to
recognize this and opts to self-accommodate, rather than pursue some formal legal remedy where her appeals to opportunity would largely be irrelevant to the technicalities of the law.

It is notable, that many of the respondents in this study seem to indicate how often they consider the perspective of their employers. Previous research has suggested that workers with a disability must often learn to manage the attitudes and emotions of others if they wish to be successful in the workplace (Engel and Munger 1996, 2003). Workers in this study often base their approach to the ADA based on the attitudes that they imagine their employers will have. In doing this, workers adopt a frame of fairness and equality in an attempt to preempt and soothe employer resistance. These findings lend support to the idea that perceptions of fairness are often relational in nature (Berrey et al. 2012; Tyler 1989). Additionally, the way that respondents in this study base views of fairness on their position within the workplace power structure supports the insights of situated justice. In other words, the individuals in this study often base their descriptions of fairness and the ADA on their embeddedness in the workplace power structure. However, these findings add one major insight to the situated justice approach. Workers with a disability in this study do not only assess fairness based on their experiences and position within the workplace structure; they also consider the perspective of their employers. Workers with a disability imagine how, from the perspective of their employers, the ADA must look like an unfair restriction over control and authority. This ability to imagine how the other party experiences fairness or unfairness becomes a crucial component in how workers with a disability orient their action. Doing this allows workers to mobilize fairness in strategic ways that might preempt the potential resistance of their employers. In this sense, fairness and mobilization strategies are situated in the workplace context.
CHAPTER FOUR: MOBILIZING EMOTIONS: USING EMOTIONS TO CLIMB THE DISPUTE PYRAMID

“And you know, if we have to go that route, we have to go that route. I didn’t get the attorneys involved until I needed to; until, you know, I followed the procedure, when they denied it [reasonable accommodation] I appealed it, when they denied it [the appeal] I went to the EEOC and said, ‘you know, what do I have to do? My civil rights are being violated here.’” –Deanna DiCarlo

Sociolegal scholars often describe the dispute process as a pyramid that individuals must climb in the pursuit of legal remedies and justice (Felstiner, Abel, and Sarat 1980; Calavita and Jenness 2013). Climbing the dispute pyramid requires individuals to perceive that they have been subject to harm, blame their harm on another, pursue an official legal remedy for that harm, and remain in the legal system until they obtain a formal resolution, such as a settlement or trial verdict (Felstiner et al 1980). In general, scholars have found that the vast majority of individuals who experience discrimination or injury will never climb the dispute pyramid by filing an official complaint or claim; those who do are likely to drop out quickly before reaching the top (Bumiller 1987, 1988; Curran 1977; Engel 1984, 2016; Ewick and Silbey 1998; Felstiner et al. 1980; Nielsen and Nelson 2005). Indeed, the most common response of most Americans who suffer from harm or discrimination is to simply do nothing (Sandefur 2007).

The official statistics compiled by the Equal Employment Opportunity Commission (EEOC) for disability related discrimination claims generally supports this theoretical model of disputing. In 2016, the EEOC received 28,073 charges filed by individuals alleging violation of the Americans with Disabilities Act (ADA) (EEOC 2016). Only a fraction of these official complaints reached the upper regions of the dispute pyramid. The vast majority—63.7 percent—were found to be without reasonable cause, while an additional 17.1 percent were closed for administrative reasons (EEOC). Only 2,537 claims—8.6 percent—reached the settlement stage in 2016 (EEOC 2016). The 2016 figures reflect a historical norm, where the percent of claims
reaching the settlement stage has hovered around 10 and only peaked at 13 in 2007 (EEOC 2016).

Deanna DiCarlo is among this small percentage of individuals who have successfully climbed the dispute pyramid and obtained a favorable settlement with an EEOC claim for disability discrimination. Deanna was born with spinal muscular atrophy and has largely used a power wheelchair for mobility during her life. She is an experienced and credentialed employee, having obtained a master’s degree in education and working as a director for multiple different employers. While working for a government agency, Deanna first encountered a problem in obtaining a reasonable accommodation. Deanna has a flexible work schedule, allowing her to arrive at 9:30 in the morning because she relies on home aides to assist her in getting ready for the day. Since she often arrives later than most other employees, Deanna was often unable to find an accessible parking space in the lot provided by her employers. Instead, she used the nearby parking garage that was connected to her building. After working at her job for only eight months, the owners of the parking garage suddenly decided to charge three hundred dollars a year for access to the lot. Deanna first asked her employer to pay this cost and was shocked when they refused, saying, “Now, everybody gets parking, I mean, like, that should not be—when I tell people I had to fight to get parking everybody laughs, because it’s one of the easiest accommodations to grant to people.”

It eventually took Deanna one and half years to obtain a reasonable accommodation for the parking garage after her EEOC claim was settled with her employer. During this time, she “followed the chain of command” by contacting her human resources department, appealing their decisions, and eventually filing a formal claim with the EEOC. She also continued to use the parking garage and simply told the owner that she was going to keep parking there while she
fought her employer, even threatening to go to the media with her story if he tried to charge her. Reflecting on why she felt so strongly about this issue, Deanna remarked, “And, you know, to me gaining access to the building that I work in really made sense for me to be able to perform the essential functions of my job, you know? Like, nobody else—it all came down to—nobody else in that building has to pay to gain access to the building. To make me pay for access to that building is discrimination.”

Deanna’s choice to climb the dispute pyramid and mobilize the law in response to discriminatory treatment is atypical. Most scholars studying individual responses to workplace discrimination find a general reluctance to formally invoke the protections of the law (Baumgartner 1988; Bumiller 1987, 1988; Curran 1977; Miller and Sarat 1980; Quinn 2000). However, it would be wrong to simply present Deanna as an exception to the rule; always ready to rationally assess the situation and enforce her ADA rights whenever necessary. Deanna would eventually leave this particular job after a supervisor began to target her and threaten to take away her reasonable accommodations, and flexible scheduling. Her supervisor would go on to “lambast” Deanna in a meeting and critique her professionalism, leading her to remark, “And to have that questioned, you know, by somebody who is acting so unprofessionally herself, I was devastated; I was absolutely devastated.” In this instance, Deanna did not fight, complain, appeal, contact the EEOC, or invoke the ADA; feeling devastated, she simply left for another position.

In this chapter, I analyze the role that emotions play in shaping how workers with a disability, like Deanna, choose to resolve disputes and deal with discrimination. Sociolegal scholars are just beginning to fully integrate the role that emotions play in shaping the uses of law (Abrams 2011; Abrams and Keren 2010; Gillespie 2017; Maroney 2016). Research in this
area has largely focused on the behavior of juries, judges, and policy-making, and has rarely addressed the question of how emotions influence the mobilization of legal rights (Abrams 2011). Here, I argue that emotional states—especially indignation, fear, and embarrassment—influence how individuals choose to mobilize or avoid the law in response to ADA violations. Specifically, I find that individuals who mobilized ADA law were most likely to view their experience of discrimination with a sense of indignation—a kind of justified anger. However, many other individuals viewed their experiences of discrimination with fear and embarrassment, leading them to avoid the law entirely. In this sense, the likelihood to mobilize the law for individuals in this study was not simply a matter of perceiving discrimination or possessing accurate legal knowledge; it was also influenced by powerful emotional states regarding the manner in which the discrimination occurred. Thus, I argue that the emotional reactions to discrimination can influence the decision to mobilize the law. This analysis contributes to recent calls for more attention to how emotions can shape the use and mobilization of law in everyday life (Abrams 2011; Abrams and Keren 2010).

I begin by describing previous research regarding legal mobilization; paying attention to studies building on the dispute pyramid model. I also highlight previous studies describing the relationship between emotions and law. I then discuss my data collection strategies and methods, which are comprised of forty interviews of workers with a disability. Next, I present my findings describing how emotional states influence how and when people with a disability choose to mobilize the law. I begin with a discussion of the role that emotions such as fear, shame, and embarrassment play when individuals choose to avoid the law and do nothing when resolving some dispute. I then analyze and describe how feelings of indignation shaped the decisions of individuals who chose to mobilize the law. Here, I argue that the way in which individuals
respond to discrimination is shaped by emotional states and interpretations. I conclude with a
discussion of the implications of these findings for our understanding of disputing, the
mobilization of law, and emotions.

**Emotional States and the Dispute Pyramid**

Sociolegal scholars have long argued that the vast majority of individuals who suffer
harm, injury, or discrimination will avoid the law completely while resolving their situation
(Bumiller 1987, 1988; Curran 1977; Ellickson 1991; Engel 1984, 2016; Ewick and Silbey 1998;
Felstiner et al. 1980; Nielsen and Nelson 2005). This finding prompted a shift in sociolegal
research; drawing scholarly attention away from courts, legislatures, and administrative agencies,
and refocusing it on the troubles that individuals deal with in everyday life (Albiston et al. 2014;
Ewick and Silbey 1998; Felstiner et al 1980). This new perspective led scholars to focus on how
disputes emerge in everyday life and gradually progress towards some form of resolution
(Felstiner et al 1980). Sociolegal scholars, then, study disputes as social constructs that emerge
and transform over time (Felstiner et al 1980); an approach that has been similarly developed by
legal anthropologists (Nader and Todd 1978). Scholars have introduced various models to better
understand the many factors influencing how disputes transform over time (Albiston et al 2014;
Felstiner et al 1980; Miller and Sarat 1980; Nader and Todd 1978). These models break down
the dispute process into different stages (Felstiner et al 1980; Nader and Todd 1978) using
heuristics and metaphors such as the dispute pyramid (Miller and Sarat 1980; Morrill et al 2010),
pagoda (Michelson 2007), and tree (Albiston et al 2014).

The most well-known heuristic model of the dispute process is the image of a pyramid
(Felstiner et al 1980). The base of the dispute pyramid represents the total number of injuries,
harms, or forms of discrimination that might escalate into legal claims. For such escalation to
happen, an individual must first perceive that they have been subjected to an injurious experience; a process labeled by scholars as naming (Felstiner et al. 1980). Once named, a dispute may climb the pyramid if someone is identified as responsible for causing the initial injury; this process is known as blaming (Felstiner et al. 1980). A fully formed dispute emerges out of this process once an individual makes some sort of claim against the responsible party and that claim is denied (Felstiner et al 1980; Miller and Sarat 1980). At this point, a dispute continues to climb the pyramid if the individual pursues a remedy through various types of legal action. This classic image of the dispute pyramid has proven useful in illustrating how few injuries or harms actually result in formal legal action. In this way, climbing the dispute pyramid can be thought of as a slow process of attrition where more and more cases drop out for various reasons (Albiston et al 2014; Felstiner et al 1980; Michelson 2007).

