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Clinical & Externship Programs

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CLINICAL & EXTERNSHIP PROGRAMS

ASSISTING LAW STUDENTS WITH
DISABILITIES IN THE 21ST CENTURY:
BRASS TACKS

PANEL 2: CLINICAL & EXTERNSHIP PROGRAMS
Washington, D.C.
Thursday, March 8, 2007

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PROCEEDINGS:

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ROBERT DINERSTEIN: Good morning. My name is Bob Dinerstein. I did not pay the Dean for those remarks earlier but I appreciate his making them. I am a Professor of Law here at Washington College of Law and Director of our Disability Rights Law Clinic. We have a wonderful panel for you today. Our plan is going to be a little different from that of the last panel in the sense that we are going to go speaker by speaker and then at the end provide an opportunity for questions for all of them.

You have in your packet a description of each of the speakers so I will not go into great detail about them but suffice it to say they are all highly accomplished in their fields. To the far right on the panel, is Jennifer Gundlach, who is a Clinical Professor of Law at Suffolk University School of Law. She is a teacher in and creator of the Disability Advocacy Clinic at Suffolk. She is a graduate of this law school and also has taught here in both our Legal Rhetoric program and in our clinical program. Next to Jen is Keri Gould, also a graduate of the Washington College of Law. That really was not our criterion for having people here, although it certainly makes us proud institutionally that both Jen and Keri have done such great work since leaving us, owing it all, of course, to the people who taught them. Keri is Associate Dean for Professional Skills, Director of the Center for Professional Skills, and Associate Professor of Clinical Education at St. John's University School of Law. She teaches in and is responsible for, in an advisory way, the externship program at St. John's as well as Trial Advocacy and Lawyering Skills and does a lot of work both domestically and internationally in the disability area. Our third speaker will be Irene Bowen, who is Deputy Section Chief in the Civil Rights Division, Disability Rights Section. Among other things she was involved in the drafting and creation of the Americans with Disabilities Act ("ADA"),¹ which I think brings us up to about one hundred people who claim authorship of the ADA. Success has a lot of parents. She has also had many important experiences in the disability law area in addition to being at the Department of Justice, including having served as Deputy General Counsel of the Architectural and Transportation Barriers Compliance Board, to which she is currently a liaison from the Department of Justice. Last, but certainly not least, is Christine Griffin who is a

1. 42 U.S.C. § 12101 *et seq.*

Commissioner of the EEOC, where she has served since 2006. She has, in the past, also served as an Attorney Advisor to the former Vice Chair of the EEOC, Paul Igasaki, and from 1996 to 2005 she was the Executive Director of the Disability Law Center in Boston. I think you can tell from the range of their experience and backgrounds, which are elaborated on in your program, that our speakers not only are very knowledgeable about Section 504² and the ADA in terms of what the law and regulations require, but also have a range of direct experiences dealing with people with disabilities in the employment or educational context.

I am very excited to moderate this panel and to have it as part of this conference because, as a few of us were talking about beforehand, there really is not much out there, and certainly almost nothing written, about accommodating and dealing with students with disabilities in externship and clinical programs. We heard from the first panel about some of the challenges involved in providing accommodations in a classroom setting, challenges that certainly are very real. But in some ways, taking it to the externship and the clinical area (and I should say in using clinical here I am really talking about in-house programs), we really face some additional challenges that I know the panel will speak about as they make their remarks. These challenges include: what does it mean to represent a client while also having a disability and how do we deal with that in our educational context? In particular how do we deal with the fact that we are concerned not just about the person with the disability and the teacher, but we have added in a third party, the client or clients, or supervisors in the workplace? What does it mean with respect to accommodating students with disabilities when you have them work in teams of two, in which one student comes to a clinical supervisor, as has happened to me, and says, "I have a learning disability. I want you to know about it, but I do not want you to tell my partner about it. Deal with it." This problem is one that we have had in our clinical program and it raises interesting some questions, not only for the clinic itself but, of course, for future work experiences that students will have in which they will be working collaboratively with other people in the workplace. Working collaboratively is something that we do too little of in law school, but the clinic is often the first place where they are doing consistent collaborative work. Faculty and students have to think about how the student's disability affects or does not affect that work. If you are talking about students who are placed in externship or internship programs, who is responsible for providing the accommodations to the students, both the actual delivery of the accommodations and, of course, the financial support for them? What are the legal rules regarding these issues, but, in addition, what is the best practice with respect to those kinds

2. 29 U.S.C. § 794.

of questions?

To reiterate, the panel has a wealth of experience that they will be able to bring to bear on this topic so we will be hearing from each one of them in turn and at the end we will leave a good amount of time for questions. I will just remind you when we get to the question stage, please come up to one of the microphones because not only is this being podcast, but we are going to produce a transcript of the conference so that would help us be able to do that. So without further ado, Jen Gundlach.

JENNIFER GUNDLACH: Thank you for inviting all of us here today, Bob. It is always a real pleasure to come back to my law school not only where I have taught, but where I was a student and to see how it has changed. It was interesting to hear the panel this morning because as a clinical professor and a disability rights advocate, I really come at these issues very differently than a Dean of Students Office or Disability Support Services Office might be approaching this. They are thinking about the bar that they need to meet as far as all the cases go. And what they were saying is true, that unfortunately a lot of those cases that are litigated really are in favor of the law schools regarding the choices that are being made about reasonable accommodations. I tend to be a bit of a critic of some of those cases and feel like we can actually be raising the bar significantly higher still without a lot of undue burden to the law schools. We should not be shooting for that low bar, but we can be raising it a lot higher, especially within the context of clinical legal education.

For those of you who do not have a real clear idea of what clinical legal education is, it can take on a number of forms, but it usually means that there is some capacity where students are practicing as lawyers. In many cases they are actually representing clients, though not in all cases. There might be mediation clinics or some other kind of a situation where there is not a direct client representation, but they are serving in a representational role as a lawyer. It is our obligation as clinical professors to supervise the students in that context, but also to provide an educational component as well. So we often teach a seminar that may focus on any number of issues not only relating to lawyering skills, but also to bigger picture issues—substantively within the practice area of the clinic or also issues relating to professionalism, legal ethics, cultural awareness about the practice of law, you name it.

There is always been this sense within the doctrinal classes that it is very easy to approach these cases under Section 504 and under the ADA as an academic situation, where you have to follow a very strict analysis: considering whether it would fundamentally alter the curriculum and what not. But in clinical legal education, we have more of a quasi-employment

situation, where we have clients and there are certain professional obligations that are inherent in what the students are doing. That being said, I continue to view my primary role as an educator and a mentor first, rather than as an employer. I really do not view myself as an employer of students and thus, it would be a faulty analysis to be thinking about accommodations in the clinic only in terms of essential functions of the lawyering job. However, I do think it is helpful within the context of the clinic to think about “what are the essential functions of a lawyering job?” There has been some scholarship that has tried to capture that and I think everybody who has written in that area has admitted that it is very difficult to do it. It is difficult to come up with a concrete list of fundamental aspects of lawyering and even more so in the context of clinical legal education. In other words, are there really lawyering skills that are so fundamental to being a student attorney in a clinical program that a student has to perform all of them to be able to be in the clinic? My position is that there really are not any and that is probably a pretty provocative position, something that my Dean of Students is back there quaking in her shoes hearing. But I truly feel that, similar to what Professor Lerman was saying earlier, the clinical legal education occurs within the context of a very individualized, closely supervised setting. There are usually anywhere from six to ten students in the clinic that you are supervising and it provides for an incredible opportunity to problem solve and think creatively for all of the students, regardless of whether or not they may have disabilities that need accommodation.

