THREE FORMULATIONS OF THE NEXUS REQUIREMENT IN REASONABLE ACCOMMODATIONS LAW

The concept of reasonable accommodation is fundamental to the American disability law regime, yet it has proved as slippery as the concept of disability itself.[1] Underlying much of the difficulty is disagreement over the appropriate relationship between an accommodation and the disability-related obstacles it is aimed at removing. Just as it is not illegal to discriminate against a member of a protected class for reasons unrelated to her protected status,[2] the Americans with Disabilities Act[3] (ADA) does not require accommodations that are not related to a person's disability. But this seemingly simple concept has produced a muddled, often self-contradictory body of case law. Disability statutes provide little guidance to the judges who must decide whether a dog is properly understood as a needed therapy animal or a household pet,[4] whether an alternative examination method is an innovative accommodation for dyslexia or a clever way of gaming the test,[5] and whether a request to transfer to a different work setting is genuinely related to the disabling aspects of posttraumatic stress disorder.[6] This Note seeks to classify the various approaches that courts have brought to the so-called "nexus requirement," to examine the beliefs about disability that are implicit in these approaches, and to offer some ways in which courts might reconcile those beliefs with the realities of disability.

A reasonable accommodation is an alteration to some element of the status quo that is intended to enable a person with a disability to participate in work, higher education, residential living, or public life to the same extent as the nondisabled. The range of possible accommodations is in theory limited only by the human imagination: it can include changes to physical environments and time schedules, adjustment of requirements and policies, and provision of assistive devices,

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[1] For a philosophical and sociological exploration of the concept of disability, see N. Ann Davis, *Invisible Disability*, 116 ETHICS 153, 157–79 (2005).

[2] *See, e.g.*, Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 80 (1998) (emphasizing that workplace harassment is not actionable under the Title VII prohibition of sex discrimination unless it is motivated by the victim's sex).

[3] Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (codified as amended at 42 U.S.C. §§ 12101–12213 (2006 & Supp. V 2011)).

[4] *See* Prindable v. Ass'n of Apartment Owners of 2987 Kalakaua, 304 F. Supp. 2d 1245 (D. Haw. 2003).

[5] *See* Stern v. Univ. of Osteopathic Med. & Health Scis., 220 F.3d 906 (8th Cir. 2000).

[6] *See* Felix v. N.Y.C. Transit Auth., 324 F.3d 102 (2d Cir. 2003).

just to cite a few examples.[7] The Supreme Court has held that exceptions to workforce seniority rules are not necessarily off limits,[8] and courts have recently entertained the idea of including commuting-related accommodations as well.[9] Given this seemingly untethered flexibility, perhaps it was inevitable that courts interpreting disability-rights statutes would search for some principle to limit the costs incurred by businesses, landlords, and governments in complying with disability law.

Three major federal statutes require reasonable accommodations in some capacity. The ADA prohibits discrimination against people with disabilities in employment,[10] government services,[11] and places of public accommodation,[12] and its definition of discrimination includes refusal to provide a reasonable accommodation[13] and failure to grant reasonable modifications to rules and practices.[14] The Fair Housing Amendments Act of 1988[15] (FHAA) forbids discrimination in the sale or rental of housing[16] and likewise includes failure to accommodate in its definition of discrimination.[17] And the Rehabilitation Act of 1973[18] imposes many of the ADA's regulations on the federal government and its agents.[19] These statutes define disability as an impairment that "substantially limits one or more major life activities."[20] They specify that discrimination is forbidden only if "on the basis of,"[21] "by reason

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[7] *See* Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, 29 C.F.R. § 1630.2(o)(2) (2011).

[8] *See* US Airways, Inc. v. Barnett, 535 U.S. 391, 394 (2002). The Court in *Barnett* held that such exceptions are generally unreasonable, however, despite being within the ambit of theoretically possible accommodations. *See id.* at 403.

[9] *Compare* Colwell v. Rite Aid Corp., 602 F.3d 495, 505 (3d Cir. 2010) (holding that commuting-related accommodations are within the ADA's purview), *with* DiNatale v. N.Y. State Div. of Human Rights, 909 N.Y.S.2d 597, 599 (App. Div. 2010) (holding the opposite).

[10] 42 U.S.C. § 12112(a) (2006 & Supp. V 2011).

[11] *Id.* § 12132.

[12] *Id.* § 12182(a).

[13] *Id.* § 12112(b)(5).

[14] *Id.* § 12182(b)(2)(A)(ii).

[15] Pub. L. No. 100-430, 102 Stat. 1619 (codified as amended at 42 U.S.C. §§ 3601–3631 (2006)).

[16] 42 U.S.C. § 3604(f).

[17] *Id.* § 3604(f)(3)(A)–(B).

[18] Pub. L. No. 93-112, 87 Stat. 355 (codified as amended in scattered sections of 29 U.S.C.).

[19] *See* Richard Bales & Lindsay Mongenas, *Defining Independent Contractor Protection Under the Rehabilitation Act*, 34 HAMLINE L. REV. 435, 440–42 (2011) (describing the legislative process that led to the Rehabilitation Act's incorporation of the ADA's standards).

[20] 42 U.S.C. § 12102(1)(A) (2006 & Supp. V 2011); *see also* 29 U.S.C. § 705(9)(B) (2006 & Supp. V 2011) (defining "disability" by incorporating the ADA's definition); 42 U.S.C. § 3602(h)(1) ("[Handicap means] a physical or mental impairment which substantially limits one or more of [a] person's major life activities . . . .").

