

Professional Perspective

Disabled But Equal

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Disabled But Equal

Contributed by *David D. Cross, Morrison Foerster*

Born without a left hand, I've always known I'm different. But I didn't see myself as disabled. I didn't want to see myself that way. And most importantly, I didn't want others to see me that way. I wanted to be seen—and treated—as equal to my peers. I didn't want my physical difference to limit my opportunities or experiences, and I didn't want others to perceive me as inferior or broken.

But as I close in on 50 years of age and surpass 20 years of legal practice, I've come to face a tragic, disappointing reality: There's no escaping that perception. And the more I fight it, the worse I make things for myself.

I'm disabled. That's a fact. And I'm finally okay with that—because it doesn't define me or limit me in ways that matter. Sure, I'll never be an award-winning juggler, but neither do I aspire to be. I'm a lawyer whose disability imposes no constraints on the service I provide clients. To the contrary, my disability has been the source of some of my greatest strengths.

My entire life my disability has required me to devise novel solutions to countless challenges that few others face, from tying my shoes to crossing the monkey bars, serving a tennis ball, and much more. And I didn't just meet those challenges—I excelled. I was the fastest typist in my high school typing class—back before kids started typing on tablets as toddlers or speech-to-text technology. I earned a starting position on my varsity basketball team. I won the solo canoe race at summer camp—the J-stroke can be very effective.

Growing up the victim of repeated bullying for my disability ironically also produced certain strengths. For example, I've learned how to handle difficult, aggressive personalities, which comes in handy dealing with other lawyers from time to time. I also internalize the injustices suffered by others and feel a deep motivation to remedy those, which makes me a passionate advocate for my clients.

And because I know well the struggle of being different and overcoming challenges others don't face, I feel a deep empathy for and invest heavily in colleagues who struggle to actualize the potential within them. As one of my former associates once put it, I tend to put myself on the island of misfit toys, because I want to help those who also find themselves left out or left behind. We misfits bring special value to the world by virtue of what makes us different.

The creativity, ingenuity, pragmatism, persistence, passion, and empathy I've developed because of my disability serve clients and colleagues well in my complex practice. I wouldn't be who I am or have the talents I have without my disability. Nor would I have achieved the victories I have for my clients.

Unfortunately, that's not how many others view me or my disability. Despite my best efforts—and, ironically, because of them at times—that singular attribute has been a marginalizing and even isolating force in my life. I couldn't begin to count the number of people who can't have a conversation with me without periodically glancing at my missing hand like I'm a curiosity in a traveling carnival.

A grown man once grumbled to his wife about losing a tennis match to a “gimp” at a local tournament as we left the court. Before law school, a restaurant manager refused to hire me as a waiter because he assumed—wrongly and unfairly—that I couldn't carry a tray and deliver food to patrons—fortunately, a manager at a restaurant up the street trusted me when I said I'd figure it out, which I did. In my legal career, I've been excluded from important opportunities, such as a new business pitch years ago because someone worried the client might find my disability “off-putting.”

My efforts to be seen and treated as an equal tragically often are themselves the source of marginalization and the resulting pain. I knew I could never be as good as the other kids on my high school basketball team because there were certain things I couldn't do, such as dribbling with both hands. This meant I had to demonstrate value in other ways. For me, that meant being the hardest-working kid on the team, which at times engendered resentment in my teammates. They saw my efforts as egocentric and intended to outshine them. But for me, I just wanted the coach to look at me in the same way he looked at them. I wanted my efforts to outshine my own disability.

I've faced the same phenomenon in my career. I've had colleagues perceive my hard-charging, relentless effort to excel as hyper-competitive and self-serving. But again, for me, it's about showing the world that my disability doesn't limit what I can do, that I'm no less capable or valuable than my colleagues in all the ways that matter. My need to do my best is not

so much about being the best as simply about achieving parity in the eyes of those who would see me as the monster in "Goonies." Sadly, I've come to learn that there's no escaping that perception with many, and my efforts to do so often alienate those I only wish to befriend.

A key problem I've faced over the years is that there's rarely, if ever, another person with a disability in my social or professional circles, especially among leadership positions and decision-makers. This means there's nobody who understands my particular struggles or experience, nobody who really understands me—and perhaps very few who really want to, beyond a superficial level.

Imagine a large commercial organization that had no women in any leadership position at any level. Few would view that as appropriate or effective leadership today because we've rightly come to recognize the importance of diverse perspectives among decision-makers. We recognize that certain differences among us—such as gender, sexuality, and race—yield such different challenges and life experiences that only those who've lived those experiences can really speak to them and fully appreciate the shared experiences of others in the same demographic. But that recognition tends to end or at least taper off dramatically when it comes to those of us with disabilities.

Across the many matters I've handled over the course of my career, I can't recall an instance working with or against a lawyer who exhibited a disability or openly identified as disabled. Nor am I aware of any such individual in a law firm leadership position. There also are very few of us on the bench across the country. This is not because we are unqualified to practice at the highest levels of the legal industry. In my experience, the reason is twofold.

First, disabilities frequently bring with them a negative stigma flowing from both overt and implicit biases that sadly remain prevalent in society. It's a well-known fact that people tend to hire and promote those who look like they do. Diversity, equity, and inclusion (DEI) efforts are important to combat these biases and to open doors to those who otherwise would find them closed. These efforts have made great strides for such historically disadvantaged groups as women, people of color, and members of the LGBTQ+ community.