Clinics provide an opportunity for students to engage in a very critical, reflective process about their role as lawyers representing clients and about their position within the legal profession as a whole. In some ways, it makes my job quite easy. It is such a natural outgrowth of all of the conversations that I am having with students, including those with disabilities, to think and talk with them about the areas that challenge them and to begin to explore that as they are taking on this practicing role. Additionally, it gives me the opportunity to talk with them about their strengths. One thing that I did not hear at all from the panel this morning is the recognition that there are incredible strengths that individuals with disabilities can bring to their practice and part of my job is to help people begin to recognize that. I had a question this week from a colleague who said, “Well what would you say about a student who has ADD/ADHD who cannot organize their thoughts, who has got to work in a litigation context and has got to crank out a brief really fast? How can you possibly accommodate that person in a clinical context?” And I said, “Well, the first thing that you are focusing on, is determining if there is a challenge there. You must realize the fact that somebody who has that diagnosis often has an incredible capacity to see the forest over the trees and has incredible

strategic planning ability in a litigation context.” As a clinical legal educator, my job is to talk with the students and help them think about how their practice might be affected by their disabilities. But this is an important question to pursue with all of my students, not just those students with disabilities. This is really the kind of critical, reflective process that you want to be engaging in with all students, and I recognize we have that luxury because of the nature of the intimate relationship that we are able to create with students.

As far as the issue of teams goes, I do have students who I pair up on cases. I have had situations, just as Bob said, where one student has disclosed a disability to me and they have begun to think about whether to disclose it to the other student, or the other student is experiencing some aspect of the symptom of the disability and struggling with it and trying to figure out what is going on. But again, clinical educators negotiate those kinds of collaborative difficulties all the time between students, even those who do not have disabilities. There are all sorts of issues that arise between students: one person is not working hard enough; one person is better at this or that, and how do you negotiate that. It is a very natural discussion to be having in the context of the clinic. My point of view is that it is really essential for clinicians to play a role with students who have disabilities in these discussions. It is, therefore, important for the clinical professor to be informed about the disability. I have never had a student—probably because of the subject area of what I teach in—but I have never had a student who has felt uncomfortable disclosing their disability to me. Interestingly enough, I have never had the Dean’s Office, even in my doctrinal classes that I teach, disclose that an individual has a disability. As was said earlier, I would really appreciate having that information. However I can see why students would not necessarily want to disclose that to professors. I advise my students that if they have a disability, they should talk with the disability support staff about whether or not it makes sense to disclose it to any or all of their professors because it may be helpful for purposes of accommodations to talk about the risks but also consider the benefits.

Furthermore, I like the suggestion of having resources within the law school, not only as somebody who is a disability coordinator, but also as professors who are actually really good and creative at making accommodations, allowing those individuals to be a resource for other professors to speak to about ideas about how to come up with creative options. Some of the things that we have been able to institute in our clinic are things like a web-based case management system so that students can access their case files and everything that they need from the documents. Also, we have got scanners so we can scan in all the documents that they can access via the web. They can do their research from home, and this

assists not only students who may have physical disabilities but also those who may have mental disabilities who, for whatever reason, are not able to get into the law school and have other competing demands in their lives. There have also been situations where we have hired aides to come in and assist students with page turning, document review, note taking, faxing and the administrative aspects. One thing that came up this year was we had a student who was paired with another student who had a physical disability and the former student felt mixed about wanting to attend to the needs and help out this other student, but at the same point felt conflicted about her capacity to do her own work. Once she disclosed this to me, the three of us met and discussed the situation. The students brainstormed about what would make the most sense and their discussions were a critical component of working together and talking about what would be the best accommodation for their situation. We then presented it to the Dean's Office.

So there are those kinds of creative, problem-solving opportunities that I think can be really beneficial on many levels. It can be beneficial to include partners in that process so they get first-hand awareness and the chance to really problem solve with their partner. That is another collaborative aspect that is really important training for them as lawyers. They also experience, from their partner's perspective, the kinds of areas of law practice that still are inaccessible. For example, we had a situation where somebody had to go visit their client in a public housing building that was not accessible. The client was also disabled and had an inability to travel alone beyond his house. So we had this really interesting problem-solving moment of "How do we do this?" What is wonderful is when, especially if it is an obvious disability, the client can sometimes be brought into that accommodation process as well—it can be a very interesting discussion for everybody.

AUDIENCE MEMBER: So how was it resolved?

JENNIFER GUNDLACH: They ended up meeting in the lobby of the building and they were able to find a private room that they could meet in. We had another very similar situation where we actually had the other partner go to meet the client and bring him to the law school. So there are lots of situations and resolutions. But again what is interesting is having students with disabilities in the clinic also creates enormous opportunities for us as a class to have discussions about accessibility to courts and to the various jurisdictions where we are practicing. We have a couple of courthouses and venues in Massachusetts that still are inaccessible. To talk about the issues relating to that can produce an incredibly empowering

moment for the students to think about, “Ok, is this a political moment? Is this an advocacy moment?” There is also this double layer of representing a client who has a disability, and also being a student attorney who has a disability. There is just some really nice bonding that can go on there as well.

To me, the more you can talk with students about the benefits, the strategic benefits of disclosure to those who are going to be involved, the better. I do not think students are obligated to disclose to clients and, in fact, I think there are lots of reasons why you do not want to do that. I certainly do not think the ethics rules—and by the way I teach Professional Responsibility—impose any kind of a requirement to disclose to clients, assuming that the student attorney, with or without accommodations, is meeting the professional responsibility obligations that they have to the client. So I would say we need to really constantly think about raising the bar; think about creative solutions and seek the input of relevant professionals and invite the students to have other professionals join in that conversation.

KERI GOULD: Hi. I would like to say first that I am thrilled to come back to my law school. It really is a special feeling and it is very exciting. Secondly, I would like to agree with Jen that open communication is really the key to trying to resolve a lot of these issues. As Bob said, I am the Assistant Dean for Professional Skills, so within all that I deal with a pretty extensive externship program that we have—the trial advocacy programs. We also have a pretty extensive trial team competition group that goes around the country and participates in trial competitions with which I deal. There are a couple of hybrid clinics that are sort of under my auspices and other skills courses as well. So among all those different kinds of courses, the issues of students with disabilities are very different and I think the accommodations that have to be made may be different as well. I also teach a couple of online courses for New York Law School and those issues in that are very interesting for students with disabilities.

