Stigma without Impairment: Broadening the Scope of Disability Discrimination Law

During oral argument in *Murphy v. U.P.S.*, a case in which the Supreme Court was asked to decide whether the Americans with Disabilities Act covers individuals whose impairments are mitigated by corrective devices or medication, Justice Antonin Scalia removed his glasses and waved them in the air. He was making the point that if mitigation were ignored, he, along with millions of other Americans, would be swept into the category of "disabled," swelling its ranks far beyond the 43 million recognized by Congress when it adopted the statute a decade ago.

Some commentators fear that restricting the ADA to severe disability excludes many who are also subject to invidious discrimination.

Scalia's gesture nicely evokes a broader dispute about the scope of the ADA: between those who see it as protecting "a discrete and insular minority," comprising the relatively small proportion of the population marked by their functional limitations, material privation, and social exclusion, and those who see the statute as applying to a broad and loosely bounded range of people stigmatized by physical and mental differences. The former believe that a narrow definition of disability is critical for preserving the moral urgency and popular support of the ADA; the latter fear that restricting the ADA to severe disability excludes many who are also subject to invidious discrimination.

The narrower view of the ADA prevailed in *Murphy* and in a related case, *Sutton v. United Airlines*, where the Court held that "disability" does not include impairments that are substantially limiting only in the absence of corrective devices or medication. For a majority of the Court, people who can achieve normal functioning simply by putting on glasses or taking a pill do not belong to the highly vulnerable and disadvantaged group the ADA was intended to protect. As Justice Ruth Bader Ginsberg observed in her concurrence, "Persons whose uncorrected eyesight is poor, or who rely on daily medication for their well-being, can be found in every social and economic class; they do not cluster among the politically powerless, nor do they coalesce as historical victims of discrimination."

Justice Stevens, in dissent, did not deny Ginsberg's claim that people with correctable impairments are generally less vulnerable and disadvantaged than those with severe disabilities. Nonetheless, he argued that this difference provides no reason to deny them protection from discrimination:

> When faced with classes of individuals or types of discrimination that fall outside the core prohibitions of antidiscrimination statutes, we have consistently construed those statutes to include comparable evils beyond Congress' immediate concern in passing the legislation. Congress, for instance, focused almost entirely on the problem of discrimination against African-Americans when it enacted Title VII of the Civil Rights Act of 1964.... But that narrow focus could not possibly justify a construction of the statute that excluded Hispanic-Americans or Asian-Americans from its protections—or as we later decided ..., Caucasians.

It may, however, be more difficult in the case of disability than race to decide what classes of individuals face evils comparable to those addressed by the statute's "core prohibitions." Construing the 1964 Civil Rights Act to include Hispanic-Americans, Asian-Americans, or Caucasians appears (at least in retrospect) straightforward, because it is clear that people of any racial, ethnic, or national-origin group can be treated as moral inferiors by virtue of their membership in that group. In contrast, the justices in *Sutton* disagreed about whether discrimination against individuals with minor and correctable impairments was an evil comparable to discrimination against individuals with more severe, less tractable impairments. For the majority it was not, because the former, unlike the latter, are not a discrete and insular minority, left poor and powerless by a long history of exclusion and neglect. Because of this difference, the majority held an employer was "free to decide that physical characteristics or medical conditions that do not rise to the level

of an impairment—such as one's height, build, or singing voice—are preferable to others, just as it is free to decide that some limiting, but not *substantially* limiting impairments make individuals less than ideally suited for a job." The dissent, however, saw in such preferences precisely the kind of "stereotypic assumptions" about competence that confront people with more severe impairments and that the ADA was intended to overcome.