[21] 42 U.S.C. § 12112(a); *id.* § 12182(a).

of,"[22] or "because of"[23] disability, but they do not elaborate on how courts are to determine whether the plaintiff has adequately established a link. Notably, the ADA Amendments Act of 2008 clarifies many of the contentious issues that developed in connection with the original ADA, but it is silent on the nexus question.[24] The Supreme Court has never addressed the nexus requirement directly.[25]

Thus, the lower federal courts have been left largely to their own devices, and many commentators have been unhappy with the results. These scholars have typically treated the nexus requirement as a straightforward binary issue, generally assuming that courts either scrutinize the nexus or do not.[26] But the existing variety of judicial treatments calls for a more comprehensive, nuanced framework. This Note introduces a tripartite scheme for classifying the ways in which courts have attempted to reconcile statutory nexus requirements with the factual uncertainties inherent in disability. The first, discussed in Part I, requires the requested accommodation to bear a direct causal relationship with the substantial limitation of a major life activity that the plaintiff alleges. The second, discussed in Part II, asks whether the requested accommodation is more logically integrated with the disability or with some other aspect of the plaintiff's circumstances. The third, discussed in Part III, conceptualizes disability broadly and defers to the judgments of individuals on issues related to their own intimate life experiences. Each formulation has merit, yet none can resolve every case in a way that satisfies the diverse interests at stake in the American disability law regime. These categories are interrelated and far from mutually exclusive; courts have applied very different reasoning to different areas of disability law, and some have even shifted their analyses within a single opinion. Nonetheless, the framework may serve to illuminate the complexities of the nexus inquiry, and Part IV discusses the ways in which judges might employ its insights to compensate for the shortcomings of their own understandings of disability.

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[22] *Id.* § 12132.

[23] *Id.* § 3604(f)(1).

[24] *See* ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553 (codified in scattered sections of 29 and 42 U.S.C.); Kerri Stone, *Substantial Limitations: Reflections on the ADAAA*, 14 N.Y.U. J. LEGIS. & PUB. POL'Y 509, 539–40 (2011).

[25] Perhaps the most relevant precedent is *US Airways, Inc. v. Barnett*, 535 U.S. 391 (2002), in which Justice Breyer's opinion for the Court reasoned that the concept of "accommodation" contains an implicit effectiveness requirement, *id.* at 400, and Justice Scalia's dissent stressed the need for a link between a challenged practice and disability-specific obstacles, *see id.* at 412 (Scalia, J., dissenting).

[26] *See* sources cited *infra* notes 48, 50.

I. THE BRIDGE MODEL

In one formulation of the nexus requirement, courts have required a direct causal connection between the substantial limitation of a major life activity that the plaintiff alleges and the reasonable accommodation that she seeks. That is, the accommodation can be connected to the disability only by way of the "substantial limitation" requirement contained in the statutory definition of disability in the ADA, the FHAA, and the Rehabilitation Act. This version of the nexus requirement can be conceptualized as a bridge. The plaintiff builds a bridge when she demonstrates that she is substantially limited in a major life activity, thereby connecting her real-life circumstances with the statutory definition of disability. Later, in asserting that she was denied accommodation, she must cross that same bridge to show that the accommodation she requested is linked to her disability. While any reasonable-accommodation plaintiff must prove that she is substantially limited in a major life activity, the bridge model carries this definition into the next phase of inquiry instead of treating it as a threshold matter. The bridge model imposes a significant restriction on the accommodations that an individual is entitled to by denying those that are related to some aspect of the disability *other than* the substantial limitation through which she initially proved the disability.[27]

Perhaps the most prominent example of the bridge model comes from the Second Circuit's 2003 decision in *Felix v. New York City Transit Authority*.[28] The plaintiff, Denise Felix, was a railroad clerk for the Transit Authority, a job that required selling transit passes from ticket booths inside subway stations.[29] After witnessing the disturbing aftermath of a firebombing incident in the subway system, Ms. Felix was diagnosed with posttraumatic stress disorder.[30] She requested reassignment to an office job as an accommodation for her resulting fear of subway stations.[31] The district court granted summary judgment for the employer,[32] and the Second Circuit affirmed, finding that the accommodation Ms. Felix had requested had no connection to her disability.[33] Ms. Felix's employer had conceded that the insomnia caused by her posttraumatic stress disorder interfered with her sleeping, a ma-

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[27] A disability plaintiff is free to claim that she is substantially limited in more than one major life activity. *See, e.g.*, Wood v. Crown Redi-Mix, Inc., 339 F.3d 682, 684 (8th Cir. 2003) (claiming impairments in "walking, standing, turning, bending, lifting, working, and procreation"). If she established these limitations, the plaintiff would have multiple "bridges" at her disposal in the reasonable accommodation phase.

[28] 324 F.3d 102 (2d Cir. 2003).

[29] *Id.* at 103.

[30] *Id.*

[31] *Id.* at 104.

[32] Felix v. N.Y.C. Transit Auth., 154 F. Supp. 2d 640, 644 (S.D.N.Y. 2001).

[33] *Felix*, 324 F.3d at 107.

jor life activity, such that it rose to the level of a disability.[34] Because the anxiety Ms. Felix experienced inside subway stations was not caused by her insomnia, however, the Second Circuit held that the Transit Authority's failure to provide the accommodation she requested did not constitute discrimination on the basis of disability.[35]

In requiring Ms. Felix to request an accommodation that was linked to her disability *by way of* the ADA's "substantial limitation" definition, the Second Circuit adopted the bridge mode of reasoning. The court did not question Ms. Felix's contention that both her insomnia and her fear of subway stations resulted from one traumatic incident, but it maintained that they were nevertheless distinct mental states.[36] To reach this conclusion, the court emphasized that the substantial limitation language in the ADA is the *definition* of disability.[37] To illustrate, it likened Ms. Felix's situation to that of a car accident victim who emerges with an ambulatory disability as well as minor injuries to his arms: if the arm injuries do not substantially limit a major life activity, the accident victim's employer will not be required to provide a reasonable accommodation for the decreased typing speed that might result, even if the ambulatory impairment qualifies as a disability under the ADA.[38] Thus, like an explorer who must cross a bridge she has already built to reach an otherwise unconnected piece of land, Ms. Felix was required to establish the logical connection between her disability and her requested accommodation by showing a substantial limitation on a major life activity. Because her request for clerical work was not directly related to her insomnia, she was not entitled to relief.