Let me talk about externships first. For those of you who might not know, externships are where students work with carefully selected mentor attorneys who are working in the community so they leave the law school and go out and work with the lawyer. In our school primarily, though not solely, the lawyers are working for not-for-profit or government agencies. Students work there approximately a day and a half a week and they come back and have a two-hour seminar, the externship seminar. In our school in the fall, it is a general externship seminar. In the spring, it is divided up by substantive area. In the summer, it is all together.

In thinking about this, I concluded that there are really three main areas

where disability issues may arise. Those areas are: (1) the selection of the placements or where the students are going to work; (2) the work environment at the placement, such as what the commute may be, how are they going to get to the placement, the physical environment of the placement itself, and any kind of work accommodations with the kinds of work that they are going to have to be doing at the placement; and (3) the seminar.

Let me start with the seminar because that might be the easiest. In designing the seminar—although I was not necessarily thinking about the students with disabilities—I was thinking very much about different kinds of learning strengths and learning styles and how to make a seminar that will give students with very different learning styles something to grab onto within the course itself. The seminar classes are very small. They are usually not more than twelve students, sometimes they are less, with one professor. Again this is a situation where participation in the class really is an essential element. How the student fulfills that participation may be able to be accommodated but I think it is an essential part of the class. We have short, written assignments which I call SWAs. The short written assignments are due every week. Students have to hand them in; they have to be at least two pages and are based upon the reading that is given for the week and also it draws upon the student's experiences within their placement. For many of those short written assignments, students have to talk with their mentor attorney. Again, this is going towards that open communication and getting students to feel that they really can approach the people for whom they are working in an externship situation and can speak with them about a lot of things. You know what happens a lot with students is they feel so grateful that they have gotten this externship placement that they do not want to bother the mentor attorneys because they seem very busy and so the students do not want to ask any questions. That is when a lot of problems begin; whether you have a disability or not, it is the same for all students. So what I try to do with the short written assignments is not only have them reflect on their experience and what is going at their placement, but also to start communication with the mentor attorneys.

Students also have to keep time sheets. Again this goes to what they may have to do once they get out of law school and are practicing where they have to keep track of their time. It is annoying, but it teaches students both to keep track and get some realization of how they are spending their time and how much time it may be taking them to do certain assignments, which might be helpful for them to realize how they have to arrange their work schedule. There is also the element of class participation. Again within the class there is a lot—it is very interactive class—of discussion, there is a lot of talking about your placement, maybe comparing how things

are in another student's placement. So there is that. There is also a collaborative student presentation that is graded, which is a big part of the class, and that may bring up some of the issues we are discussing. I do not assign students to partners. Students self-select the partners, which hopefully will help if the student has some concerns about working with others. In that case, like in the example that Jen gave, at least there was a sympathetic and empathetic partner who, even realizing there may have been a problem, was willing to work through it. That is my hope in having the students select their own partners. It is not to say that there are not problems sometimes but at least they are not feeling like they have been made to work with someone they really think will be unsympathetic.

Part of that also is the group has to meet with me or the seminar professor at least twice before they do their presentation. In doing that we really sit down and sort of throw out all these ideas about what the topic of the presentation is going to be and what the format of the presentation is going to be; they have to do a time line to really think about who is going to do what when. Again this helps to involve the students in the way with which they feel most comfortable. Whether it is gathering information, standing up, doing a simulation, or doing a whole multitude of things that they could do, this will allow the students to participate in a way that they feel most comfortable.

The course materials are online on a web course. I think that helps the students because they can get to that information anytime they want. They can download it anyway they want. If there are students who have visual impairments and they need to download it and print it in big print, I think that they can then do that and it just helps people to access it whenever they need to.

In addition, we have a fourteen-week course and around the middle of the semester, we have one on one meetings where the students come in and meet with me or the seminar professor and create their own agenda. So what are they going to get from me? What part of my expertise can I help them with? What are the concerns that they have? How are things going at the placement? How are things going with the class? All that sort of stuff. So if there are problems, the hope is that now the students who may not feel comfortable talking about their problems in the larger class are going to be able to come in and really discuss what those problems are and think about how to make it better and how to work things out. I found that students are pretty forthcoming and willing, once you come up with some creative ideas, to put them into effect and see that they can really effect how their placement or how their work situation progresses. They can sort of change the outcome if they were concerned that they were not getting out of it what they wished.

The second part is the selection of the placement. In my program, students pick up a booklet I call the "Help, I want to do an externship" handbook. That really sets out what they have to do for the application process and it gives them the list of the placements that we have. As I said it is a large program so we have, at any given time, hundreds of placements, maybe a hundred or so placements at any given time. They are supposed to read through it. The booklet also tells them what the expectations are of the class, of the timing they have to spend at the placement, all that sort of stuff. Then they have to come in for an interview, again with me or the other professor that works in my program, and they have to bring in their resumes and everything else. So they come in, you look at their resume, they fill out a form for the placement that they are interested in and give it to you, and you sit down and say "Well what is it that you want to get out of this externship? You know you have written down x, y, and z, but why do you want to work in those places? What is it that you want to get out of those placements?" And it is actually very interesting because sometimes students will just say "Well I heard that it is prestigious to work there." Okay, and what is it that you want to get out of working there? But you can really work with them because they have not thought it through. Many students do not think about what skills they want to get from working in a certain place or what they really want to do and how this will help them to do it. Once you start really discussing it with them you can say "Well this other placement might give you what you are looking for." Even some other things. You know I do a whole matching thing. In my opinion, for my program, students do not automatically just get to apply to wherever they want. I mean I take into consideration what they are asking, what are their interests. I take into consideration my knowledge of the individual mentor attorneys and the placement, then I kind of do a matching thing. For the most part I send their resumes out to where they are interested, but I will talk to them a lot about the placement and that may include things like "You know the mentor attorney at this placement is very smart and he is a great attorney but he is very abrupt, he is not very warm and cuddly, and you might want to think about if that is the kind of person that you really want to be working with because you may not get the most out of it. But if you go to this placement they are much more understanding about different things, they are much less formal and are easy going." Then we do sort of a matching thing and hopefully we send out to the places that are going to really work the best for the student. It does not have to be a student with disabilities.

Again go into some of the strengths. I had a student who was hearing impaired. He wanted to work at the DA's Office in the Appeals Department because that would be research and writing. That is what he was interested in. That was the area of law that he was interested in, but he

was concerned about how he would be able to do in the courtroom with the trial aspect of the DA's Office and was not even interested in applying for that. So we were able to find something for him that would again go to his strengths and make it for a good work experience.

Part of the interview that I have with the students is discussing them as students and consumers. Again going back to the students "Oh my God can I get that placement?" Go in there, talk to the people, find out the timing, find out if it is accessible, find out what you are going to be doing and if it is going to meet what your expectations are, and then make an informed decision if an offer comes to you that that is the place you want to work. But you have to really go in there and talk, not just kind of sit there and say "All right, what ever happens, happens."