Scholars have refined and enhanced this basic model of the dispute pyramid over the years in a variety of ways. In the traditional dispute pyramid, a dispute only progresses when an individual initiates formal legal action (Felstiner et al 1980; Miller and Sarat 1980). In their study, Morrill et al (2010) argue that formal legal action is only one of several possible modes of action that individuals may choose from when resolving, or progressing, a dispute. Morrill et al (2010) note that individuals may choose to resolve a dispute by taking quasi-legal action; such as a formal organizational complaint or administrative mediation (Albiston et al 2014). Additionally, individuals may choose to resolve a dispute by taking extra-legal action; such as using threats, direct confrontation, or appeals to the media (Albiston et al 2014; Morrill et al 2010). This approach enhances the dispute pyramid model by including various modes of action that individuals may engage in beyond formal legal action.
Other scholars have suggested that while the basic premise of the dispute pyramid is correct, the imagery used to describe it should be replaced (Albiston et al 2014; Michelson 2007). One example is Michelson’s suggestion that the dispute pyramid be better conceptualized as a pagoda (2007). Michelson’s model better captures the idea that disputes do not necessarily follow a fixed course with the ultimate endpoint represented by a legal trial. Instead, he argues that “the successive layers of the pagoda are mutually exclusive and therefore do not necessarily progressively narrow” (Michelson 2007:460). A more radical recent attempt by Albiston et al (2014) is to reconceptualize the dispute pyramid as a dispute tree. The image of a tree better captures the multiple different paths that a dispute may take on its journey towards resolution. As Albiston et al (2014) argue, the central trunk of the dispute tree gives way to a multiplicity of branches; each representing a different path for a dispute. Furthermore, this metaphor better captures the idea that disputes are living evolving social constructs subject to change over time (Albiston et al 2014). Additionally, the tree metaphor is better suited to analyzing structural forces that shape the dispute process beyond any single individual.

Regardless of what metaphor is being used, the dispute processing literature has greatly contributed to sociolegal scholar’s understanding of the factors influencing which disputes climb the pyramid. At the individual level, many victims drop out of the dispute pyramid entirely by engaging in self-blame for their injury or discrimination (Calavita and Jenness 2013). Scholars have found that victims in more vulnerable social positions and with fewer resources are more likely to engage in self-blame, thereby dropping out of the dispute pyramid (Albiston 2010; Engel and Munger 2003; Hoffmann 2003; Michelson 2007; Morrill et al 2010). Similarly, individuals may fail to climb the dispute pyramid out of fear for making a claim (Bumiller 1987; Sandefur 2007). Individuals may also opt out of making formal legal claims for injury or
discrimination because they face greater power inequalities based on their race (Bumiller 1987, 1988; Morrill et al 2010), gender (Hoffmann 2005; Marshall 2003, 2005; Quinn 2000), or disability (Engel and Munger 2003; Robert and Harlan 2006). Other scholars have argued that an individual’s socioeconomic status has a significant impact on their choice to remain in the dispute pyramid or not (Sandefur 2008).

Within the workplace, the likelihood of disputes climbing the pyramid is reduced by employer’s control over official policies and the management of problems. Researchers have found that employers seek to reinterpret workplace disputes as personality clashes or management problems (Albiston 2005; Edelman et al 1993; Marshall 2003, 2005). In this way, employers guide individuals who have suffered harm or discrimination away from the language of rights and law. These findings have been supported by the experiences of workers with a disability (Harlan and Robert 1998; Robert and Harlan 2006). In other instances, the very meaning of what types of actions constitute legal violations are too bound up with cultural and institutional norms for individuals to recognize them as harms (Albiston 2005, 2010). In these ways, many workplace conflicts are successfully managed by employers and prevented from entering and climbing the dispute pyramid. Workplace conflicts may also be redirected from official legal institutions and become lost in a web of law-like organizational structures designed to manage disputes (Edelman and Suchman 1999; Edelman et al 1993; Heimer 1999).

The dispute pyramid—and the various models used to describe similar processes—is but one way to describe a process that scholars often label legal mobilization. Narrow definitions of legal mobilization focus solely on how disputes end up within the official legal system (Black 1973). More recently, legal mobilization has been defined broadly as “the social processes through which individuals define problems as potential rights violations and decide to take action
within and/or outside the legal system to seek redress for those violations” (Morrill et al 2010:654). This more expansive definition includes action that occurs outside of the formal legal system, such as threats or direct confrontation. Additionally, legal mobilization can be understood simply as the use of law, even in the absence of a dispute. For example, Albistion argues that when a worker chooses to take protected leave under rights granted by the Family and Medical Leave Act (FMLA), this constitutes legal mobilization (2005, 2010). Similarly, a worker with a disability who successfully negotiates a reasonable accommodation in the workplace, without disagreement or dispute, is mobilizing ADA law.

**Legal Mobilization and Emotions**

The dispute processing and mobilization literature has rarely engaged with studies focusing on the relationship between law and emotions (Abrams 2011; Abrams and Keren 2010). Perhaps this is unsurprising, considering that the western legal tradition has largely been characterized as an arena dominated by objective rational analysis (Weber 1978). From this perspective emotions are largely seen as a potential disruption to legal rationality (Abrams and Keren 2010). Indeed, much of law and emotions scholarship is founded on a challenge to the very idea that humans are capable of practicing such a strict form of legal rationality (Abrams 2011, 2015; Abrams and Keren 2010; Bandes 1999; Gillespie 2017; Maroney 2006, 2015; West-Newman 2005). Instead, scholars who study law and emotions argue that “emotion is everywhere in law,” it is only a matter of identifying the specific manner in which it exerts an influence (Abrams and Keren 2010:2009). In this way, law and emotions scholarship has explored the way that emotions influence legal actors such as judges (Abrams 2010; Bandes 2009; Maroney 2012), lawyers (Ammar and Downey 2003; Bandes 2006), juries (Sarat 2001), and litigants (Berrey et al 2012; Huang and Wu 1992). Additionally, scholars have examined
how emotions influence specific legal contexts such as family law (Huntington 2008), criminal law (Lynch and Haney 2015; Solomon 1999), and contract law (Keren 2010). Given this rich history, many researchers now argue that law and emotions scholarship must move towards addressing fundamental questions such as “what kinds of emotions operate in particular contexts and what sort of role do they play?” (Abrams and Keren 2010:2009).

In general, the role of emotions in shaping how individuals mobilize rights has remained an understudied phenomenon (Abrams 2011). This particular omission is somewhat unexpected, considering the inclusion of emotions in Felstiner, Abel, and Sarat’s (1980) foundational article on the naming, blaming, and claiming of grievances. While Felstiner et al (1980) do not explicitly mention emotions as a category that should be analyzed independently, they do consider them when discussing other factors that influence the transformation of disputes; such as, attributions, ideology, and representatives and officials (Abrams 2011). This suggests that scholars should consider how emotions might influence the way grievances transform into disputes or formal claims. For example, the ability to mobilize the law necessarily requires that an individual overcome a number of disempowering emotions, such as fear, grief, shame, self-blame, victimhood, or despair (Abrams 2011; Bumiller 1987; Calavita and Jenness 2013).

Within sociolegal studies, it is well documented that such emotions are among the most likely reasons that individuals who suffer harm do not choose to invoke the law (Bumiller 1987, 1988; Calavita and Jenness 2013; Engel and Munger 2003; Hoffmann 2003; Michelson 2007; Morrill et al 2010). For this reason, the ability to mobilize a claim is not a purely cognitive exercise, but requires the involvement of some emotions (Abrams 2011).

Some scholars have identified particular emotions that are more likely to push individuals towards mobilization of rights; referring to them as “emotions of injustice” (Abrams 2011). For
example, in her study of antidiscrimination rights in New Zealand, West-Newman (2005) identified resentment as a particularly important emotion in understanding the likelihood that an individual would mobilize the law (Barbalet 1998; Solomon 1999). Here, West-Newman defines resentment as “an emotional apprehension that others are receiving undeserved advantage,” and found that it was highly correlated with official complaints (2005:319). Similarly, in a theoretical article, Abrams (2011) specifically identified indignation as an importance emotion when focusing on individual rights mobilization. For Abrams, indignation is a powerful emotion because it invokes a sense of wrongdoing that is grounded in the violation of shared norms. For individuals, indignation becomes a form of justified anger at the loss of legal entitlements that one is deserved (Abrams 2011). Additionally, indignation is an emotional state that can be easily expressed within the strict requirements of legal rationality because individuals can logically appeal to the loss of specific legal entitlements. While Abram’s (2011) discussion is largely theoretical, she does draw similarities to the way that scholars studying social movements invoke indignation as a powerful mobilizing emotion.

The specific provisions of the ADA make it an excellent case for studying the role of emotions in the mobilization of the law. People with a disability encounter ADA violations on an almost daily basis in settings such as educational facilities, medical facilities, the workplace, and public places of accommodation (Barnes and Burke 2006, 2012; Engel and Munger 2003). Such continued experience with a wide variety of legal violations provides numerous opportunities for people with a disability to mobilize the law in many different ways. Additionally, responding to the continued presence of legal violations necessitates that most people with a disability learn to manage and vary their emotional states, especially since engaging with the formal legal system can be draining on both personal and financial resources (Berrey et al 2012; Galanter 1974). As
one respondent indicated during an interview “I just want to be able to do what I need to do and I think there’s a thing of picking your battles, just because, for your own piece of mind, your own energy level.” In this way, the experiences and narratives of people with a disability represent an ideal setting to better understand how individuals use emotions to manage their engagement with the law. In this chapter, I provide such an account of how emotions—such as indignation, fear, and embarrassment— influence how and when people with a disability choose to mobilize their ADA rights.