Other courts have extended *Felix*'s logic to reasonable-accommodations cases outside the employment context. In *Long v. Howard University*,[39] for instance, a district court ruled that in order to be "necessary" under Title III of the ADA, an education-related accommodation had to be directly linked to the substantial limitations on major life activities that a disabled student alleged.[40] And in *Giebeler v. M & B Associates*,[41] the Ninth Circuit adhered to bridge-style reasoning in its application of the FHAA necessity requirement. There,

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[34] *Id.* at 104.

[35] *See id.* at 105.

[36] *See id.* ("Felix's inability to sleep . . . is separate from her inability to work in the subway . . . , even though both were caused by the subway firebombing and the resultant PTSD.").

[37] *See id.*

[38] *Id.*

[39] 439 F. Supp. 2d 68 (D.D.C. 2006).

[40] *See id.* at 78 ("[Defendant university] was required to make modifications . . . only insofar as its policies and practices failed adequately to take account of limitations on walking and breathing.").

[41] 343 F.3d 1143 (9th Cir. 2003).

plaintiff John Giebeler suffered from AIDS and could not work as a result of this condition.[42] His income was below the minimum permitted at the apartment complex where he sought housing, so he requested an exception to the landlord's policy against cosigners so that his mother, whose income was sufficient, could cosign his lease.[43] The Ninth Circuit held that the defendant was required to grant an exception to its policy,[44] but in so doing, it seemingly ratified the logic of *Felix* and its progeny:

> Giebeler's AIDS-related impairments substantially — indeed, entirely — limited his ability to work. . . . Consequently, his income stream was limited . . . . Because of his reduced income, Giebeler did not meet the minimum income defendants' policies require of . . . tenants. . . . A direct causal link therefore existed between Giebeler's impairment, his inability to work, and his inability to comply with defendants' minimum income requirement . . . .[45]

The notion of disability that emerges from these cases assumes discrete, easily identifiable conditions with obvious effects. Because only certain activities qualify as "major life activities" under the ADA,[46] and because the bar for proving a "substantial limitation" is high,[47] the bridge model is typically the most restrictive of the three types of nexus formulations. As such, the model has been unpopular among many commentators.[48] Specifically, they have questioned its logic,[49] its statutory interpretation,[50] and its compatibility with the policy objectives of the disability laws.[51] But the disability rights movement is not monolithic, and some within the movement have championed narrow pro-

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[42] *Id.* at 1145.

[43] *Id.*

[44] *Id.* at 1159.

[45] *Id.* at 1147–48.

[46] *See, e.g.*, Toyota Motor Mfg., Ky., Inc. v. Williams, 534 U.S. 184, 197 (2002) (restricting coverage to "those activities that are of central importance to daily life"). Congress expanded the *Toyota* definition somewhat in its 2008 amendments to the ADA by including a nonexhaustive list of major life activities. *See* 42 U.S.C. § 12102(2)(A) (2006 & Supp. V 2011).

[47] *See, e.g.*, Dutcher v. Ingalls Shipbuilding, 53 F.3d 723, 727 (5th Cir. 1995) (holding that plaintiff was not substantially limited in the major life activity of working because, although she could not perform the job she held at the time of her injury, she may have been able to obtain different employment).

[48] *See, e.g.*, Cheryl L. Anderson, *What Is "Because of the Disability" Under the Americans with Disabilities Act? Reasonable Accommodation, Causation, and the Windfall Doctrine*, 27 BERKELEY J. EMP. & LAB. L. 323, 354–55 (2006); Stone, *supra* note 24, at 530; Kelly Cahill Timmons, *Limiting "Limitations": The Scope of the Duty of Reasonable Accommodation Under the Americans with Disabilities Act*, 57 S.C. L. REV. 313, 326–34 (2005).

[49] *See* Timmons, *supra* note 48, at 326–34.

[50] *See id.* at 326–27; James M. Carroll, Note, *The Causal Nexus Doctrine: A Further Limitation on the Employer's ADA Duty of Reasonable Accommodation in the Seventh Circuit*, 91 MARQ. L. REV. 839, 869–71 (2008).

[51] *See* Carroll, *supra* note 50, at 871–72.

tections.[52] They have pointed to the legislative compromise at the foundation of the ADA[53] as well as the practical idea of conserving the scarce resources of employers, landlords, and governments for individuals with serious disabilities.[54] They contend that a narrow construction of the nexus requirement may be necessary to prevent litigants from using broad accommodations requirements as a backdoor way of expanding the protected class, thereby subverting the policies behind the minority-group approach to disability law.[55] But even if the bridge model is less repugnant to the goals of the disability rights movement than some have contended, its underlying assumptions seem questionable as a gloss on the human experience.

For one thing, the model treats life as a disaggregated bundle of "major activities" in which pursuits like sleeping, working, walking, and procreating are hermetically sealed off from one another — a construction that seems unlikely to ring true to most laypeople. Firsthand accounts demonstrate that a disability tends to intrude on many aspects of daily life in complex and sometimes nebulous ways, often intensifying personal struggles that are not directly related to the disability. In Professor Elyn Saks's personal memoir of living with schizophrenia, for instance, the author describes the gradual onset of her condition, which little by little began to affect her hygiene, sleeping patterns, conversational skills, and ability to concentrate on her studies, among other things.[56] She also describes a childhood bout with eating issues,[57] "painful lack of social skills" as a young adult,[58] and general difficulty adjusting to change,[59] all of which may or may not have been somehow connected to her psychological disability. Furthermore, she describes the immediate effects of her condition as having secondary impacts on multiple other areas of her life.[60] The com-

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[52] *See* SAMUEL R. BAGENSTOS, LAW AND THE CONTRADICTIONS OF THE DISABILITY RIGHTS MOVEMENT 3–4 (2009).

