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Abstract

This Article is about “madness” in higher education. In *Mad at School: Rhetorics of Mental Disability and Academic Life*, Professor Margaret Price analyzes the rhetoric and discourse surrounding mental disabilities in academia. In this Article, I place Price’s work in a legal context, discussing why the Americans with Disabilities Act fails those with mental illness and why reform is needed to protect them. My own narrative as a law professor with Borderline Personality Disorder frames my critique. Narratives of mental illness are important because they help connect those who are often stigmatized and isolated due to mental illness and provide a framework for them to overcome barriers limiting their equal participation in academic life.

Keywords

book review, ADA, Americans with Disabilities Act, mental illness, mental disability, academia, law school

Disciplines

Civil Rights and Discrimination

Over the Borderline—A Review of Margaret Price’s *Mad at School: Rhetorics of Mental Disability and Academic Life*

Gregory M. Duhl*

This Article is about “madness” in higher education. In Mad at School: Rhetorics of Mental Disability and Academic Life, Professor Margaret Price analyzes the rhetoric and discourse surrounding mental disabilities in academia. In this Article, I place Price’s work in a legal context, discussing why the Americans with Disabilities Act fails those with mental illness and why reform is needed to protect them. My own narrative as a law professor with Borderline Personality Disorder frames my critique. Narratives of mental illness are important because they help connect those who are often stigmatized and isolated due to mental illness and provide a framework for them to overcome barriers limiting their equal participation in academic life.

INTRODUCTION

In *Mad at School: Rhetorics of Mental Disability and Academic Life*,¹ Margaret Price writes about academics (i.e., students, staff, faculty, and administrators) who are “mad” in higher education.² Despite often burying her readers in rhetorical theory, Price offers a

* Associate Professor of Law, William Mitchell College of Law. I thank Jim Hilbert and Jaclyn Millner who often go to great lengths to prevent me from going “mad” or “losing my mind.” I also thank my friends and family who have helped me behind the scenes. You know who you are.

1. MARGARET PRICE, *MAD AT SCHOOL: RHETORICS OF MENTAL DISABILITY AND ACADEMIC LIFE* (2011).

2. Price states that:

Mad is a term generally used in non-U.S. contexts, and has a long history of positive and person-centered discourses. MindFreedom International, a coalition of grassroots organizations, traces the beginning of the “Mad Movement” to the early 1970s, and reports on “Mad Pride” events that continue to take place in countries including Australia, Ghana, Canada, England, and the United States

. . . .

. . . As with *queer*, the broad scope of *mad* carries the drawback of generality but also the power of mass.

Id. at 10.

refreshing discussion of mental disability in academic life, inviting a dialogue that has long been missing in legal education. In focusing on the rhetoric and discourse surrounding mental illness, Price departs from traditional legal and medical analyses of the rights of the mentally ill and “cures” for mental illness.³ In doing so, she offers a blueprint for increased understanding and acceptance of, and participation by, those who are “mad” in legal education.

I am “mad.” As a law professor, students, staff, and faculty colleagues often have called me a “mad genius,” with the usual connotations that the label suggests—“brilliant,” “eccentric,” “unorthodox,” “creative,” and “inspiring.”⁴ At the same time, my students tell me if my socks do not match or my shirt is only half tucked into my jeans.⁵ I certainly get “mad” or “angry,” which is more scientifically defined as feeling “inappropriate, intense anger or [having] difficulty controlling anger.”⁶ Quite literally, I have often been “mad” at “school”—the school at which I am studying or working. Lastly, while I usually do not refer to myself in this way, I am “mad” in the sense that I am mentally ill; oscillating like a yo-yo, I regularly experience periods of mania, irritability, insomnia, anxiety, and depression, often all in the same day. Even if, rhetorically, medicine and science cannot define a “normal” mind, symptomatically, I do not feel “normal.”

To the best of my knowledge, I now join only two other law professors who have written narratives about how their own chronic

3. Price describes this rhetoric:

Th[e] well/unwell paradigm has many problems, particularly its implication that a mad person needs to be “cured” by some means. One material consequence of this view is that mental health insurance operates on a “cure” basis, demanding “progress” reports from therapists and social workers, and cutting off coverage when the patient is deemed to have achieved a sufficiently “well” state.

Id. at 12.

4. *Cf. id.* at 2 (“That film [*A Beautiful Mind*] upholds a truism about mental illness, namely, its link to creative genius. . . . The commonsense link between madness and genius arises again and again, in stories about real people like composer Robert Schumann, who is said to have been bipolar . . .”); *id.* at 16 (“In her ‘bipolar book,’ . . . *A Mind Apart*, Susanne Antonetta argues that neurodiversity acts as a positive force in human evolution, enabling alternative and creative ways of thinking, knowing, and apprehending the world.”). I have also been “diagnosed” (or misdiagnosed) repeatedly with Bipolar Disorder II. See *infra* Part I (discussing my struggle to ascertain a diagnosis for my mental illness).

5. See *id.* at 2 (“Faculty members who display ‘quirky’ behavior are sometimes regarded with affection: think of funny Professor X, who mumbles in the hallways and perhaps wears outlandish outfits.”).

6. AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS § 301.83, at 710 (4th ed. rev. 2000) [hereinafter *DSM-IV-TR*].

mental illness affects their participation in academic life.⁷ I have Borderline Personality Disorder (“BPD”), a condition “in which people have long-term patterns of unstable or turbulent emotions, such as feelings about themselves and others. These inner experiences often cause them to take impulsive actions and have chaotic relationships.”⁸ My reality is defined by black-or-white, right-or-wrong, and good-or-bad thinking, although I do not dissociate or live on the border of psychosis and neurosis.⁹ For that reason, “borderline” is an unfortunate name for this personality disorder and an example, in Price’s words, of how “persons with mental disabilities are presumed not to be competent, nor understandable, nor valuable, nor whole.”¹⁰

While mental health professionals commonly believe that “clinicians should help people with borderline personality disorder to avoid black-and-white thinking, such as right/wrong, good/bad, and all-or-nothing styles of thinking,”¹¹ this belief presumes that the “borderline” mind is unsound or abnormal and that medicine and science can objectively

7. See generally JAMES T.R. JONES, A HIDDEN MADNESS (2011) (describing his decades-long struggle with bipolar disorder); James T.R. Jones, *Walking the Tightrope of Bipolar Disorder: The Secret Life of a Law Professor*, 57 J. LEGAL EDUC. 349 (2007) (same); ELYN R. SAKS, THE CENTER CANNOT HOLD: MY JOURNEY THROUGH MADNESS (2007) (chronicling her struggles with schizophrenia); cf. PRICE, *supra* note 1, at 130 (“[O]ne study of U.S. law schools reveals that just over 1 percent of their faculty were reported as having disabilities . . . [and] [s]pecific information on faculty with mental disabilities is even more scarce.”).

8. PubMed Health, *Borderline Personality Disorder*, U.S. NAT’L LIBRARY OF MED. (Nov. 15, 2010), <http://www.ncbi.nlm.nih.gov/pubmedhealth/PMH0001931/>.

9. Rather than being labeled as a psychotic disorder, BPD is instead recognized as a disorder characterized by intense emotional experiences and behavior and instability in relationships. JOHN G. GUNDERSON & PAUL S. LINKS, BORDERLINE PERSONALITY DISORDER: A CLINICAL GUIDE 2, 13–14 (2008). See Anneli Rufus, *The Uncertainty Curse*, PSYCHOL. TODAY (Mar. 28, 2011), <http://www.psychologytoday.com/blog/stuck/201103/the-uncertainty-curse> (describing a mother’s struggle with BPD). Rufus notes:

I’ve come to believe she had Borderline Personality Disorder, a condition whose characteristics—identity issues, self-loathing, negativity, black-and-white thinking, and a sense of emptiness inside—describe her perfectly and tragically. It’s arguably the most misleadingly named disorder in the *DSM*, because one wastes a lot of time wondering: the borderline between what and what? Originally it was neurosis and psychosis. Later that distinction was retired. This disorder needs a clear new name.

Id.

10. PRICE, *supra* note 1, at 26. Some commentators also assign blame for BPD’s bad rap to mental health professionals who haphazardly diagnose the condition. See Jerold Kreisman, *Society’s Changing View of Borderline Personality*, PSYCHOL. TODAY (Nov. 25, 2012), <http://www.psychologytoday.com/blog/i-hate-you-dont-leave-me/201211/societys-changing-view-borderline-personality> (discussing that when BPD first appeared in the *DSM*, “most professionals viewed it as a diagnosis bestowed on difficult, unremitting, pain-in-the-ass patients”).

11. See, e.g., RICHARD K. RIES ET AL., ASSESSMENT AND TREATMENT OF PATIENTS WITH COEXISTING MENTAL ILLNESS AND ALCOHOL AND OTHER DRUG ABUSE: TREATMENT IMPROVEMENT PROTOCOL (TIP) SERIES 9, at 57 (1994).

define the “normal” mind. As Price notes, “such [disordered] minds show up all the time, in obvious and not-so-obvious ways[,] . . . [and] recognizing their appearance is not a yes-no proposition, but rather a confusing and contextually dependent process that calls into question what we mean by the ‘normal’ mind.”¹² The array of diagnoses in the *Diagnostic and Statistical Manual of Mental Disorders (DSM)* is “so copious that [the *DSM*] seems to suggest that ‘human life is a form of mental illness.’”¹³

I have chosen to use the power of my own personal experiences with mental illness—placed within the context of Price’s work—to fight the stigma of mental illness and to begin to overturn the barriers that mentally ill academics encounter in legal education. When I have tried to write analytically about mental illness in higher education, the writing has been forced, clinical, and devoid of the intense emotions that this issue invokes.¹⁴ Even if such analytical writing, with a thesis-driven academic argument, is more “coherent,” I wonder, as Price does, if the “demonstration of coherence indicate[s] a stronger mind.”¹⁵ The medical paradigm is incoherent in that it presumes an “objective, benign, and stable authority,”¹⁶ which is often not the case, as evidenced by numerous and conflicting mental diagnoses I have received over the last twenty years.¹⁷ Furthermore, medicine has trouble grappling with academics who are professionally hyper-functional but emotionally dysfunctional—therapists, as well as colleagues and administrators, have often minimized the gravity of my symptoms because I am “high functioning.”¹⁸ The legal paradigm is not much better because even with the Americans with Disabilities Act, courts and commentators have struggled for over twenty years with how to fit employees with “mental disabilities” into the Act’s framework.¹⁹

12. PRICE, *supra* note 1, at 3–4.

13. *Id.* at 3 (quoting Lawrence J. Davis, *The Encyclopedia of Insanity*, HARPER’S MAG., Feb. 1997, at 61).

14. *See id.* at 31–32 (“It would seem . . . that reason and emotion reside together quite comfortably, and hence, that there is ample space to theorize rhetoricity for those with mental disabilities.”).

15. *Id.* at 6.

16. *Id.* at 36–37.

17. *See infra* Part I (discussing the various diagnoses I have received throughout my struggle with mental illness).

18. *See* Anita L. Allen, *Mental Disorders and the “System of Judgmental Responsibility,”* 90 B.U. L. REV. 621, 623 (2010) (“The group affected by mental disorders includes the high functioning professionals we rely on[,] . . . including lawyers, judges, physicians and politicians . . .”).

19. *See, e.g.,* James Concannon, *Mind Matters: Mental Disability and the History and Future of the Americans with Disabilities Act*, 36 LAW & PSYCHOL. REV. 89, 107 (2012) (“Although

Rather than writing as an “insider”—a “straight, white, educated, male American citizen”²⁰—analyzing “*who* is mentally disabled . . . and *what we do* once we have decided a person should be labeled as such,”²¹ I write this narrative as an “outsider” looking in at the misassumptions of the “normal-minded” in legal education about academics with mental illness.²² Traditional critiques of “outsider” narratives are that they do not “fit into the legal framework of verifiable

individuals with mental impairments were not failing to establish protected-class status *more* than plaintiffs with physical impairments, such plaintiffs were still losing at an alarming rate pre-Amendments Act.”); Michelle Parikh, Note, *Burning the Candles at Both Ends, and There Is Nothing Left for Proof: The Americans with Disabilities Act’s Disservice to Persons with Mental Illness*, 89 CORNELL L. REV. 721, 745 (2004). In her Note, Parikh describes the framework within the Act:

The incompatibility of the disability definition with mental illness . . . has played out quite starkly in recent case law. The two main shortcomings of the ADA’s treatment of mental illness are borne out in the case law of the lower federal courts. By and large, mentally ill individuals who attempt to gain protection under the ADA are unsuccessful. On a conceptual level, it is difficult for individuals who are mentally ill and in the workforce to juggle the dual requirements of disability and qualified individual status. An individual who clearly suffers from a mental illness that has a detrimental effect on her work functioning may look to the statute for a safe haven. What she finds instead are formalistic, rigid requirements, which incur more qualifications and caveats with each Supreme Court decision. What the ADA drafters intended to be an individualized, case-by-case inquiry has turned into a series of obstacles and hoops, as individuals attempt to translate the complexities of their experiences into the “buzzwords” of the courts’ opinions.

Id. (footnotes omitted). See also *infra* Part III.A (discussing the role of misconceived rhetoric in stigmatizing mental illness).