Before *Sutton* and *Murphy*, several commentators had argued that the ADA should cover a variety of conditions less limiting than paradigm cases of disability. Not only should correctable impairments be included, but also impairments that are substantially limiting only in a narrow range of activity, such as a specialized kind of work, or that are substantially limiting only by virtue of the discriminatory response they elicit, such as the denial of a job or service. And at least one commentator took the argument a step further, proposing the outright elimination of the "substantial limitation" requirement. If, as Justice Stevens argued in his *Sutton* dissent, "the purpose of the ADA is to dismantle . . . barriers based on society's accumulated myths and fears," it should protect all people with impairments, since those myths and fears are not confined to impairments that are, or are perceived to be, substantially limiting.

A revised statute should protect anyone with a disfavored physical or mental variation.

After *Sutton* and *Murphy*, these arguments for enlarging the scope of the ADA can no longer be made within the confines of the existing statute. Whether or not they were correct as statutory interpretation, I believe they are correct in articulating what the central purpose of the ADA *should* be: to challenge discrimination based on physical or mental difference, not to protect a vulnerable class of people bearing the most salient or substantial differences.

By the same token, however, I believe that these arguments require a more extensive revision of the ADA than their proponents acknowledge. The reasons for extending the protection of the ADA to persons whose impairments are not "substantially limiting" also justify extending these protections to persons with atypical physical or mental conditions that are not (or are not regarded as) impairments at all. A revised statute, I shall argue, should protect anyone with a disfavored physical or mental variation: It should apply to those who are overweight but not morbidly obese, short but not achondorplasic, unattractive but not disfigured, and "dull-witted" but not mentally retarded.

The expansion of the ADA to include all disfavored physical and mental variations would treat people with index impairments and substantial limitations not as a discrete and insular minority, but as some of the most salient and aggrieved victims of prejudice and stereotyping that adversely affect most Americans at some point in their lives. In extending protection to people with minor impairments and "normal" deficiencies, the statute would not assume that the discrimination they face is as severe as that faced by people with substantially limiting impairments, but merely that it is a "comparable evil." Perhaps the class protected by this extended statute should no longer be referred to as "Americans with Disabilities," reserving the term "disability" for those who have, or are regarded as having, functionally significant impairments. On the other hand, retaining the name would be a useful reminder that people with normal structural and functional imperfections can be "disabled" by aversion, contempt, and stereotyping. I am less concerned with the statute's name than with its scope.

This further extension of the ADA would doubtless be opposed by many who favor the liberal interpretation or outright elimination of the "substantial limitation" requirement. Justice Stevens himself, in arguing for the inclusion of mitigated impairments, made it clear that he did not "mean to suggest, of course, that the ADA should be read to prohibit discrimination on the basis of, say, blue eyes, deformed fingernails, or heights of less than six feet. Those conditions, to the extent that they are even 'impairments,' do not substantially limit individuals . . . and thus are different in kind from the [substantial but mitigated] impairment in the case before us." My first task, then, is to show that a variety of minor imperfections, from short stature to slight deformities, are not necessarily "different in kind" from substantially limiting impairments, and that the discrimination faced by people with these conditions is sufficiently similar to that faced by people with major impairments and substantial limitations to be covered by the same statute.

The Experience of Stigma

The similarity between discrimination for minor imperfections and major impairments seems fairly obvious in the case of some deficiencies, like obesity and extreme homeliness. Consider the case of Deborah Birdwell, as described by Ruth Colker, an opponent of narrow eligibility requirements in antidiscrimination law.

> Birdwell is obese and had wanted to see a movie with her niece. Knowing that she could not fit into a movie theater seat, she called ahead to ask if she could bring her own chair and use it in the wheelchair section. She was told that she could. But when she went to the theater with her chair, she was rudely informed that she would not be able to use it.