[53] *See id.* at 44–45. *But see* Kevin Barry, *Toward Universalism: What the ADA Amendments Act of 2008 Can and Can't Do for Disability Rights*, 31 BERKELEY J. EMP. & LAB. L. 203, 207–08 (2010) (disagreeing with Professor Samuel Bagenstos's claims about the concessions disability advocates made to ensure the ADA's passage).

[54] *Cf.* BAGENSTOS, *supra* note 52, at 20–21 (describing a tension within the disability rights movement between those who would treat people with disabilities as a distinct minority group and those who would recognize disability as a continuum that affects everyone to a greater or lesser extent).

[55] *See id.*

[56] ELYN R. SAKS, THE CENTER CANNOT HOLD 35–36 (2007) (hygiene); *id.* at 112 (sleep); *id.* at 54–55, 136–37 (conversation); *id.* at 41, 56, 76 (concentration).

[57] *See id.* at 15–17.

[58] *Id.* at 37.

[59] *See id.* at 18, 41, 46–47.

[60] *See, e.g.*, *id.* at 48 ("In an unfortunate side effect of my increasing inattention to myself — my periodic lapses of self-care, which always became worse during stress — my ears had become so clogged with wax I could hardly hear a word anyone spoke.").

plex connections among illness, personality, and environment that Saks describes are difficult to reconcile with the simplicity of the bridge model, which assumes a straightforward link between a specific impairment and a corresponding need for accommodation.

Moreover, an individual's interaction with her disability is often more of a dialectic process than a static one, so that the one-way causation that the bridge model represents is a poor approximation of real-world dynamics. First, individuals with disabilities might take actions to mitigate their symptoms, prolong their lives, or adapt to their environment that themselves have impacts on other areas of their lives. They might take medications with side effects,[61] for instance, or spend a great deal of time, money, or energy managing symptoms. Second, individuals might cope with the emotional and social consequences of having a disability in unhealthy ways.[62] In these scenarios, the disability is the actual cause of the secondary effects, but the narrow one-way causation that the bridge model contemplates will likely fail to account for them, since they appear to flow from the individual's own actions rather than the substantial limitation on a major life activity. Thus, even if narrow coverage is consonant with some of the goals of the disability statutes, the bridge model provides no guarantee that its narrow coverage will be *correct*, or that the people most in need will be the ones included in the statute's protection. Instead, the *Felix* rule provides a blunt, artificial means of limiting the set of reasonable accommodations from which people with disabilities may choose.

II. THE CONSTELLATION MODEL

A second type of nexus requirement still requires the plaintiff to establish a logical connection between his particular impairments and the accommodation sought, but it permits a much wider range of logical links to play a role in the analysis. A constellation is a pattern of stars in a small region of the sky upon which humans have imposed familiar pictures from their culture or mythology.[63] Under the constellation model of the nexus requirement, the outcome of a reasonable ac-

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[61] *See, e.g.*, CATHERINE WYATT-MORLEY, AIDS MEMOIR 17–18 (1997) (describing the severe side effects of AZT, a medication used to treat HIV).

[62] *See, e.g.*, JEFF BELL, REWIND, REPLAY, REPEAT 195 (2007) (describing a period of despair in which the author, tired of living with obsessive-compulsive disorder, wanted to "put an end to [his] elaborate charade of normalcy and accept [his] lot in life as a rank-and-file member of the mentally ill"); MATT LONG WITH CHARLES BUTLER, THE LONG RUN 135–36 (2010) (discussing the emotional effects on an accident victim of withdrawing from family and friends when he felt alienated as the result of his numerous severe injuries); WYATT-MORLEY, *supra* note 61, at 29, 90 (discussing author's effort to remain optimistic and avoid becoming "self-destructive" in the face of the emotional stress and social stigma of living with HIV).

[63] *See* ASTRONOMY ENCYCLOPEDIA 92–93 (Patrick Moore ed., 2002).

commodation claim depends on a court's ability to discern whether the accommodation sought forms part of the disability constellation or is separate from it. Like astronomical maps, the litigants' firsthand and expert testimony can assist the decisionmaker in constructing a coherent image out of a limited set of known data points. In this formulation, the substantial limitation of a major life activity is only one such data point: it may provide important information on the nature of the disability, but it does not restrict the ways in which the accommodation might form part of the picture. Instead, to an adherent of the constellation model, a disability is an image to be discovered within a cluster of points and distinguished from unrelated astral objects with a discerning eye.

Judges who apply the constellation model have relied on some mix of objective criteria and their own intuition to determine whether requested accommodations lie within or outside the sphere of disability. In *Edwards v. EPA*,[64] an employee suffered from Crohn's disease, an intestinal condition that is aggravated by stress and fatigue.[65] He asked for permission to bring a dog to work with him to mitigate job-related stress, thereby improving his physical health.[66] The employee obtained a note from his doctor, but the doctor referred to the treatment as "experimental" and could not guarantee its effectiveness.[67] The employee's supervisor declined the accommodation request because she could not categorize the dog as a traditional service animal.[68] Faced with these competing viewpoints, the court concluded that the employee had not established a sufficient link between the Crohn's disease and the dog, in part because he had not presented "objective" evidence that the dog would have reduced his stress.[69] But the court also made clear its own skepticism over the asserted link, pointing out that the enjoyment humans derive from pets is not a disability-specific phenomenon.[70] It appears that the court felt instinctively that the companionship of a dog and the benefits it brings are not within the constellation of disability, even if alleviating the symptoms of a disability is one of those benefits.

