

Adventure Learning: Not Everyone Gets to Play

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***Editors' Note:** Larson analyzes the initial experiments with adventure learning in Istanbul, a setting replete with long staircases, narrow winding alleys, and user-hostile transportation (at least to Westerners with mobility problems.) He concludes that the post-modern agenda of excitement and authenticity in learning carries a serious risk of running smack into the post-modern agenda of openness to all, characterized by the Americans with Disabilities Act. The risks are not just physical; some of the "disabilities" students may encounter have an ethical or moral dimension. Larson offers a number of cautions for future applications.*

Introduction

Educators, or at least the educators with whom I am familiar, try very hard to be inclusive. But try as we might, sometimes we adopt learning strategies and approaches that turn out to have the opposite effect. We understand that when students are excluded, the entire educational enterprise suffers. The Second Generation Negotiation program in Istanbul, Turkey was remarkably interesting and productive on many levels. But it reminds us that unless we are careful, the programs we develop may exclude participants because of disability, ethical issues, cultural differences, spirituality, and religion.

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Adventure learning, which was a central theme for the program in Istanbul, encourages students to physically leave the classroom in order to experience how theoretical models and principles apply in the “real” world. Adventure learning admittedly has substantial value. But the initial rush of enthusiasm witnessed during the Second Generation Negotiation project in Istanbul must be tempered. When participants are directed to venture out of the classroom in order to perform certain tasks, persons with disabilities, persons with certain values or beliefs, and persons from different cultures may find it impossible to complete those assignments.

Pedagogical approaches entirely unrelated to adventure learning also may be problematic. It is not surprising that educational programs typically are delivered using methods familiar to the instructors. Effective as these approaches may be when teaching in one’s own country, these methods may be quite nation-centric. Information and ideas may not be communicated effectively when the methods of delivery, and the language used, are not as familiar to the participants as they are to the instructors. If instructors do not become familiar with their students’ values, traditional approaches to problem-solving, cultural practices and, in some instances, religion, then instructors not only may fail to communicate effectively with program participants, they also may risk discouraging and even alienating participants.

Problems with Adventure Learning

When a student, without warning or notice, suddenly is confronted with the fact that an essential part of the learning experience will be experiential, and consequently impossible for him or her to complete, then all participants are harmed. The student certainly will be disappointed, if not angered, and the purpose of the learning exercise will not be accomplished. The student will be isolated by the abrupt and complete separation from the group. The characteristic that makes this student different from the rest of the group will be highlighted in a dramatic fashion. Unique insights attributable specifically to the experiential nature of the exercise will be unavailable to the student. Although the rest of the students who can participate in the adventure learning exercise likely will report their experiences to the entire group once that group is reassembled, the fact that the excluded student only can *hear* about an adventure learning experience emphasizes the fact that the excluded individual(s) did not *share* this learning opportunity.

The harm is not restricted to the excluded individual(s), however. To the degree that we believe that diversity has inherent value and that different perspectives are important, an adventure learning

exercise can exclude someone as effectively and completely as a bold lettered “No ‘_s’ Allowed” sign (feel free to fill in the blank). Unique perspectives that may be valuable for the entire group will be lost.

Furthermore, adventure learning exercises often lead to more intense and multidimensional experiences than one can have in the classroom. Shared experiences of this nature help create connections, and perhaps even friendships, among those who participate. Individuals who are excluded, however, not only miss the experience itself, they miss the opportunity to build connections with their fellow participants. Particularly when it comes to programs that last only a few days, this loss can be impossible to overcome and the excluded individuals may be relegated to the periphery of the group.