Clearly, Birdwell was discriminated against on the basis of a disfavored physical difference; it is unlikely that someone who needed extra space because he was seven feet tall would have met with such a rude response. Fat people, unlike tall people (at least tall men), are stigmatized. And this is true *whether or not* they are impaired, or substantially impaired, under the definitions laid down in the ADA. Indeed, discrimination against fat people often involves an implicit contrast between their conditions and "true disabilities." Fat people do not receive the accommodation accorded to wheelchair users because their inconvenience is seen as transient and voluntary, resulting from their (presumed) gluttony and self-indulgence. The myths and stereotypes they face are arguably no less invidious than those faced by people in wheelchairs. The challenge for disability discrimination law is to recognize how far beyond the impairment category such stigmatization extends.

Erving Goffman, who introduced the term "stigma" into the discourse of modern social science, maintained that a person is stigmatized by "his possessing an attribute that makes him different from others ... and of a less desirable kind." This attribute can be a physical deformity, character flaw, or membership in a particular racial, ethnic, national, or religious group. Although he recognized the pervasive effects of stigma on routine social interaction, Goffman declined to restrict the notion to "those who possess a flaw that uneases almost all their social situations." Rather, he regarded stigmatization as a threat to almost all people some of the time: "The most fortunate of normals is likely to have his half-hidden failing, and for every hidden failing there is a social occasion for which it will loom large.... Therefore, the occasionally precarious and constantly precarious form a single continuum." For Goffman, this continuity reflects the nature of the prevailing norms:

> While some of these norms, such as sightedness and literacy, may be commonly sustained with complete adequacy by most persons in the society, there are other norms, such as those associated with physical comeliness, which take the form of ideals and constitute standards against which almost everyone falls short at some stage in his life. And even where widely attained norms are involved, their multiplicity has the effect of disqualifying many persons. For example, in an important sense there is only one completely unblushing male in America: a young, married, white, urban, northern, heterosexual Protestant father of college education, fully employed, of good complexion, weight, and height, and a recent record in sports.... Any male who fails to qualify in any of these ways is likely to view himself—during moments at least—as unworthy, incomplete, and inferior.

On this view, stigma is not the defining characteristic of a discrete and insular minority, but a universal condition. The breadth and elasticity of the process of stigmatization make it morally arbitrary to single out some physical and mental differences for legal protection.

Now, it may be that in emphasizing the "precariousness" of the normal, Goffman understated the disparity in social attitudes toward the normal deviant and the significantly impaired. There may well be differences, in kind as well as degree, in attitudes towards different kinds of deviance—differences which, for some purposes, eclipse the underlying commonalities that Goffman found. Those deviating from an ideal "which almost everyone falls short of at some stage in his life" may be stigmatized far less severely or pervasively than those displaying a rare and conspicuous physical or mental abnormality. The stigma associated with striking cosmetic anomalies, serious limb deformities and neuromuscular disorders, profound retardation, and the impairment of multiple senses may be distinct from, and worse than, any stigma associated with physical and mental variations not regarded as impairments.

Not all substantially limiting impairments, however, are severely stigmatized. The impairments covered by the ADA elicit a broad range of social responses, from the intense aversion and anxiety provoked by leprosy, epilepsy, AIDS, and schizophrenia to the constricting solicitude and overprotectiveness triggered by cardiovascular and lower-back problems. The ADA recognizes that even the more "benign" responses to impairment, involving the exaggeration of frailty and dysfunction, contribute to the exclusion and devaluation of the people who have those impairments. At the same time, many physical and mental differences not classified as impairments elicit contemptuous, dismissive, patronizing, or oversolicitous responses that can be equally handicapping. People with normal imperfections are often relegated to inferior roles and places, if not excluded outright, by false assumptions about their suitability for various jobs or activities. A large body of research, for example, finds that people perceived as unattractive are also regarded as less competent and intelligent.