Once the students are placed, you may encounter some of the accommodations concerns. There is always the issue of whether the student wants to inform the placement, even at the interview, that they have a disability. Sometimes a physical disability may be obvious but they have to talk about it, and what to do if the students did not talk about their disability or if they did and they felt that what they had said is now being ignored now that they are actually in the workplace. Again, that is a matter of open communication with the students, having the students come in and talk to me and trying to work out with the students creative options for dealing with that problem and having them then go and solve it. My preference is always to work with the students and have the students try to go back to the placement. There have been, not very many, but there have been some times when I have called the mentor attorney myself and discussed the issue. At other times the mentor attorney called me. It is very unusual, but I think there has been two or three times, and I have been doing externships for a really long time now, twenty years or so, where I have actually removed the student from the placement. But I think we, as educators, owe it to our students if the placement is really almost being abusive to the students or not making the most of the students, to go in there and do that as a final solution if it cannot be fixed any other way.

I think there are other issues that come up in some of the other courses I teach, like in some of the skills courses and in a trial advocacy course. I teach a trial ad course in an intensive method and also a concentrated mode so it is either a two-week course or a seven-week course. In those courses you have to stand up and do it. That is just part of the course and you got to do it. What I try to do is have very understanding professors teaching the course, and there have been times when I have assigned a certain student to a particular small group that I thought had the most sympathetic or the most empathetic professors and that has worked out very well.

You know interesting questions come up with the idea of external trial

teams—it has not really come up but I have thought about it—and they do not necessarily deal with students with disabilities but instead with students who do not have English as a first language and have a very thick accent. How does that play out with being on a trial team? I had one student who came to me with concerns about putting a woman on the trial team who was obese and how that would look. We had a long discussion about that. But these are issues that do come up and are going to have to be dealt with at some time, and especially as law schools start doing these things more and more. Then just a very brief note, the online course I teach has—you know you would think “Online courses. Okay. They do not have to talk. It is great.” But even the typing and interacting on the computer can be very frightening to some students. I think overall students really enjoy online courses. But again, just the open communication and sort of talking a student through things and saying, “Well just try it and see how it is,” has worked out when it has come to my attention in these classes. Thank you.

ROBERT DINERSTEIN: Irene.

IRENE BOWEN: Keri was talking about having done this for a while. I was a teacher, before that, I was a student teacher, and then I was a law student. While I was in law school in 1976—

ROBERT DINERSTEIN: —that was just yesterday.

IRENE BOWEN: Yes, and I must say it was before there were regulations from the Department of Education, did they not come out in May of 1977?³ So when we really had no idea of what we were doing, two other students and I, who were all second year law students, got a grant from what was then the Department of Health, Education, and Welfare to start a legal services clinic. That was the beginning of the National Center for Law and the Deaf, later changed to Law and Deafness. (We still said “the Deaf” in those days. Things were a lot different then. Fortunately they are much better now.) That is one of my vantage points here, is having been a student who put in twenty hours at the clinic every week and then also supervised other law students. I then worked at the Access Board and have been at the Department of Justice for a long time now. I will not claim that I wrote the ADA. The Commissioner and I were just saying that most people who claim that they did that, actually did not. But I was there

3. 34 C.F.R. §§ 104.1-104.61.

coordinating Section 504,⁴ Title IX,⁵ and Title VI⁶ matters, and then I was one of the members of the task force that worked on the ADA, went through the notice and comment process, etc. So I come at this with that experience and also having supervised many attorneys and interns with disabilities.

Bob and I were talking about how sometimes our section is a magnet for people with disabilities because we enforce the Americans with Disabilities Act. There are two things, I think, that contribute to this. One is that people see that we have a lot of people with disabilities employed, proportionately, and assume that they will get accommodations, which they do. That is one of the things that I am pretty proud of that we do, not always as well as we could, but generally pretty well. Secondly, originally a lot of attorneys with disabilities, and I do mean a while ago, wanted to do advocacy primarily in the disability field. I think that is starting to change, and that individuals with disabilities have more options now. I think that is a good thing when people with disabilities can do things that are not necessarily related to their disability. I think that is a good sign of mainstreaming, so to speak. People should have a choice of what kind of work they are going to do.

Also, at Justice in my section we interpret the Section 504 rules regarding federal financial assistance as well as Titles II and III of the ADA, which apply to public entities and private entities respectively. So all these statutes come into play here. I just cannot help myself; I have to read the rule. The first rule is to read the rule. I actually went and read the 1977 regulation of the Department of Education—formerly the Department of Health, Education and Welfare—and there are some specific things that apply here. As shorthand, I am going to call the entities (1) a school; and (2) a placement, regardless of internship, externship, clinic, or whatever. I think one of the fuzziest issues is who is responsible for what. I agree that there is not an employment relationship generally between the placement and the student. But generally there are some principles we can look at and again you look at the rule first.

This symposium is supposed to be about brass tacks. I looked that up on Wikipedia. I thought brass tacks had to do with boots or something, but it really has to do with something else. A long time ago, even before I was in law school, merchants would lay out fabric and then tack it down at certain intervals, as a way of measuring the fabric. Brass tacks means you get

4. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794.

5. Title IX of the Education Act Amendments of 1972, as amended, 20 U.S.C. § 1684.

6. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d-2000d07.

down to the nitty gritty facts and you clear up the confusing details. But I think you have to lay the fabric out before you can get there, so I am just going to do that very briefly.

First, what if you are a university who is a recipient of federal financial assistance? There is one university that is not and I do not think it is represented here, is that right Howie? Is there still one?

HOWARD KALLEM: Four now.

IRENE BOWEN: Oh, Okay. It is a trend. There are four schools that do not accept federal financial assistance and, therefore, are not bound by Section 504. The rest are bound by it and basically it says that you cannot discriminate in any program that you operate. But the Section 504 rules say a little bit more than that. They also say that you cannot give significant assistance to an entity or person who discriminates.⁷ I think when you send one of your law students to clients in a clinic or participate in other ways in an external or internal placement that you are providing significant assistance to that placement. So if they are discriminating in ways that we will talk about, you would have to withdraw that assistance. You have to be sure they are not discriminating and if you become aware that they are, it is my view that you have to withdraw that assistance. I will give you an example of that in a minute.

There are specific provisions in the regulation that say that you cannot discriminate in academic or occupational training that I think are right on point here. If you want to read these rules, which I recommend highly, please read 34 C.F.R. Part 104. The most significant provision is section 104.43, which is entitled "Treatment of Students." It covers academic and occupational training, and also says that if you consider that participation in programs that you do not wholly operate is equivalent to or part of the educational program, then you have to ensure that that other program is not discriminating. It is similar to the significant assistance provision, but it is basically saying that if through a partnership of the types that we are talking about, you are in a way and in effect making that other program part of yours, you have to ensure that there is equal opportunity for participation. That is the key here: equal opportunity. Not every placement has to be physically accessible to people with mobility impairments, and not every placement necessarily has to provide all accommodations; but there has to be a range of options and you have to ensure that this is the case for your students.