20. Carolyn Grose, *A Field Trip to Benetton . . . and Beyond: Some Thoughts on “Outsider Narrative” in a Law School Clinic*, 4 CLINICAL L. REV. 109, 110 n.4 (1997). Grose defines an “outsider” as “someone who does not have access to the channels of power and communication in this society. Practically speaking . . . this means someone who is female, of color, lesbian, gay, bisexual, undereducated, low-income, poor, disabled, undocumented, non-English speaking, etc.” *Id.* at 110.

21. PRICE, *supra* note 1, at 2.

22. See Marc A. Fajer, *Authority, Credibility, and Pre-Understanding: A Defense of Outsider Narratives in Legal Scholarship*, 82 GEO. L.J. 1845, 1854 (1994). In describing the perspectives, Fajer notes:

We can tell stories about ourselves, not so much to show how we are representative of our group, but how the society makes essentializing assumptions about us because of the groups to which we belong. These stories do not purport to show that all members of the group behave a certain way. Instead, they demonstrate that people commonly believe members of a group behave in specific ways and they show that some portion of the group does not conform to the stereotype or at least that the relationship between the stereotype and reality is complex.

Id. See also Paul Gewirtz, *Narrative and Rhetoric in the Law*, in *LAW’S STORIES: NARRATIVE AND RHETORIC IN LAW* 2, 13 (Peter Brooks & Paul Gewirtz eds., 1996) (describing “outsider” jurisprudence or the “turn to narrative” as a “clear offshoot of the further loss of faith in the idea of objective truth and the widespread embrace of ideas about the social construction of reality”); Grose, *supra* note 20, at 114 n.17 (citing sources).

truths that creates new legal principles,”²³ but this position presupposes, in my case, that there is an objective truth about mental diagnoses and mental illness, which there is not. As Jane Baron notes,

[T]he notion that storytellers must justify departures from “the rules” of mainstream scholarship “as they exist,” as well as from the “ordinary understanding” or the “conventional standard” of truth . . . [is] precisely what many storytellers dispute, namely, that mainstream, ordinary, and conventional standards are just “there” and themselves already justified.²⁴

In other words, the supposed objective truth about mental illness is no more valuable than my firsthand experience with mental illness in academia. Without any scientific, objective meaning of the “normal” mind, narratives matter.

Price gives further warning about the use of mental illness narratives. She cautions that “such narratives often reify the dominant script of disability as an individual tragedy (and potential source of triumph when ‘overcome’).”²⁵ She calls for academics with mental disabilities to be heard and respected, “not *in spite of* [their] mental disabilities, but *with and through* them.”²⁶ We do not need more feel-good stories

23. Grose, *supra* note 20, at 116. See Kathryn Abrams, *Hearing the Call of Stories*, 79 CAL. L. REV. 971, 978 (1991) (noting that contrary to the author’s stated intentions, “[the story] does not help [readers] think about ameliorative legal reforms. . . . The experience conveyed by the narrative does not seem to translate automatically into a new rule; and the narrative scholarship seems to provide no ‘normative framework’ for achieving that translation”); Mark Tushnet, *The Degradation of Constitutional Discourse*, 81 GEO. L.J. 251, 252–60 (1992) (arguing that “outsider” narrative, with its focus on individual experience, does not relate well to general legal principles).

24. Jane B. Baron, *Resistance to Stories*, 67 S. CAL. L. REV. 255, 256 (1994) (footnotes omitted).

25. PRICE, *supra* note 1, at 178.

26. *Id.* at 8. Unfortunately, Professor Jones’s narrative falls subject to this criticism:

I want to demonstrate that those with mental illness can have full and satisfying professional and personal lives, and they need and should not endure stigma or doubt as to their ability to perform their personal or employment duties. I show this by pointing out that someone who has a severe bipolar disorder can graduate with high honors from an elite college preparatory school; earn Phi Beta Kappa at a prestigious college (graduating with highest distinction) and the Order of the Coif at a top law school (graduating with distinction), where he served on law review and finished second in his class; work successfully at a Wall Street law firm; clerk for two federal judges; be a finalist for a clerkship with the Chief Justice of the United States; practice law as a member of the United States Supreme Court and Florida Bars; teach at the University of Chicago Law School; marry successfully; earn tenure and full professor status by teaching, service, and publication at a law school where no one knew I have a severe mental illness; and become a nationally known expert on an important social issue. If that message gets across, and as a result someone is encouraged to reach for everything in life *despite* having a mental disease, this article was worth writing and my “secret” was worth disclosing.

Jones, *Walking the Tightrope of Bipolar Disorder*, *supra* note 7, at 373 (emphasis added).

about those who have succeeded despite a mental illness.²⁷ I try to write the “counter-diagnosis” that Price calls for in *Mad at School*.²⁸ My mind is, objectively, neither sound nor unsound, but it is the source of my greatest assets and my greatest deficits in academia.²⁹ To “cure” my mind, using the medical paradigm, is to zap me of all of my strengths.

In Part I of this Article, I describe my own experiences with the mental health system, as well as how mental illness has affected me in law school, as a lawyer, and most importantly, as a law professor. In Part II, I use my own narrative as a lens to analyze Price’s discussion of the rhetoric of mental illness in higher education. I start with how the law interacts with mental illness, use that interaction to criticize Price’s damaging label of “mental disability,” and discuss her analysis of teaching and learning, collegiality, and productivity. Part III concludes with a discussion of how we should frame the discourse about mental illness in legal education. Rhetoric matters, but law, medicine, and narrative matter as well.

I. MY STORY

Price notes the “proliferation of stories” about mental illness as proof “of two important truths about disorderly minds. First, such minds show up all the time, in obvious and not-so-obvious ways; and second, recognizing their appearance is not a yes-no proposition, but rather a confusing and contextually dependent process that calls into question what we mean by the ‘normal’ mind.”³⁰

I have experienced these truths firsthand, and now I share my story.

A close friend, with no formal training in psychology or psychiatry, recently diagnosed me with Borderline Personality Disorder (“BPD”),³¹

27. See PRICE, *supra* note 1, at 104 (“I found the references to courage and heroics disturbing, though not surprising; here was the familiar overcoming narrative, rehearsed yet again.”).

28. *Id.* at 176–77.

29. Cf. Andrea Sachs, *A Memoir of Schizophrenia*, TIME (Aug. 27, 2007), <http://www.time.com/time/arts/article/0,8599,1656592,00.html> (“‘My mind has been both my best friend and my worst enemy,’ says [author] Elyn Saks . . .”).

30. PRICE, *supra* note 1, at 3–4.

31. The criteria for BPD is as follows:

A pervasive pattern of instability of interpersonal relationships, self-image, and affects, and marked impulsivity beginning by early adulthood and present in a variety of contexts, as indicated by five (or more) of the following:

1. Frantic efforts to avoid real or imagined abandonment. Note: Do not include suicidal or self-mutilating behavior covered in Criterion 5.
2. A pattern of unstable and intense interpersonal relationships characterized by alternating between extremes of idealization and devaluation.
3. Identity disturbance: markedly and persistently unstable self-image or sense of

after psychologists and psychiatrists had diagnosed me at various times over the last twenty years with Dysthymia, Major Depressive Disorder, Generalized Anxiety Disorder, Panic Disorder, Bipolar Disorder, Narcissistic Personality Disorder, Dependent Personality Disorder, Antisocial Personality Disorder, Attention Deficit Disorder (ADD), and Attention Deficit Hyperactivity Disorder (ADHD).³² While I perhaps had symptoms of some of these mental “disorders,” I felt as if I was not being heard, as none of the diagnoses captured how my illness affected me in the same way as my diagnosis of BPD. For example, a resident in the mood disorders clinic at one of the largest U.S. research hospitals continually asked me during an evaluation to define my last “manic” episode that lasted at least a couple of weeks. I became frustrated that I could not do so. Nonetheless, the resident and attending psychiatrist diagnosed me with Bipolar Disorder. When I later spoke to a psychologist about treatment for BPD, she told me that I was mistaken about my diagnosis because I was too “bright” to have BPD.

I finally found a psychologist who listened to me, although ironically she was an unlicensed psychologist who was practicing under her supervisor’s license. Once I had a diagnosis from my psychologist, I also found a psychiatrist who established that I had BPD. While I agree

self.

4. Impulsivity in at least two areas that are potentially self-damaging (e.g., spending, sex, substance abuse, reckless driving, binge eating). Note: Do not include suicidal or self-mutilating behavior covered in Criterion.

5. Recurrent suicidal behavior, gestures, or threats, or self-mutilating behavior.

6. Affective instability due to a marked reactivity of mood (e.g., intense episodic dysphoria, irritability, or anxiety usually lasting a few hours and only rarely more than a few days).

7. Chronic feelings of emptiness.

8. Inappropriate, intense anger or difficulty controlling anger (e.g., frequent displays of temper, constant anger, recurrent physical fights).

9. Transient, stress-related paranoid ideation or severe dissociative symptoms.

DSM-IV-TR, *supra* note 6, § 301.83, at 710 (emphases omitted).

32. The diagnosis of mental disorders is very complex and imprecise. Authors Moses and Barlow have articulated a reason for this:

Possible explanations for these high levels of comorbidity have been reviewed extensively and include overlapping definitional criteria, varying base rates of occurrence in different study settings, and a possible sequential relationship among the disorders such that features of one disorder serve as risk factors for another. Another possible explanation for this comorbidity is the presence of a “negative affect syndrome (NAS).” The collective symptoms of emotional disorders have been theorized as merely variable responses emerging from a more fundamental disorder.

Erica B. Moses & David H. Barlow, *A New Unified Treatment Approach for Emotional Disorders Based on Emotion Science*, 15 *CURRENT DIRECTIONS IN PSYCHOL. SCI.* 146, 147 (2006) (internal citations omitted). *See, e.g., DSM-IV-TR*, *supra* note 6, at 429–84 (discussing the symptoms and diagnoses of anxiety disorders, including, for example, Generalized Anxiety Disorder and Panic Disorder).

with one commentator that “the DSM-IV is a book of dogma,”³³ which had failed me for twenty years, I am a casebook study for the symptoms of BPD. The *DSM*, while giving my illness a name and thus helping me feel less isolated and more connected to “patients” who share this disorder, stigmatizes me by labeling my diagnosis as a “personality disorder”—a personal indictment of who I am.³⁴ BPD is an Axis II diagnosis, which is considered “less treatable and insurable” than disorders with an Axis I diagnosis, such as depression, bipolarism, and schizophrenia.³⁵

To offer some context to my review of Price’s book, I share some of my experiences with mental illness as a law student, as a lawyer, and as a law professor.

A. *Law School*

I began at Harvard Law School in the fall of 1992 after graduating from Yale College in 1991 and spending a year abroad teaching at a private boys’ boarding school in Sydney, Australia. While I experienced some depression during college and in Australia, I started at Harvard unaware of my emotional limitations.

Near the middle of my first year, I became disillusioned with my experience at Harvard Law School. That was not atypical,³⁶ especially

33. L.J. Davis, *The Encyclopedia of Insanity*, HARPER’S MAG., Feb. 1997, at 62 (emphasis omitted).

34. Elise Stobbe articulates this stigmatization:

There may be no other psychiatric diagnosis more laden with stereotypes and stigma than Borderline Personality Disorder. People who live with this label—the majority being female—often have problems accessing good mental health services. Unlike the stigmatization that society puts on mental illness, the stigma associated with BPD often comes from mental health professionals and their patronizing attitudes. Many psychiatrists will not treat BPD patients, or they may limit the number of BPD patients in their practice or drop them as “treatment resistant.” Often attempts to treat borderlines fail, and some professionals blame the patient for not responding to treatment. It is often undiagnosed, misdiagnosed, or treated inappropriately.

Elise Stobbe, *Psychiatry Discriminates against People with Borderline Personality Disorder*, BRAINBLOGGER.COM (June 20, 2006), <http://brainblogger.com/2006/06/20/anti-stigmatization-psychiatry-discriminates-against-people-with-borderline-personality-disorder/> (internal citations omitted).

35. *What Is an Axis II Disorder?*, BPD-CENTRAL.COM, <http://www.bpdcentral.com/faq/personality-disorders> (last visited July 19, 2012).

36. Two authors have described the feelings they experienced while attending Harvard. First, Covington and Burling partner Peter Barton Hutt writes:

I remember long talks late at night venting my frustration and arguing about how law should really be taught to make it interesting and even exciting. I left Harvard Law School feeling unfulfilled, unsuccessful, and alienated. Nonetheless, those vivid memories did more to entice me to consider teaching food and drug law at Harvard than to discourage me. I was intrigued by the challenge of trying to teach law the way I felt it should have been taught when I was there.

before Elena Kagan became dean.³⁷ Most first-year classes were large, with about 135 students, and as a result, I became alienated from my classmates, the faculty, and the institution. I still remember the first question on Duncan Kennedy's torts exam. This question was the one he called the "bullshit question": "Discuss some issue we studied over the course of the semester." I thought that much of my first year of legal education at Harvard was "bullshit."

During the second semester of my second year, I took the late Phil Areeda's antitrust class. Professor Areeda was a "master of the Socratic method."³⁸ On one of the first days of class, as I was trembling in my chair, he called on me. I had no idea what the answer to his question was, and he compassionately moved on to another student. Afterward, I panicked at the thought of going back to his class again—I stopped going to it, along with the rest of my classes that semester. I became too depressed to get out of bed except to make my daily trek to Harvard Square to have a chocolate milkshake at Herrell's Ice Cream. I did not think I would finish law school.