Potential Legal Liability

And one should not underestimate the fact that an adventure learning program may result in legal liability. Although one easily could write an article dedicated exclusively to the fact that adventure learning can result in unlawful disability discrimination prohibited by statutes such as the Americans with Disabilities Act,¹ this article will not focus primarily on legal and statutory analysis. This article instead will identify potentially problematic situations and suggest how those situations can be avoided. Nonetheless, program planners and educators should be aware that relevant statutes require virtually all public venues and classrooms selected to host programs be accessible for individuals with disabilities.²

In the United States, for example, programs utilizing venues identified in Title III of the Americans with Disabilities Act may have to ensure accessibility regardless of whether the program planners own the property or simply have made arrangements to use the property temporarily.³ Physical barriers may have to be removed, for instance, if that is “readily achievable.”⁴ And if ADR education is being offered to children in the United States through the school system, then an entirely new set of accessibility requirements may apply.⁵ Although countries may have widely divergent requirements regarding disability discrimination,⁶ or may have no formal requirements at all,⁷ educators and program planners must make themselves aware of the relevant legal environment.

Benefits of Adventure Learning

But if adventure learning is so problematic, why should we even consider using this approach? We all are familiar with scenarios where students sit passively at their desks while the speaker at the front of the classroom drones on. Perhaps you, and undoubtedly I,

have been that dreaded “drone.” And we have watched our students try to pretend how carefully described characters would react in a precisely scripted simulation when, in fact, they have little or nothing in common with those imaginary characters and they never have experienced the hypothetical circumstances themselves.

Adventure learning, in contrast, offers an opportunity to apply theories and principles essentially on a first-hand basis. Students do not have to assume contrived personalities or imagine how they would behave if confronted with a set of wholly unfamiliar circumstances. When students are asked to put theory into practice in a real-life situation, this approach can create a level of excitement sorely lacking in the lecture and simulation scenarios described above. The lessons that students learn will be retained because it is likely that the entire experience will be remembered, often quite vividly and specifically.

Students may be asked to go to a retail establishment and negotiate the price of a particular item, for example. They will act only as themselves while interacting with an actual merchant.⁸ Students can be given the very real goal of completing the transaction, or they may be asked to try to establish the beginning of a long term relationship. The possible scenarios are almost limitless.

Students today are bombarded with relentless multimedia stimuli and, out of necessity, they are learning to manage, and ultimately embrace, those stimuli (Larson 2006).⁹ Much of the information being communicated in today’s world is presented in a multimedia format and students may now expect, and even demand, that formal educational material be presented in a similarly stimulating manner. As educators we are coming to accept the fact that time-honored and traditional methods of teaching, such as lecturing and simulations, may not resonate with a technology-weaned generation. Accordingly, one cannot be dismissive of an approach such as adventure learning that offers the opportunity for students to be fully engaged intellectually, emotionally, and physically.

But we have to be careful. It was rather surprising to see the degree of excitement generated by the idea of adventure learning at the Istanbul Second Generation Negotiation Conference. The atmosphere, frankly, had a “kid in the candy store” quality to it, including the same sense of naiveté. It almost appeared as though adventure learning had not been reviewed thoroughly or critically but that, instead, it was being heralded as a remarkable, new, exciting discovery.

Historical Context

The fact is, however, that experiential learning in higher education has a long history. This author had the good fortune to spend a se-

mester participating in the Comparative European Studies program offered by Antioch College,¹⁰ an institution that has been a pioneer in experiential education.¹¹ The College describes itself as follows:

Antioch College has been a pioneering and values-driven secular institution since it was founded in 1852. ...In the 20th century, Antioch College redefined liberal arts education by initiating an entrepreneurial and experiential curriculum through the development of its hallmark cooperative work program. Many of the now-common elements of today's liberal arts education – self-designed majors, study abroad, interdisciplinary study, and portfolio evaluation – had an early start at Antioch College.¹²

Experiential learning and what is best termed as its subset, adventure learning, is not a new approach, and substantial literature is available from subject areas distinct from ADR (Manwaring, McAdoo, and Cheldelin, *Orientation and Disorientation*, in this volume).¹³ It may be helpful to put adventure learning into a historical context.

Legal education in the nineteenth century, for example, was conducted primarily through experiential learning methods, specifically apprenticeship (Moliterno 1996: 78). Although students likely read various legal treatises, students principally were educated by observing a practitioner as he consulted with clients and appeared in court, or provided basic legal services such as the drafting of wills, pleadings, and real estate documents (Moliterno 1996: 71).