7. 34 C.F.R. § 104.4(b)(v).

There are of course the provisions about academic adjustments⁸ and the question of what are the technical standards⁹ that you have to meet. I think there are some essential requirements for being an attorney, whether or not you are following an employment analysis, which I think we will address in a minute. When people say that they want to go to law school and ask what they should study in college, I always say English or Philosophy. That is because I think an attorney has to be able to reason, to do critical thinking and to communicate. Those are the essential functions of most attorney positions. Furthermore, many attorneys have to actually deal with people.

There are some who do not and there are also a lot of attorneys who do not have to appear in court. So I agree with someone who said earlier that not everyone is going to be the courtroom litigator. We do a little bit of everything in our office. We have litigators, we have regulators, we have coordinators; and we are often able to shift responsibilities around in that respect; and that is probably easier in an employment setting than it is in a sort of time limited, more focused placement. But that is another thing to be thinking about. Basically, I believe you have to be able to think, research, and communicate. That does not mean you have to be able to speak, it does not mean you have to be able to hear, it does not mean you have to be able to see. But you have to process information in whatever way you process it.

Title II and Title III of the ADA have similar provisions, although not as specific as the Department of Education's rule about non-discrimination, about significant assistance, etc. The ADA regulations, if you want to look at them, are in 28 Code of Federal Regulations, Parts 35 and 36, as issued by the Department of Justice.

Okay. Some more brass tacks, so to speak, or application of these principles. I said that the school itself has to insure that there are adequate opportunities in its placements. It is really important to have a process in place for doing that, for determining what is expected by the placement itself, how well this student's abilities fit, and for how well those disabilities will be accommodated. The process is really key and in looking at OCR decisions (OCR being Department of Education's Office for Civil Rights, the ones that really decide these things), one thing that comes through pretty clearly is that if you have a process, if it is well documented, and if you follow it, OCR will often give deference to the decision that comes from that. You see that in all kinds of situations and Howie Kallem from Education, I hope, will correct me if I say anything wrong about what they do. But part of that process is having knowledgeable decision makers,

8. 34 C.F.R. § 104.4.

9. 34 C.F.R. § 104.3(k)(3).

having people who understand how the placement works and how certain disabilities affect people's ability to do a certain type of placement. Have the process established in advance; you need to follow it; you need to have adequate information; give a careful, thoughtful review, etc., and then document it.

Someone mentioned confidentiality issues. Apart from whether FERPA¹⁰ or any other statute prohibits or allows revelation of particular information, I think you need to be careful about what you might say to a placement and act in accordance with the decisions of the student. If the student does not want the accommodation or does not want their disability revealed, you need to honor that, but then the student also needs to understand that he or she is not going to get accommodations. The student has to understand that there may be consequences to that decision.

I have one example of this, not in a law school setting. I have two examples from large universities, so we will call the first one Large State University A, and then there is Large State University B, and I will try not to say their names. An ADA coordinator at Large State University A said to me that they had had a student who wanted a student teaching placement, had registered with Disability Student Services as a student with a learning disability, and had received accommodations in testing, but did not want anyone to know about her learning disability when she went to student teach. The supervising professor, trying to be helpful, told the supervising teacher with whom this person had been placed that this person had a learning disability and would need accommodations. The student was just mortified. She had thought that here was her chance, making it on her own, with no one knowing about her disability and her accommodations as a student. She did not think she needed accommodations as a teacher. What the college ended up doing then was withdrawing that placement, finding her another one where they did not reveal the disability, training supervising teachers, and posting policies on their web site. You should also be including information about non-discrimination on the basis of disability in anything that you put out to potential placements and to those who may supervise them.

The other large state university, State University B, is the one that my son attended. He teaches on the Navajo Reservation now. State University B has a program through which you can decide in advance that you want to do your student teaching on the Reservation and then you probably will teach there. You do this whole cultural immersion program, a year-and-a-half program to teach on the Reservation and study Navajo culture and their writings through student teaching. While our children were at home, I

10. Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g (2002).

had tried to open their eyes to reality especially in the area of disability discrimination. So after he became a teacher, he called me one night and said, "Mom, you are not going to believe this." I said, "Well, I probably will." He had told me a few days before that a student teacher who used a wheelchair was coming to his school, a boarding school. I had said, "Excellent," because I had been there, and I had said, "I know that they have basic accessibility, and you have couple of students who use wheelchairs." So he called and he said, "Mom, she is not coming." I said "Why?" He said that his school apparently called State University B and said, "We cannot accommodate this student teacher." It was on a Sunday night before she was to be there on Tuesday. So, being me, I said "You should file a complaint with the Bureau of Indian Affairs, the state, the school, and people who fund the school—" because it is partly a charter school. He said, "Well, I do not know if I will do that Mom, but I am left here; it is not right, and now nobody is coming this semester from my university in the program." So, in that example, the Bureau of Indian Affairs funds the school so the school is a recipient. It is also a part of the state school system. I followed up with him later and said, "So what happened? Are you going to file a complaint? Should I do something?" He said, "There are no more student teachers coming from State University B." They did the right thing. That is absolutely what they should have done. I think the University was so furious that they are not even trying to make it right.

I just want to say that we accommodate in so many ways in our office. A person who comes already has all of the basic reference materials in alternate format because as part of our responsibilities, we provide them to the public. We provide interpreters. We have three interpreters that are shared by five people. Because we are a pretty large office—we have 125 employees and students—we are able to have student workers and others sometimes accommodate in sort of the "as needed" ways such as doing filing, fetching books, that kind of thing. But then we also have readers who are assigned to individuals who are blind or have low vision, etc. I want to encourage all of you to do that and to encourage all of your placements to do that.

ROBERT DINERSTEIN: Christine.

CHRISTINE GRIFFIN: What Bob did not tell you in the introduction was that I went to Boston College Law School. My Boston College colleagues are here. I was a law student with a disability. I was in a clinical program with my disability. I did internships and went on to employ lots of lawyers with disabilities and now at EEOC have internship

opportunities in my office. So I think like Irene, I sort of run the gamut. I am also a veteran, a group of us who were veterans at Boston College Law School started a clinical program called homeless veterans shelter program. And that exists today and I think involves multiple law schools, and others are involved in that clinical program. So I looked at this again. You know I think, like Jennifer, Irene, and Keri, that we do not look at just what is—what the law says needs to be done. We look at it in a much broader sense and we look at what value people in general bring to any of these programs. I had experiences, especially in the clinical program, where I really talked a lot with my mentor and professor about what did it mean, what was the clients' reaction when they came in and they saw their lawyer was a woman with a disability? I think in one case it clearly was a problem for one of my clients, but we decided actually that was just tough luck. She was getting free legal services from this program and I could provide them. It did not matter if she did not like me. What we talked about was what would we do if I was a different race or ethnicity that she did not like? We would not do anything different and so we would not change—it was not that I was not providing her good services. It was that she was a little wigged out about the wheelchair. She was an interesting character.