Similarly, in *Stern v. University of Osteopathic Medicine and Health Sciences*,[71] a medical student with dyslexia requested an accommodation that would allow him to supplement his answers to

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64 456 F. Supp. 2d 72 (D.D.C. 2006).
65 *Id.* at 77.
66 *See id.* at 79.
67 *See id.* The doctor's note continued, "I would say 'go for it!' It certainly cannot hurt." *Id.*
68 *Id.* at 80.
69 *Id.* at 100.
70 *Id.* at 101–02.
71 220 F.3d 906 (8th Cir. 2000).

multiple-choice exams with essays or oral responses.[72] The university, however, offered a standard accommodation for all students with dyslexia, which consisted of an audiotape of the questions, a private room in which to take the test, and extra time, and it proffered expert testimony on the general effectiveness of this protocol as an accommodation for dyslexia.[73] The Eighth Circuit found that in order to proceed, the plaintiff would have to put forth his own expert testimony to establish a real relationship between his request and his disability.[74] The court sought an objective viewpoint on whether the student's proposal was in fact specific to his disability or was simply aimed at making the test easier in a way that it would for any student.[75]

Although the plaintiffs in *Edwards* and *Stern* were unsuccessful, it stands to reason that the constellation model is, on average, more generous to plaintiffs than the bridge model. After all, it permits a much wider array of connections between the disability and the accommodation. But one line of cases departs from this generalization. A significant question in FHAA litigation has been whether landlords must accommodate the financial circumstances of tenants with disabilities,[76] and this issue typically triggers a nexus-style analysis. In *Salute v. Stratford Greens Garden Apartments*,[77] for instance, two housing applicants who were unable to work due to disabilities were turned away from an apartment complex because it would not accept Section 8 vouchers.[78] They asserted that the complex should have waived its policy of not accepting Section 8 vouchers as a reasonable accommodation under the FHAA, arguing that their disabilities were causally linked to their financial status.[79] Whereas the Ninth Circuit in *Giebeler* would later use a bridge framework to find that such an accommodation was necessary, here the Second Circuit rejected it on the basis that the plaintiffs had not established a sufficient link between the requested accommodation and the circumstances of their individual disabilities.[80] The court reasoned that the plaintiffs' Section 8 status

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[72] *Id.* at 907.

[73] *Id.* at 907–08.

[74] *Id.* at 908.

[75] *Id.* at 909 ("[The question is] whether allowing Mr. Stern to supplement his answers on multiple-choice tests actually compensates for his dyslexia, rather than simply making the test easier for him in the same way that such a measure presumably would assist other students.").

[76] *See* Brian R. Rosenau, Note, *Gimme Shelter: Does the Fair Housing Amendments Act of 1988 Require Accommodations for the Financial Circumstances of the Disabled?*, 46 WM. & MARY L. REV. 787, 789 (2004).

[77] 136 F.3d 293 (2d Cir. 1998).

[78] *Id.* at 296.

[79] *See id.* at 301.

[80] *See id.* at 302.

was a symptom of their economic situations, not of their disabilities.[81] Disability and poverty, in the *Salute* court's judgment, are separate constellations.[82]

Whether or not it is favorable to disabled plaintiffs, the constellation model is in many ways intuitively better suited to the realities of disability than the bridge model. Rather than zeroing in on the statutory language of "substantial limitation" and the artificial and arbitrary distinctions that often accompany it, the constellation model conceptualizes disability holistically. This formulation comports better with Elyn Saks's account of life with schizophrenia, in which she characterizes her illness as having a gradual onset and pervasive effects.[83] Indeed, several critics of the *Felix* doctrine argue for a constellation-like analysis in its place.[84] Yet the variety of outcomes reached through constellation-based reasoning is evidence of its indeterminacy and subjective nature. At best, the constellation model lacks the analytical crispness of the bridge model.[85] As anyone who has attempted to do so has likely observed, "seeing" constellations requires suspension of disbelief and is highly susceptible to idiosyncrasies in perception.[86] Just as early astronomers from different ancient cultures drew different maps of the night sky,[87] our collective judgment about where the boundaries of a physical or mental condition lie may be more rooted in culture than in science.

Although the *Felix* decision was based on the bridge model, a comparison that the court drew in dicta[88] serves to illustrate the ways in

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[81] *See id.* ("Plaintiffs seek to use this statute to remedy economic discrimination of a kind that is practiced without regard to handicap.").

[82] *See also* Sutton v. Piper, 344 F. App'x 101 (6th Cir. 2009) (rejecting an accommodation request for relaxation of credit requirements for apartment rental because the plaintiff's poor credit was distinct from his disability); Schanz v. Village Apartments, 998 F. Supp. 784, 792 (E.D. Mich. 1998) ("[Plaintiff's] handicap is not preventing him from obtaining an apartment . . . . Instead, it is plaintiff's financial situation which impedes him . . . and it is plaintiff's financial situation which he is requesting that defendants accommodate.").

[83] *See, e.g.*, SAKS, *supra* note 56, at 35 ("Schizophrenia rolls in like a slow fog, becoming imperceptibly thicker as time goes on.").

[84] *See, e.g.*, Timmons, *supra* note 48, at 349 ("[L]eveling the playing field for individuals with disabilities . . . requires accommodation of all limitations caused by a disabling impairment, instead of only those causally connected to a substantially limited major life activity.").

[85] Many of the differences between the bridge model and the constellation model replicate the arguments in the classic debate over rules and standards. *See, e.g.*, Pierre J. Schlag, *Rules and Standards*, 33 UCLA L. REV. 379, 380 (1985).

[86] *Cf.* E. WALTER MAUNDER, ASTRONOMY WITHOUT A TELESCOPE 8–9 (1904) ("[I]n general, the natural configuration of the stars gives us no clue whatsoever as to the origin of the constellation figures.").

[87] *See* ASTRONOMY ENCYCLOPEDIA, *supra* note 63, at 92–93.