Unfortunately, those of us with disabilities have not received the same attention or support. We've largely been forgotten and left behind. The "A" for accessibility that's supposed to appear at the end of the DEI nomenclature to capture those with disabilities—i.e., DEIA—too often seems more like a scarlet "A" that folks don't want to be branded with. As a result, those making hiring and promotion decisions include very few, if any, of us among their ranks, which perpetuates the disadvantages we suffer in the workforce and beyond. This needs to change.

Second, because the negative stigma associated with disabilities can be severely career-limiting, those of us who can hide our disabilities frequently do so. I spent most of my life keeping my hands in my pockets as often as I could. When I've gone to client pitches and job interviews, even as a lateral partner candidate, I tried to ensure that my disability wasn't visible until I already had the work or a job offer in hand. I hid my disability in virtually every professional and social setting, hoping people would get to know me and my talents before eventually seeing me as disabled. This meant forgoing drinks at cocktail receptions, for example, to avoid the awkwardness of having to shake hands while holding a drink in the only hand I could shake with and avoiding entrées that required both a knife and fork—I missed out on a lot of excellent steaks over the years.

I know a number of lawyers with disabilities at varying points in their careers who still worry that exposing their disabilities, even to request an accommodation, may suddenly lower the ceiling on their ambitions. Frankly, I share that concern. Given the tens of millions of people with disabilities in the US, many of whom practice law, there undoubtedly are more of us in the profession than it seems. But many worry they may jeopardize their careers by outing themselves. This too needs to change.

Breaking down the barriers that those of us with disabilities still face requires at least three significant steps. One is simply a deliberate thoughtfulness toward us and our needs. A young blind girl famously wrote Mister Rogers to say that she couldn't see him feed the fish on his show and she was concerned that they were hungry, which made her cry. Mister Rogers responded with a small yet powerful gesture: Each time he fed the fish, he would say so out loud. Something that took nominal effort on his part was life-changing for that little girl and the many other children like her watching the show. Small gestures in the workplace can have powerful implications for those with disabilities, even if only to let us know that we're seen and valued.

The second step is a shift in mindset in the way those with disabilities are perceived, in particular, seeing us as people rather than problems. I once heard a story about a group going to the movies with someone in a wheelchair and having to leave because the theater had no ramp. When one member of the group complained that the wheelchair caused them to miss the movie, another rightly responded that it wasn't the fault of the person in the wheelchair—it was the theater's fault for not having a ramp. An empathetic mindset would recognize that we didn't choose to be disabled and, more importantly, that the burdens we face every day are exponentially greater than whatever inconvenience colleagues might experience in accommodating us. We need to build ramps rather than turn people away, even unconsciously.

The third step is placing those with disabilities in leadership and decision-making positions. This country was founded on the basic principle that governance without representation is fundamentally unfair and harmful to those not represented. That principle holds equally true in the private sector. Those with the power to affect the lives—and livelihood—of others at an organization need to truly understand and appreciate the specific challenges and experiences of those they manage.

Leaders need to know and feel the deep and abiding pain of being repeatedly mocked for a disability, the profound frustration of not being able to do things that are routine for everyone else, and the dark loneliness of going through a world where only a handful of people look like you. And those with ambitions and aspirations to become leaders themselves need to see that what makes them different won't keep their dreams from becoming reality. This means hiring and promoting individuals with disabilities, and not in trivial numbers.

The Diversity Lab's Mansfield Rule certification, launched in 2017, is an exciting step in the right direction. It requires law firms “to consider at least 30% historically underrepresented lawyers—including women lawyers, underrepresented racial and ethnic lawyers, LGBTQ+ lawyers, and lawyers with disabilities—when promoting or appointing to leadership roles, among a dozen other actions that focus on the path to leadership.” Law firm participation has grown from only about three dozen at inception to hundreds today. But even laudable, important DEIA efforts like this suffer from a significant limitation: They're based on aggregate numbers across various diverse groups which can—and often do—mask the disproportionate underrepresentation of particular groups.

For example, the Mansfield-certified firms tend to include few, if any, individuals with disabilities in leadership roles. For this reason, DEIA initiatives need to measure representation for each historically underrepresented group individually, not just at an aggregate level. They also need to set specific goals for each such group individually, which is exactly what the Diversity Lab has recently done for those of us with disabilities with the launch of its Disability Inclusion Commitments. Those Commitments identify just ten actions “organizations and individuals can take to create a culture of inclusion for people with disabilities.” This is the sort of thoughtfulness and action needed to foster that culture where it's currently lacking.

I love being a lawyer. I love the many ways I get to help clients with what's important to them, whether that's their business, their family, or their freedom. And I've finally at long last embraced the many ways in which my disability has enabled me to do what I love and to help others. I first dreamed of being a lawyer when I was only nine years old—my fourth-grade teacher once told me I'd be a great lawyer; looking back, I don't think she meant it as a compliment.

The legal industry has made tremendous strides in shattering glass ceilings and opening doors that historically were closed to many for reasons having nothing to do with their talent or qualifications. But more is needed, especially for those of us with disabilities. No person's dreams should be out of reach simply because of their gender, the color of their skin, the person they love, or the limits of their abilities, as long as they can do what's required of them. Nor should anyone be left behind in the continuing pursuit of equality. Many of us are disabled. But we're no less equal than those who aren't. And that's what matters.