It was a divorce case and she kept thinking I was making her file for the divorce. She kept thinking I was making her get a divorce. She could not quite get it through her head the divorce was going forward. Her sisters would call me and say “Why are you making her get a divorce?” So it was very interesting.

I think one of the more interesting disability related events in that clinical program was when I represented a man who had a disability and was trying to get Social Security benefits. We had a lot of discussions about what that was going to be like when I went to that hearing in front of the ALJ. I certainly was much more disabled looking than my client. How was that going to play out? Was I doing a disservice? We had lots of discussions about this. The client did not mind at all. The client thought it was just great but myself and the professor were not so sure—I raised it because this was a guy with a back problem and even getting his doctors to write the documentation that he needed was like pulling teeth. So I could just imagine an ALJ sitting there saying “Who is the client here and what is going on?” Interestingly enough we won the case, but you know in that decision the ALJ kept going back and forth calling the client a he and then sometimes calling the client a she.

So some interesting things do present themselves in clinical programs and in internships. When we talk about who is really responsible for providing the reasonable accommodations, it sometimes comes down to coverage. Is an intern an employee and therefore covered by law? I think interns that receive compensation for their work, and some do, fit more into

that category. Although I have seen some people do internships where the placement treats them as if they are a contractor. So there is all the stuff that goes with whether you are an employee or whether you are a contractor and what that means about whether the employer owes an obligation to the student of any kind. I will not go into what all the factors are, but there are many factors and a lot of you probably know them. They determine whether you really are a contractor or whether you are an employee. I think more unsettled is the area of when there is an unpaid intern. In the federal government, lots of agencies do not pay their interns

The externships are programs run by the school. I was not going to talk about that very much because I think you have covered it. But I clearly think the school is responsible. When there is an externship, this is part of your training. I think you are paying tuition just like in the clinical program. Obviously I thought BC, at the time I was there, was responsible. If there were other people that needed accommodations, the school would be the one responsible. You pay tuition to be a part of that clinical program.

AUDIENCE MEMBER: What about if they are under a student practice order that is from the placement, not from the school?

CHRISTINE GRIFFIN: Are they paying tuition to be in that program that year?

AUDIENCE MEMBER: They are paying tuition but—

CHRISTINE GRIFFIN: Well, I think it would be incredible if the employer—if the placement wants to provide the accommodation, then why not? I mean save yourself some dough. But if they do not, the school is absolutely responsible for paying, I think.

AUDIENCE MEMBER: It is a shared responsibility?

CHRISTINE GRIFFIN: It could be. But I think you know if push comes to shove and no one is providing the accommodations and that placement is not going to happen without it. I think the school has to step up. So I think when you now have an intern in your office that is unpaid, what is your obligation? There is a case that we found out of the Second Circuit in 1997 where the court said that an unpaid intern was not an employee covered by Title VII because they were not an employee but

merely a volunteer.¹¹ Now, I am not speaking for the EEOC right now; I am speaking for myself. I really do think that when you measure the benefits of an internship to the individual as well as to the organization that there is some obligation to provide the accommodation. These unpaid internships are extremely popular in the federal government. Frankly, for a student with a severe disability, this is going to be one of your only opportunity in offices like Irene's and mine to get experience that you can trade on later. We see the unemployment rate for people with disabilities is still what?

ROBERT DINERSTEIN: I do not know.

CHRISTINE GRIFFIN: You name it. Fifty, sixty, seventy percent unemployment of people with severe disabilities. Any one of those numbers is so high, it is abysmal. To provide someone with an experience that they can use to get employment in the future is really important. When you have an unpaid intern you are obviously obtaining labor at no cost. Employers also use internships as a means to select permanent employees—lots of the federal agencies actually do that. This is an opportunity to assess the interns' abilities and performance before actually making a selection decision. Graduating students, particularly law students who are seeking that specialized experience, really need this work during law school in order to get a job. I mean, if we all flipped burgers in the summers between years of law school, would we really be that marketable? So this is a way for the people to get their foot in the door. Studies have shown that a law student's ability to obtain employment by graduation is greatly impacted by their ability to obtain real legal experience. Many law students are able to obtain academic credit for some of these internships. They are no longer just something to do for the summer, but really have become a prerequisite, I think, for employment. So again speaking for myself, I think an unpaid internship really goes beyond being just sort of that volunteer. Now would the law agree with me? Would the judges agree with me? Probably not. I think push come to shove, if you are not an employee as defined by the law, you would have a hard time alleging that you should have been accommodated and you were not. But I think going back to that whole issue of should we do it, could we do it, I think it is critical that we do it. Like Irene's office, we do—we have three interpreters on staff. We are able to provide just about any accommodation that anyone would need in the workplace. And if the Federal government cannot do it, we should not be out there arguing that others should do it. So

11. *O'Conner v. Davis*, 126 F.3d 112 (2d Cir. 1997), *cert. denied*, 118 S. Ct. 1048 (1998).

like the DOJ, I do think that the school is really in the best position to really try and facilitate things that happen in internships. I think it is probably healthy to know what is happening to your students with disabilities as they go out and they work in different internship programs. So I am going to stop here and leave time for questions.

JENNIFER GUNDLACH: Bob can I follow up on one point since I was the first one?

ROBERT DINERSTEIN: Sure.

JENNIFER GUNDLACH: The idea of saying the provocative statement that I did that there are no essential lawyering skills. The idea behind it is that in a clinical legal education program especially, these are students who are getting into these skills for the first time and trying them on for size and seeing what works and what does not. But even in my substantively specific clinic there is an array of skills that any student in any case and any client may or may not require. So for me to try and articulate that somebody has got to be able stand up and do an oral argument or write a twenty-page brief in a two week period in time or anything like that is ridiculous. So instead what I do is I have created a very long list of grading criteria so it is very clear the kinds of things that students will be evaluated on, as well as a list of goals for what they are going to be hoping to achieve. What I want them to be walking away from the experience having done in some capacity, but again none of those are necessarily critical because there is just no way you are going to have all of those in any given case.

ROBERT DINERSTEIN: Okay.

JENNIFER GUNDLACH: Alright.

ROBERT DINERSTEIN: We do have plenty of time for questions so if you would come up to the microphone, state who you are and where you are from that would be helpful. Thank you.

RUTH TOWNSEND: My name is Ruth Townsend and I am from George Mason University. I am in the equity office. Among other things I am an AVA coordinator. My question relates to internships that are not associated with an institution like law school but instead is a mandatory placement like student teaching. I mean, we are talking about that internship as a program. Anybody who participates in that program

benefits from it so it has to be accessible in terms of program access. So it still has to be accessible even though it may not be an employment situation. What we have done with volunteer situations is look at the program access. The program has to be accessible because they are actually working in an employment sort of framework and for determining what has to happen in terms of accommodating them. So I mean, you would not be the enforcing agency. If it was our program OCR would be the enforcement agency, but if it was, you know, a private it would be just this. So are we looking at more of an issue of who is enforcing access versus access required?