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There may, though, be a more general reservation about eliminating the impairment requirement in disability discrimination law. Although that requirement may exclude some highly stigmatized people and conditions, it lays down a reasonably clear boundary for the protected class. If we cannot restrict the class in that way, how can we restrict it at all? How do we decide whether a person falls sufficiently below a standard "against which almost everyone falls short"



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to be "truly stigmatized"? How unattractive must he be to be stigmatized as ugly, how overweight to be stigmatized as fat, how uncoordinated or ill-proportioned to be stigmatized as ungainly? It would be difficult to draw, let alone justify, any line on the continuum from the occasionally to the constantly precarious. But without such a line, we are left with a statute protecting us all from unwarranted and exaggerated responses to our minor imperfections. The defender of an impairment requirement would argue that such a statute would indeed trivialize disability discrimination, because discrimination on the basis of minor imperfections is far more benign than discrimination on the basis of impairments—it is simply not a comparable evil.

I think this concern has some force, but much less than may initially appear. There is no reason to assume that the contempt and devaluation that most people face at some point in their lives will be significantly more benign than the contempt and devaluation that a few people face throughout their lives. Our attitudes toward older people—consistently found to be among the most stigmatized individuals in our society—should suggest that we are quite capable of despising what we are, or are likely to become. Leslie Fiedler has argued that the "cults of slimness and eternal youth" are profoundly demeaning and oppressive to the vast majority of Americans. Even if we are not quite as suffused with self-loathing as Fiedler imagines, a preference for the young and beautiful can be unfair and cruel, denying older and less attractive people meaningful work and rewarding social experience. Moreover, a preference for the young and beautiful may reinforce, or evolve into, an aversion to the old and ugly. For these reasons, the law would not trivialize its condemnation of discrimination against the constantly precarious by banning discrimination against the occasionally precarious as well.

One concern about extending the ADA is that any such change would limit the resources available for those who most need the statute's protections.

Distributive Implications

A distinct concern about extending the ADA to people without substantially limiting impairments is that any such change would have perverse distributive effects, limiting the resources available for those who most need the statute's protection. Shortly after the *Sutton* decision was handed down, a quadriplegic man wrote in a letter to the *New York Times*, "the effect of diluting the definition of disability by including nearly half of the population would ultimately have hurt those who need accommodation the most." For instance, the statutory exception holding that accommodation needn't be provided if it imposes "undue hardship" may be more frequently available if the class of people who can claim accommodation is expanded. Because there are limits on the costs an employer or

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Anita Silvers, David Wasserman, and Mary B. Mahowald, with an afterword by Lawrence C. Becker

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provider will be required to bear, it may be more appropriate to impose costs for the benefit of those who, as a result of the social consequences of severe impairment, are among the worst-off members of society.

To the extent that these concerns about scarce resources for accommodation are realistic, however, they will be raised by any statute that, like the present ADA, covers individuals who vary widely in the severity of their impairments and the magnitude of their disadvantage. If the burdens of accommodation accumulate, it is possible that employers and facilities will find themselves exempted under any such statute from accommodating more severely impaired individuals because they have already accommodated less severely impaired ones.

There are several reasons for doubting that expansion of the ADA would significantly increase either the frequency or the cost of accommodation.

But in fact, there are several reasons for doubting that the proposed expansion of the ADA would significantly increase either the frequency or the cost of accommodation. First, the barriers faced by people with many normal deficiencies, such as unattractiveness and short stature, will be predominantly attitudinal rather than structural. People with slightly deviant shapes and sizes do face some structural inconveniences, e.g., in reaching switches and ordering clothes, but the more substantial barriers they face arise without structural mediation, from the attitudes and assumptions of other people. Further, the site improvements that people with normal deficiencies may require, such as lower electrical switches, will for the most part already have been mandated for people with substantially limiting impairments. Finally, any individual accommodations that might be required, such as an adjustable chair or a more flexible work schedule, would probably be less expensive on average than the individual accommodations required for people with index impairments.

Still, the cost of accommodating an individual will not always be proportionate to the magnitude of his physical or mental differences, and the accommodation of people with normal deficiencies or minor impairments will sometimes limit the resources that are available for accommodating people with more severe impairments. It would be naive to expect that the extension of the ADA would have no adverse effects on some of those who now enjoy its protection.