In the early twentieth century, a revolution in legal education took place, spearheaded by Christopher Columbus Langdell of Harvard University, in which classroom-based appellate case reading replaced the apprenticeship as the dominant means of legal instruction (Moliterno 1996: 82-83). Although appellate case reading is not intuitively classified as experiential learning, Langdell's revolution was part of a broader transformation at Harvard designed to lessen the role of reading and lectures in professional education and expand experiential learning opportunities (Moliterno 1996: 84).

In medical education, this transformation took the form of laboratories, field experiences, and the establishment of teaching hospitals (Moliterno 1996: 84). In the area of legal education, however, both Langdell and Harvard University President Charles W. Eliot concluded that the law library was to the budding lawyer what the teaching hospital was to the emerging physician (Moliterno 1996: 85-86).

Eliot actually may have preferred to create a teaching institution for legal education comparable to a teaching hospital, but he determined that it was not possible. Legal education's experiential education history consisted of individually arranged apprenticeships. In contrast, medical education's experiential education history was institutionally based and offered a more standardized experience from which reform could proceed (Moliterno 1996: 87). Additionally, medicine's clear relationship with "hard science" distinguished the profession from, and elevated it above, more common "trades." Law had no similar relationship. It consequently was left with the choice of being regarded as one of the less respectable social sciences or, instead, presenting itself as its own science (Moliterno 1996: 87-88). The result was that the varied experiential learning methods characteristic of the apprentice system were replaced by a form of legal instruction that focused exclusively on the "experience" of appellate case reading for the purpose of extracting legal doctrine, understanding legal theory, and developing the skills of legal analysis (Moliterno 1996: 83).

Today, the experiential component of law school often is limited to summer employment opportunities, externships, and moot court or law review participation. Law schools frequently run legal clinics that serve actual clients, however, and these clinics can provide extraordinarily rewarding experiences. But clinic enrollment typically is severely restricted and many students never have a clinical experience.

Experiential learning is based on the idea articulated by Carl Rogers that "the only learning that really sticks is that which is self-discovered" (Moliterno 1996: 80). Experiential education achieves the goal of self-learning through a process, outlined by John Dewey among others, in which the teacher explains the theory behind an activity to a student and then provides the student with an opportunity to experience that activity (Moliterno 1996: 81). The student evaluates his or her experience and its relationship to the relevant theory, and then forms a new or modified theory consistent with the knowledge gained through participation in the activity (Moliterno 1996: 81). The student subsequently tests his or her new theory through additional experiences and the theory evolves accordingly (Moliterno 1996: 81). The unique value of experiential education is its ability to provide the student with an internal locus of evaluation (Moliterno 1996: 81). This model for iterative learning through experience enables the student to self-learn in a manner that is transferable to diverse activities and theoretical frameworks (Moliterno 1996: 81).

Despite the many positive aspects of experiential learning, however, it has drawbacks even beyond those already discussed. The fact that an adventure learning program may exclude persons with physical disabilities seems quite obvious. Persons with mental impairments also quite obviously may be affected adversely. Additionally, persons with particular personality traits who do not have impairment, but who feel significant discomfort in certain social situations, also may find themselves unable or unwilling to complete a particular adventure learning assignment.

A Critical Look at the Istanbul Program

During the two-day Istanbul Second Generation Global Negotiation Program, for example, attendees were asked to participate in two adventure learning exercises. The first half day exercise required participants to walk around the Spice Market and the Grand Bazaar and negotiate with vendors. Participants were encouraged to experiment with different negotiation techniques, to interact with multiple vendors, and to compare and contrast those experiences. Attendees were assigned to small groups and transported to the markets to complete this exercise.

The exercise required the participants to spend a substantial amount of time on their feet and to walk over ancient, and therefore not surprisingly, rough and uneven surfaces. Because of the physical demands, at least two of the attendees were unable to participate in this exercise.

For the half day adventure learning exercise planned for the second day, attendees again were assigned to small groups. The groups were asked to travel around Istanbul and take photographs that captured visual images in response to specific questions proposed by the conference planners. Again, one of the two individuals who were not able to participate in the first adventure learning exercise also was unable to participate in this exercise because of the physical demands. Neither of these individuals was aware prior to the conference that he or she would be required to engage in these physical activities in order to participate fully.