CHRISTINE GRIFFIN: I think here we are talking about access—is access required? For enforcement, if they are not an employee it would not be the EEOC.

RUTH TOWNSEND: But we still have to accommodate because it is a program and the program has to be accessible.

CHRISTINE GRIFFIN: I think under the Department of Education yes.

ROBERT DINERSTEIN: Yeah.

IRENE BOWEN: I think you are doing the right analysis. I mean I come at this from the view that if somebody sues you, what are you going to do? Or are we going to sue somebody? Then what are they going to do? It is just a stark nature to go through, “Well, why is this covered and what are the relationships of the schools and the programs?” But yes, the school is operating a program of providing these opportunities. Those opportunities have to be equivalent overall for people with disabilities compared to others. Then the person on the other end—the placement—is separately covered as an entity that is either a Title II or Title III entity in a non-employment context. But I also think that you need to use the employment analysis in many instances to get to the answer of what is required and it is often going to end up being the same result. Whether you are looking at what are the modifications required or what are the reasonable accommodations, we still get back to what is reasonable. We get back to not too big a burden on you and the placement. But I think you are absolutely right in the nature of the analysis.

ROBERT DINERSTEIN: One thing I think that if it comes a little bit in terms of not legal responsibility not program integrity, is whether you

want to keep working with a workplace that would not want to provide accommodations. I am not talking about even the cost of it but just the comp—an entity that says “Well we do not have to. We are not going to.” That, in addition to pulling out a particular student who may be therefore unable to be serviced, you might decide it is just not the kind of place where you want to work. Because we do have this valuable resource and I very much agree as well, students are paying tuition to us. That puts a responsibility on the law schools but part of that responsibility is to model the practices including with whom you interact.

CHRISTINE GRIFFIN: Is anyone here from Northeastern Law School? Some issues I know we hear about get raised with this co-op program and are very interesting. Who pays for the accommodation? Some of them are paid and some unpaid co-ops, so there is that whole issue regarding the accommodation.

RUTH TOWNSEND: They do not get academic credit for it.

CHRISTINE GRIFFIN: And they do not get academic credit.

RUTH TOWNSEND: They are hired to do something, right? But no academic credit.

CHRISTINE GRIFFIN: Right. But it is part of their law school experience. Their program is designed to include this. So everyone must participate. You do not get to say “Yeah, I am taking the next semester off. I am not doing a co-op.” So you actually have to do it. So this issue has come up time and again. We would get calls and have discussions back and forth about who does provide the accommodation. I think the position always was hopefully the employer. But when push comes to shove, Northeastern would do it, right? So . . .

AUDIENCE MEMBER: I am curious.

CHRISTINE GRIFFIN: I always thought that was very admirable.

AUDIENCE MEMBER: I am curious whether any of the panelists think that in a school that does not require a clinical education, and I think in the country there are only about four schools that actually require it, but this school like many of the schools in this conference and like the other schools represented have extensive clinical programs in which we think are very important for our students to participate. I wonder if anybody

thinks—not so much even your personal values—but whether you think it would permissible for the law school to say “You cannot do this clinic because you do not meet our qualifications so we are not going to let you do clinic.” In a situation where it is not a required program but might be considered desirable.

KERI GOULD: I think when you have reached that point it is critical – in many cases; all of these cases actually go to litigation. It means that somebody has given up in my opinion. That I would find it hard to believe that there is any clinical program that there is not some feasible way of finding a reasonable accommodation that is workable for a student. Even if there is not, then I think you find a way to offer it as an independent study.

ROBERT DINERSTEIN: Yeah.

KERI GOULD: Or do some alternative arrangement, reduced credits or whatever. But I think so much of this is because one or both sides get too rigid about what they think is a reasonable accommodation and you almost have to kind of step away and then take a deep breath and come back together and say “Okay, we need some more perspectives here. Let us keep this dialogue going.” And do not give up on that process.

CHRISTINE GRIFFIN: Right. We had an intern at the disability law center who was autistic and brilliant. He could recite statutes just off of the top of his head. Just ramble it right off. What we learned pretty quickly was he could not interact with clients. So we found, as Jennifer said, we found his strengths. He had a very successful internship. But it was because we were willing to say “Okay, originally that is what we hoped this intern would be able to do is to interact with clients but you know what? We can shift gears here and there is certainly enough work to do and he will just not do that part. He will do lots of other parts of this internship.” He was a brilliant researcher and writer. He had these great strengths. Maybe someone who is a people person was not that great at research and writing. So you find those balances. I really think you are right. It is very hard to think of a circumstance that you cannot work with or work around.

JENNIFER GUNDLACH: Educationally that is such a great moment of self discovery as well. So for that student to know that the kinds of jobs that he should be looking at, and what he will be very successful doing and not being involved in something else. It is wonderful to be able to do that in a context of a school where hopefully there is a lot of discussion and sort

of a reflection on what is going on and how you should take that into the future.

ROBERT DINERSTEIN: Jennifer told me that she was very offended by the conversation. She had—she has to teach a class so.

JENNIFER GUNDLACH: The next question I am going to take it personally.

ROBERT DINERSTEIN: Thank you Jennifer.

AUDIENCE MEMBER: People are also . . .

AVIS ANDERS: Avis Anders with the Washington College of Law. The question that I receive most often from students has to do with disclosure. Whether and when they should disclose to the field placement that they have a disability. For example, I had a student with carpal tunnel syndrome who had difficulty typing, should she tell them during the interview? Should she tell them after the interview had completed and she had been offered a job? Or she should just wait and show up and deal with it then? The other typical question is should they disclose once they are in the externship and having some difficulties that they had been hoping to avoid but it turns out their depression, their attention deficit disorder, or some other hidden disability is turning out to be more problematic. Should they tell the field placement and how honest should they be? But then and I started answering them with that response. “Well, legally . . .” and then I thought no, no, no, that is not what they are asking me. So I was just wondering what you thought about that.

CHRISTINE GRIFFIN: Well, I think that if you have an obvious disability and you roll into the interview, they know. So we are only talking about people with hidden disabilities. This is what I advise people: if you do not need an accommodation, you do not honestly think you are going to need an accommodation in the placement, do not disclose. It is absolutely nobody’s business to know that you have a disability. If you know you are going to need an accommodation, you know up front, then I think it is always better to raise it up front. I do not think it is good to get in there and then say “Oh, okay now that you have hired me I have something else to tell you.” I do not think that ever serves a person well. If the person really believes—if they truly think “Gee, I am really hoping that my depression is not going to flare up during this period of employment,” then I do not think you have an obligation to tell them. I really do not. I

think that if something happens while you are in the placement and you need an accommodation, then that is when you deal with it. So I really think it is—for me it is degrees of what you really believe at the time you are accepting that placement and what you are going to need.