**Emotional States, Disputing, and Legal Mobilization: Fear, Embarrassment, and Indignation**

Most of the individuals who participated in this study experienced some form of disability related discrimination or negative experience that they recalled during interviews. These disputes occurred in the workplace, with medical professionals, in educational settings, and at restaurants, bars, stores, or other places of public accommodation. The majority of these disputes were resolved by individuals doing nothing and avoiding the law, although there were a variety of other types of responses. For this analysis, each dispute was placed in one of the following categories to indicate what form of resolution the individual sought: formal lawsuit, contacting a lawyer or legal official, direct confrontation using the law, direct confrontation without using the law, leaving the setting or avoiding the situation, self-accommodating, or doing nothing. These categories roughly correspond to those used by Morrill and colleagues in their conceptual model of legal mobilization, which identified formal legal action, quasi-legal action, extralegal action, and doing nothing as representative of the typical responses to a grievance (2010). Using these basic categories, I report on the overall picture of how individuals in this study resolved disputes with or without mobilizing the law.
The most common form of dispute resolution in this study was doing nothing. 18 of the 115 disputes analyzed, or roughly 15 percent, were resolved because the individual did nothing and simply absorbed the injury or discrimination that they experienced. Similarly, 17 of the 117 disputes analyzed, or roughly 15 percent, were resolved when individuals chose to leave a setting where they were subject to harm, or to avoid the person subjecting them to negative treatment. A much smaller number of disputes—roughly 4 percent—were resolved when individuals engaged in self-accommodations; these mostly occurred when individuals found a way to provide for their own reasonable accommodation. For example, one respondent named Brent—who works in website development and computer programming—resolved a dispute with the developers of a particular piece of inaccessible computer software by simply designing his own. Taken together, these various forms of doing nothing or avoiding the law were used by individuals in resolving roughly 35 percent of the disputes in this study.

Somewhat less common forms of dispute resolution that individuals used in this study involved more explicit mobilization of ADA law. Of the 115 disputes analyzed in this study, 11, or roughly 9.5 percent, resulted in formal lawsuits. The majority of these lawsuits had to do with accessibility violations according to the ADA. Similarly, 11 of the 115 disputes analyzed, or roughly 9.5 percent, involved an individual formally contacting a lawyer or legal representative for a union. After the initial contact, all of these disputes were abandon by the individual, although one of these disputes was ongoing. Somewhat differently, 12 of the 115 disputes analyzed, roughly 10 percent, were resolved when the individual used some form of legal threat during a confrontation. In some instances, individuals threatened to file lawsuits, while other times they made specific reference to some situation as an ADA violation to gain leverage in a dispute. For example, one individual named Robert Dawes, sent his employer a “well-crafted
letter” that simply invoked the ADA in order to obtain a second computer monitor for a reasonable accommodation. Taken together, these different forms of legal mobilization were used by individuals to resolve roughly 29.5 percent of the disputes in this study. Finally, 41 of the 115 disputes analyzed in this study were resolved when individuals resorted to extralegal forms of confrontation and personal argument. This included things like engaging in formal arguments or complaining to a superior, but excluded the law.

In this section, I analyze the role that emotions play in how and when individuals choose to mobilize the law when resolving disputes. I focus particular attention on the role of indignation for individuals who chose to mobilize their ADA rights, and fear and embarrassment for individuals who choose to avoid the law. Scholars have largely ignored this topic, although some have theorized that specific emotions might be positively related to legal mobilization; this is especially true for “outward-directed” emotions such as anger, outrage, and indignation (Abrams 2011:555). For Abrams, indignation is a useful emotion for mobilization because it expresses a strong sense of norm violation and the deprival of the basic fair treatment that individuals believe they are entitled to. In this way, indignation provides individuals with a foundation upon which they can view their sense of anger as legitimate and justified. For this reason, Abrams describes indignation as “add[ing] to anger an additional dimension of entitlement” (2011:574).

At the same time, most injuries and harms that individuals perceive will remain unclaimed (Bumiller 1987, 1988; Curran 1977; Engel 1984, 2016; Ewick and Silbey 1998; Felstiner, Abel, and Sarat 1980; Nielsen and Nelson 2005; Sandefur 2007). To explain this lack of legal mobilization, scholars sometimes point to more inward-looking emotions; such as, shame, embarrassment, self-blame, fear, and resignation (Abrams 2011; Bumiller 1987, 1988;
Abrams and Keren 2010; Nussbaum 2004; Sandefur 2007). In these cases, individuals understand their injury through emotions which tend to immobilize a potential claim. Fear, for example, was a commonly cited reason for why victims of discrimination chose not to invoke legal protections in Bumiller’s (1987) study. Such inward-looking emotions are likely related to a lack of legal mobilization because they lead individuals to “legitimize their own defeat” (Bumiller 1987:426; Sandefur 2007). In addition, these emotions might also contribute to the likelihood that an individual engages in self-blame for some injury; one of the most commonly cited reasons for underclaiming (Calavita and Jenness 2013).

**Turning Inward and Doing Nothing: Fear, Embarrassment, and Despair**

As previously mentioned, roughly 35 percent of the disputes in this study resulted in no claim by the individual and a lack of rights mobilization. The specific forms that this lack of mobilization took included simply doing nothing, leaving a situation or avoiding a specific person, and engaging in self-accommodation. The inward-looking emotions of fear and embarrassment were most present in the individual narratives of these situations. For some individuals, a feeling of embarrassment over having to make requests that are not typical can immobilize potential legal claims. One respondent, named Tracy Merrill, discussed these feelings of embarrassment as she talked about handling routine problems with accessibility. Tracy has been a full-time wheelchair user since birth, as a result of having cerebral palsy. She works as a university professor in a large state school. When talking about dealing with routine accessibility problems Tracy remarked, “I don’t mean to be like ‘that’ person, but whenever you sort of have to deviate and that requires change on, on an institutional level where change is not easily acceptable there’s some issue.” For Tracy, her workplace reputation and identity necessitates that some injuries and harms must remain unclaimed. To claim every possible
accessibility violation would result in becoming known as “that’ person.” Here, Tracy is partly motivated by a sense of embarrassment as someone who deviates from the typical norm and often requires change on an institutional level. Tracy also expresses a tendency to limit her number of claims out of a desire to create a less deviant, and more normal, workplace identity. Her sense of embarrassment over always requiring differential treatment also serves to prevent potential claims from ever being mobilized and climbing the dispute pyramid. For this reason, Tracy later stressed the importance of learning to “pick your battles.”

Similarly, the opening story of Deanna DiCarlo illustrates how the emotion of embarrassment can defuse a potential claim and lead an individual to do nothing about an injury that they experience. As previously mentioned, Deanna left a job after one of her supervisors began to target her, threaten to take away her reasonable accommodations and flexible scheduling, and call into question her professionalism. During one particularly tense exchange, Deanna’s supervisor called a meeting with her and another one of her more immediate supervisors and severely critiqued their work. Deanna recalled her feelings after this meeting saying:

I mean, I’ve never cried in front of a supervisor at work because of something and, and so she just lambasted my supervisor and me, and my colleagues, one day in a meeting. And I went in the next day, and I called my supervisor and my colleague in, and I shut the door and I said, ‘okay, just so you know, I will never let that happen again, and if it does I am walking out; I don’t care if I have another job to go to, I don’t care if I have no money in the bank, that will never happen again.’ And you know, I totally broke down and just said, ‘I have never been treated so unprofessionally in my entire life, ever, I have never had anybody call into question my competency and my ability to do my job;’ like, it’s the one thing that I pride myself on, is my professionalism.”

While Deanna clearly demonstrates a sense of self-respect and fight in this narrative, it is also clear that she is embarrassed over the damage done to her professional identity, so much so, that she was ready to simply leave her position; a course of action that she
ultimately took. This sense of embarrassment—at being singled out for negative treatment as a worker with a disability—influenced Deanna’s choice to avoid mobilizing her rights. Indeed, the effect is so strong that Deanna recalls crying in front of her supervisors and colleagues; something that had never happened before or since. As Abrams (2011) argues, arriving at the “threshold of legal action” requires individuals to move beyond inward-looking emotions such as embarrassment. In this instance, Deanna was unable to do so, even given her previous successful EEOC claim regarding accessible parking.

For other individuals, feelings of embarrassment were linked specifically with the perception of the disability that they identify with. This was especially clear with a respondent named Jon Thomas. Jon is a military veteran who has developed regularly occurring powerful migraines in recent years. Jon works as an advocate with a local independent living center, however, in recent years his migraines have negatively affected his ability to perform his job. By law, Jon’s position must be filled by a person with a disability, yet he struggles to complete his work because of it. At the time of our interview, Jon was having difficulty keeping up with the rigorous scheduling demands for his job, saying that he needed flexibility to help manage his migraines. Despite these difficulties, Jon has never spoken with his employer about making changes and has never invoked the law in any way. Instead, Jon spoke openly about having written a resignation letter that he keeps in his desk and has considered handing in. For Jon, having a disability was something that he should be embarrassed about, rather than something he might use as the basis for a legal claim. Jon discussed his disability, saying, “I just think that people start thinking, well, how bad is it and how is it going to screw up my business or
whatever, and how much time am I going to have to give this person off. You know, this kind of….it doesn’t look like a medal, let’s put it that way. It’s not something you wear proudly; it’s something you hide.” By framing his disability as something that he should hide and be embarrassed of, Jon legitimizes his own struggles as normal and outside the realm of legal protection. This type of emotional understanding of disability serves to immobilize any type of legal claim that Jon could potentially make.

In other narratives, embarrassment arose for individuals because of how other people with a disability were treated in their workplace. This was the case for Eileen Robinson, who worked in curriculum development. When Eileen was seventeen she became blind from a condition known as Eugenia Stigmatosa. Eileen recalled a particularly problematic special event she was involved in planning at her workplace. One of the women being honored at this event was a wheelchair user and Eileen had invited many of her friends who had various disabilities. Eileen recalled that her bosses assured her that everything at the event would be accessible, so there was nothing to worry about; however, this was not the case. There was a poorly installed wheelchair ramp leading up to the stage and no accessible bathroom in the facility where the event was held. When Eileen found out she was very upset and ultimately described the whole event as a “nightmare.” She left the event early and in tears, eventually telling her other friends not to attend because the facility was not accessible. Despite this, Eileen never indicated that she voiced her frustrations with her employers. Additionally, Eileen’s frustration never translated into a sense of justified anger that might warrant more formal mobilization of the law. Instead, she seemed embarrassed to be associated with the discriminatory actions of her employer.
Even for individuals who successfully mobilize a claim, an emotion such as embarrassment can work against them and influence the outcome of the dispute. This was the case for Lindsey Jensen; a middle school teacher who was legally blind. Lindsey recalled a time when she needed a reasonable accommodation for an accessible computer work station. At the time, Lindsey’s school district was transitioning towards using computer based grading software only. As a person with a visual impairment, Lindsey would need a computer with a particular type of audio screen reader software known as Job Access With Speech (JAWS). In an attempt to navigate this change, Lindsey involved her vocational rehabilitation counselor who then attempted to work on the problem with the school district. In the end, the school district was forced to pay for the new equipment, but even then, problems persisted. The new grading software was not fully compatible with JAWS, so, using her own money, Lindsey hired someone to help her input grades. Reflecting on the experience, Lindsey remarked, “It was like I was just like a problem. I don’t know, I always felt like it was—disability was a problem.” Lindsey’s remarks signal a sense of embarrassment, and almost shame, at being treated like a problem on account of her disability. Because Lindsey’s employers treated her initial claim with annoyance and reluctance, she clearly reached a breaking point and decided to simply self-accommodate to solve her problem. In this way, emotions like embarrassment or shame can be influential in pushing individuals towards various forms of self-blame and away from mobilization.