Physical disabilities are not the only reason why participants may be excluded. Asperger's syndrome, for example, is a developmental disorder that affects one's ability to socialize and communicate effectively with others.¹⁴ Individuals with Asperger's syndrome may be employed, highly functioning and truly exceptional when it comes to solving complex tasks, but they also may exhibit social awkwardness and an all-consuming interest in specific topics.¹⁵ And they, like many other employees and students, may be interested in

participating in a program described rather simply as a dispute resolution training program.

It is not difficult to imagine how an individual who is uncomfortable in social settings may find an assignment difficult or even impossible when he or she is dispatched to negotiate with strangers in an unfamiliar location. This may be the outcome regardless of whether his or her unusually high reticence rises to the level of what some would call "an impairment."

As someone who has been a full time faculty member at four different universities across the country and who has taught thirteen different courses ranging from Torts to Employment Discrimination Law to Municipal Corporations, this author honestly can say that most ADR instructors with whom he is familiar are unusually sensitive and responsive to inclusion concerns. The fact that adventure learning exercises may exclude certain individuals almost assuredly is a result of the fact that certain characteristics such as disability are not always immediately apparent. And as a society, at least in the United States, we still are not automatically conditioned to be alert for, and to accommodate, certain characteristics such as disability.

Including persons with disabilities never has been the highest priority. One only need recall that race, color, religion, sex and national origin discrimination was prohibited in the United States as a result of national legislation over forty-six years ago.¹⁶ Similarly, age discrimination was outlawed in the United States only two years later.¹⁷ Disability discrimination, in contrast, did not receive comparable protective federal legislation until twenty-six years after passage of the Civil Rights Act of 1964.¹⁸

While upon reflection it becomes obvious that persons with disabilities may be excluded from adventure learning, persons with characteristics that have nothing to with disability also may be excluded. For example, an unexpected opportunity presented to participants before the Istanbul Second Generation Negotiation program officially began involved a program known as the Interfaith Dialogue.

Program participants were invited by gracious local Turkish hosts to travel to the hosts' office or workplace to see how and where each person worked. Once we arrived at the different destinations, we had an opportunity to sit down and describe our jobs and learn about our hosts' vocations. We then were able to explain how spirituality enters into our work lives and to listen as our hosts explained the role spirituality plays in their lives.

If you are a spiritual person, then this was a remarkable opportunity. But if you do not believe in a higher being or an afterlife, but you nonetheless were very interested in Turkish working life, then

you may have been frustrated as the conversation turned to topics in which you have little interest, and for which you may have little patience.

Now admittedly, the individuals who attended the Istanbul Second Generation Global Negotiation Program have an orientation that would make it very unlikely that they would be offended by a conversation of this nature. But as noted earlier, this author believes (and genuinely appreciates) that dispute resolution educators are an unusually empathetic and tolerant group. It is difficult to believe, however, that we all have not witnessed situations or circumstances where the introduction of religion or spirituality into a discussion had a negative impact on that conversation.

An adventure learning exercise that directs students to explore how real-life merchants' or professionals' spirituality manifests itself in their vocational life may be alienating for individuals who reject the idea of a higher authority or a god. An individual with minimal dispute resolution experience who thought that he or she was signing up for a class or a short program simply to learn a little bit about, and only about, negotiation may be (at the least) surprised when the focus turns to spirituality. Accordingly, if an instructor plans to explore the role and influence of spirituality and religion in negotiation then, similar to the suggestions with regard to physical activities and planned social interactions, it would be helpful to inform prospective attendees in advance that this topic will be explored.

A student also may feel his or her personal ethics are being challenged or compromised by an adventure learning assignment. For instance, a student asked to negotiate a purchase for purposes of an educational experience may be quite uncomfortable imposing on a merchant for whom the negotiation is anything but an academic exercise. For the merchant, time is money and his or her financial livelihood depends upon whether or not actual sales are completed. Students may be very uncomfortable negotiating with a merchant knowing that they have no intention to actually purchase an item. Or if students are instructed to complete the sale and purchase the item, then they may be unhappy that they are being asked to spend their typically limited resources on such a frivolous purchase.