I did make it back for my third year. But on the mornings of exams, I would often feign physical illness because I was too scared to take them. I finally went to a school psychiatrist who arranged for me to take my exams in a quiet, separate room, which was actually the make-up room for other students writing exams. He referred me to a therapist because Harvard Law could not provide the "type" of therapy that I

Peter Barton Hutt, *Food and Drug Law: Journal of an Academic Adventure*, 46 J. LEGAL EDUC. 1, 1–2 (1996). Furthermore, Kevin Washburn states:

For most of the past fifty years, attending Harvard Law School was a miserable experience for the majority of its students. The tremendous jubilation on acceptance quickly soured after students arrived on campus. While some students took the Harvard experience in stride, recognizing it as the price of admission to the school they had first learned about in *The Paper Chase* or *One L*, many became unhappy during the first year and stayed that way through the rest of their law school careers. To be sure, students appreciated the tremendous opportunities that a Harvard law degree provided, but many were alienated not only from the institution, but even their own classmates, during their time at the law school. This alienation often continued long after law school. To meet a recent Harvard Law grad was sometimes to meet an embittered person who vowed never to give a dime to the institution.

Kevin K. Washburn, *Elena Kagan and the Miracle at Harvard*, 61 J. LEGAL EDUC. 67, 67 (2011).

37. See Washburn, *supra* note 36, at 70–73 (discussing how Kagan transformed the first-year sections and first-year orientation). After her time as Dean of Harvard Law School, Kagan became the 45th Solicitor General of the United States, and subsequently, the 100th Associate Justice of the Supreme Court of the United States.

38. See Clark Byse, *In Memoriam: Phillip E. Areeda*, 109 HARV. L. REV. 889, 896–97 (1996) (“[Areeda] was a master of the Socratic method. . . . The essence of [his] approach in teaching . . . produced tension and anxiety [that eventually evolved into gratitude] for ‘a rigorous and yet understanding style of teaching.’” (internal quotation marks omitted)). I never got over the “tension and anxiety” from Areeda’s teaching.

needed. I wondered at the time, and still wonder now, what that “type” of therapy was.

One day, I was assigned to be “on call” in my corporations class during my third year. The thought of having to perform in front of over 100 students terrified me. The professor’s secretary told me that I could be excused if I had a doctor’s note. I got one, and with notes and made-up illnesses, I “managed” my mental health while at Harvard Law. I graduated in 1995, but skipped my graduation because I was disillusioned and alienated by my law school experience.

B. Practicing Law

Between 1995 and 2002, I worked at several different law firms in either tax or intellectual property litigation. I also spent two years trying to start my own firm. My tenure at various firms lasted between six days (my first job out of law school) to eighteen months. I quit jobs because of some combination of depression, irritability, anxiety, and boredom. I was fired from one job because I “resisted” the law firm hierarchy. I was always able to get my next job without much ado about why I left the previous job. I repeatedly made an “impulsive” decision and took the “next” job offered. I consistently thought the problem was with the firms and not with me. At every firm where I worked, I felt empty and alienated—I found no meaning in the work, was bored with its tediousness, and did not like the firms’ hierarchical and undemocratic structures.³⁹

39. My experience was not atypical. Other authors have similarly addressed this type of alienation:

Many scholars have commented on the extensive alienation that lawyers experience, particularly within large law firms. Such alienation can contribute to high levels of stress and job dissatisfaction. Indeed, many lawyers lament that the practice of law is merely a business and that the atmosphere of law firm practice is bureaucratically stifling, leaving many lawyers chronically unfulfilled and discontented. Much of the alienation that lawyers experience, particularly in larger law firms, stems from the “proletarian-like” conditions that operate within these firms.

Robert Granfield, *The Meaning of Pro Bono: Institutional Variations in Professional Obligations among Lawyers*, 41 *LAW & SOC’Y REV.* 113, 134 (2007) (citations omitted). Furthermore, authors Rustad and Koenig comment on the “legal hierarchy”:

Hierarchy remains a significant variable in predicting lawyer happiness for those excluded from elite law firms. The sifting and sorting of law school applicants into the different branches of the law is often an arbitrary and inefficient process. MacLeish suffered existential anxiety because the formalism of law practice stifled his creativity, just as Stefancic and Delgado’s example of a contemporary law firm associate who suffers from alienation, wondering “Whatever Happened to That English Major I Used to Be?”

Michael L. Rustad & Thomas H. Koenig, *A Hard Day’s Night: Hierarchy, History & Happiness in Legal Education*, 58 *SYRACUSE L. REV.* 261, 314 (2008) (footnotes omitted).

I knew I could not survive in the legal profession and had reached a dead end. I was deeply depressed. For six weeks in December 2000 and January 2001, I was hospitalized at the Menninger Clinic, then in Topeka, Kansas. I participated in the Professionals in Crisis Program,⁴⁰ and for the first time, I felt like less of an “outsider.” There were lawyers, doctors, businesspeople, and academics—educated men and women with high-paying jobs who had the same struggles with mood and personality disorders as me. I attended career counseling while in the program, and the counselor, after administering a battery of tests, concluded that I should become a “deep sea diver.” I ignored that advice, but realized that I had always loved teaching. From that point, I decided to seek a career in which I could combine my passion for teaching with my background in law.

C. Legal Education

There is a “truism about mental illness, namely, its link to creative genius. . . . The commonsense link between madness and genius arises again and again, in stories about real people like composer Robert Schumann, who is said to have been bipolar”⁴¹ Much scientific research suggests that there is a high correlation between creativity and mood and personality disorders, although the relationship between the two is complex (i.e., does mental illness cause creativity or does creativity cause mental illness?).⁴² In *First-Rate Madness: Uncovering the Links Between Leadership and Mental Illness*, a professor of

40. See *Professionals in Crisis Program*, MENNINGER CLINIC, <http://www.menningerclinic.com/patient-care/inpatient-treatment/professionals-in-crisis-program> (last visited July 20, 2012).

41. PRICE, *supra* note 1, at 2.

42. See, e.g., Erika Lauronen et al., *Links Between Creativity and Mental Disorder*, 67 PSYCHIATRY 81, 90–92 (2004) (discussing studies exploring correlations among creative groups, such as writers, and mental illness). But see Charlotte Waddell, *Creativity and Mental Illness: Is There a Link?*, 43 CAN. J. PSYCHIATRY 166, 166–67 (1988) (“Creativity and mental illness have long been popularly associated. Until recently, few studies have examined this purported association using scientific methods. A spate of recent review articles, as well as memoirs of mental illness by prominent, creative individuals, have coincided with scientific interest in possible associations between creativity and mental illness. These studies, reviews, and memoirs have garnered media attention and reinforced popular views that creativity and mental illness are positively associated. . . . There is a long history of associating creativity and mental illness in western European cultures, starting with Aristotle, who equated insanity with genius, and culminating in the “mad genius” controversy of the last two centuries. Many authors have described famous, creative individuals who reportedly had mental illnesses. Recent accounts in popular media have touted a link between creativity and various forms of mental illness. The popularity of asserting connections between creativity and mental illness has also been fueled by recent memoirs of mental illness by prominent gifted individuals. . . . In summary, much recent psychiatric and popular literature has enthusiastically promoted an association between creativity and mental illness. This enthusiasm, however, has not always been balanced with scientific evidence.” (internal citations omitted)).

psychiatry and pharmacology at Tufts Medical Center argues that “the mad” make the best leaders in times of crisis because of their creativity, resiliency, empathy, and realism.⁴³ I strongly believe that my “abnormal” mind has led to much of my success as a law professor—the same intense emotions with which I struggle fuel my passion, energy, and creativity. My “mad” mind is not only a personal liability, but also a professional asset.

D. Employment and Struggling for Success

The faculty at Temple Law School’s James E. Beasley School of Law took a chance on me, and for two years I taught as an Honorable Abraham L. Freedman Teaching Fellow and earned my LL.M. in legal education. After stops at the Southern Illinois University College of Law and the University of Tulsa College of Law, I was hired by William Mitchell College of Law, where I have been teaching for four-and-a-half years. This is the longest I have held any job—the previous record being two years. I have become more self-aware and focused on my mental health since I started teaching at William Mitchell, which is largely why I have been able to maintain my current position.

I regularly receive outstanding teaching evaluations (4.7 to 5.0 out of 5.0 as overall scores), won the Teacher of the Year Award in my first year at William Mitchell, and have designed cutting-edge and creative transactional skills classes that combine negotiating and drafting, as well as a comprehensive pre-orientation workshop. My students regularly call me “brilliant,” “a wizard,” “demanding,” “compassionate,” “realistic,” and “creative.” I write scholarly articles in the areas of commercial law, legal ethics, and legal education, and I am coauthoring the second edition of a leading bankruptcy text. I am the Associate Editor-in-Chief of *The Business Lawyer*, the flagship journal of the ABA Section of Business Law with a circulation of over 60,000 subscribers. I edit, cite-check, and proofread over 1200 book pages of manuscript annually. I engage in significant internal service, including chairing our curriculum committee over the last two years, in which I spearheaded significant reform of the first-year and skills curricula.

I do not want to belabor my success. My only point is that I am successful *because* of my mental illness, not *despite* my illness. At the same time, I face extraordinary struggles: frequent mood swings over the course of a day; feelings of emptiness, abandonment, and low self-esteem; difficulties in interpersonal relationships; self-injurious

43. NASSIR GHAEMI, A FIRST-RATE MADNESS: UNCOVERING THE LINKS BETWEEN LEADERSHIP AND MENTAL ILLNESS 17–18 (2011).

behaviors such as cutting and addictions; and even paranoia. I describe some of these challenges below.

1. Feelings of Abandonment and Emptiness and Difficulty in Interpersonal Relationships

I spend much of my day in front of the computer responding to emails, often within minutes. I write, edit, prepare for class, and communicate with colleagues using my laptop. I am more comfortable in front of my computer than with face-to-face interactions. When I do not get any emails for a period of time, I feel abandoned—lost, empty, and unaware of what to do. I have low self-esteem even when a successful class or program ends. I look for external sources of gratification when none exist. The highs often become lows. I focus on the failures in my life (e.g., the jobs I could not keep) rather than my successes as a law professor. Mentors become villains, and villains become mentors.⁴⁴ I have such a strong sense of “right” and “wrong” that people switch on me quickly. I have found, however, that since entering academia, I am more loyal to those who are aware of my illness, and they are more loyal to me—hence, my willingness to share my narrative.

2. Addiction

Last year, I became addicted to benzodiazepines, which has happened numerous times since law school. My mother had to hide my medicine from me when I was living at home in my twenties to prevent me from taking too much. Last fall, I began waking up in the morning shaking and sweating, overwhelmed with all the work that I had to do. By the second semester, the thought of teaching caused tremendous anxiety, despite the fact that I had taught Sales and Secured Transactions over a half-dozen times each. I lost confidence in myself and no longer believed I could be a good teacher. For the first few weeks of the semester, I either cancelled class or taught in a way that manifested my illness, “in forms ranging from ‘odd’ remarks to lack of eye contact to repetitious stimming.”⁴⁵ Mental impairments are not truly “invisible,”

44. John Cloud further explains this dichotomy:

Borderline patients seem to have no internal governor; they are capable of deep love and profound rage almost simultaneously. They are powerfully connected to the people close to them and terrified by the possibility of losing them—yet attack those people so unexpectedly that they often ensure the very abandonment they fear. When they want to hold, they claw instead.

John Cloud, *The Mystery of Borderline Personality Disorder*, TIME (Jan. 8, 2009), <http://www.time.com/time/magazine/article/0,9171,1870491,00.html>.

45. PRICE, *supra* note 1, at 18.

although students ironically are likely to perceive that these behaviors are a function of eccentricities and not of any illness.

I was already on 45 milligrams of Temazepam (a benzodiazepine) and 12.5 milligrams of Ambien CR (addictive, similar to benzodiazepines) when the psychiatric physician assistant I was seeing prescribed 0.5 to 1 milligram of Xanax to take “as needed.” The pills provided instant relief—I thought I had found the “magic bullet”—a feeling that I have had repeatedly over the last twenty years each time I have tried a new medication. However, I quickly had to take more and more pills to have the same effect, and I quickly began to use Xanax even on weekends to sleep and escape from my reality.

Each time that I tried to cut back, I felt more and more anxious, not knowing whether these feelings stemmed from the original anxiety or rebound anxiety from not taking enough Xanax. I often became confused, and my cognitive abilities seemed to slow. I finally saw a new psychiatrist who told me that I had an addiction. I had become impulsive in my use of anti-anxiety medications in an attempt to numb my reality. Although at first she wanted to hospitalize me, she instead used a Valium taper to help me successfully get off all benzodiazepines (and the Ambien). Ironically, at least some researchers believe that benzodiazepines are contraindicated for those with BPD.⁴⁶ Where does the objective truth lie—take the benzodiazepines for anxiety or avoid them altogether? Even mental health professionals cannot agree.⁴⁷

3. Cutting

I have never been suicidal or attempted to commit suicide, although I often want to crawl into a hole (or bed) and escape. Over the past few years, I have started to engage in self-mutilating behavior, usually cutting myself on my arms or legs with a razor or scissors. For example, I once cut myself when I did not receive a position at my law school that I believed I was promised, when I was overwhelmed with

46. Robert S. Bobrow, *Benzodiazepines Revisited*, 20 FAM. PRAC. 347, 348 (2003) (“Patients with borderline personality disorder are at great risk for dependence, and benzodiazepines are contraindicated [because BPD patients can become dependent on them].”). Although benzodiazepines treat the symptoms of BPD, the higher risk of dependency mitigates their potential for good for individuals diagnosed with BPD.