In other cases, individuals experienced the demobilizing emotion of fear when dealing with a particular dispute. For individuals dealing with an injury or dispute, fear can seem much more powerful and relevant to their situation than antidiscrimination law.
This was most evident in the narrative of Kate MacDonald; who works at an independent living center and has been legally blind since birth. Kate recalled a particularly harsh introduction to her job saying, “when I first started one of the staff came up to me, she came up to me and she got right in my face, and she said ‘how do you think you’re going to do this job?’ She goes, ‘you can’t see,’ and she goes, ‘don’t think we’re going to help you because we don’t have time,’ and she walked away.” This instance had a significant impact on Kate because it directly led her to hire readers who help her complete and fill all of her paperwork. She has to pay the readers out of her own salary, but this has greatly stretched her finances and contributed to an almost constant sense of stress in the workplace. Despite this, Kate has never sought an alternative solution with her employer or ever invoked the ADA. The intensity and fear that she recalled from her initial interaction with her coworker remain the dominant frame through which she understands her workplace situation.

Fear also played a prominent role in the relationships between some respondents and their managers or supervisors. For Barbara Robinson, the fear of her immediate supervisor has largely overshadowed her occasional thoughts about making a claim. At the time of the interview, Barbara had just been hired as a supervisor in a state agency that works with people with an intellectual disability. Shortly after starting in her new position, Barbara slipped and severely sprained her ankle, leading her to miss a considerable amount of work. Barbara then returned to work after being told that she would be fired if she missed any more time. However, Barbara’s mobility is more limited and she frequently finds herself exhausted at the end of a work day. Soon after, Barbara’s director called her in for a tense meeting where she seemed to indicate a suspicion
regarding Barbara’s work capabilities after the injury; especially about her mobility. Her director also made several not-so-subtle suggestions that Barbara apply for another position. Barbara has continued on in this position, however she complains of feeling like she is constantly being watched by her director to see if she is walking around the building enough. Additionally, on one occasion her supervisor seemed to indicate a belief that Barbara was faking her disability saying “’we both know that you didn’t fall on something.’” Barbara has largely dealt with this situation by doing nothing. She is more influenced by the fear of her supervisor—who apparently has a reputation for undermining people—than any belief in her own legal rights. In situations such as this, legal rights appear increasingly irrelevant to individuals who are more concerned with fear regarding the immediate power of their employers. Fear, along with embarrassment and shame, can act as powerful emotions that turn injuries and harms inward and immobilize otherwise potential legal claims or confrontations.

*Turning Outward to Mobilization*

Importantly, the ADA grants people with a disability a number of entitlements that apply to a broad array of settings. The ADA is a federal law comprised of five separate titles which protects an estimated 15-20 percent of the US population, and regulates an estimated 600,000 businesses and 5 million places of public accommodation (Barnes and Burke 2006; Harlan and Robert 1998). Title I of the ADA regulates the workplace, in part by protecting people with a disability from discrimination in the hiring, promoting, or firing process (ADA §12112[a]). Additionally, workers with a disability are entitled to a “reasonable accommodation” in the workplace. Reasonable accommodations may include “making facilities…readily accessible,” job or schedule restructuring, providing modifying or adaptive equipment, modifying exams or
training materials, and providing readers or interpreters for employers with a disability
(§12112[b][5][A], [B]).

Similarly, Titles II and III of the ADA regulate accessibility and access for public places
of accommodation and governmental entities. Title II requires both state and local governments
to make their programs and services equally available to people with a disability, in addition to
being made accessible. Title III specifically regulates nongovernmental public places of
accommodation. In general, both these titles require the “readily achievable” removal of physical
barriers that might otherwise prevent people with a disability from gaining access to a building
(§12182[b][2][A][iv]). Additionally, both these titles require that “reasonable modifications” be
made to any program or service that would otherwise exclude people with a disability
(§12182[b][2][A][ii]). Finally, both these titles create guidelines regulating accessibility for
existing building and new construction (Barnes and Burke 2012).

In many ways, the ADA grants people with a disability entitlements they have the
opportunity to use each day in a variety of settings. These entitlements are influential in creating
a basic sense of expected treatment that many people with a disability feel. As one interviewee
named Tracy put it, “it gets to the point where I don’t want everything to be tailored around me, I
just want to be able to do what I need to do.” Most individuals in this study expressed a similar
sentiment of not expecting perfectly equitable treatment and access, or a world that catered
solely to them. At the same time, for some individuals the ADA clearly has been influential in
creating a baseline of expectations regarding inclusion and equality that they feel entitled to.
Such legally supported expectations are important in creating the basic conditions that might lead
an individual to view a dispute in terms of indignation. As Abrams argues, indignation is not
simply a response to some perceived wrong, it arises from the violation of “shared
understandings about equality and belonging” (2011:575). For some individuals, having their expectations of equality and belonging not be met contributed to the specific type of “justified anger” that is characteristic of indignation, and influential in energizing mobilization of their rights (Abrams 2011:577).

Roughly 29.5 percent of the disputes in this study were resolved by some form of legal and extralegal mobilization. Individuals engaged in formal legal complaints, lawsuits, contacting a lawyer, threatening a lawsuit, or using the ADA as an implicit threat. In many of these cases, the decision to mobilize the law was clearly related to a sense of indignation or justified anger over the deprivation of legally guaranteed entitlements to equal treatment. This emotion helped push some individuals to mobilize the law through extralegal means, such as by directly invoking the ADA to an offender. This was clear in the narrative of Beth Drummond, a full-time wheelchair user who was born with a form of spina bifida. While working at an independent living center, Beth was required to attend meetings for an advisory council held in New York City on occasion. Her employers, and other members of the advisory council, selected an inaccessible location for the meetings; primarily as a means to save on costs. In order for Beth to access the building she had to take a series of backdoors and use a lift that was frequently locked. As a result, Beth was often forced to wait on the street for almost an hour while an employee arrived with a key for the lift. After enduring this treatment on several occasions, Beth wrote her bosses an e-mail saying “I thought that it was against the Americans with Disabilities Act. There’s not a reasonable accommodation to get in there and that I strongly support moving the meeting someplace else.” Reflecting on why she decided to write this e-mail Beth said, “I was just so sick of waiting on a New York City street for someone to come with a key. It was awful,
it was awful.” To Beth’s surprise, her bosses moved the meetings and never brought the issue up again.

For Beth, a sense of indignation at how she was being treated brought her to the threshold of legal action. While there were many other stories of inaccessibility throughout Beth’s narrative, the disrespect of being forced to wait on a New York City street for over an hour was particularly hurtful and “awful.” It is notable that Beth was able to both express a sense of justified anger that was also grounded in a rational explanation; inaccessibility according the ADA. Interestingly, Beth seemed aware that she was at least partly reacting based on emotion in this situation. During her recollection of this event Beth said, “I just sent an e-mail. I was like out of my mind. I was out of my mind; I sent an e-mail and they moved it.” Looking back on the event, Beth clearly views her actions as emotional and not totally grounded in an objective rational thought process. Despite this, her sense of indignation at being treated in such a careless way was powerful enough to successfully push her towards extralegal mobilization. Additionally, this emotion provided a sense of legitimacy and moral outrage that carried Beth forward with her claim.

A similar instance was experienced by Deanna DiCarlo, although it did not occur in the workplace. While out with her girlfriends one night, Deanna stopped at a new fancy restaurant for dinner. Deanna had to use the lift in the back of the store to gain access to the restaurant. However, the lift was almost completely full of garbage and the employees could not find the key to operate it. Once they did find the key, there was a problem getting the lift to work. Deanna also felt like the employees were making a big deal out of having to move the garbage. Finally, Deanna just said, “you know what, you don’t want my money,” and left with her friends. Deanna then wrote a letter to the manager telling him why the whole situation was unacceptable and
went back six weeks later to see if anything had been changed. Similar to Beth, Deanna has many experiences with inaccessibility, however this particular instance was especially hurtful. In this instance, Deanna articulates a sense of justified anger when her ADA rights are violated in this particular manner. Not only does she feel entitled to certain legal guarantees—such as accessibility—but, she also feels entitled to basic fair and humane treatment. When both of these entitlements are violated, Deanna is ready to move towards extralegal mobilization.

Other individuals who expressed a similar sense of indignation did not go so far as to directly invoke the ADA during a dispute, but did move in the direction of a formal lawsuit by contacting a lawyer. Monica Gilles, a public relations specialist for a small college, was considering a lawsuit and had recently contacted a lawyer at the time of our interview. Monica is a full-time wheelchair who was born with a form of spina bifida. During our interview, she recalled a recent experience while she was attending a healthcare and living with disabilities conference. When Monica arrived at the conference hotel there was no direct access to the building from the accessible parking locations. When Monica sought help from the hotel staff she was told that if they had known it was a disability related conference, they would have had her park somewhere that was more accessible. Monica was clearly irritated by this response and told the staff, “Well, that’s great, except for, you know—and I made this up for arguments sake—you know, what if I came to a chemistry conference, you wouldn’t know that the attendees would be disabled, so you wouldn’t know to have provided them accessible access to the building, like, that doesn’t make sense to me.” Here, Monica expresses a sense of justified anger at the hotel’s failure to comply with basic ADA accessibility law. Furthermore, in a strange inversion of ADA law, the hotel gives the impression that it is Monica’s responsibility to notify them about her disability if she expects to gain access to the building. Monica’s decision
to contact a lawyer about a potential lawsuit for this dispute is revealing. Here, Monica is reacting to the manner in which she experienced this act of discrimination and the sense of justified anger, injustice, and indignation that it provoked in her.