What Can We Do?

There certainly is no need to abandon adventure learning. But at a minimum, program planning should be transparent. Because surprises tend to grab peoples' attention and because most people appear to enjoy surprises, program planners may be tempted to withhold certain information. The planners may hope that program attendees, who may be losing interest as the day wears on, will be

energized by a new, unanticipated learning opportunity – particularly one that engages them physically as well as intellectually.

But information can be communicated that need not spoil the surprise. It may be enough simply to advise potential participants that the planned activities will involve an extended period of standing or walking. If this fact will be troublesome or challenging for some individuals, then the planners should request that they be contacted in order to explore possible accommodations. If an accommodation simply is not possible (in the United States accommodations must be made only when reasonable and when they will not create an undue burden),¹⁹ then at least the potential participant will not be surprised, after the program already has begun, with the fact that he or she cannot participate in core activities. Furthermore, reasonable accommodations often are less expensive and more achievable than one might think, and sometimes all it takes is awareness and planning.²⁰

When it comes to issues of spirituality and ethics, it also may be advisable to provide information regarding planned activities. When potential participants are alerted in advance about adventure learning exercises that may involve religious or spiritual issues, they can make the individual determination as to whether they want to participate before the program has begun. This can and should occur before individuals suddenly are forced to decide whether they will participate without any time for reflection. The Istanbul Second Generation program, it must be noted, did provide significant notice and information to participants about this dialogue opportunity well in advance.

Conclusion

Without a doubt, few teaching opportunities are as exciting as the chance to teach negotiation to a global audience. Not only will the instructors be challenged in their preparation and planning in ways they never may have been challenged before, they also will be able to learn seemingly limitless information about culture, values, and dispute resolution practices. Although we tend to be sensitive about the existence of cultural differences, we may not invest sufficient energy to appreciate the details and extent of those differences. Once we begin, we often learn that the challenge is much more than we anticipated.

As we search for new teaching models appropriate for a diverse global audience, we need to be attentive to the myriad ways in which individuals can be excluded. Some of the characteristics that can lead to exclusion are fairly obvious, but others are not immediately apparent. If we are going to adopt multidimensional learning

approaches like adventure learning that engage students intellectually, physically, ethically, and perhaps even spiritually, then we have to be responsive to the danger that students may be excluded and unable to participate because of characteristics relating to any one of those dimensions.

Notes

¹ 42 U.S.C. § 12101 et. seq. (2009). The Americans with Disabilities Act (“ADA”) was passed by the United States Congress in 1990 to remedy the effects of systemic and individual discrimination against Americans living with a variety of physical and mental impairments. *Id.* The most recent amendments to the ADA became effective on January 1, 2009, and broadened the statutory scope of protection for these individuals. *Id.*

² 42 U.S.C. § 12181-12189 (2009). Title III of the ADA, entitled “Public Accommodations and Services Operated by Private Entities,” establishes the minimum standards of accessibility that private entities must provide when they are engaged in a wide array of commercial activities considered to be “public accommodations.” *Id.* Under Title III,

The following private entities are considered public accommodations...if the operations of such entities affect commerce: (A) an inn, hotel, motel, or other place of lodging... (B) a restaurant, bar, or other establishment serving food or drink; (C) a motion picture house, theater, concert hall, stadium, or other place of exhibition entertainment; (D) an auditorium, convention center, lecture hall, or other place of public gathering; (E) a bakery, grocery store...shopping center, or other sales or rental establishment; (F)...[the] office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment; (G) a terminal, depot, or other station used for specified public transportation; (H) a museum, library, gallery, or other place of public display or collection; (I) a park, zoo, amusement park, or other place of recreation; (J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education; (K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and (L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

42 U.S.C. § 12181 (2009).

³ See generally 42 U.S.C. § 12181-12189 (2009). See also 28 C.F.R. § 36.201-36.203; 36.304 (2009). The United States Department of Justice (“DOJ”) is responsible for enforcing Title III of the ADA. *Id.* The DOJ regulations governing Title III enforcement stipulate that both landlords and tenants bear the responsibilities of ensuring accessibility:

Both the landlord who owns the building that houses a place of public accommodation and the tenant who owns or operates the place of public accommodation are public accommodations subject to the requirements of this part. As between the parties, allocation of responsibility for complying with the obligations of the part may be determined by lease or other contract 28 C.F.R. 36.201 (2009).