[88] At least one district court in the Second Circuit has relied on this dictum to apply the constellation model instead of the bridge model in an employment reasonable accommodation case in spite of *Felix*'s holding. *See* Stamm v. N.Y.C. Transit Auth., No. 04-CV-2163, 2011 WL 1315935, at *21–24 (E.D.N.Y. Mar. 30, 2011).

which culturally dependent conceptions of disability might factor into a typical court's assumptions about the boundaries of disability. The court first analogized Ms. Felix's situation to that of a car accident victim who has multiple unrelated injuries that just happen to result from the same event,[89] and later contrasted it with that of an AIDS patient who has multiple symptoms resulting from the same discrete medical condition.[90] But firsthand accounts undermine this comparison. A memoir by Matt Long, a New York City firefighter who was severely injured in a bicycle accident, casts doubt on the validity of treating accident victims with multiple injuries as having several independent impairments.[91] In the aftermath of his accident, Mr. Long's various injuries exacerbated each other: the immediate results of the impact caused secondary complications, and doctors were unable to perform preferred treatments for fear of interfering with separate bodily processes or worsening his overall condition.[92] And as Mr. Long recovered, the confluence of his numerous injuries led to struggles with self-image[93] and bouts of despair[94] that may not have accompanied any of his impairments independently.[95] It may also be overly simplistic to treat AIDS as a single, discrete condition. Although the HIV virus itself breaks down the immune system, the symptoms associated with AIDS actually result from other disease agents that exploit the weakened system.[96] Much like Mr. Long after his accident, the typical AIDS patient suffers from various physical and emotional ailments that are experienced as coherent and interrelated — likely for reasons that have little to do with science.[97] Thus, the court in *Felix* overstated the differences between the accident victim and the AIDS patient. If most judges would agree with the *Felix* court's comparison, the constellation model risks entrenching such oversimplified notions of disability and its boundaries in our case law.

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89 Felix v. N.Y.C. Transit Auth., 324 F.3d 102, 105 (2d Cir. 2003).

90 *Id.* at 107.

91 *See generally* LONG WITH BUTLER, *supra* note 62.

92 *See id.* at 38–40; *id.* at 48 (discussing the importance of a colostomy procedure, which Mr. Long's other injuries made very difficult); *id.* at 91 (describing how blood loss caused a great deal of stress on Mr. Long's heart, which in turn caused his muscles to atrophy).

93 *See id.* at 125, 162–63.

94 *See id.* at 118, 136–37; *see also id.* at 278–79 (summarizing the lingering physical, mental, and emotional difficulties Mr. Long experienced in spite of his remarkable recovery).

95 In particular, the combination of Mr. Long's ambulatory impairment, *see id.* at 148, colostomy bag, *see id.* at 186–87, and erectile dysfunction, *see id.* at 174–75, led him to worry that he would never again have a happy and fulfilling life.

96 *See* Vande Zande v. Wis. Dep't of Admin., 44 F.3d 538, 544 (7th Cir. 1995).

97 *Compare* LONG WITH BUTLER, *supra* note 62, at 178–80 (describing feelings of alienation from family and community due to the stigma of his multiple impairments), *with* WYATT-MORLEY, *supra* note 61, at 20–21 (discussing societal discrimination against people with HIV and the damaging emotional effects of such discrimination).

Furthermore, the subjective nature of the constellation analysis presents the danger of inequitable outcomes for individuals with invisible and psychological disabilities as compared to their counterparts with visible and physical ones. Those with invisible disabilities often have trouble impressing the seriousness and scope of their conditions upon others,[98] and those with psychological disabilities frequently struggle to convince decisionmakers that a particular accommodation is actually for their disabilities rather than for personal enjoyment.[99] A live issue from the FHAA context — whether an exception to a landlord's no-pet policy requires the animal to have formal training — illustrates this difficulty.[100] Although the FHAA does not contain an explicit training requirement for service animals,[101] some courts have imposed one.[102] Specialized training is arguably not necessary for an animal to mitigate psychological symptoms,[103] yet these courts, like the court in *Edwards*, were reflexively suspicious of requests for emotional support animals. This result is unsurprising; since accommodations for psychological disabilities often bear a closer resemblance to widely desired amenities than do those for physical disabilities, constellation reasoning is likely to have a disparate effect on the psychologically disabled. The flaws of the constellation model thus weigh in favor of a standard that relies less on the intuitions of individual judges.

III. THE ICEBERG MODEL

Finally, some courts have conceptualized disability as an amorphous mass, the outer boundaries of which judges are ill-equipped to detect. In this formulation, the substantial limitation on a major life activity is a threshold test for proving that the disability exists, after which a presumption of connectedness applies to any plausible accommodation the individual might seek. This judicial maneuver can be compared to that of a ship captain who gives a wide berth to an iceberg, knowing that the subaquatic portion is likely much larger

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98 *See* Davis, *supra* note 1, at 180–89.

99 *See* JoAnn Nesta Burnett & Gary A. Poliakoff, *Prescription Pets®: Medical Necessity or Personal Preference*, 36 NOVA L. REV. 451, 467–75 (2012); Christopher C. Ligatti, *No Training Required: The Availability of Emotional Support Animals as a Component of Equal Access for the Psychiatrically Disabled Under the Fair Housing Act*, 35 T. MARSHALL L. REV. 139, 149–52 (2010).

100 *See generally* Ligatti, *supra* note 99.

101 *Id.* at 154–55.

102 *See* Bronk v. Ineichen, 54 F.3d 425, 431–32 (7th Cir. 1995); Prindable v. Ass'n of Apartment Owners of 2987 Kalakaua, 304 F. Supp. 2d 1245, 1256–57 (D. Haw. 2003).