A select few individuals in this study responded to some perceived injury or experience of discrimination by filing a formal lawsuit. For this group, indignation was a powerful resource for navigating the costly world of litigation and having the energy to stay in litigation. This was clearly evident in the opening story of Deanna DiCarlo. The decision to file an EEOC complaint against her employer was partly derived from a sense of shock, frustration, and justified anger at their refusal to grant her a parking pass. In Deanna’s words, “everybody gets parking, I mean, like, that should not be—when I tell people that I had to fight to get parking everybody laughs because it’s one of the easiest accommodations to grant to people. You know, I mean, it should not be an issue at all.” Deanna’s declaration that this should “not be an issue at all” indicates a clearly justified sense of entitlement regarding accessibility and the ADA. To have this entitlement revoked struck her as both legally and morally wrong. Her conviction and sense of indignation over having to fight for parking was strong enough to sustain her through a dispute that lasted for one and half years before it was resolved through a settlement.

Other interviewees in this study filed lawsuits that were more clearly motivated by how they had been treated, rather than the simple recognition of discrimination. This was the case for Barbara Robinson; mentioned in the previous section for a workplace dispute that she did not address by turning to the law. Barbara recalled another instance when she was out for the night with her girlfriends. After being turned away from a club that was inaccessible, Barbara and her friends were looking for a place to eat. When they tried to gain entry to a nearby restaurant they found out it was also inaccessible because there were stairs leading up the only entrance. The
view of the stairs was blocked by the door, so Barbara and her friends did not know it was inaccessible until an employee opened the door. The employee then offered to carry Barbara in and she responded, “Well, I’m not a piece of furniture, but thank you anyway.” Shortly thereafter, Barbara contacted a lawyer and filed a lawsuit against this restaurant, eventually winning after several trips to court. Barbara’s sense of indignation at being treated “like a piece of furniture” is clear in her account. It is notable that Barbara chose to file a lawsuit against the restaurant for inaccessibility, but does not take the same course of action against the club that she had previously been turned away from on the very same night and for the same reason. In fact, Barbara was adamant in clarifying that she is not the type of person who will sue any establishment for any reason. She stressed that she would not sue a small “Mom and Pop” establishment, but would consider legal action for places that treat her with a poor attitude, saying, “It’s the places that, it’s the, the approach that they have, like; it’s as if people with disabilities don’t matter.” Clearly, Barbara felt that she was subject to this disrespectful approach with the restaurant that she chose to sue, making her actions justified.

Returning to the narrative of Tracy Merrill provides one final illustration of how indignation can shape when individuals choose to mobilize the law. At times during our interview, Tracy expressed a reluctance to use the law that was grounded in a sense of embarrassment and risk in becoming “that person.” For this reason, she stressed the need to “pick your battles” when choosing how to involve the law in resolving a dispute. This was not empty talk for Tracy, considering that she filed a lawsuit against the college she was attending as an undergraduate. This came after years of attending classes without having a single accessible bathroom on one of the major campuses of the college. The lawsuit dragged on for years and was only settled because Tracy agreed to continue her graduate studies at the same university. Tracy
recalled dealing with substantial criticism from both faculty and students while the lawsuit was still pending. Tracy responded to this criticism saying, “people looked at me and said, ‘well you found ways to get around it. You’re the highest academic, you’re, you’re going to make it out of here, so what do you care?’ I care because nobody in their right mind should have to do what I have done to get through here.” Tracy’s comments point to a collective understanding and framing of indignation that extends beyond her personal experience. It is notable that Tracy’s clearest articulation of outrage at the kind of discrimination and inaccessibility that she dealt with is expressed by imagining other individuals having to experience the same thing. Interestingly, imagining one’s own experience of discrimination happening to another served to almost amplify the sense of justified anger and indignation for Tracy. Among the participants in this study, Tracy was not alone in expressing her sense of indignation collectively and through the imagined experiences of other people with a disability. Indignation, whether directed at individual or collective experiences of discrimination, exerts a powerful influence on when individuals choose to mobilize the law.

**Conclusion: Feeling One’s Way Up the Dispute Pyramid**

For many of the participants in this study, emotional understandings and states played a vital role in determining how they chose to resolve disputes and acts of discrimination. This chapter has demonstrated that emotion is often the real “stuff” or content of discrimination for individuals who experience a dispute. While many of them have a basic understanding of the ADA, few, if any, possess a detailed and technical mastery of this complex law. To put this in the words of one individual in this study, “it’s not like I go to work every morning with the ADA in my backpack.” For this reason, emotional states played an important role in shaping the nature of an individual’s response to discrimination and injury. For some individuals, specific situations
of discrimination provoked a sense of indignation, justified anger, and moral outrage. These outward-looking emotions were vital resources in their decision to mobilize ADA law. For other individuals, acts of discrimination, although recognized as such, were linked with a sense of fear, embarrassment, and shame. These inward-looking emotions became significant barriers for the mobilization of potential rights claims. These findings point to several issues that deserve further attention in the scholarship on legal mobilization and emotions.

First, for some individuals, indignation arose when imagining other people with a disability encountering similar types of discrimination and negative treatment. This imagined collective experience of discrimination proved quite powerful for some individuals. This finding questions the long-standing critique that individual rights obstruct forms of collective action by forcing individuals to frame their grievances solely as individual problems (Albiston 2005, 2010). Contrary to this belief, some of the individuals in this study were partly moved to action specifically by framing their individual experience of discrimination in collective terms. This collectivity of potential discrimination victims was largely imagined, much like Tracy Merrill imagining other undergraduates at her university having to face the same type of discrimination that she struggled through. It is possible that such a collective framing of injustice may serve to amplify a sense of indignation and injustice for some individuals.

Second, future research should consider how social and personal characteristics influence emotional responses. The emotional reaction to discrimination is likely structured, inhibited, and enhanced by a variety of factors. For some individuals in this study, the ability to move beyond fear and embarrassment towards a sense of indignation was related to other factors. For example, friends and other 3rd parties emerged as a significant influence on some people’s decision to mobilize the law. Many of the individuals who did choose to mobilize the law in this study
recalled discussing their dispute over with friends who were lawyers or had some other special relationship to the law. This influence might be useful in solidifying the legal foundation for an individual’s sense of justified anger. Similarly, future research might consider the impact of legal knowledge on an individual’s emotional response to discrimination. It is possible that greater legal knowledge provides individuals with a better sense of what legal entitlements they possess, and therefore, what they are unjustly being deprived of in certain situations. For example, several participants in this study indicated completing college courses regarding disability rights and the ADA. For at least one participant, these courses radically changed her view of rights and how she should respond to discrimination.

Additionally, the role of identity formation in childhood likely plays a significant role in shaping individuals emotional responses to discrimination. Previous research has suggested that identity plays a crucial role in shaping an individual’s orientation towards their legal rights (Engel and Munger 2003). For many of the individuals in this study, their experiences in childhood proved especially critical in developing their sense of justice and identity. In this sense, some individuals had parents who raised them with the expectation that they live a fully inclusive and normal life. It is possible that experiences of discrimination and exclusion are more likely to be met with indignation for these individuals. Finally, an individual’s educational attainment and professional experience may also play a role in structuring the emotional response to discrimination. Mobilizing the law through formal channels may seem like a luxury to those possessing the economic and social capital to do so (Sandefur 2007, 2008). Some individuals in this study had high levels of educational attainment, advanced degrees, and professional qualifications. These forms of workplace capital provide an individual with a level of security from which they may be better positioned to challenge discriminatory treatment. For
other individuals in this study working in more precarious types of employment and lacking educational qualifications, the idea of filing a formal lawsuit was simply unrealistic. Instead, fear over retaliation and the loss of income or employment was far more palpable than any possible legal solution.

This chapter builds on previous attempts to understand the relationship between the mobilization of the law and emotions. While this study focuses on the importance of indignation, fear, embarrassment, and shame, there are likely other emotions which future research might consider. Although law is often seen as the exclusive province of objective rational analysis, this should not preclude sociolegal scholars from seriously engaging with the influence of emotions. This is especially true for studies which focus on the law of everyday life. Everyday victims of harm and discrimination rarely possess comprehensive knowledge over the technicalities of the ADA. Instead, individuals ground their understanding of how to respond to discrimination in the emotional tone of the situation.
CHAPTER FIVE: CONCLUSION

“‘Drive-by Lawsuits.’ ‘Shakedown lawsuits.’ ‘Google Lawsuits.’ These are just a few of the names used to describe abusive lawsuits filed by personal injury lawyers under the Americans with Disabilities Act (ADA).” –sickoflawsuits.org

On February 15th, 2018, the House of Representatives passed H. R. 620, or, the ADA Education and Reform Act of 2017. The purpose of this bill was to limit the ability of people with a disability and their lawyers to file legal claims against organizations for public accessibility violations. People with a disability currently enjoy this right through the provisions of the ADA. H. R. 620 sought to limit and change this right in several ways. First, it would have mandated that people with a disability who encounter inaccessibility respond by writing a formal letter to the offending business. They would then have to wait 60 days for their complaint to be acknowledged. Then, the business would have a further 120 days to make “substantial progress” in resolving the accessibility violation. Only after this total of 180 days had passed since the initial complaint could a person file a lawsuit; and, only if the business had failed to make “substantial progress” in resolving the issue. After passing in the House of Representatives, H. R. 620 failed in the Senate.

Although this attempt to limit the ADA failed, it drew on a familiar stereotype and belief about the law in American society; that we are a sue-happy and hyper-litigious culture (Engel 2016). That this stereotype expanded to include the rights of Americans with a disability is revealing. Originally lauded by then-president George H. W. Bush as a “bright new era of equality, independence, and freedom,” H. R. 620 portrayed the ADA as a reckless tool for greedy and unscrupulous plaintiffs with a disability. While this example may be extreme, and clearly does not represent a mainstream view about the ADA, it is notable. Specifically, this example demonstrates the complex web of meanings and stereotypes that people with a disability must
navigate when using their ADA rights. It also demonstrates the potential stigma that comes from relying on ADA rights.

These tensions and choices form the day-to-day experiences for most workers with a disability. However, they are often lost in the debates regarding the ADA. Relatively few studies regarding the effects of the ADA rely on interviews that document the experiences of people with a disability in the workplace and everyday life. This dissertation directly addresses such a gap; focusing explicitly on how workers with a disability understand the ADA and the role it plays in their workplace lives and experiences. In taking this approach, it is clear that workers with a disability often view the ADA as a failure, like many scholars do. However, a more complex picture of the ADA emerges from the narratives of workers with a disability. Each individual narrative in this study weaves together stories of frustration, criticism, and failure regarding the ADA with stories of pride, appreciation, and hopefulness.