Furthermore, these parties are responsible for providing accessibility and services in as seamless a manner as possible to facilitate ease of use: "A public accommodation shall afford goods, services, facilities, privileges, advantages, and accommodations to an individual with a disability in the most integrated setting appropriate to the needs of the individual." 28 C.F.R. 36.203 (2009).

⁴ 28 C.F.R. § 36.304 (2009). In fact, the DOJ regulations essentially make mandatory the removal of such barriers, defining "readily available [as] easily accomplishable and able to be carried out without much difficulty or expense." *Id.* Section 36.304, the regulation governing the removal of barriers, provides a non-exhaustive list of examples to illustrate the ways in which barriers should be removed and, furthermore, provides guidance on the order of priority for removal. *Id.* Compliance with Section 36.304 requires, among other things,

(1) Installing ramps; (2) making curb cuts in sidewalks and entrances; (3) repositioning shelves; (4) rearranging tables, chairs, vending machines, display racks, and other furniture; (5) repositioning telephones; (6) adding raised markings on elevator control buttons; (7) installing flashing alarm lights; (8) widening doors; (9) installing offset hinges to widen doorways; (10) eliminating a turnstile or providing an alternative accessible path; (11) installing accessible door hardware; (12) installing grab bars in toilet stalls; (13) rearranging toilet partitions to increase maneuvering space; (14) insulating lavatory pipes under sinks to prevent burns; (15) installing a raised toilet seat; (16) installing a full-length bathroom mirror; (17) repositioning the paper towel dispenser in a bathroom; (18) creating designated accessible parking spaces; (19) installing an accessible paper cup dispenser at an existing inaccessible water fountain; (20) removing high pile, low density carpeting; or (21) installing vehicle hand controls. *Id.*

The order of priority focuses first on external accommodations (designating parking spaces, building ramps, etc.), second on internal accommodations, (lowering display racks, rearranging tables, etc.), third on restroom facility accommodations (widening stalls, installing grab bars, etc.), and fourth on "any other measures necessary to provide access to the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation." *Id.*

⁵ The rights of students with disabilities are governed by the Individuals with Disabilities Education Act ("IDEA"). 20 U.S.C. § 1400 et seq. (2009).

The United States Congress pursued legislation to protect the rights of disabled students after determining that: “Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.” 20 U.S.C. § 1400(c)(1) (2009). To this end, Congress originally passed IDEA with the intent to:

[E]nsure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living...ensure that the rights of children with disabilities and parents of such disabilities are protected; and...assess, and ensure the effectiveness of, efforts to educate children with disabilities 20 U.S.C. § 1400(d) (2009).

⁶ In Australia, for example, the country’s Disability Discrimination Act (“DDA”) not only protects *individuals* with disabilities from discrimination, but also protects *associates* of individuals with disabilities from discrimination (Australian Human Rights Commission). The DDA is relatively broad in scope, including in its definition of disability the use of corrective lenses, stuttering, and even allergic reactions to cigarette smoke. *Id.* In contrast, Germany amended its constitution in 1994 to include a prohibition against disability discrimination, but has yet to codify this mandate into a single, comprehensive legislative scheme (see e.g., Degener 2006, explaining that, “The concept of disability varies according to German criminal, civil, education, and social law... Even within one legal subject area, such as social law, there is no universal definition of disability covering all social welfare and social security laws”). In the context of employment, for example, German law protects only those individuals classified as “severely disabled ... persons whose degree of disability is at least 50%...” *Id.* Within social law, on the other hand, disability protection extends to individuals “if their physical functions, mental capacities, or psychological health are highly likely to deviate for more than six months from the condition which is typical for the respective age and whose participation in the life of society is therefore restricted.” *Id.*