47. Compare Jean-Marc Cloos & Valérie Ferreira, *Current Use of Benzodiazepines in Anxiety Disorders*, 22 CURRENT OPINION IN PSYCHIATRY 90, 94 (2008) (“The sole use of BZDs in anxiety disorders, without having tried the alternatives, is to be avoided and . . . are contraindicated in patients with a history of substance abuse disorder.”), with Theo J.M. Ingenhoven & Hugo J. Duivenvoorden, *Differential Effectiveness of Antipsychotics in Borderline Personality Disorder*, 31 J. CLINICAL PSYCHOPHARMACOLOGY 489, 489 (2011) (“The American Psychiatric Association . . . advocates anti-psychotics, antidepressants, mood stabilizers, and benzodiazepines.”).

frustration that the law school's response to the decreasing demand for legal education was too slow, or when administrators and colleagues could not distinguish between my mental illness and character "flaws" and in turn criticized me for manifestations of my illness (e.g., talking too loudly in class and avoiding conflict). I have "a hard time regulating, expressing or understanding [my] emotions. Physical injury distracts [me] from these painful emotions or helps [me] feel a sense of control over an otherwise uncontrollable situation."⁴⁸

Cutting is a rhetorical device, a communication that I am in emotional pain. To others it conjures up images of violence, which feeds into the stereotype that the mentally ill are "dangerous." It is not the case that "[p]eople who self-injure are crazy and/or dangerous. . . . Self-injury is how they cope. Slapping them with a 'crazy' or 'dangerous' label isn't accurate or helpful."⁴⁹ Ironically, this rhetorical device is not effective to the "insider"—frequently after I cut, faculty, students, and staff notice but ask me how I "fell." Cutting is part of my "outsider" narrative.

4. Mood Swings

Every day is like a roller coaster. I go through periods of mania, anxiety, irritability, and depression, often within the same hour. Those who know me well find my mood swings unpredictable. I often feel a sense of mania from a small accomplishment. For example, when I ran the William Mitchell Fellows Program, a leadership development program for students with exceptional capacity for leadership in law school and the legal profession, I felt an immediate "high" when I successfully recruited a student to William Mitchell. I screamed the student's name out of the car window and rewarded myself with ice cream or coffee. A few minutes after that "high," I started feeling a "low," wondering when or if the next victory would come along.

5. Anger

Anger has plagued me since entering teaching, especially when I feel as if I have been treated "unjustly."⁵⁰ When I was a visiting professor at another school, I lost my temper with the associate dean, who had told me that I could not reschedule classes so that I could go on job

48. *Causes, Self-Injury/Cutting*, MAYOCLINIC, <http://www.mayoclinic.com/health/self-injury/DS00775/DSECTION=causes> (last visited July 16, 2012).

49. *Cutting and Self-Harm*, HELPGUIDE.ORG, http://www.helpguide.org/mental/self_injury.htm (last visited July 16, 2012).

50. See Cloud, *supra* note 44, at 1 ("What defines borderline personality disorder—and makes it so explosive—is the sufferers' inability to calibrate their feelings and behavior. When faced with an event that makes them depressed or angry, they often become inconsolable or enraged.").

interviews. While I was a teaching fellow at Temple, I yelled at a faculty member who did not inform me about a workshop that I was supposed to attend. Even at William Mitchell, I often get angry when “rules” and “processes” are not followed—for example, when tenure subcommittees are not appointed by the specified date set in the Tenure Code. My emotions overwhelm me in my quest for “justice,” although I do not believe my understanding of “justice” is wrong.

6. Paranoia

“Paranoid ideation” is defined as “suspiciousness or a nondelusional belief that one is being harassed, persecuted, or unfairly treated.”⁵¹ This commonplace definition exposes the subjectivity of the *DSM*, despite the notion that its authors have “increas[ingly] adhere[d] to a model of mental disability as a measurable and biological phenomenon.”⁵² Is it problematic or symptomatic of an illness that one feels “unfairly treated,” especially when “fairness” is inherently subjective? For example, in the fall of my third year at William Mitchell, the dean decided that the “normal” waiting period for tenure was four-and-half years on the tenure-track, despite the fact that our Tenure Code states that the “Board of Trustees may consider granting tenure at any time during a faculty member’s service with William Mitchell.”⁵³ As I had been teaching for seven-and-a-half years at that time with significant scholarship and service, I believed that the dean’s interpretation was unfair and inconsistent with the black-and-white language of the Tenure Code. One year later, administrators and colleagues were still puzzled as to why I felt that I was treated unfairly. Their reaction, more so than the dean’s initial decision, made me feel as if I was being “pushed out of the societally defined space of the ‘normal.’”⁵⁴

On the subject of paranoia, I obsess over how faculty, staff, and students perceive me when my symptoms of mental illness are acute. I usually spend less time at the office, am less focused and responsive, and worry that those who do not understand mental illness or do not know that I have a mental illness will judge me “unfairly.” In hindsight, my reactions are, to some extent, irrational. Yet, at the same time, when

51. NARRIMAN C. SHAHROKH ET AL., *THE LANGUAGE OF MENTAL HEALTH, A GLOSSARY OF PSYCHIATRIC TERMS* 183 (2011).

52. PRICE, *supra* note 1, at 36.

53. WILLIAM MITCHELL COLLEGE OF LAW, *FACULTY HANDBOOK* 18 (Feb. 2011), available at <http://web.wmitchell.edu/mitchellaneous/wp-content/uploads/2010/05/Faculty-Handbk-20111.pdf>.

54. PRICE, *supra* note 1, at 29.

I explained my mental illness to one colleague, she said that she hoped I returned to “normal” soon, presupposing that there is a “normal” mind. Likewise, in writing about my accommodations, the dean quite innocently referred to “flare-ups” of my illness, as if the illness came and went and was somehow separate from who I am. While my symptoms do vary from time to time, they are not like a rash that can be “cured” with a magic balm.

This background has provided a glimpse into my “abnormal” mind. I now go on to discuss Price’s work without leaving my narrative behind.

II. MAD AT SCHOOL: THE INTERACTION BETWEEN RHETORIC AND THE LAW

As a professor of English who teaches composition and rhetoric, Price analyzes “madness” in academic life from the perspective of rhetoric and academic discourse. As a law professor, the starting point for my analysis is legal protections for academics with mental illness. In this Part, I discuss five areas where our analyses overlap: legal constructs, labels of the mentally impaired, teaching and learning, productivity, and collegiality.

A. Legal Constructs

The Americans with Disabilities Act (“ADA”) has largely failed college and university faculty with mental disabilities.⁵⁵ In a 2003 study, Suzanne Abram found that about ninety-three percent of “disabled” faculty, including those with mental *or* physical impairments, lost their cases under the ADA.⁵⁶ As Abram explains,

55. See Susan Stefan, “*You’d Have to Be Crazy to Work Here*”: Worker Stress, the Abusive Workplace, and Title I of the ADA, 31 LOY. L.A. L. REV. 795, 805 (1998) (“[J]udicial assumptions about the nature of psychiatric disabilities and essential employment functions have resulted in the near-total failure of the ADA to protect individuals with psychiatric disabilities from employment discrimination.”); Kathleen D. Zylan, Comment, *Legislation that Drives Us Crazy: An Overview of “Mental Disability” under the Americans with Disabilities Act*, 31 CUMB. L. REV. 79, 80 (2001) (“Particularly for the mentally ill, the ADA has failed to prevent discrimination in the workplace.”). See also *supra* note 19 and accompanying text (explaining that the rigid requirements under the ADA prevent many mentally ill individuals from seeking protection under the statute).

56. Suzanne Abram, *The Americans with Disabilities Act in Higher Education: The Plight of Disabled Faculty*, 32 J.L. & EDUC. 1, 5–6 (2003). Abram articulates:

When faculty sue their employers for alleged disability discrimination, they fare no better than plaintiffs in non-academic lawsuits. By far, the majority of college and university instructors who sue under the ADA lose their cases. Worse yet, they lose them at the summary judgment stage. Since the standard for summary judgment is the absence of any genuine issue of material fact, or the inability of a reasonable jury to find for the plaintiff, it is particularly ominous that disabled faculty lose their cases at this early stage in the litigation, without obtaining the opportunity to put their cases

In short, courts have demonstrated a proclivity to dismiss ADA actions brought by disabled, or allegedly disabled, professors. The actions often fail because the faculty members cannot walk the fine line between being disabled enough and being too disabled. A disabled professor must construct his complaint so that he is demonstrably able to perform the essential functions of his position with reasonable accommodation and yet not so disabled that he is unable to perform his duties with accommodation. In the majority of cases, the plaintiff professors seem unable to place themselves within this narrow range.⁵⁷

Price glosses over one of the biggest hurdles that “mad” faculty must overcome to succeed in ADA claims: they must prove that they have a “disability” covered by the Act.⁵⁸ A person with a “disability” is one who: “(A) has a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) has a record of such impairment; or (C) is being regarded as having such an impairment.”⁵⁹ While the ADA expressly includes “working” as a major life activity,⁶⁰ “[u]nder case law, being unable to perform a single, particular job [e.g., that of a tenure-track or tenured academic] is not generally considered a substantial limitation on the major life activity of working.”⁶¹

While the faculty member with ADD or ADHD might be substantially limited in the major life activity of “concentrating,”⁶² or the academic with a learning disability substantially limited in the major life activity of “learning” or “reading,”⁶³ the borderline or bipolar

before a jury.

Id. (footnote omitted). Authors Rothstein and Irzyk discuss the issue of tenure with respect to disabilities:

In some cases, faculty have argued that their denial of promotion or tenure has been related to a disability. The courts have generally found, however, that even if a disability is related to inadequate performance in the area of teaching or scholarship, it does not excuse performance standards. In most cases, the courts are finding that the institution’s action was based on nonperformance, not on the disability.

LAURA ROTHSTEIN & JULIA IRZYK, *DISABILITIES AND THE LAW* § 3:26, at 334–35 & n.2 (4th ed. 2012).

57. Abram, *supra* note 56, at 11. Abram’s study, of course, could not account for faculty with claims under the ADA who never brought their cases to court.

58. See ROTHSTEIN & IRZYK, *supra* note 56, § 4:9, at 414 & n.30 (“Mental impairments as a disability are complex. They are often difficult to diagnose, and there are also concerns about danger to self or others.”).

59. 42 U.S.C. § 12102(1) (2006).

60. *Id.* § 12102(2).

61. ROTHSTEIN & IRZYK, *supra* note 56, § 4.8, at 396 n.62 (citing cases).

62. See 42 U.S.C. § 12102(A) (defining “concentrating” as a major life activity). Inattentiveness is a common symptom of ADD or ADHD.

63. See *id.* (identifying learning and reading as major life activities). Individuals with learning

faculty member faces high hurdles in showing that he or she qualifies under the ADA's definition of "disability."⁶⁴ For example, courts are unlikely to view "interacting with others" as a "major life activity" when asserted by an individual with a mental impairment.⁶⁵ Because the ADA approaches "disability" from a medical model, focusing on the actual impairment itself, the "normal" person might not understand how the mentally impaired academic is "substantially limited" in a major life activity.⁶⁶ However, from the psychosocial model that Price and I

disabilities experience difficulties with both.

64. See Ramona L. Paetzold, *How Courts, Employers, and the ADA Disable Persons with Bipolar Disorder*, 9 EMP. RTS. & EMP. POL'Y J. 293, 314 (2005). Paetzold describes these hurdles:

In addition, [bipolar disorder] is easily doubted because its manifestations are often behaviors that everyone believes they have experienced. It is easy to say that all people have good days and bad days; all people have periods of elation and periods of irritability; all people have days that they cannot concentrate versus days when mental abilities seem stronger; and all people have periods during which they exercise poor judgment. People with [bipolar disorder] may thus be dismissed as merely hypersensitive, more emotional, lacking in self-regulation, or engaging in greater levels of self-promotion. What are missing from this construction are the extremes that persons with [bipolar disorder] experience, their lack of ability to control the extreme moods and concurrent experiences, their risk of suicide, the progression of their disorder, and the debilitation that they suffer as a result of the devastation done to their lives.

Id. I have often been dismissed by administrators and colleagues as "hypersensitive," "overemotional," and "self-promotional."

65. Wendy F. Hensel, *Interacting with Others: A Major Life Activity under the Americans with Disabilities Act?*, 2002 WIS. L. REV. 1139, 1142 (describing that these cases reveal a disturbing trend: "Although the Supreme Court has strongly indicated that courts must evaluate whether an activity is 'major' by looking to the activity's significance to the population generally rather than to the claimant specifically, the pattern in several cases suggests the contrary is occurring."). Furthermore:

Courts appear far more likely to recognize interacting with others as a major life activity, or a significant component of an established major life activity, when asserted by an individual with a physical, rather than mental, impairment. Likewise, cases stemming from an individual's inability to interact with others as a result of other people's unsubstantiated prejudices concerning physical ability, rather than any specific individual action, are viewed favorably by courts. In sharp contrast, where interacting with others is asserted by an individual with a psychiatric impairment involved in questionable behavior in the workplace, courts are far less likely to recognize this activity as "major," even when the individual's inability to interact effectively is a result of group harassment and exclusion.

Id. (footnotes omitted). For example, the Tenth Circuit—in granting summary judgment to an employer following an employee's claim alleging a hostile work environment—determined that the employee was not limited in his ability to sleep, walk, or interact with others and was not regarded as disabled. See *Steele v. Thiokol Corp.*, 241 F.3d 1248 (10th Cir. 2001).