A legal ban on discrimination against all disfavored or stigmatized physical and mental differences may

also impose less tangible costs. These range from the administrative burdens imposed on a judicial system required to field a vast array of new complaints arising from a broad and vaguely formulated proscription, to the erosion of public support that may result from extending protection against disability discrimination to people who are not in fact disabled. Critics who regard the United States as litigation-crazed and rights-obsessed will raise the specter of short, fat, and homely people clogging the courts with petty complaints that reveal nothing more than the increasing incidence of the "disability" of thin skin. More ominously, they will see an oblique assault on the very idea of merit; on practices and institutions that celebrate beauty, strength, and intelligence. I shall address these complaints in turn, arguing that they are greatly exaggerated but not entirely baseless. The ultimate question is whether the risk of additional expense, litigation, and public hostility is justified by the moral and practical value of extending the statute's protections.

Effects on Litigation

However credible the threat of exploding litigation may be in general, that specter seems especially remote in this area. As Justice Stevens remarked in his *Sutton* dissent, "it is hard to believe that providing individuals with one more antidiscrimination protection will make any more of them file baseless or vexatious lawsuits." The awkwardness of raising claims of discrimination on the basis of obesity, very short stature, or extreme unattractiveness would serve as a powerful deterrent to anyone lacking a strong grievance, as would the formidable difficulty of proving discrimination on the basis of less striking departures from aesthetic and other social ideals. Moreover, the removal of the substantial limitation requirement would eliminate one of the most litigated issues under the present ADA.

The revision of the statute would reduce the incentive for the kind of fraud that has preoccupied disability policy makers.

Research on ADA claims suggests that much current litigation is attributable to disputes about whether an impairment is substantially limiting. Those disputes would arise less frequently under the revised statute, which would focus not on the severity of the condition but on the social response to it, e.g., did the reassignment of a worker with a lower-back or heart problem reflect myths and fears about her frailty or weakness, or a prudent avoidance of risk? Of course, questions about the severity of such conditions would continue to arise in considering such issues as the reasonableness of a proposed accommodation or the existence of a safety threat. However, it would no longer be necessary to establish the severity of the condition as a prerequisite for claiming accommodation.

The revision of the statute would also reduce the incentive for the kind of fraud that has preoccupied disability policy makers. The pressure to obtain false medical evidence arises from the need to establish impairment and substantial limitation, a need that the proposed revision largely eliminates. The corrupting pressure to "diagnose disability down" would be relieved by a statute that demanded no medical evidence of impairment or substantial limitation. It is possible, of course, to imagine litigants fattening up to claim weight discrimination, or putting on unflattering makeup and clothes to claim unattractiveness discrimination, but such stratagems would hardly be more deceptive than much routine trial preparation. And they would be of no avail in satisfying the most difficult element of proof for all such claims: not that of establishing a disfavored difference, but of establishing that discrimination occurred on the basis of that difference.

Admittedly, litigation would arise over the scope of the expanded statute, about whether a particular type of physical or mental difference is actually subject to social prejudice or stigma, and about whether it should be covered by the statute if it is not. For example, while left-handed people may once have been subject to a variety of myths, fears, and stereotypes, they do not appear to face them in turn-of-millennium America. It is doubtful that any current or residual stereotyping or animus explains the absence of left-handed mail-sorting devices or "crossover" training complained of by Daniel de la Torres, a discharged mail sorter whose claim of disability discrimination was dismissed for want of an impairment. The court may have reached the right result in that case, not because left-handedness is not an impairment, but because it is not stigmatized. Then again, the lack of accommodation for left-handed people might well create a risk of stigmatization, by making them appear incompetent as they struggle in a world of right-handed equipment.