⁷ Bolivia, for example, has enacted a series of laws that explicitly include individuals living with disabilities as citizens entitled to rights such as “employment, health care, rehabilitation, vocational training, and access to public spaces” (Center for International Rehabilitation 2004). Yet these laws neither prohibit discrimination nor ensure the enforcement of these rights. *Id.* In fact, the government itself discriminates against certain people with disabilities: “The [Bolivian] Civil Code declares that ‘deaf-mute and mute persons are incapable of making a will.’ They are likewise deemed ‘incapable’ of serving as a witness, as are people who are deaf.” *Id.* Notably, however, certain provisions of the country’s criminal law impose harsher sentences for crimes against disabled persons: “Individuals who commit a crime against a person with disabilities [such as] rape, etc., may be sen-

tenced...to a longer [imprisonment] period due to the aggravating circumstances." *Id.*

⁸ Even in simulation debriefing, students approach the experience as "not in the real world."

⁹ See also Ojeda-Zapata (2010) (reporting that an increasing number of schools across the United States are incorporating mobile technology devices, such as the iPod Touch, into their curricula).

¹⁰ After more than a century and a half, however, the Board of Trustees for Antioch University decided to close Antioch College in July, 2008 (Antioch to Close Main College 2007). See also Goldfarb 2007 (describing an alumnus' perspective on the demise of the college).

¹¹ In light of the closing of Antioch College, one might question whether the verb should be present or past tense; "has been" or "had been." But loyal and determined alumni formed the Antioch College Continuation Corporation, are planning to reopen Antioch College in 2011, and consider the closing to be an opportunity to reorganize and regroup, see generally <http://antiochcollege.org/> (last accessed June 7, 2010).

¹² See generally http://antiochcollege.org/about/mission_and_history.html (last accessed June 7, 2010).

¹³ One always should keep in mind, of course, that dispute and conflict resolution cannot be taught without exploring human behavior. Theoretical studies alone will not be sufficient.

¹⁴ See MAYO CLINIC, ASPERGER'S SYNDROME DEFINITION, available at <http://www.mayoclinic.com/health/aspergers-syndrome/DS00551> (last accessed June 7, 2010). Asperger's syndrome characteristics include "engaging in one-sided, long-winded conversations; displaying unusual non-verbal communication, such as lack of eye contact, few facial expressions, or awkward body postures; showing an intense obsession with one or two subjects, such as baseball statistics, train schedules or snakes; and having a hard time reading other people or understanding humor" (Voigt 2009). Asperger's syndrome typically is grouped with other conditions that are called autistic spectrum disorders or pervasive developmental disorders and generally is considered to be at the milder end of this spectrum (Voigt 2009).

¹⁵ *Id.*

¹⁶ 42 U.S.C. 2000e et seq. (2009). Since its original adoption in 1964, the Civil Rights Act has been amended several times, with its most comprehensive amendments in 1991. *Id.*

¹⁷ 29 U.S.C. § 623 et seq. (2009). The Age Discrimination in Employment Act (ADEA) protects people 40 years of age and older from employment discrimination based on age. 29 U.S.C. § 623 (2009). The ADEA states that it is illegal for an employer:

- (1) [T]o fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;
- (2) to limit or segregate or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect

his status as an employee, because of such individual's age; or (3) to reduce the wage rate of any employee in order to comply with this chapter. *Id.*

¹⁸ 42 U.S.C. § 12101 et. seq. (2009). As mentioned above, the ADA was passed in 1990 and was a remedial measure to address Congress' finding that:

[H]istorically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem; [and further] unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability often had no legal recourse to redress such discrimination 42 U.S.C. § 12101 (2009).

¹⁹ 42 U.S.C. § 12182 (2009). Under the ADA, it is unlawful discrimination if an entity fails:

[T]o take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered *or would result in an undue burden* ... *Id.* (emphasis added).

²⁰ See *supra* note 4 (discussing the types of accommodations required by the ADA). In the employment context, for example, one study found that "most accommodations sampled required little or no cost – more than 75% required no cost; somewhat less than one quarter cost less than \$1,000; and less than 2% cost more than \$1,000. The average direct cost for accommodations was less than \$30" (Blanck 1999: 280).

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