66. See Paetzold, *supra* note 64, at 324 (explaining that courts' analysis of major life activities sometimes focuses too much on physical limitations rather than the issues confronted by an individual with BPD).

favor,⁶⁷ “‘disabilities’ result from situations that are themselves disabling.”⁶⁸ From this perspective, and not from the perspective of a “normal” person (including some judges), it is easier to understand how mentally impaired academics can be “substantially limited” in the major life activities of working,⁶⁹ concentrating, or thinking, and why “interacting with others” should be considered a major life activity. Maybe a court would even recognize “that having the capability to live one’s life for some stable period of time without unpredictable and sometimes extreme mood swings may be a major life activity.”⁷⁰

To qualify for protection under the ADA, a faculty member must be “otherwise qualified” to perform the “essential requirements” or functions of the job, “taking into account reasonable accommodations that could be provided.”⁷¹ Price notes the potential clash between the directive to provide “reasonable accommodations” and “the faculty member’s burden to show that he or she can perform the ‘essential functions’ of the job.”⁷² If academic institutions define “essential functions” too narrowly, they unnecessarily risk the exclusion of faculty members with mental impairments.⁷³ I know firsthand the difficulty in

67. See PRICE, *supra* note 1, at 19 (“My appreciation of *psychosocial* has been affirmed by philosopher Cal Montgomery . . .”).

68. Paetzold, *supra* note 64, at 320. Paetzold observed:

Thus, from a social model perspective, the level of impairment experienced by a person with [bipolar disorder] is determined in part by the physical layout of the work area, interactions with supervisors, interactions with coworkers, the general culture within the work team or organizational group, general attitudes and behaviors within the work environment, flexibility in manner and time of working, and the nature of the task.

Id.

69. See *id.* at 369 (“The issue is not whether the employee with [bipolar disorder] is restricted from performing an entire class of jobs, or even a broad range of jobs within a class, but whether work circumstances are disabling her so that she cannot perform *this* job. If so, then the organization should be expected to make reasonable accommodations to assist her in performing the job. If this is not the standard, people with [bipolar disorder] will be excluded from American workplaces and will not be able to live independently as part of the larger society.”).

70. *Id.* at 368.

71. ROTHSTEIN & IRZYK, *supra* note 56, § 4.10, at 420–21 & n.2 (citing *Se. Cmty. Coll. v. Davis*, 442 U.S. 397, 407 (1979)).

72. PRICE, *supra* note 1, at 108.

73. See, e.g., *Darcangelo v. Verizon Md., Inc.*, 189 F. App’x 217, 218 (4th Cir. 2006) (holding that bipolar employee did not qualify under the ADA because she could not interact with coworkers, an “essential function” of the employee’s position). In defining the position’s “essential functions,” the court relied on the defendant’s code of conduct, which “directs employees to be ‘respectful, cooperative, and helpful toward customers, suppliers, our coworkers, employees and the general public’ and to refrain from acting in ‘an abusive, threatening, discriminatory, harassing or obscene manner toward any employee or others with whom we come in contact during the course of business.’” *Id.*

Paetzold further describes the issue of disability within the context of employment:

getting reasonable accommodations for mental illness.⁷⁴ I have struggled to get the primary accommodations that I have requested—written job responsibilities with significant advance notice of teaching and service obligations. I have been asked that my doctor provide a list of “work restrictions,” rhetoric suggesting that I could not perform certain functions of my job. To the contrary, I perform *all* of the functions of my job but need reasonable accommodations to do so.

Price makes two wrong moves in criticizing the ADA and how courts have applied it. She questions whether the “essential functions” of the job of a law professor should change to accommodate faculty with disabilities: “For example, what if a professor who has agoraphobia or panic disorder must miss classes on an unpredictable basis. Does the burden lie on him to find a substitute, no matter how short the notice or distressing the situation that gave rise to his absence in the first

Employers should not be able to rely on stereotypical beliefs about the personal failings or other unsuitability of a person with [bipolar disorder] in establishing the essential job functions. For example, by saying that “getting along with others” is an essential job function, it could be that employers are thinking that employees who cannot perform this function are simply deficient as people and could never be good employees or perhaps that they would introduce workplace conflict. Employers could also be reflecting on their own lack of experience and ideas regarding trying to accommodate interpersonal interactions, i.e., their inability to think “outside of the box.” Courts must place a stronger burden on employers to justify their choices for essential job functions so as not to discriminate against persons with [bipolar disorder].

....

... Although all job functions can be manipulated to have negative consequences for persons with [bipolar disorder], those requiring subjective assessment may leave far too much to employer discretion. Being friendly and getting along with others are subjectively evaluated job functions that are problematic because they are relatively incapable of objective measurement. It will always be difficult to know when the level of performance of such job functions is acceptable.

Paetzold, *supra* note 64, at 370–71.

74. On the issue of accommodation, Paetzold opines that:

It may be difficult for the employee with [bipolar disorder] to articulate precisely how she is impaired or what she may need to assist her in doing her job effectively. Placing a greater burden on the employer to initiate the process, provide suggestions, communicate with doctors (with the employee’s permission), show patience, and generally facilitate the process would help to allow employees with [bipolar disorder] to remain in the workplace.

Id. at 365–66. Price additionally notes that:

[R]equests for accommodations for psychiatric disabilities are “routinely deemed per se unreasonable by reviewing courts.” Such accommodations include working at home, being transferred away from certain coworkers or supervisors, or modification of standards for behavior. In short, not only are workers with mental disabilities likely to be considered a threat, and thus unqualified for employment, but their requests for accommodations are likely to be deemed “unreasonable.”

PRICE, *supra* note 1, at 111 (internal citations omitted).

place?”⁷⁵ To the extent that teaching classes regularly is an “essential function” of a law professor (which it should be), the professor who regularly and unpredictably misses classes (even with reasonable accommodations) is not fulfilling that function and should not receive protection under the ADA. To suggest otherwise is to suggest that faculty with mental impairments are less capable than faculty without impairments, which pushes faculty like me unwillingly “out of the societally defined space of the ‘normal.’”⁷⁶

Price’s second wrong move is to confuse the reader about the effect of the 2008 ADA amendments. She is correct that the “Equal Employment Opportunity Commission states that disability should be defined without consideration of ‘medicines.’”⁷⁷ That has been the state of the law since the amendments were passed.⁷⁸ However, she then claims (as if it were the current law) that “several judgments in 1999 and following found that an individual’s qualification for [being] disabled should be assessed in a ‘corrected,’ that is, ‘medicated’ state.”⁷⁹ Those cases, which were decided *before* the amendments, are clear in stating that mitigating measures, such as medication, should not be taken into account when considering whether a disability imposes a “substantial limitation.”⁸⁰

B. Naming

To refer to academics with mental impairments, Price writes, “[T]hese days I’m using *mental disability*. . . . [T]his term can include

75. PRICE, *supra* note 1, at 108. Price provides an example:

In [*Horton v. Board of Trustees of Community College District No. 508*], the professor claimed to have an “unspecified nervous disorder” and missed time from teaching. The court ruled that since the “essential functions” of a community college professor’s job are to “prepare, attend, and teach classes,” and his disorder caused him to miss class, he did not qualify. . . . If presence is considered an essential function of an academic position, and presence is defined in terms of one’s fleshy appearance in a classroom, then many faculty members with mental disabilities are de facto not qualified for their jobs.

Id. at 112 (internal citations omitted).

76. PRICE, *supra* note 1, at 29. *See id.* (“[Disability Studies] concerns itself with human difference, and emphasizes the ways that people with disabilities are ostracized, medicalized, heroized, and otherwise pushed out of the societally defined space of the ‘normal.’ . . . [Disability Studies] has a long history of interest in the ways that language is used to construct formations of power and difference.”).

77. *Id.* at 110.

78. *See* 42 U.S.C.A. § 12-102(E)(i) (West 2012) (stating that the determination of whether an impairment substantially limits a major life activity shall be made without considering factors such as medication). *See also* 29 C.F.R. § 1630.2(j)(v) (2012) (indicating that a medical analysis is not required; however, the presentation of such an analysis is not prohibited).

79. PRICE, *supra* note 1, at 110.

80. ROTHSTEIN & IRZYK, *supra* note 56, § 4.8, at 398 nn.68–71.

not only madness, but also cognitive and intellectual dis/abilities of various kinds.”⁸¹ While “mental disability” is perhaps accurate for the student with dyslexia, ADHD, or autism, I disagree with Price’s choice of labels for “mad” academics with a myriad of mood and personality disorders for three reasons.

First, part of the problem with the term “disability” is that it presumes an inability to do things that a “normal” person can do. This stance ignores the fact that what an individual can or cannot do often depends on the social context⁸²—e.g., an academic environment—and the fact that faculty members with mental impairments are often able to do everything a “normal” faculty member can do, with medication, support, workplace flexibility, and other reasonable accommodations. Labeling me as “disabled” suggests I am incompetent, which I am not. On the contrary, I have been able to exceed expectations in the “essential functions” of my current job.

Second, the word “disability” demands diagnostic and objective precision, which Price abhors. As she states, “[p]sychiatric discourse positions itself as natural, scientific, and objective, a system through which human minds may be reliably measured as ‘crazy’ or ‘normal,’ and through which human bodies can therefore be sorted into their appropriate spaces: the educational institution or the mental institution.”⁸³ When a faculty member has received multiple and conflicting diagnoses, and has a myriad of mental health symptoms, how can we define his or her impairment? I would not begin to know how to describe my mental “disability,” and neither medicine nor science has been any more successful. Once we use the term “mental disability,” we devalue the individual experience.

Last, and most important from my perspective, the term “disability” buys into the ADA’s legal constructs. This is problematic for the faculty member who has a mental impairment (but does not qualify for protection under the ADA) because there is a risk of altogether delegitimizing his or her impairment. The ADA also does not adequately protect academics with mental illness.⁸⁴ Faculty members with mental impairments have to work outside of the confines of the ADA—whether through narrative and rhetoric, democratic institutional

81. PRICE, *supra* note 1, at 19.

82. See *supra* notes 66–70 and accompanying text (describing the psychosocial model for approaching “disability,” which involves analyzing situations that result in disabilities).

83. PRICE, *supra* note 1, at 33.

84. See *supra* notes 55–57 and accompanying text (explaining how the ADA has not protected academics from employment discrimination).

governance, or legislative or grassroots advocacy⁸⁵—to ensure equal participation in academic life. The term “mental disability” hampers this effort because, to a large extent, “mad” faculty members with “disabilities” have a safe haven under the ADA and are included as equal participants in academic life; those without “disabilities” under the ADA are often excluded. To break free of the ADA as a construct to define who is “able” and who is “disabled,” we need to break free from the term “mental disability.”

I prefer the term “mental illness.” Illness can incorporate a host of diagnoses and symptoms, and does not carry with it the baggage that the mentally ill academic might be incompetent in performing his or her job. Price criticizes this term:

Mental illness introduces a discourse of well/unwellness into the notion of madness; its complement is *mental health*, the term of choice for the medical community as well as insurance companies and social support services. The unwell/well paradigm has many problems, particularly its implication that a mad person needs to be “cured” by some means.⁸⁶

While I agree with Price’s critique to some extent, many mental illnesses are chronic (as are many physical illnesses like cancers and autoimmune disorders), and there is no expectation that they will be “cured.” Additionally, the term “mental illness” does not have to be defined naturally, scientifically, or objectively, but, unrestrained by the ADA, can be defined subjectively in light of the “mad” academic’s individual symptoms and experiences. Admittedly, however, there are problems with any term used to describe “madness.” Just as “illness” might suggest temporariness or an impairment that can be cured, “disability” suggests permanence or an impairment that cannot be mitigated or ameliorated.

C. Teaching and Learning

My own experiences with mental illness at Harvard Law greatly inform my teaching. Price organizes her discussion of teaching and learning within three constructs: presence and absence, participation and discussion, and resistance. I do the same.

1. Presence and Absence

A student physically present in class is not necessarily

85. For an example of an organization that fosters grassroots advocacy to overcome the stigma of mental illness, see BRING CHANGE 2 MIND, <http://www.bringchange2mind.org> (last visited Jan. 11, 2013).

86. PRICE, *supra* note 1, at 12.

“experiencing” the class.⁸⁷ Conversely, a student not physically present in class may “experience” the class: “A student with social anxiety, or [a disorder falling] on the autism spectrum, for example, might get a great deal more out of the learning process that does *not* involve close contact or interaction with others.”⁸⁸ I learned best in law school by reading text; I often did not attend class when not required to do so, yet did well in the courses that I did not regularly attend. Students’ disabilities may play a role in the students’ physical presence in class,⁸⁹ and therefore, I do not require attendance in my doctrinal classes and provide students many other ways to learn. As an example, I post copies of all of my class notes online.

Of course, students can be absent from class for reasons unrelated to a mental impairment—they might be unmotivated or disinterested (which, of course, could be related to mental illness), have a conflicting commitment (e.g., a job, family, moot court competition, etc.), or be physically ill. Consequently, I take attendance and reach out to any students who consistently miss class, offering pastoral advice and academic assistance. In my transactional skills classes, however, I require students to attend class and participate—students’ learning is thwarted without active attendance and participation (e.g., as a client, co-counsel, or opposing counsel). In a law school, students need to learn how to keep professional obligations despite their disabilities,⁹⁰ and I try to provide safer places⁹¹ for them to do so (e.g., reaching out to a seemingly anxious student in a negotiation for one-on-one coaching, or encouraging students to take a break on their own to gather their thoughts). Ironically, students in these classes often talk to my co-teachers and me about issues related to their mental health, partly because of the intense interactions and critical self-reflection that we require.