It may seem that my proposal would compel courts to make awkward threshold judgments about such matters as physical appearance—deciding, for instance, whether a plaintiff was sufficiently unattractive to have experienced appearance discrimination. But because a revised statute would not limit itself to differences that fell below some vaguely defined social benchmark for an "acceptable" appearance or physique, this issue would not arise. To be discriminated against on the basis of physical appearance, a

person need not be unattractive, just insufficiently attractive to satisfy the job-irrelevant preferences of an employer. If an employee of average appearance could actually show that he was denied a promotion because he did not meet his employer's high aesthetic standards, he would have a discrimination complaint under the revised statute. The claim that "I would have been promoted if I were better-looking" would state a cause of action, because an employer who places an unwarranted premium on beauty devalues the plain-looking as well as the homely.

Although this expansive view would, in theory, open the courthouse door to virtually anyone with an adverse employment outcome and a physical or mental imperfection, I do not think a flood of "baseless and vexatious lawsuits" would result. Admittedly, it would be less awkward to raise a claim of discrimination on the basis of a minor than a major departure from an aesthetic or other social ideal. But it would be that much harder to prove such a claim—a plaintiff would be likely to prevail only against an employer who was remarkably indiscreet or emphatic about his illicit preferences. The great majority of counterfactuals of the sort "I would have been promoted if I were better-looking" will be unprovable even if true, and the obvious difficulty of proving them should keep the floodgates closed against all but the most serious grievances.

It may seem a dubious recommendation for the proposed extension of the ADA that it would be virtually unusable by those it was intended to protect. But this overlooks the fact that a few cases can have a major impact on social practice. A judicial decision that Deborah Birdwell had a right to reasonable accommodation would have both symbolic and practical value, condemning the indignities visited on people with ordinary physical differences (as well as making life easier for overweight moviegoers). A single administrative ruling that a law or advertising firm could not defer to its clients' preferences for good looks in hiring its professional staff would increase employment opportunities for homely and plain-looking professionals, although it would hardly eliminate all the advantages of physical attractiveness. As many commentators have noted, the law casts a broad shadow, and the benefits to people with ordinary imperfections would be more likely to arise from preemptive measures than from specific judicial or administrative orders.

A Quixotic Statute?

Nevertheless, the very difficulty of proving specific instances of a kind of discrimination we believe to be ubiquitous may suggest that there is something quixotic about the revised statute. Precisely because physical appearance has such a pervasive impact on social judgment, and because norms of beauty are so deeply enmeshed in social practice, it might be argued that a law against discrimination on the basis of physical appearance would either be wildly impractical or unreasonably demanding. We are willing to accept the sometimes awkward formalities imposed on job searches by affirmative action guidelines as an acceptable price to pay for purging the great evils of race and sex discrimination. Similarly, we may accept the relentless institutional self-scrutiny and small monetary expense involved in making jobs and activities more broadly accessible, to end the wholesale exclusion and isolation of people who are blind, deaf, or paraplegic. But the effort to purge ourselves of "lookism" may seem to require greater sacrifice and contortion for a less urgent objective. As Robert Post argues, it raises the specter of denatured transactions between disembodied individuals. Disability discrimination law

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would indeed demand too much of us if it sought to eliminate, rather than control, the impact of physical appearance.

But disability discrimination law has always had more modest ambitions—it is more pragmatic than the "dominant conception" of discrimination law described by Post. As many commentators have noted, the ADA does not demand "blindness" about physical and mental impairments; not only does it recognize that impairments are sometimes relevant to eligibility or qualification, but it also requires a reasonable attempt to accommodate relevant impairments. This pragmatism can be preserved in the extension of disability law to normal imperfections. For example, the law (or its accompanying regulations) might require that face-to-face interviews be deferred until the final stage of the hiring process. At the same time, it might decline to bar face-to-face interviews altogether, recognizing that it would be unduly burdensome to forgo the information such interviews could yield. In a pragmatic spirit, then, the law would seek to limit the sway of powerful aesthetic preferences, but not aspire to eliminate them entirely.