This is perhaps best exemplified by Lindsey Jensen’s description of the ADA as “opportunity, but still opportunity with strings attached.” Lindsey understood the important role the ADA had played in her career as a middle school teacher, while simultaneously feeling “hopeless” that it could protect her from discrimination. Similarly, Deanna DiCarlo was empowered by the ADA at times in her life; winning a legal dispute with her employer over her right to a reasonable accommodation and writing a letter to the owner of a restaurant describing multiple ADA violations. At the same time, Deanna viewed the power of the ADA as attached to her abilities and effort, saying “It [ADA] doesn’t guarantee me anything; it’s up to me to make it work for me.” At times, Deanna was unable—or unwilling—to make the ADA work for her, as demonstrated by her decision to leave a job after a dispute with a supervisor who threatened to take away her reasonable accommodations. The same ambivalence was evident in the
experiences of Julie Walton, who proudly declared “I am very disabled; at least I don’t go around acting like it.” Julie does believe that the ADA grants her certain opportunities, saying that it helps people with a disability “get a foot in the door” and creates a “level playing field.” However, Julie is quick to point out an “opportunity with strings attached” understanding of the ADA by claiming “you can make all the laws in the world, but you’re not going to change everybody’s attitude.” For Julie, the ADA takes a backseat to a more conventional focus on the importance of individual work ethic. For these respondents, the ADA plays a complicated role in their private, public, and workplace lives.

By analyzing the narratives of 40 workers with a disability this dissertation provides a more complete understanding of the failures and successes of the ADA. Returning again to the words of Lindsey Jensen, these narratives demonstrate how frequently people with a disability experience the ADA as a complex series of “opportunit[ies] with strings attached.” By focusing on these narratives then, this dissertation makes broad contributions to scholarship regarding disability and law. In part, this dissertation demonstrates the conditions and strategies under which individuals choose to either mobilize or abandon ADA law. Specifically, some individuals were able to rely on a framework of fairness to help them use the ADA, while others drew on powerful emotions when mobilizing their rights. Although these strategies were sometimes successful, they also limited the use of ADA rights to specific instances. Additionally, ADA rights were also limited for many respondents in this study because of long-standing stereotypes regarding disability. Most individuals could not imagine a way to successfully use their ADA rights without simultaneously invoking negative stereotypes. For this reason, ADA rights were filtered through the perspective of each respondent’s coworkers and stereotypes. These findings contribute broadly to both sociolegal and disability scholarship.
Implications for Sociolegal Studies

Sociolegal scholars have long been interested in understanding the uses and overall impact of legal rights (McCann 2014). Indeed, the study of rights occupies a central place in sociolegal research and has been the subject of active debate for many years (Engel and Munger 2003; McCann 1994, 2014; Rosenberg 1991; Scheingold 1974). Many scholars address this debate by focusing specifically on rights mobilization (Albiston 2010). Among sociolegal scholars, rights mobilization is framed both as the process by which individuals invoke legal categories to understand their everyday life, and, the direct claiming of legal rights during a dispute (Albiston 2010; Felstiner et al 1980). These scholars ask when and how individuals mobilize their rights to resolve disputes, address discrimination, and alter conduct that was previously taken as normal. Although the debate regarding rights mobilization continues, scholars have largely concluded that the vast majority of individuals who encounter discrimination in the form of rights violations will do nothing and avoid mobilization (Bumiller 1987, 1988; Engel and Munger 1996, 2003; Ewick and Silbey 1998; Marshall 2003, 2005; Nielsen and Nelson 2005; Quinn 2000). Some recent scholarship takes a more expansive and complicated view of rights mobilization, rather than viewing it as a simple binary choice (Engel and Munger 1996, 2003; McCann 1994). From this broad perspective, rights mobilization may occur when an individual uses legal categories to differently interpret their social world or to reconfigure their identity. In this sense, individuals may choose to mobilize rights for their symbolic or strategic effect (Albiston 2010).

In general, this dissertation mainly contributes to existing sociolegal scholarship on the complex nature of rights mobilization. Individuals in this study mobilized their rights in various strategic ways and with varying degrees of success. Some individuals in this study found success
by using the frame of fairness to create a climate in their workplace where rights claims might be understood as normal and commonsense; rather than as a form of special treatment. This strategy reframed a formal legal right, extended to a specific group of workers, into a generic less threatening claim for fair treatment and an equal playing field. In this sense, appeals to fairness served as a cultural Trojan horse for the mobilization of rights claims. While fairness has been studied by sociolegal scholars before (Berrey et al 2012; Lind and Tyler 1988; Tyler 1984, 1990; Young 2014), its role in the mobilization of law and rights has rarely been considered.

This dissertation also finds that some individuals successfully mobilized rights claims by drawing on powerful emotional states. Sociolegal scholars have only recently begun to consider the role that emotions may play in the mobilization of law (Abrams 2011; Abrams and Keren 2010; Gillespie 2017; Maroney 2016). In this study, several individuals chose to formally mobilize their ADA rights partly based on a sense of indignation and outrage at how they were treated. While every individual in this study shared some story of experiencing discrimination, some instances were so egregious that they seemed to demand a formal legal response. This finding builds on recent attempts to move beyond the typical manner in which the dispute pyramid is framed within sociolegal research. Typically, sociolegal scholars frame an individual’s choice to pursue or avoid a legal claim as a matter of rational calculated choice (Engel 2016). Recently, scholar David Engel has argued that injury and harm compromise an individual’s ability to engage in the type of rational decision-making depicted in the traditional dispute pyramid (2016). He urges scholars to adopt a more realistic model, which takes account of various non-rational influences on decision-making. This study builds on this model by focusing on how emotions may influence an individual’s choice to either mobilize or avoid the law.
At the same time, this dissertation also confirms previous research regarding the mobilization of rights. Specifically, the widespread finding that most people who encounter discrimination will choose to avoid the law and any mobilization of their rights (Albiston 2005, 2010; Bumiller 1987, 1988; Engel and Munger 1996, 2003; Marshall 2003, 2005; Nielsen and Nelson 2005). Engel and Munger’s (2003) study of workers with a disability powerfully reinforced this finding. Despite all sharing stories of discrimination, none of the 60 individuals interviewed in that study had ever filed a formal ADA claim. Similarly, all of the individuals in this study shared stories that detailed experiences of discrimination. In the majority of these stories, individuals chose to avoid the law and do nothing. This study, then, largely confirms previous findings, with the majority of individuals who encountered disputes choosing to do nothing. However, of the 115 disputes analyzed in this dissertation, 11 did result in a formal lawsuit. While the general picture of rights mobilization remains the same in this study, those slight variations are worth noting.

Additionally, this study supports the conclusion that rights are largely embedded in the workplace (Albiston 2005, 2010; Blackstone et al 2009; Hirsh and Lyons 2010; Hoffman 2003; Engel and Munger 2003), and therefore, less likely to be mobilized. Many scholars have observed that the workplace context influences how individuals understand and mobilize their legal rights. In this study, the tendency of workers to frame their ADA rights in terms of fairness is partly a response to this embeddedness of rights. Specifically, rights are embedded in a workplace context of unequal power distribution; with employers and managers enjoying most of the control over the workplace. Because the ADA gives people with a disability a specific right over how and when they complete their job, many people with a disability fear that using it could
be viewed as a threat. For this reason, individuals in this study emphasized fairness, rather than rights, in their attempt to navigate power differences in the workplace.

This dissertation also finds that individual legal rights are often perceived and understood from a social perspective. Specifically, many of the individuals in this study discussed their ADA rights from the perspective of other coworkers, or, from the perspective of cultural stereotypes. This was true in the way that workers framed their ADA rights as meaning fairness and fair treatment. In part, this strategy was based on the assumption that their managers and coworkers would view their use of the ADA as a request for special treatment, or, a threat to their authority. Previous research has suggested that people with a disability often find that they must manage the attitudes and fears of those they interact with (Engel and Munger 1996, 2003). This study builds on these findings by highlighting the way that individuals view their own ADA rights from the perspective of other people; often choosing a strategy based on how they imagine others will judge them. In this way, individuals often view their ADA rights as relational, rather than as abstract legal rights (Berrey et al 2012; Young 2014).

This finding also builds on the insight of sociolegal scholarship addressing the legal consciousness of everyday people. Legal consciousness is largely framed as the commonsense understanding that everyday people have about the law (Ewick and Silbey 1998; Merry 1990; Silbey 2005). In general, scholars have largely focused on legal consciousness as an individual phenomenon; or, beliefs that individuals have about the law (Young 2014). This dissertation builds on recent attempts to study the social nature of legal consciousness, specifically, the concept of “second-order legal consciousness” (Young 2014). The individuals in this study often viewed the nature of the ADA through the perspectives of their coworkers, or, through cultural stereotypes regarding disability. This led many people to deliberately avoid overly relying on the
ADA out of fear that others would view them as incapable workers, malingerers, dependents, or worse, as an individual who does not deserve the law. This study, then, suggests that individuals often understand their own legal rights through the perspectives of others. In this way, powerful stereotypes enter into the legal consciousness of individuals, thus shaping the manner in which they understand and use the law.

This emphasis on the social nature of individual ADA rights departs from conventional views of how individuals mobilize and understand their rights. Many scholars have argued that individual legal rights often undermine the potential for collective action because they encourage workers to frame their problems in individual terms. In some cases, this study finds the opposite: that individuals frequently imagine their problems in collective terms. Specifically, many individuals understood experiences of discrimination in collective terms; seeing them not as an isolated incident, but as something that might happen to another person with a disability. This imagined collective framing was often cited by individuals in this study as a reason for why they chose to mobilize rights; mainly, from a desire to protect others from the same treatment. These findings build on Albiston’s work regarding the mobilization of the Family and Medical Leave Act (FMLA) (2005, 2010). In this study, workers often talked with others in an attempt to understand and plan their use of the FMLA. In this dissertation, the social nature of individual ADA rights stemmed from an imagined collective of people with a disability, rather than real encounters with other coworkers. Nevertheless, this ability to band together with an imagined collective often served as a powerful basis for resistance and rights mobilization.