87. *Id.* at 66.

88. *Id.*

89. *See id.* at 65 (explaining that some studies of classroom attendance erroneously ignore that disabled students may face barriers to physically attending class).

90. Many commentators have described the importance of teaching law students professionalism. *See, e.g.,* Douglas S. Lang, *The Role of Law Professors: A Critical Force in Shaping Integrity and Professionalism*, 42 S. TEX. L. REV. 509, 512 (2001) (“Although law professors could easily set law students on the track towards honest, ethical and professional behavior in the practice of law, many professors refuse to act.”).

91. *See* PRICE, *supra* note 1, at 100–01 (discussing “safe houses,” which are defined as “social and intellectual spaces where groups can constitute themselves . . . with high degrees of trust, shared understandings, [and] temporary protection from legacies of oppression” (citations omitted)).

2. Participation and Discussion

I do not use the Socratic method or cold-call on students; every time I think about doing so, I am brought back to my experience in Professor Areeda's antitrust class. The Socratic method can alienate or silence students who identify with "outsider" groups.⁹² I give students many opportunities to participate through "multimodal communication"⁹³—in class, they work individually, in pairs, and in groups; can work on written assignments by themselves or with classmates; receive information in writing, verbally, and visually; and can communicate with me by email or in person.⁹⁴ I also ask groups of students to

92. See, e.g., Jennifer Jolly-Ryan, *Disabilities to Exceptional Abilities, Law Students with Disabilities, Nontraditional Learners, and the Law Teacher as a Learner*, 6 NEV. L.J. 116, 124–25 (2005) ("Scholars now criticize the Socratic Method as a primary teaching tool, despite its long reign in law schools. It is ineffective for most types of learners. Some scholars describe it as 'mystifying and patriarchal, persisting because of large classes and professors too lazy to adopt new teaching methods.' It has been particularly ineffective for teaching women, minorities, and students with a wide variety of learning styles. However, law professors cling to the Socratic Method as their primary teaching tool." (footnotes omitted)); Benjamin V. Madison, III, *The Elephant in Law School Classrooms: Overuse of the Socratic Method as an Obstacle to Teaching Modern Law Students*, 85 U. DET. MERCY L. REV. 293, 301 (2008) ("Does the unwillingness to embrace methods to complement the Socratic method actually represent an unhealthy elitism? Evidence suggests that the large-class Socratic format discourages participation of many students, particularly women and minorities. If women and minorities do not benefit from the pure-Socratic approach, we ought to ask ourselves whether professors are ironically perpetuating a subtle form of discrimination by their insistence upon a purely Socratic classroom." (footnote omitted)); Jennifer L. Rosato, *The Socratic Method and Women Law Students: Humanize, Don't Feminize*, 7 S. CAL. REV. L. & WOMEN'S STUD. 37, 37–38 (1997) ("Complaints have been leveled against the Socratic Method of law teaching for many years. Notwithstanding these complaints, the Socratic Method continues to be the primary pedagogy used by law school teachers. Renewed concerns about the continued use of this teaching method have been raised by recent studies that address its effect on women law students. The results of these studies are overwhelmingly negative: they conclude that the Socratic Method alienates, oppresses, traumatizes and silences women." (footnotes omitted)).

93. See PRICE, *supra* note 1, at 96–98 (discussing "multimodal communication," or implementing a variety of modes and styles of communication).

94. Students should be exposed to varying types of communication both because they have diverse learning styles and because they will be required to communicate in different ways as lawyers. Professor Alaka describes the need for this type of learning:

Similarly, regardless of whether one self-identifies as a visual, auditory, kinesthetic, or tactile learner, lawyers regularly use each of those modalities in practice. They process information by reading and synthesizing legal authority and documents obtained during discovery, for example, and act on oral directives from clients, judges, and colleagues. As professional writers, lawyers create myriad types of documents, including those that reflect their analysis of the law, their understanding of clients' goals, and their informed strategic choices. Although personality might ultimately determine a lawyer's career choices and, thus, the frequency with which she engages in particular activities, lawyers need to develop the ability to obtain and use information across the spectrum of identified modalities.

Aida M. Alaka, *Learning Styles: What Difference Do the Differences Make?*, 5 CHARLESTON L. REV. 133, 167–68 (2011). See also Robin Boyle & Rita Dunn, *Teaching Law Students through*

prepare problem sets and discuss the assigned problems in class. I emphasize ongoing feedback, including positive feedback and encouragement of students,⁹⁵ comments on drafts of student work, and opportunities for students to provide me feedback on the class.⁹⁶

3. Resistance

My classroom is unorthodox. I stand on desks, yell, make self-deprecating jokes, tell stories, and have even been known to take a student's water bottle and dump it out on the floor (to illustrate the tort of conversion). Consequently, the norms in my classroom are flexible, inclusive, and appeal to students with a variety of learning styles and backgrounds. I view student resistance flexibly, and "seek to include disruption of [my] own classroom-based agendas as part of the learning process."⁹⁷ For example, I taught an intensive one-week simulation class, and students were near mutiny after staying up all night to

Individual Learning Styles, 62 ALB. L. REV. 213, 223 (1998) ("A growing number of law professors agree that students do not all learn the same way. This leads to the conclusion that more emphasis on individual learning styles should be explored at the law school level." (footnote omitted)). Furthermore, "[b]ecause all students do not learn the same way, law professors should avoid adopting an across-the-board teaching method." *Id.*

95. Faculty members should give students prompt feedback, including positive feedback. See Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75, 106 (2002) ("The importance of formative feedback for student learning cannot be overestimated. Prompt feedback has a clear positive relationship to student achievement and satisfaction. Frequent positive feedback helps students become self-motivated, independent learners."); Christine Ver Ploeg & Jim Hilbert, *Project-Based Learning and ADR Education: One Model for Teaching ADR Students to Problem Solve for Real*, 11 APPALACHIAN J.L. 157, 182 (2012) ("So little of law school is spent on providing feedback, and this is an important time for the students to feel good about their work. Typically, the clients are extremely happy about the work product, so it can be fun to debrief the students on the clients' satisfaction." (footnote omitted)). However, in order for this feedback to become "real," "faculty could actually go around the room and tell each student individually what particular contributions were valuable, thereby providing both positive feedback and public acknowledgement." *Id.*

96. See PRICE, *supra* note 1, at 96 (discussing the provision of feedback). Joan Catherine Bohl has described the issue of feedback with respect to current generations:

This characteristic has particular significance for Gen X Y students, who learn best when they are actively engaged with the material. A key part of active engagement, and of participation in the classroom, is the give and take of feedback between professor and student. Feedback—like frequent opportunities for evaluation—confirms to students that they have grasped the concepts involved. With this confirmation, they can progress through the learning process in the small steps their life experiences have taught them to expect. Since their technology-laced experience has conditioned them to receive information in small, discrete portions, rather than engaging in a lengthy process of learning with results deferred, frequent evaluation can enhance the learning process directly.

Joan Catherine Bohl, *Generations X and Y in Law School: Practical Strategies for Teaching the "MTV/Google" Generation*, 54 LOY. L. REV. 775, 785 (2008) (footnotes omitted).

97. PRICE, *supra* note 1, at 79–80.

complete research memos. I used this experience both to encourage students to reflect critically on what they learned and for me to reflect on how I could give feedback to boost the students' enthusiasm and reduce the workload for the remainder of the week. I welcome students to "interrupt the conventional script of classroom discourse"⁹⁸ as long as they do so civilly and professionally. I often interrupt that "conventional script" myself, by, for example, leading a mindfulness or relaxation exercise in the middle of class.

D. Productivity

As Price notes, we "continue to think of the prototypical faculty member as a three-trick pony, equally skilled in research, teaching, and service."⁹⁹ In response to this traditional conception of "productivity," Price asks two pertinent questions:

The first question is[:] *What is the nature of the thing?* In other words, what in fact *are* the essential functions of work as a faculty member? . . . The second question is[:] *What is the quality of the thing?* In other words, how good is the faculty member's performance in teaching, scholarship, service (and perhaps collegiality)?¹⁰⁰

Critics of legal education have argued that law schools should redistribute resources away from scholarship and toward student learning and development.¹⁰¹ Law schools are beginning to rethink the

98. *Id.* at 79.

99. *Id.* at 136.

100. *Id.* at 107.

101. See Lauren Carasik, *Renaissance or Retrenchment: Legal Education at a Crossroads*, 44 IND. L. REV. 735, 767 (2011) (arguing that a way to justify fewer full-time faculty is based on the lack of utility "of increasingly esoteric faculty scholarship" that law students finance, but from which they derive no real benefit). Instead, "the money spent supporting law professors to produce scholarship could be better spent providing direct benefits to the students who finance those salaries." *Id.* See also Mary A. Lynch, *An Evaluation of Ten Concerns about Using Outcomes in Legal Education*, 38 WM. MITCHELL L. REV. 976, 985 (2012) ("Some legal education reformers maintain that resources in legal education have been disproportionately weighted towards scholarship goals and away from professional development of students. They argue for what they see as a 'fairer' distribution of resources." (footnote omitted)); Brent E. Newton, *Preaching What They Don't Practice: Why Law Faculties' Preoccupation with Impractical Scholarship and Devaluation of Professional Competencies Obstruct Reform in the Legal Academy*, 62 S.C. L. REV. 105, 154-55 (2010) (finding unacceptable that a substantial portion "of the tuition that law students pay currently serves as a cross-subsidy that allows professors to spend most of their time researching and writing impractical law review articles rather than effectively teaching students the knowledge, skills, and professional values they will need to be competent (and employable) lawyers"). Instead, Newton proposes that schools strike a healthier balance between their functions as both "learning institutions and producers of legal scholarship." *Id.* at 155. Because of the latter's current dominance over the former, schools have "mostly impractical law faculties [that] must cease before [certain] pedagogical and curricular reforms . . . can be realized. The professoriate must practice before it preaches." *Id.* (footnotes omitted).

role of faculty,¹⁰² and some proponents of reform argue that law school faculty should focus either on teaching or scholarship.¹⁰³ As Price argues, a “key structural shift that would benefit not only faculty with mental disabilities, but all faculty . . . would be a radical reconfiguration of the research-teaching-service triad, with a proliferation of differently structured positions according to [institutional] need, ability, and desire.”¹⁰⁴

If we were to rethink the role of faculty, we could reexamine the role of the faculty member’s “presence” in the classroom.¹⁰⁵ Law schools are beginning to shift more resources to online teaching and learning to increase access to legal education.¹⁰⁶ To the extent online teaching and learning further pedagogical objectives, such as appealing to different learning styles¹⁰⁷ and achieving certain learning outcomes,¹⁰⁸ faculty

102. See John O. Sonsteng et al., *Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 WM. MITCHELL L. REV. 303, 467 (2007) (“[We should determine the] appropriate role of faculty, while taking into account the impact of cost on individual students, the established educational objectives, the necessary balance between the faculty’s role in education and scholarship, and the extent to which a particular faculty structure requires students to find crucial training outside the law school.” (footnote omitted)).

103. As an example, Newton proposes some alternatives:

First, law schools should create two types of tenure-track professorships, “research” professors and “teaching” professors, with equal opportunities in the tenure-track system (although evaluated differently for tenure), equitable voting rights in faculty governance, and equivalent salaries. Unlike the current system, which routinely assigns the bulk of teaching responsibilities to faculty members who have been hired to be impractical scholars, the proposed system would permit a certain segment of the faculty, at most one-third, to focus on what they do best: theoretical, interdisciplinary research and scholarship. Such research professors, only a small percentage with both a Ph.D. and a law degree, would carry lesser teaching loads than teaching professors, and in addition would only teach courses in their areas of expertise (e.g., statistics and econometrics for lawyers).

Newton, *supra* note 101, at 148–49 (footnotes omitted).

104. PRICE, *supra* note 1, at 137.

105. See *id.* at 112 (“Here we see the problem of presence, explored in terms of students’ experience in chapter 2, affecting faculty members as well.”).

106. See, e.g., Gregory M. Duhl, *Equipping Our Lawyers: Mitchell’s Outcomes-Based Approach to Legal Education*, 38 WM. MITCHELL L. REV. 906, 943–44 (2012) (“Online and blended courses increase access for students, especially nontraditional students We need more courses that are fully online, especially bar courses, which enable students to complete externships in rural parts of Minnesota”).

107. See David P. Diaz & Ryan B. Cartnal, *Students’ Learning Styles in Two Classes: Online Distance Learning and Equivalent On-Campus*, 47 C. TEACHING 130, 135 (1999) (concluding that information about the different learning styles of participating students should impact the style and structure of the “distance education environment,” or online courses).

108. See U.S. DEP’T OF EDUC., EVALUATION OF EVIDENCE-BASED PRACTICES IN ONLINE LEARNING: A META-ANALYSIS AND REVIEW OF ONLINE LEARNING STUDIES 18 (2010), available at <http://www2.ed.gov/rschstat/eval/tech/evidence-based-practices/finalreport.pdf> (“The overall finding of the meta-analysis is that classes with online learning (whether taught completely online or blended) on average produce stronger student learning outcomes than do

members, such as professors who suffer from panic disorder, could be “present” in the classroom without making a “fleshy appearance.”¹⁰⁹ Likewise, the faculty member who, like me, feels awkward and uncomfortable at conferences,¹¹⁰ could discuss his or her work through blogs, emails, and peer exchange or feedback.¹¹¹

There remains one caveat. While the experiences and perspectives of “mad” faculty can provide the answers to Price’s questions, particularly because we can relate to students with different learning styles and dis/abilities, we should define the “essential functions” of a professor in the context of institutional needs. Price starts with the premise that some “mad” faculty members cannot fulfill the “essential functions” of a professor as traditionally defined, and then argues that all faculty could benefit from a reconceptualization of faculty “productivity.”¹¹² Her rhetorical move undercuts the “outsider” narrative; we have more credibility to advocate for institutional change if we are “competent” as measured by current institutional norms.