JENNIFER GUNDLACH: I think this is one of the hardest questions. Partly because there are so many types of disabilities and partly because as was mentioned the students do not always know what they are getting into. You may have a disability that is exacerbated by stress and you may not know that it is going to be as stressful as it turns out. I guess from a practical standpoint if you can share that with the one doing the placement and sort of talk it through and sort of figure out how much should I reveal? How much should I not? If you have migraine headaches that come on unexpectedly but somewhat frequently how is that going to affect you? If you have an allergy to something in the environment, you do not want to be placed in a place where that substance exists. So these are all things that are very personal, especially if they are not visible. I mean even an individual whom might make it through an initial interview even though they are hard of hearing, may somehow be able to read lips adequately, which does not usually work but let us just say they can, it is going to be a lot more difficult to do that in the clinical placement or if you are going to court. I think that if the student in that instance does not—tries to act like they can do more than they really can or does not reveal the difficulties, they are going to have a—it is going to really cause hard feelings and be difficult to get the accommodation later. So all of these things have to be weighed. I am not sure about the right answer.

IRENE BOWEN: I think there is no clear answer. It depends so much on the student. How comfortable the student is with discussing the possible disability. I mean another thing that the student should think about is would the student want to do the externship, work, or placement at a place that is not going to be willing to give accommodations. Just from a politic standpoint. I once had a student who was gay and had on their resume that she had worked at a lot of organizations that did gay rights stuff. She said to me “Should I take the stuff off?” I answered, “Well that is up to you.” If that information would keep you from getting hired someplace, would you want to work there anyway? So that is another consideration. If you think that by saying what your disability is you may not get the job or the placement, would you even want to work there? But this decision is on the students themselves, how they feel, and how revealing they want to be about the disability.

CHRISTINE GRIFFIN: So does that answer your question?

AVIS ANDERS: It does.

JENNIFER GUNDLACH: It likely gives you a lot more questions.

CHRISTINE GRIFFIN: There is no right answer.

DONNA SHELTON: Hi. My name is Donna Shelton. My question is for Commissioner Griffin. You mentioned that you think that the schools should bear some of the financial costs. Our school does a dual matching system. We go out and find employers that we would like to work for and then it is matched. But in schools of dual matching systems, I wonder what your thoughts are in respect to a student looking for an educational experience—for someone who wants to work at a placement which would give him or her a different field background but the employer does not want to accommodate. Do you think the school should take the student's preferences into consideration?

CHRISTINE GRIFFIN: Well, I think what Irene said is correct. The school should not have a relationship with a placement that will not accommodate. Because it is not just this one student. I always look at it this way. What would you do if a placement said "We really do not want any African American law students." Okay. "We really do not want this or that person." You would not accept it. You would be outraged. If a placement says "We will not accommodate a student with a disability." They are saying we do not want a student with a disability. Do not send us a student with a disability. That is just wrong.

IRENE BOWEN: I think the problem is not usually so obvious. I mean most places are not.

CHRISTINE GRIFFIN: Right.

IRENE BOWEN: An employer saying "By the way, we discriminate against people with disabilities so do not send us anybody." That is just not going to happen.

CHRISTINE GRIFFIN: Well you would be surprised.

DONNA SHELTON: At least they do not say it.

CHRISTINE GRIFFIN: We have just been discussing a case where it was an employer who said “Oh no, we do not want applicants in wheelchairs.”

DONNA SHELTON: Thank you.

CHRISTINE GRIFFIN: I mean, it happens every day.

IRENE BOWEN: What is there to discuss?

CHRISTINE GRIFFIN: Yeah.

ROBERT DINERSTEIN: Other questions? Great.

AUDIENCE MEMBER: It is—just one.

ROBERT DINERSTEIN: Yeah.

AUDIENCE MEMBER: Just one that I wanted to raise that comes up when we talk about our clinical program, and Cathy Swartz and her colleagues sometimes talk to my colleagues in the clinic about these issues. I think clinical teachers who do not otherwise specialize in or are interested in disability have the same kinds of issues that lots of employers have, which is they are frustrated if they think a student has a disability and they cannot inquire of that or at least they do not know how to inquire about it. So I think the last time we did that, Cathy sort of offered that you should be able to say something like “do you not have—it looks to me like you have a learning disability.” We said “Well no, you cannot really talk about that.” You can talk about what the essential functions are of the position and the clinic, and talk about how the person is meeting or is not meeting that. But there is this kind of curiosity and I would say well intention. I think sometimes it can be not so, but certainly among my colleagues is well-intentioned curiosity. Yet I wonder whether or not—I mean I think we are telling them the right thing to say you cannot ask those questions—but it does reflect this kind of very real pressure that they have, which is we are the good guys. We want to be, we want to step in. We want to do these things and yet it runs up against what I think is an essential quality about disability issues and discrimination, which is, it is up to the person to decide what he or she will disclose, especially with a hidden disability. It is not for us, or as Irene pointed out earlier, it is not for the instructors to

step in and just say I think you ought to know this. It is really not our call. But I wonder if those issues have come up for you at all.

IRENE BOWEN: Well they come up for us in an employment setting when you see that someone is struggling with their job. And let's talk about once the placement occurs. If you see that somebody's struggling or is not coming to work on time or just is not getting their work done and you do not go and say "Are you depressed?" Or something real offensive.

I think you approach it a little differently. Is there something we can help with? Do you need or would you like to speak someone? Is there something we can do to say I will help you do your job? There are other ways to say it. You do not just say well you have a disability and what do we do? I mean you are trying to get to the bottom of it, but do you need to make modifications or accommodations without asking those prohibited types of inquiries. But you can certainly seek information about what you need to do or what you might be required to do so that the person can meet the requirements.

JENNIFER GUNDLACH: Well one of the things I try to do in my course is to talk to students. Have them reflect on supervision styles that work the best for them. A lot of that and you really bring it because a lot of people just do not think about it, especially students. Is it best for you to have a definite meeting date set every Tuesday at three o'clock and what do you expect out of the supervisor when they come at that time? Is it best if somebody just drops by or you go to the supervisor when you have a question? Many of those questions and a lot of those realizations about how you best work in the working situation go to a lot of the issues that are brought up when you have a sort of hidden disability. By making students more aware of those issues, and to have to talk with their mentor attorney about those issues, I think can help sometimes.

ROBERT DINERSTEIN: Well we have returned to being almost on time but I am glad we had the opportunity to extend this panel. Please join me in thanking the panelists for the second time. We will be convening in the sixth floor student lounge for lunch. It will start in about five minutes. For those of you who do not know the building, it is on this floor past the dining room. But there will be volunteers to help you. Also, please during the course of the day find an opportunity to at least stop by some of the booths here in the exhibitors room. We appreciate their time in coming out today and we will see you at lunch.