Finally, this dissertation also builds on previous research addressing the role that law plays in the construction and management of individual identity (Bumiller 1987, 1988; Engel and Munger 1996, 2003; Kirkland 2008a, 2008b). Much like Engel and Munger (2003), this study
finds that many individuals struggle to incorporate ADA rights into their work identity. The tension between the identity that is constructed when an individual uses their ADA rights and their identity as an independent worker, was often left unresolved. For Engel and Munger, this tension existed largely because using the ADA requires that an individual identify as someone who is different, deficient, and abnormal in some capacity (2003). In this way, many individuals in Engel and Munger’s study chose to completely avoid the provisions of the ADA for fear that it would spoil their work identity. Similarly, some individuals in this study chose to avoid the provisions of the ADA because they imagined that it might stigmatize and stereotype them as undeserving workers. However, this study finds that individuals often sought to resolve this tension in creative and strategic ways. Framing the meaning of ADA rights as ultimately about fair treatment was one such strategy that sought to resolve the tension between two otherwise opposing identities: worker and ADA beneficiary.

Additionally, this dissertation largely focuses on the social nature of the tension between workplace and disabled identities. Specifically, this study finds that the tension between different identities for workers with a disability is resolved through social interaction and performance. This perspective departs from previous research on this topic, where the relationship between identity and law largely unfolds as an internal narrative (Engel and Munger 1996, 2003). In this study, many individuals avoided ADA rights specifically because it would disrupt their otherwise convincing social performance as an independent worker. In doing this, individuals portrayed themselves as primarily concerned with how others would view and interact with them, rather than how they viewed themselves.

In a similar way, some scholars argue that this tension is a product of the competing logics of antidiscrimination law and the way it instructs individuals to relate to each other in
multiple—and sometimes contradictory—ways (Kirkland 2008a). Kirkland (2008a) has argued that some antidiscrimination law instructs us to ignore certain traits when we evaluate work performance, such as gender and race. However, the exact opposite approach is then taken with disability; difference must be acknowledged, so that it can then be managed and integrated into the workplace (Kirkland 2008a). This dissertation lends empirical support to this view of antidiscrimination law as existing in tension with other competing logics about how to treat difference. Many of the individuals in this study subscribed to the notion that what matters most about them in the workplace is not their disability, but their capacity as quality workers. However, workers often require that disability be acknowledged in other contexts, such as the need for a reasonable accommodation, so that it may be better integrated into the workplace. For many individuals, this tension is partly resolved through social performance, rather than internally.

**Implications for Disability Legal Studies**

This dissertation also makes contributions to the newly identified field of disability legal studies (DLS). The intellectual foundation and origin of DLS is the field of disability studies (Mor 2006). Disability studies is a diverse field of inquiry primarily grounded in the argument that disability is a socially constructed category and not a personal defect that resides in the individual body; a perspective known as the social model of disability (Heyer 2015; Mor 2006). In this sense, disability studies investigates disability as a category created through social interaction and maintained through unequal power structures (Kanter 2011; Mor 2006). DLS builds on this tradition by treating law as an important field for the social construction of disability (Heyer 2015; Mor 2006). Put differently, DLS views the law “as an arena of struggle in
which the meaning of disability is constantly formed and transformed, contested, negotiated, defied, and interrogated, constrained, and liberated” (Mor 2006:78).

By focusing on the narratives of workers with a disability, this dissertation builds on the main project of DLS. In this study, the “arena of struggle” over the meaning of disability is the workplace and everyday lives of people with a disability, rather than the courtroom or the political realm. As previously noted, many of the individuals in this study entered the struggle over the meaning of disability by using the frame of fairness to describe the ADA. In part, this strategy served to contest and defy popular criticisms framing the ADA as a form of special treatment. At times, then, individuals resisted attempts to frame the ADA as just another welfare benefit or as a form of affirmative action. In doing this, individuals actively worked to define themselves, as ADA beneficiaries, in a more positive light. More specifically, the emphasis on fairness and an equal playing field represents an attempt to frame people with a disability as normal, rather than different. This runs directly counter to the requirements of the ADA, where individuals are required to prove that they have a disability; in essence, to prove that they are somehow different from “normal” individuals (Kirkland 2008a). These narratives of workers with a disability highlight the DLS emphasis on law as a site where the meaning of disability is constructed, deconstructed, and contested (Mor 2006).

This dissertation also finds that workers resist organizational practices aimed at highlighting and emphasizing their disability. The text of the ADA did not include a list of all possible disabilities, nor specific descriptions about how to accommodate each disability. Rather, the official interpretations and guidelines for the ADA created by the Equal Employment Opportunity Commission (EEOC), suggest that accommodating for each disability should be an individualized process. Furthermore, this process is described as a cooperative interaction
between the employee and employer (Kirkland 2008a). For this reason, some scholars argue that ADA law creates the conditions for individuals with a disability to be subject to continual management. Kirkland calls this legal approach to disability “managerial individualism” (2008a). This requires that each worker with a disability enter into negotiations with their employer about the specific manner in which they will be accommodated.

In this sense, ADA law encourages employers to define disability through organizational practices aimed at managing and accommodating difference. This dissertation finds support for such practices, at least, from the perspective of workers with a disability. Many individuals in this study lamented the managerial and often bureaucratic manner in which their disability was treated. For some individuals, managerial practices objectified their disability as a thing separate from their body and identity. This made the process of obtaining a reasonable accommodation much more difficult and significantly less personal that it used to be prior to the ADA. In addition, this approach seems to rely on a more medicalized view of disability; as something that resides in the individual and, therefore, must be managed on an individual basis. This interpretation of the ADA also encourages managers to alter the law for their own needs. This type of “managerialization of law” has the potential to subvert the goal of the ADA (Edelman et al 2001). In this way, this study contributes to the goals of DLS in specifying the manner in which law helps create the boundaries and social construction of disability.

However, this dissertation finds that many individuals resisted this managerialized approach to handling their disability. Some individuals resisted by avoiding formal bureaucratic procedures for obtaining a reasonable accommodation and developed more informal ways to do so; such as relying on informal personal relationships. For others, the answer was to take a much more direct approach in how they obtained their reasonable accommodations. Specifically, some
individuals spoke forcefully about the importance of speaking with employers about functionality, rather than accommodations. In this approach, individuals specifically told employers what things they needed in order to function in the workplace. In this way, individuals framed themselves as whole individuals, rather than as disabilities that must be continually managed and scrutinized. This subtle change in how one engages in the interactive process of obtaining reasonable accommodations is notable though. Importantly, it demonstrates that people with a disability actively participate in how the law is used to define them. In this case, that active participation takes the form of subtle resistance to the process of managerial individualism. This also frames people with a disability as functional workers, rather than as different and incapable.

**Limitations**

Conducting research with people with a disability can present certain limitations. Of particular importance to this dissertation is the socially constructed nature of disability as a category. Disability studies scholars have frequently critiqued various attempts to define disability for this reason (Linton 1998; Heyer 2007). To account for this, no formal definition of disability was used during the selection and recruitment process for this study. Individuals were asked to self-identify as a person with a “physical disability,” and were free to interpret this however they wished. As a result, the respondents in the sample for this study identified as having a variety of different impairments, with relatively few commonalities between them. The approach taken in this study, then, differs from other scholars who limit their sample to specific types or groups of impairments (Engel and Munger 2003). These scholars argue that since the experience of disability varies by impairment, some limits should be used to form a more homogeneous sample of respondents. Additionally, the sample in this study contains an
overrepresentation of people with a visual impairment, although this was not intended. This may have influenced the findings of this study. It is likely that people with a visual impairment have a unique set of experiences in the workplace that may differ from other impairments. As such, the attitudes and experiences of people with a visual impairment toward the ADA may be overrepresented in this study. This likely impacts the ability to generalize the findings from this study to the larger group of people with a disability.

In addition, the racial demographics of the sample in this study are by no means representative of those found in the United States as a whole. Specifically, the individuals in this study overwhelmingly identified as white. Only three individuals identified as non-white, with two identifying as Mexican-American, and one identifying as Vietnamese-American. Some research does suggest that race can influence how individuals understand and mobilize the law (Bumiller 1987; Nielsen 2000; Sandefur). Furthermore, studies of disability have recently been critiqued as ignoring the experiences of minorities (Bell 2010). For these reasons, the findings of this dissertation may be overly based on the experiences of white individuals with a disability.

Similarly, the research design for this study made no attempt to sample for equal numbers of visible or invisible impairments. This could limit the findings of this study by introducing too much variety in the experiences of the sampled respondents. Unlike those with visible impairments, people with an invisible impairment may choose to hide it from others and “pass” in certain situations. Several respondents in this study indicated that they have hidden their disability on several occasions for a variety of reasons. Other research has found that there are notable differences between the experiences of people with visible and invisible disabilities (Engel and Munger 2003). Additionally, people with invisible impairments must choose to reveal
their disability to their employer, if they wish. Such options to reveal or hide one’s disability were not options for many of the other respondents in this study.

The design and sampling procedures used in this study also introduce some limitations. First, the small sample size used in this study limits the ability to generalize findings across larger groups. For this reason, this study makes no claims to understanding the workplace experiences and attitudes towards the ADA of people with a disability as a whole. In addition, the manner in which participants were recruited for this study may have skewed the sample. As previously noted, the call for research participants was forwarded, anonymously, to several e-mail listservs that the author had not identified. Many of the participants included in this sample first learned about the study from these secondary listservs. It is possible that these individuals learned about this study through disability specific listservs. In this sense, there is a possibility that they were more politically active than the average person with a disability, and potentially have more exposure to ADA law. Several individuals included in this study also indicated that they were part of a social movement organization fighting for disability rights. Additionally, the sample in this study was not limited geographically, unlike other studies regarding the ADA (Barnes and Burke 2006, 2012; Engel and Munger 2003; Maroto and Pettinicchio 2014).

It is also important to note that the findings of this study are not based on observation of people with a disability in the workplace. In this sense, there are no comparisons made between the narrative recollection of events and the actual events themselves. This study also contains no data or interviews from the employers mentioned by each respondent. It is likely that employers would have a different perspective on each of the experiences recalled in this study. Additionally, individuals were asked to recall experiences that may have occurred several years earlier. It is possible that the lengthy time between the interview narrative and actual experience
has influenced the respondents’ recollections. In a similar manner, many individuals in this study were employed before and after the passage of the ADA. In some cases, individuals recalled workplace experiences that occurred prior to the passage of the ADA, but did not clearly identify them as such. It is possible that other individuals may have blurred narratives and experiences from before and after the ADA. This would necessarily limit the findings of this research and its ability to explain how and when people resort to the law when dealing with conflicts.