The converse of Price’s concern as to whether mentally ill faculty members can fulfill the “essential functions” of their jobs is the risk that they be held to a higher “productivity” standard than “normal” faculty. For example, the Faculty Handbook at my law school states:

To be granted and retain tenure, faculty members at William Mitchell are expected to demonstrate competent and professional performance in four areas: (1) teaching; (2) scholarship; (3) service; and (4) complying with the standards of professional conduct. Each of these areas is among the *essential functions* of the position of a faculty

classes with solely face-to-face instruction.”); Gary A. Munneke, *Managing a Law Practice: What You Need to Learn in Law School*, 30 PACE L. REV. 1207, 1245 (2010) (“Just as legal services are no longer bound by the four walls of the law office, education without walls is not only feasible, but desirable. Without denigrating the value of face-to-face contact, distance learning, like distance representation of clients, provides opportunities to enhance and expand the scope of communications.”).

109. PRICE, *supra* note 1, at 112.

110. Cf. PRICE, *supra* note 1, at 121–29 (discussing “productivity” and “collegiality” in the context of academic conferences).

111. Price gives an example:

I’m delighted to give and receive directly voice feedback when I can; however, being queer and mentally disabled myself, I can well understand that silence may be the most empowering strategy that one has available at a given time. For this reason we—faculty, administrators, and public advocates—must understand that feedback comes in many forms.

PRICE, *supra* note 1, at 131.

112. See *supra* note 73 and accompanying text (describing how academic institutions may narrowly define “essential functions” in a way that excludes faculty members with mental impairments).

member at William Mitchell. Faculty members must demonstrate overall competent and professional performance.¹¹³

Despite this language, some of our faculty members do not engage in scholarship, for example. As a mentally ill faculty member, I could be held to a higher standard than “normal” faculty members because I must show I can fulfill the “essential functions” of my job. Two higher education lawyers recommend that institutions “[m]ake sure that workload policies and practices are clear and are followed consistently, documenting any deviations from standard practice (e.g., faculty members given special projects, research leaves, etc.)”¹¹⁴

E. Collegiality

While writing this Article, I happened to read this advice for faculty candidates giving job talks from Dan Shapiro, Chair of the Humanities Department at the Penn State College of Medicine:

Fragile faculty members are a drain on our system, and more important, on me. If they need a certain temperature in their office (within two degrees), can’t function if their mailbox gets moved, and panic if the class times change, then life will be hard on all of us. I need faculty members who can help nourish our fragile students even in tough circumstances, not suck away all the resources because they themselves can’t tolerate life’s normal insults.¹¹⁵

My reaction was total disbelief. Shapiro’s rhetoric—and perhaps his actions—exclude the “fragile,” the hypersensitive, and many of the mentally ill from positions in his department. I regularly ask the facilities department to turn down the temperature in my office and in my classrooms because I sweat from general anxiety; I often get flustered by a room change or a schedule change; and life’s “normal insults”—for example, one negative comment on a course evaluation—bother me. In excluding me, and others like me, Professor Shapiro excludes our energy, our creativity, our voices, and perhaps our abilities to relate to the “fragile” students whom he describes.

Price recounts the common narrative of how mentally ill faculty members “are labeled as ‘difficult’ and become the object of administrative hand-wringing, or even formal sanctions. In this case, we might think of Professor Y, who is notorious for her outbursts in

113. FACULTY HANDBOOK, *supra* note 53, at 12 (emphasis added).

114. BARBARA A. LEE & PETER H. RUGER, ACCOMMODATING FACULTY AND STAFF WITH PSYCHIATRIC DISABILITIES 16–17 (2003).

115. Dan Shapiro, *Grim Job Talks Are a Buzz Kill*, CHRON. OF HIGHER EDUC. (July 16, 2012), http://chronicle.com/article/Grim-Job-Talks-AreaBuzzKill/132843/?cid=at&utm_source=at&utm_medium=en. *Cf.* PRICE, *supra* note 1, at 117–18 (discussing the effects of a job search on faculty candidates with disabilities).

faculty meetings and who is whispered to be ‘unbalanced.’”¹¹⁶ The speaker whom my law school invited to our spring faculty retreat to provide sensitivity training on mental illness consults with employers on working with “difficult” people and talked about how to “manage” and “deal with” mentally ill academics. There is also an assumption in much writing that mentally ill faculty members are not part of the “collegial” group.¹¹⁷ I might be “paranoid,” itself an often-described trait of “uncollegial[ity],”¹¹⁸ but I perceive that I am often viewed as difficult or demanding, ironically, even in my request for accommodations.¹¹⁹

The American Association of University Professors warns against using “collegiality” as an independent criterion for faculty evaluation:

[C]ollegiality is not a distinct capacity to be assessed independently of the traditional triumvirate of teaching, scholarship, and service. It is rather a quality whose value is expressed in the successful execution of these three functions. . . . The current tendency to isolate collegiality as a distinct dimension of evaluation, however, poses several dangers. Historically, “collegiality” has not infrequently been associated with ensuring homogeneity, and hence with practices that exclude persons on the basis of their difference from a perceived norm. The invocation of “collegiality” may also threaten academic freedom. . . . [C]ollegiality may be confused with the expectation that a faculty member display “enthusiasm” or “dedication,” evince “a constructive attitude” that will “foster harmony,” or display an excessive deference to administrative or faculty decisions where these may require reasoned discussion. Such expectations are flatly contrary to elementary principles of academic freedom, which protect a faculty member’s right to dissent from the judgments of colleagues and administrators.¹²⁰

This warning is particularly welcome for a faculty member whose reality is not shaded but defined in black and white. One colleague calls

116. PRICE, *supra* note 1, at 2–3.

117. Jennifer Ruark, *In Academic Culture, Mental Health Problems Are Hard to Recognize and Hard to Treat*, CHRON. (Feb. 16, 2010), <http://chronicle.com/article/In-Academe-Mental-Health/64246/> (“Historically, ‘collegial’ has too often been code for ‘just like us[,]’ which can drive out otherwise qualified faculty members”); PRICE, *supra* note 1, at 112–17.

118. PRICE, *supra* note 1, at 114.

119. Price notes that there is very little current research on the issue of accommodating mental disabilities outside of studies on lawsuits under the ADA. However, the research that has been done seems to indicate that “employees fear asking for accommodation, and when they do ask, report being further stigmatized This creates . . . a ‘disclosure conundrum’: to obtain accommodation, a person with a mental disability must disclose; but the act of disclosure itself may bring about stigmatization and retaliation.” *Id.* at 118.

120. *On Collegiality as a Criterion for Faculty Evaluation*, AAUP (Nov. 1999), <http://www.aaup.org/AAUP/pubsres/policydocs/contents/collegiality.htm>.

me an “enigma” because he cannot figure out whether I will support the administration from issue to issue. His reaction is not surprising; I support not what the administration wants or does not want, but what I think is “right.” At the same time, however, I am “highly committed to [my] organization, driven to succeed, and loyal.”¹²¹

Neither Price nor I suggest that faculty conduct that does not conform to institutional norms should be condoned; we ask instead for a “clearer” and more “ethical” conceptualization of what those norms are.¹²² Mental illness should not excuse conduct harmful to the institution, and I receive mental health treatment for both personal and professional reasons to enable me to excel at work. At the same time, colleagues can be “affirming” toward faculty members with “hidden” disabilities—in standing by such a colleague under scrutiny or taking collective action on behalf of that faculty member (e.g., by writing a collaborative memo to the administration).¹²³ A “small gesture or a few well-placed words can have enormous impact.”¹²⁴ “We must proliferate our ways of asking for—and *listening*—for feedback,”¹²⁵ which suggests that feedback should be more democratic and go in many directions (e.g., faculty-to-faculty, administrator-to-faculty, and faculty-to-administrator). I am evaluated on a yearly basis by my academic deans and tenure committee, but I am never given the opportunity to evaluate *them*. More pointedly, the “shameful statistics on employment levels of persons with mental disabilities, the silence around mental disability in academe, and our scarcity in faculty positions generally, are also feedback, if we pay attention to them.”¹²⁶

As Price writes, there is no “one size fits all” for access.¹²⁷ For example, my communication style differs from the “normal-minded”: I am direct, honest, and literal; I often miss social cues and nuances; and I am an incredibly fast thinker and worker, which is refreshing to some colleagues and off-putting to others. The solution is a structural one—we need “more democratic systems of communication that make room for difference.”¹²⁸ For example, I am much more comfortable communicating by email than in person.¹²⁹ As Ramona Paetzold

121. Paetzold, *supra* note 64, at 373.

122. PRICE, *supra* note 1, at 115.

123. *Id.* at 132.

124. *Id.*

125. *Id.* at 130 (emphasis added).

126. *Id.* at 131.

127. *Id.* at 135.

128. *Id.* at 116.

129. *Cf. id.* at 90 (“For my own frenetic, visual/verbal ways of learning—not to mention my anxiety during face-to-face interactions—holding two or three conversations via chat is

writes, “opening the doors for those with mental illnesses means that innovation is required to find ways to alter the work environment to embrace them and render them enabled.”¹³⁰

III. MAD AT SCHOOL: WHAT MATTERS?

In *Mad at School*, Price, with humility and compassion, analyzes the rhetoric in academic discourse about mental disabilities. Her analysis is critical to making much-needed progress in higher education toward removing stigma and obstacles for academics with mental illness. In addition, law, medicine, and “outsider” narratives—all discussed by Price¹³¹—offer insights into how we can remove the secrecy and stigma surrounding mental illness in legal education.

A. *Rhetoric and Context Matter*

After listening to a social worker talk at our faculty retreat about how to work with “difficult” (i.e., mentally ill) people, I could not stand it anymore. I spoke out about how I had been diagnosed with both Bipolar Disorder and BPD. I argued that mentally ill academics frequently have tremendous creativity, energy, and drive, and can make enormous contributions to educational institutions, often *because of* their illnesses. Taken off guard, she responded that she was focusing on acute disorders, such as anxiety and depression, and not personality disorders. She did not even acknowledge that the symptoms of personality disorders are often acute (e.g., panic, depression, mania, etc.). That was my “coming out” to my faculty colleagues, to which most responded, “I never would have known.”

The social worker’s rhetoric did more to stigmatize mental illness than to eliminate stigma, in large part because of the context in which she spoke—she was the alleged expert on mental illness in the workplace. After the presentation, one of my curmudgeonly colleagues came up to me and said, “Greg, I didn’t know you were a nutcase.” In most contexts, such a comment would be insulting and dehumanizing, but this colleague made his comment as a sign of support and affection. Context matters.

While writing this Article, Jesse Jackson Jr., the U.S. Representative for Illinois’s Second Congressional District, went missing from

considerably more effective and more energy-efficient than holding one oral/aural conference in person.”).

130. Paetzold, *supra* note 64, at 371.

131. See PRICE, *supra* note 1, at 52 (commenting that medical or “other” narratives with respect to disability attempt to “cure” through rhetoric).

Congress.¹³² After much speculation, his staff released a statement from an unidentified doctor that Jackson was “receiving intensive medical treatment at a residential treatment facility for a mood disorder,” “responding positively to treatment,” and “expected to make a full recovery.”¹³³ His office first announced that he was taking a medical leave of absence for “exhaustion.”¹³⁴ Using “exhaustion” as a misnomer for mental illness is stigmatizing; when administrators and colleagues tell me they worry about me “burning out” or becoming “exhausted,” they are, although well-intentioned, minimizing that my illness is part of my mind. Likewise, the remark that Jackson is “expected to make a full recovery” suggests that mental illness can be “cured,” a suggestion that both Price and I would agree is rhetorically crippling.

B. Law Matters

The ADA has largely failed academics with mental illness.¹³⁵ These academics cannot prove that they have a “disability,” that they are “otherwise qualified” to perform the “essential functions” of the job, or that their accommodations are “reasonable.”¹³⁶ While some commentators have called for courts to interpret the ADA more broadly,¹³⁷ the problem is with the ADA itself. Kathleen Zylan notes:

Perhaps in an effort to combat fears of overinclusiveness by covering the mentally ill under the ADA, Congress drafted an ambiguous statute that has undoubtedly led to economic waste in the form of increased litigation and employment costs as employers and courts wade through the nebulous language. These ambiguities are particularly troublesome when claims are based on mental disability rather than physical disability because the nature of mental illness lends itself to more speculation and less confidence in the veracity of the claim of disability. This lack of precision in diagnosis of a mental disorder, coupled with the ambiguities in the language of the ADA,

132. Kate Bolduan & Deidre Walsh, *Rep. Jesse Jackson Jr. Being Treated for Mood Disorder, Statement Says*, CNN (July 11, 2012), http://articles.cnn.com/2012-07-11/politics/politics_congress-jackson-absence_1_jackson-bipolar-mood-disorder.