The law would seek to limit the sway of powerful aesthetic preferences, but not aspire to eliminate them entirely.

I am optimistic that we can reform social practices to reduce the importance of physical and mental differences, as we have reduced the importance of race and gender. Over the past three decades, we have learned that much of what we value in our public as well as private lives, such as humor, spontaneity, and gentility, can survive within the strictures of antidiscrimination law. I believe that, with experience and goodwill, we can endow the now alien, and alienating, procedures for limiting the sway of aesthetic preferences with a patina of familiarity and grace.

The core virtue of a broadly inclusive statute, focused on stigma rather than impairment, is that it would not rely on biomedical classification to determine who should be protected from discrimination. It would challenge, rather than reinforce, the sharp dichotomy between the disabled and able-bodied. If we are all susceptible to impairment and limitation, as proponents of a universal model of disability have long insisted, we are all vulnerable to stigmatization. The Americans with Disabilities Act should be for "us," not for "them." It should command broad popular support not only because it seeks to protect some of the least advantaged and most stigmatized members of society—its capacity to do so will not, I have argued, be significantly diminished by its extension—but because it seeks to protect all of us from disabling attitudes and social practices.

—David Wasserman

This essay has been adapted from an essay in the forthcoming *Americans with Disabilities: Implications of the Law for Institutions and Individuals*, edited by Leslie Francis and Anita Silvers (Routledge, 2000); reprinted with permission. Sources: *Murphy v. United Parcel Service*, 119S. Ct. 2133, 1999; Linda Greenhouse, "Justices Wrestle With the Definition of Disability: Is It Glasses? False Teeth?," *New York Times* (April 28, 1999); *Sutton v. United Air Lines, Inc.* 119 S. Ct. 2139, 1999; John Tringo, "The Hierarchy of Preference toward Disability Groups," *Journal of Special Education*, vol. 4 (1970); Gary Albrecht, Vivian Walker, and Judith Levy, "Social Distance from the Stigmatized: A Test of Two Theories," *Social Science and Medicine*, vol 16 (1992); Robert Burgdorf, "'Substantially Limited' Protection," *Villanova Law Review*, vol. 42 (1997); Lisa Eichhorn, "Major Litigation Activities Regarding Major Life Activities: The Failure of the 'Disability' Definition in the Americans With Disabilities Act of 1990," *North Carolina Law Review*, vol. 77 (1999); Ruth Colker, *Hybrid: Bisexuals, Multiracials, and Other Misfits under American Law* (New York University Press, 1996); Erving Goffman, *Stigma: Notes on the Management of Spoiled Identity* (Prentice-Hall, 1963); Leslie. Fiedler, *Tyranny of the Normal: Essays on Bioethics, Theology and Myth* (David R. Godine, 1996); Linda Jackson, John Hunter, and Carole Hodge, "Physical Attractiveness and Intellectual Competence: A Meta-Analytic Review," *Social Psychology Quarterly*, vol. 58, no. 2 (1995); Marc Sorani, "Are the Rights of the Disabled in Jeopardy?," *New York Times* (June 23, 1999); Sue Krenek, "Beyond Reasonable Accommodation," *Texas Law Review*, vol. 72 (1994); John McNeil, "Americans with Disabilities: 1991–1992," *Current Population Reports* 70–33 (1993); Jerome Bickenbach, "Voluntary Disabilities and Everyday Illnesses," in *Disability Is Not Measles: New Research Paradigms in Disability*, edited by Marcia Rouix and Michael Bach (Roehrer Institute, 1994); *Torres v. Bolger*, 610 F. Supp. 593 (1985); Robert Post, "Prejudicial Appearances: The Logic of American Antidiscrimination Law," Brennan Center Lecture (ms., 1998); Note "Facial Discrimination: Extending Handicap Law to Employment Discrimination on the Basis of Physical Appearance," *Harvard Law Review* vol. 100 (1987).