Finally, this research makes no claims based on how specific workplace characteristics influence workers with a disability and their views of the ADA. Respondents in this study recalled experiences from a wide variety of workplaces; both public and private. Although each individual shared their narrative recollection of workplace experiences, there was not enough data to identify patterns in workplace structure, practices, or policies. Therefore, this study cannot identify any specific workplace features that influence how people with a disability experience, view, and mobilize their ADA rights.

**Directions for Future Research**

Existing research suggests that the ADA plays an inconsistent role in the lives of workers with a disability. The life narratives and work experiences of people with a disability help researchers understand when, and under what conditions, the ADA matters, if at all. However, further research is needed to explore the divergent uses and understanding of the ADA for people with a disability. To this end, future research could use a more carefully selected sample of people with a disability for interviews. Future research might consider sampling for people with a disability from a single large workplace. Similarly, sampling could be improved by comparing the narratives of people with a disability who work in different workplace structures; such as
public and private, or larger more bureaucratic settings. Researchers also might consider interviewing coworkers and managers, in addition to workers with a disability.

There are several other issues raised by this study that future sociolegal research should consider. In many ways, this study highlights the social nature of both legal consciousness and rights mobilization. Many of the individuals in this study formed legal understandings and decisions based on how they imagined other people would view, judge, or react to their actions. While some research has specifically identified the social element of legal consciousness, more is needed (Young 2014). Research in sociolegal studies too often treats legal consciousness and rights mobilization as individualistic and internal. Future research should approach legal consciousness and rights mobilization as existing in social interaction. This approach would be consistent with the narratives of many of the individual in this study, who often viewed their potential ADA-related actions through the lens of cultural stereotypes and the imagined response of others.

In addition, future research should take seriously the importance that emotions might play in rights mobilization. Sociolegal research focusing on the role of emotions is a recently emerging field (Abrams 2011, 2015; Abrams and Keren 2010; Bandes 1999; Gillespie 2017; Maroney 2006, 2015; West-Newman 2005). This approach may be useful for sociolegal scholars particularly because it does not assume that individual actors who suffer from injury or discrimination are rational decision-makers. Indeed, recent research suggests that individuals who suffer from injury or discrimination are highly unlikely, and often incapable, of making decisions on a rational basis (Engel 2016). For the most part, sociolegal models of rights mobilization assume that individuals make conscious rational decisions when progressing through a potential rights-claim; such as, the well-known dispute pyramid and the naming,
blaming, and claiming model (Felstiner, Abel, and Sarat 1980; Calavita and Jenness 2013). This study suggests that individuals often process their decisions through a range of emotions; some which focus their energy inward and others which push them towards mobilization. Future direction in this area should take more seriously such nonrational and emotional elements that influence how and when people choose to mobilize their rights.

Another potential focus for future research emerging from the narratives in this study concerns technology and the law. Many of the individuals in this study experienced difficulties in obtaining reasonable accommodations because of technological issues. For example, Lindsey Jensen, learned how to use a screen reader program—called JAWS—for her work laptop. However, JAWS was incompatible with the software that her school used to record student data and grades. Similar scenarios occurred for other individuals, even in situations where the employer seemed particularly involved and willing to accommodate. For this reason, future research might consider the mediating role that technology can have for the mobilization and use of rights, particularly with the ADA. Some scholars have addressed such issues, theorizing that technology might help in creating the very possibility for law to travel from the courthouse to the workplace (Latour 2002, 2012; Levi and Valverde 2008; McGee 2014, 2015; Valverde 2008). In this sense, technology is a vital ally helping the actual force of law to spread. For many of the individuals in this study, the ADA simply could not survive in their workplace because the right technology did not exist to help bring it there. In many of these cases, employers, managers, and coworkers all actively, and seemingly in good faith, sought out reasonable accommodations for some of the respondents in this study. However, for technological reasons, they were unable to do so. This intersection of law and technology should be a focus for future research, especially as
it relates to the ADA. Since a significant portion of the ADA involves the rearrangement of the physical environment, it might be particularly well suited for studying this area.

Finally, more research is needed to focus on the educational and college experiences of workers with a disability. Many of the individuals in this study reported having their first significant exposure to the ADA while attending college. In this sense, colleges might play a significant role in shaping individual’s first exposure to the ADA and disability rights. While researchers have considered the role of many different actors and settings in shaping the rights consciousness of individuals, colleges have largely been ignored. These experiences might prove to be particularly important, especially considering that most colleges have an office dedicated to disability rights and student accommodations. Such experiences may shape the expectations that students bring to the workplace. In addition, many individuals reported taking classes about the ADA or joining groups that focused on ADA-related issues while in college. In as much as college serves as an individual’s primary exposure to the ADA, it could play a significant role in shaping rights consciousness. In this sense, future sociolegal research should consider colleges as potentially significant in shaping the rights consciousness of people with a disability.
### Appendix A: Respondent Demographic Characteristics

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<th>Gender</th>
<th>Race</th>
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** data not available
Appendix B: Recruitment Flyer

Disability In The Workplace

Seeking individuals with a physical disability 18 to 50 years old for interviews about their experience in the workplace. Interviews will take approximately 1-2 hours and will be completely confidential.

Contact:
Paul Durlak—Principal Investigator
University at Buffalo Department of Sociology
Phone Number: 716-949-2173
pauldurl@buffalo.edu
Appendix C: Interview Schedule

Introduction
As I mentioned when we spoke, I’m studying the experience of people with disabilities in the workplace.

I’ll be asking you questions about those experiences and about some other things: like political views, experiences with the legal system, and personal background.

To protect your confidentiality, I’m going to ask you to pick a fake name (or I can pick one for you later). I’m going to use that fake name to identify all the tapes, transcripts, and notes I have from this interview. I’m going to have only one list with your real name on my home computer and that will be in a password-protected file.

General Questions:
- I’d like to start with a general question: could you tell me about your diagnosis or disability?
  ○ How has it Progressed, if at all?
- How did you learn about the diagnosis? (sudden? From birth?)
  ○ What was the process of the diagnosis or learning about diagnosis like?
    ▪ For example?
- How would you say your disability influences your daily life?
- Ever since the diagnosis how has your interaction with doctors and medical professionals been?
  ○ Positive experiences?
  ○ Negative experiences?
    ▪ Have you ever felt like you have been discriminated against by a medical professional?
      • What happened? Describe?
      • Do you have any specific examples of that?
- Have you ever gone to any agencies that specifically provide services for people with disabilities? (ACCES-VR, LDA, People Inc, WNYIL, Accessibility departments within college)
  ○ What type of services were you using?
  ○ What was that experience like?
    ▪ How did you feel you were treated by the agency?
  ○ Did the whole experience make you feel different about your disability?

Workplace Experience:
- Could you tell me a little about your workplace? Or most recent job?
- What type of organization was it (private/public—small/medium/large—number of workers)?
- What was your position?
  - What duties did that include?
- How would you characterize your workplace environment?
  - What was the culture of the workplace like?
  - How did people interact with each other
    - Formal/informal?
- How was your relationship with your immediate supervisors/employer?
- How was your relationship with your other coworkers?
  - Were there other people there with a disability that you knew of?
    - What were your interactions with them like?
    - How do you think their relationship with coworkers and supervisors was?
    - How do you think they were treated by others?
- In general, what has been your experience at this particular workplace?
  - How would you characterize it?
- Could you tell me about any particular experiences that stand out as being positive at this job with regard to your disability?
  - Why do think this happened?
  - Why did you feel like it was so positive?
- Could you tell me about any particular experiences that stand out as being negative at this job with regard to your disability?
  - How did that experience affect you? How did it make you feel?
  - What was your response to this negative experience?
    - Why did you decide to take this particular response?
      - How did you feel about the outcome?
      - Did it make things better or worse?
        - In what way?
  - How would you characterize that experience to someone outside of work?
- Any others that you can think of?
- What type of official policies does your employer have that govern disputes like that—or like situations that you just described?
  - How do you know about these? Where did you learn about them?
  - Have you ever considered using those official channels to solve a dispute?
    - Why or why not?
  - Do you think they are effective?
    - Why or why not?
- What can you tell me about any official policy that your employer has against discriminating against people with disabilities?
  - If you felt like that happened to you would you know where to go?
    - Who to talk to?
    - How the process works?
- Any other experiences at your workplace that you would like to talk about, or, think are important?
Legal Rights and the ADA:
- Have you ever had a negative experience at work that you thought about in legal terms?
  o Could you describe that?
  o Why did you think about invoking law?
  o What was it you felt like you were entitled to? Or what did you feel had been violated?
- Could you tell me what you know about the Americans with Disabilities Act?
  o What do you think it entitles you to?
  o What do you think it requires from your employers and coworkers?
  o What does the ADA mean to you?
- Could you tell me what you know about any other specific law that protects people with disabilities?
- Have you ever thought about using the provisions of the Americans with Disabilities Act?
  o In what way?
  o Describe the situation
    ▪ Did you actually follow through with that?
    ▪ Why or why not?
      • Were you happy with your response?
- How does the ADA factor into your workplace?
- How do you think the ADA has impacted the employer that you work for?
  o Does your workplace have an official policy in regards to the ADA?
    ▪ How do they communicate that policy?
- What do you think about the use of law and legal protection in the workplace for people with disabilities?
- Do you think you’ve ever been discriminated against in the workplace because of your disability?
  o Why or why not?
    ▪ What did you do about it?
    ▪ Why did you take this particular choice?
      • How did you feel about the outcome?
  o What would you do if you thought you had?
    ▪ How do you think you would know?
    ▪ What would be the imaginary breaking point for you?
- Have you seen other examples of discrimination in your workplace?
  o Could you give me an example

Final Questions
- Is there anything that you would like to revisit and talk about from earlier?
- Is there anything that you think I have left out that you would like to discuss?
  o Anything you think that is relevant to this topic that I haven’t mentioned?

Demographic Closed-Ended Questions:
- What is your gender?
- What race or ethnicity do you identify as?
- What is your age?
- What was your highest level of education? (some high school, high school grad, some college, college grad, etc)
- Have you ever filed any lawsuits before? Ones that don’t really relate to the topic we discussed today?
- Have you ever met with a lawyer before?
  - And what was that for?

Alright, those are all the questions. Do you have any questions for me?
References


IL: University of Chicago Press.


Statutes Cited