103 *See, e.g.*, Auburn Woods I Homeowners Ass'n v. Fair Emp't & Hous. Comm'n, 18 Cal. Rptr. 3d 669, 682 (Ct. App. 2004) ("[The animal] did not need special skills to help ameliorate the effects of the [plaintiffs'] disabilities. Rather, it was the innate qualities of a dog . . . that made it therapeutic here.").

than the visible tip. Since the ship captain cannot discern the precise dimensions of the bottom of the iceberg from her vantage point, she errs on the side of caution rather than run the risk of sinking.[104]

Courts construing the ADA have occasionally exhibited the type of broadminded reasoning that the iceberg model embodies. Some, like the Supreme Court in *Bragdon v. Abbott*,[105] have apparently not considered the nexus issue at all. In *Bragdon*, a dentist had refused to treat Sidney Abbott, a patient with asymptomatic HIV, and a threshold issue was whether her condition qualified as a disability under the ADA's "substantial limitation" definition.[106] The Supreme Court ruled that procreation was a major life activity[107] and that Ms. Abbott was substantially limited in her ability to procreate because of the likelihood of passing the virus on to her partner and offspring.[108] In the years since *Bragdon* was decided, courts and commentators have observed that if the crux of Ms. Abbott's disability was truly its interference with her ability to procreate, she was not impaired in any way that affected her ability to visit a dentist. Moreover, the dentist's refusal to fill her cavity seems to have little to do with her inability to procreate.[109] Others have questioned *Bragdon*'s applicability to the nexus debate, since it was not a reasonable accommodation case.[110] Although it is difficult to extrapolate the Justices' reasoning from their silence on the connection between Ms. Abbott's disability and the dis-

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[104] More than a century after the sinking of the Titanic, icebergs continue to pose problems for ocean travel. *See* Lauren Everitt, *Titanic Threat: Why Do Ships Still Hit Icebergs?*, BBC NEWS MAGAZINE (Mar. 20, 2012, 4:40 AM), http://www.bbc.co.uk/news/magazine-17257653.

[105] 524 U.S. 624 (1998).

[106] *Id.* at 629–30.

[107] *Id.* at 639.

[108] *Id.* at 639–41.

[109] *See, e.g.*, Quick v. Tripp, Scott, Conklin & Smith, P.A., 43 F. Supp. 2d 1357, 1367 (S.D. Fla. 1999) (interpreting *Bragdon* as "dispel[ling] the traditional notion that there [must] be a nexus between the allegedly impaired employee's workplace abilities and the allegedly impaired major life activity"); Anderson, *supra* note 48, at 350 n.161; Samuel R. Bagenstos, *Subordination, Stigma, and "Disability,"* 86 VA. L. REV. 397, 487 (2000); Thomas Simmons, *The ADA Prima Facie Plaintiff: A Critical Overview of Eighth Circuit Case Law*, 47 DRAKE L. REV. 761, 790 (1999).

[110] *See, e.g.*, Wood v. Crown Redi-Mix, Inc., 339 F.3d 682, 687 n.4 (8th Cir. 2003) (distinguishing *Bragdon* on the basis that it was not an accommodation case). The trouble with this argument is that under the ADA, failure to provide a reasonable accommodation is a type of discrimination, and any type of discrimination must be "on the basis of disability" to be actionable. 42 U.S.C. § 12112(a) (2006 & Supp. V 2011). Thus, the idea that reasonable accommodation claims must be connected to the disability in ways that garden-variety discrimination claims do not has no basis in the text of the statute. *See* Christine Jolls, *Antidiscrimination and Accommodation*, 115 HARV. L. REV. 642, 645–46 (2001) (debunking the distinction between antidiscrimination and accommodation); *see also* Patricia Illingworth & Wendy E. Parmet, *Positively Disabled: The Relationship Between the Definition of Disability and Rights Under the ADA*, *in* AMERICANS WITH DISABILITIES 3, 4 (Leslie Pickering Francis & Anita Silvers eds., 2000) (arguing that the protections that the ADA provides "do not fall neatly into any simple dichotomy of positive and negative rights").

crimination she alleged, *Bragdon* is at least plausibly understood as an iceberg case. Under this interpretation, there was nothing special about the fact that procreation was chosen as the major life activity, as its only significance was as a means of proving that asymptomatic HIV was, in fact, a disability.

A more overt example of the iceberg model comes from *Henrietta D. v. Bloomberg*,[111] in which the Second Circuit exhibited an approach to reasonable accommodations diametrically opposed to that in *Felix*. In *Henrietta*, the City of New York had created a social services agency to assist people with HIV and AIDS in obtaining certain public benefits, like welfare, Medicaid, and food stamps.[112] But the agency had become dysfunctional, and many of its clients were unable to obtain benefits to which they were entitled.[113] A class of individuals with HIV and AIDS sued the city on the theory that it was required to provide them a reasonable accommodation under Title II of the ADA and Section 504 of the Rehabilitation Act, which guarantee equal access to public benefits to people with disabilities.[114] Since the agency was incompetent, the plaintiffs reasoned, the city was in breach of its duty of reasonable accommodation that would otherwise be fulfilled through this special program.[115]

The district court acknowledged that the plaintiffs had to show a link between their disabilities and the accommodation in the form of agency assistance, but in considering this question it applied a very broad understanding of the scope of the plaintiffs' disabilities and their effects on the plaintiffs' access to public benefits.[116] In addition to its consideration of the physical impairments typically associated with HIV and AIDS and of their likely impact on the benefit application processes,[117] the court found that the plaintiffs were further limited by the side effects of their medications, the practical burdens of "extremely cumbersome treatment regimens," the stress caused by living with a terminal illness,[118] and the psychological effects of discrimination and stigma.[119] The court even found that the relationship between poverty and illness was itself a factor in the plaintiffs' reduced access to bene-

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111 331 F.3d 261 (2d Cir. 2003).

112 *Id.* at 265–66.

113 *See id.* at 268.

114 *Id.* at 264.

115 *See id.* at 269.

116 *See* Henrietta D. v. Giuliani, 119 F. Supp. 2d 181, 185–86 (E.D.N.Y. 2000).

117 *See id.* at 185 (finding that opportunistic diseases limit activities necessary to obtain benefits, such as "traveling, standing in line, attending scheduled appointments, completing paper work, and otherwise negotiating medical and social service bureaucracies").

118 *Id.* at 186.