133. *Id.*

134. Abdon M. Pallasch & Lynn Sweet, *Jesse Jackson Jr. Takes Medical Leave for 'Exhaustion'*, CHI. SUN-TIMES, (June 25, 2012, 5:36 PM), <http://www.suntimes.com/news/politics/13408948-418/us-rep-jesse-jackson-jr-takes-medical-leave-for-exhaustion.html>.

135. See *supra* note 55 and accompanying text (citing scholarly examples of the ADA's shortcomings).

136. See *supra* notes 55–74 and accompanying text (discussing the difficulty that mentally impaired faculty have in bringing successful ADA claims).

137. See, e.g., Paetzold, *supra* note 64, at 363–82 (suggesting that courts should expand their ADA interpretations to include mental disabilities).

also provides difficulties for employers when making employment decisions. Thus, the ADA fails not only the employees, but also the employers.¹³⁸

We need to advocate for laws and regulations that do not clutch to a definition of “disability” more suited for those with physical impairments, but that cover mental illness more broadly and explicitly, including specific illnesses and symptoms. Likewise, we need to think of “accommodations” more broadly. For example, the Job Accommodation Network suggests that supervisors can do the following for employees with mental health impairments:

- Provide positive praise and reinforcement,
- Provide day-to-day guidance and feedback,
- Provide written job instructions via email,
- Develop clear expectations of responsibilities and the consequences of not meeting performance standards,
- Schedule consistent meetings with employee to set goals and review progress,
- Allow for open communication,
- Establish written long term and short term goals,
- Develop strategies to deal with conflict,
- Develop a procedure to evaluate the effectiveness of the accommodation,
- Educate all employees on their right to accommodations,
- Provide sensitivity training to coworkers and supervisors,
- Do not mandate that employees attend work-related social functions, and
- Encourage all employees to move non-work-related conversations out of work areas.¹³⁹

“Mad” faculty members should also encourage their academic institutions to adopt policies for faculty members with mental and physical impairments. I was surprised that many institutions, including my own, do not have such policies. Two leading higher education lawyers advise educational institutions, “If your institution has a policy for dealing with faculty or staff disabilities, consult that first. If your institution has no such policy, it should develop one immediately.”¹⁴⁰ Similarly, the American Association of University Professors wrote, “Most institutions have well-developed procedures for managing the

138. Zylan, *supra* note 55, at 80–81 (footnotes omitted).

139. BETH LOY, ACCOMMODATION AND COMPLIANCE SERIES: EMPLOYEES WITH MENTAL HEALTH IMPAIRMENTS, JOB ACCOMMODATION NETWORK 10 (2011), available at <https://askjan.org/media/downloads/PsychiatricA&Cseries.pdf>.

140. LEE & RUGER, *supra* note 114, at 16.

needs of students who have disabilities. Procedures for managing faculty accommodation requests, while used less frequently, are equally important.”¹⁴¹

In this area, the “outsider” narrative is particularly important because academic institutions can provide greater clarity and certainty than the ADA and better support and protection for impaired faculty members. While this can benefit “mad” faculty members, it can also benefit educational institutions. As Ramona Paetzold wrote:

Ironically, employers can benefit from employees with BPD during those hypomanic periods when they tend to be goal-directed, more creative, and requiring little sleep, particularly if facilitated by surrounding conditions. It would simply be unfair (and societally unwise) to eliminate such employees if they then exhibit temporary behavioral or performance limitations [O]pening the doors for those with mental illnesses means that innovation is required to find ways to alter the work environment to embrace them and render them enabled.¹⁴²

Paetzold explicitly makes room for the narrative of faculty who contribute to academic institutions *because* of their mental impairments.

C. Medical Treatment Matters

In February 2012, I was preparing for a consultation with one of the country’s leading psychiatrists on pharmacological treatments for BPD. I read his latest research, which suggested that carbamazepine—which I took at the time—was ineffective for treating BPD and that Topomax had been proven effective. I met with him, and after talking to me for an hour, he advised me that the Topomax trials were not relevant to me, and I should stay on carbamazepine. I started seeing a new psychiatrist two months later, and she took me off of the carbamazepine and put me on Lamictal, yet a third mood stabilizer.

Despite the pronouncement that the “revisions of [the] DSM have represented an increasing adherence to a model of disability as a measurable and biological phenomenon,”¹⁴³ the diagnosis and treatment

141. AM. ASS’N OF UNIV. PROFESSORS, ACCOMMODATING FACULTY MEMBERS WHO HAVE DISABILITIES 2–3 (2012), available at <http://www.aaup.org/NR/rdonlyres/49CCE979-73DF-4AF4-96A2-10B2F111EFBA/0/Disabilities.pdf%203> (footnotes omitted). See also *Faculty & Staff Assistance Program*, UNIV. OF MICH., <http://www.umich.edu/~fasap/> (last visited Feb. 11, 2013); *Faculty & Staff Assistance Program*, JOHNS HOPKINS UNIV., <http://www.jhu.edu/~hr1/fasap/fasap.htm> (last modified Sept. 20, 2010). But see DARTMOUTH COLL., DARTMOUTH EMPLOYEE HANDBOOK (2011), available at http://www.dartmouth.edu/~hrs/handbook/dartmouth_employee_handbook.pdf (providing no mention of assistance for faculty members with mental illness).

142. Paetzold, *supra* note 64, at 371.

143. PRICE, *supra* note 1, at 34.

of mental illness is subjective and imprecise.¹⁴⁴ As my experience above shows, psychotropic medications are not “magic bullets” that can erase or cure mental illness.¹⁴⁵ Indeed, psychiatrists cannot even agree on the most effective medication for treating any particular illness or symptom. Likewise, non-medicinal treatment recommendations for BPD include such widely different treatments as Dialectical Behavior Therapy,¹⁴⁶ Schema Focused Therapy,¹⁴⁷ Mentalization Based Therapy,¹⁴⁸ and Transference Focused Psychotherapy.¹⁴⁹

However, we should not jump to the conclusions that medicine and science are arbitrary or do not matter to individuals with mental illness. Different medications and treatments have good outcomes for individuals with BPD;¹⁵⁰ the frustration is that no medication or treatment works for everyone.¹⁵¹ Price contemplates “a [psychiatric]

144. See Moses & Barlow, *supra* note 32, at 147 (discussing possible reasons why these types of diagnoses are so subjective and imprecise).

145. See PRICE, *supra* note 1, at 110–11 (“Suggesting that a person’s mental disability effectively disappears with the application of medication is as absurd as suggesting that his hearing disability disappeared because he uses hearing aids . . .”).

146. Dialectical Based Therapy (“DBT”) focuses on recognizing and balancing opposite emotions and behavioral tensions. MARSHA M. LINEHAN, COGNITIVE-BEHAVIORAL TREATMENT OF BORDERLINE PERSONALITY DISORDER 201 (1993).

147. Schema Focused Therapy helps a person confront childhood memories and experiences. PAUL M. SALKOVSKIS, FRONTIERS OF COGNITIVE THERAPY 187 (1996).

148. Mentalization Based Therapy helps the patient focus on his or her own mental states, including feelings and desires, as well as those of others. ANTHONY W. BATEMAN & PETER FONAGY, HANDBOOK OF MENTALIZING IN MENTAL HEALTH PRACTICE 67–68 (2011).

149. Transference Focused Psychotherapy uses aspects of the client-therapist relationship in order to address BPD symptoms. JOHN F. CLARKIN ET AL., PSYCHOTHERAPY FOR BORDERLINE PERSONALITY: FOCUSING ON OBJECT RELATIONS 242 (2006).

150. See *What is DBT?*, BEHAVIORAL TECH, LLC, <http://behavioraltech.org/resources/whatisdbt.cfm/> (last visited July 19, 2012) (describing two randomized controlled trials of DBT that indicated that DBT is more effective than Treatment-As-Usual (TAU) in treatment of both BPD and treatment of BPD and comorbid diagnosis of substance abuse). Furthermore, the trial demonstrated that:

Clients receiving DBT, compared to TAU, were significantly less likely to drop out of therapy, were significantly less likely to engage in parasuicide, reported significantly fewer parasuicidal behaviors and, when engaging in parasuicidal behaviors, had less medically severe behaviors. Further, clients receiving DBT were less likely to be hospitalized, had fewer days in hospital, and had higher scores on global and social adjustment.

Id.

151. Authors Western and Bradley discuss this type of difficulty with respect to treating BPD:

The empirically supported therapies movement is predicated on the assumption that most patients either have, or can be treated as if they have, one primary syndrome, for which a single treatment package can be designed. Without this assumption, researchers would need to test dozens of manuals to address all the possible interactions among disorders for even a handful of common disorders (e.g., the interaction of major depression and panic disorder, of major depression and substance abuse, or of major depression and both panic and substance abuse). This assumption is

profession that is less coercive and more democratic, one that includes not only its practitioners but also its ‘patients’ as important and powerful voices.”¹⁵² “Patients” are their own agents and should be heard by their mental health providers to enable full participation by the mentally ill in their own treatment.

D. Conclusion: Narrative Matters

Many law students experience what I did—they have acute symptoms of mental illness manifesting themselves for the first time in law school.¹⁵³ Students often must cope with their illnesses in secrecy and isolation; there are no student organizations for the mentally ill as there are for other “outsider” groups, and the student who “comes out” faces stigma and employment obstacles.¹⁵⁴ As Jennifer Jolly-Ryan

not inherent in the use of randomized controlled trials; indeed, it is precisely what distinguishes randomized controlled trials in the empirically supported therapies era from randomized controlled trials in the past, which often used mixed patient samples.

Drew Western & Rebekah Bradley, *Empirically Supported Complexity, Rethinking Evidence-Based Practice in Psychotherapy*, 15 CURRENT DIRECTIONS IN PSYCHOL. SCI. 266, 268 (2006).

152. PRICE, *supra* note 1, at 36.

153. See, e.g., Kirsten A. Dauphinais, *Sea Change: The Seismic Shift in the Legal Profession and How Legal Writing Professors Will Keep Legal Education Afloat in Its Wake*, 10 SEATTLE J. FOR SOC. JUST. 49, 112–13 (2011) (describing a 1986 study that Andrew Benjamin and colleagues conducted investigating the incidence of mental illness among law students). The study revealed that:

[T]he instances of psychiatric problems spiked significantly for first-year law students and then through law school and for two years after graduation. Many students in law school report loss of self-esteem and alienation as a result of the law school setting. They also report feeling pressure to lay aside their values in law school. Professor Hess reports that these feelings are even more prevalent in female and minority students.

Id. (footnotes omitted). See generally Jennifer Jolly-Ryan, *The Last Taboo: Breaking Law Students with Mental Illness and Disabilities Out of the Stigma Straitjacket*, 79 UMKC L. REV. 123, 144 (2010) (“Many law students begin their legal education with little or no signs of mental impairment such as depression or anxiety. But due to the nature of a legal education . . . depression and anxiety may develop.”); Robert P. Schuwerk, *The Law Professor as Fiduciary: What Duties Do We Owe to Our Students?*, 45 S. TEX. L. REV. 753, 764–66 (2003) (arguing that most law school faculty are unaware of the rise in the amount of “literature documenting the extreme levels of mental illness and substance abuse that develop among law students while in law school Many of those who are familiar with this body of work either do not believe that it is true or else attribute it to [other] causes”); Kevin H. Smith, *Disabilities, Law Schools, and Law Students: A Proactive and Holistic Approach*, 32 AKRON L. REV. 1, 28 (1999) (“A student who coped well with the stress of undergraduate studies may find herself affected for the first time when faced with the chronic and generally greater stress of law school.”).

154. Jolly-Ryan hypothesizes a reason for this fear of stigmatization:

Law students do not want to chance jeopardizing their future careers. Law students with mental illnesses, disorders, or disabilities may fear that disclosure will make them ineligible to sit for the bar exam. One author notes that “[t]here are many disincentives within the legal community for a person to admit that they have a problem. One such disincentive is that if a law student discloses that they are receiving treatment . . . [for a

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notes:

Ironically, the very people who are in the best position to increase the number of lawyers who intimately understand the discrimination and health care laws in our society impose some of the highest hurdles to employment and educational opportunities. Lawyers stigmatize and often decline to hire other lawyers unless they have a clean mental health history—free of disabilities, disorders, and illnesses.¹⁵⁵

Narratives open up opportunities for mentoring¹⁵⁶ and community¹⁵⁷ among the mentally ill in legal education and can begin to break down the secrecy, isolation, and stigma experienced by those with mental illness.

Yet, any acknowledgement of mental illness can be “dangerous,”¹⁵⁸ leading to the same isolation and stigma that “outsider” narratives can combat. Academics who commit to writing narratives about mental illness often back out.¹⁵⁹ Out of fear, I have stopped writing this Article many times. Narrative has no power in secrecy, however, and like Margaret Price, James Jones, and Ellen Saks, I have decided to share my own.

mental disease] they will not be allowed to take the bar exam.” Therefore, the decision to self-identify as a student with mental or emotional issues and to seek any help from mental health professionals is a difficult one.

Jolly-Ryan, *supra* note 153, at 129 (quoting Carol M. Langford, *Depression, Substance Abuse, and Intellectual Property Lawyers*, 53 U. KAN. L. REV. 875, 900 (2005) (footnotes omitted)).

155. Jolly-Ryan, *supra* note 153, at 123–24.

156. *Cf.* PRICE, *supra* note 1, at 138–40 (discussing mentoring).

157. *Id.* at 19–20 (“In my own experience, claiming disability has been a journey of community, power, and love.”).

158. *Id.* at 131.

159. *Id.*