119 *Id.*

fits.[120] Rather than questioning whether these factors were properly understood under the umbrella of the plaintiffs' illnesses, the court deferred to the expansive notion of disability and its effects that the plaintiffs presented. The Second Circuit approved this reasoning[121] and took the iceberg model even further, holding that the plaintiffs were not required to show that their access to benefits differed from that of the nondisabled population.[122]

If the bridge model represents a bright-line rule and the constellation model is a fact-sensitive standard, the iceberg formulation is best understood as a canon of deference. Although it is unorthodox to describe courts as deferring to private individuals representing their own self-interest, an informal rule of deferring to people with disabilities on matters concerning the scope of their disabilities would actually share many rationales with well-established interpretive doctrines. Judicial policies of deferring to administrative agencies under the *Chevron*[123] and *Skidmore*[124] doctrines, for example, are premised in large part on the idea that agencies have much greater expertise within their substantive specialties than do courts.[125] It should go without saying that the same is true of individuals with respect to their disabilities and the accommodations they need in order to participate in society.[126]

In addition, courts have developed interpretive techniques for dealing with close constitutional questions, and these techniques also have much in common with the iceberg model. The various canons of constitutional avoidance, for example, have emerged in part to protect constitutional values that cannot be adequately defended using the

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120 *See id.* ("Poverty, limited mobility, and limited resources result in limited access to fresh, high-quality food, and necessary dietary supplements. . . . The added stress of lack of housing, food, medical care, or other basic survival services that indigent people face poses a serious threat to health.").

121 Henrietta D. v. Bloomberg, 331 F.3d 261, 267–68 (2d Cir. 2003).

122 *See id.* at 277–78.

123 Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837 (1984).

124 Skidmore v. Swift & Co., 323 U.S. 134 (1944).

125 *See* Stephen Breyer, *The Executive Branch, Administrative Action, and Comparative Expertise*, 32 CARDOZO L. REV. 2189, 2193–95 (2011) (explaining that the greater an administrative agency's subject matter expertise as compared to that of a reviewing court, the greater the degree of deference the court typically accords to agency decisions).

126 Judges have frequently acknowledged their own limitations in assessing reasonable accommodation claims, often relying on expert witnesses, *see* Stern v. Univ. of Osteopathic Med. & Health Scis., 220 F.3d 906, 908 (8th Cir. 2000), administrative agencies, *see* Toyota Motor Mfg., Ky., Inc. v. Williams, 534 U.S. 184, 194 (2002) (suggesting without deciding that EEOC regulations interpreting the ADA might warrant deference despite the Agency's lack of statutory authority to promulgate them), and other evidence of third-party approval, *see* Nondiscrimination on the Basis of Disability in State and Local Government Services, 28 C.F.R. § 35.104 (2011) (requiring training for service animals), to help fill the gaps in their knowledge.

document's literal text.[127] The iceberg model can also be conceptualized as a mechanism for protecting certain underenforced constitutional norms. For one thing, the ADA is aimed at ensuring equal protection for people with disabilities, but ADA litigants have had remarkably low success rates.[128] The model also comports with the rights to privacy and dignity that some ascribe to the U.S. Constitution.[129] Many people with disabilities have lamented the intrusive nature of others' scrutiny of their conditions. Jeff Bell, a radio personality with obsessive-compulsive disorder, endured years of invasive questioning and skepticism from ill-informed therapists as he gradually came to terms with his disability.[130] Catherine Wyatt-Morley, the author of a memoir about living with HIV, has recounted the difficult personal questions that strangers often ask HIV-positive people.[131] A deference canon would curtail such unseemly inquiry, at least in the judicial setting, thereby promoting underenforced constitutional norms.

The most obvious objection to applying a deference model to the nexus problem is that of the proverbial fox guarding the henhouse. In a desire to win their claims, plaintiffs might present their stories in the light most favorable to their success in litigation, rather than in the manner most faithful to their authentic experiences, as the model contemplates.[132] Further, several important rationales for deference to administrative agencies and the canons of statutory interpretation — most notably, those rooted in ideas about congressional intent and judicial minimalism — are conspicuously absent from the iceberg model.[133] Moreover, the model comports poorly with some of the conservative goals of the ADA. In particular, it is likely to trigger concerns about undue windfalls to individuals with disabilities, as many courts and commentators have worried that accommodating the minor

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[127] *See* Philip P. Frickey, *Marshalling Past and Present: Colonialism, Constitutionalism, and Interpretation in Federal Indian Law*, 107 HARV. L. REV. 381, 415–16 (1993).

[128] *See generally* Ruth Colker, *The Americans with Disabilities Act: A Windfall for Defendants*, 34 HARV. C.R.-C.L. L. REV. 99 (1999).

[129] *See, e.g.*, Erin Daly, *Human Dignity in the Roberts Court: A Story of Inchoate Institutions, Autonomous Individuals, and the Reluctant Recognition of a Right*, 37 OHIO N.U. L. REV. 381, 381–82 (2011) ("[T]he Supreme Court is inching toward a greater recognition of the constitutional value of human dignity . . . .").

[130] *See* BELL, *supra* note 62, at 44–46, 80–81, 84–85.

[131] *See* WYATT-MORLEY, *supra* note 61, at 51.

[132] *See* Davis, *supra* note 1, at 180–82 (connecting skepticism of people's own accounts of their impairments with fears of being deceived and manipulated).

[133] On the other hand, the model could be reconciled with legislative intent through the axiom that remedial statutes should be given broad construction. *See, e.g.*, Sutton v. United Air Lines, Inc., 527 U.S. 471, 504 (1999) (Stevens, J., dissenting); Tcherepnin v. Knight, 389 U.S. 332, 336 (1967). Indeed, the ADA Amendments Act of 2008 codified this axiom. *See* 42 U.S.C. § 12102(4)(A) (2006 & Supp. V 2011).

or unrelated impairments of people with disabilities effectively favors them over their nondisabled counterparts with the same minor impairments.[134]

But an alternative critique of the iceberg model is likely more troubling to the disability rights advocates who would reject these conservative arguments. In spite of the pervasive impacts a disability has on its bearer, individuals with disabilities possess many qualities independent of the disability.[135] To nonetheless treat all of these circumstances and characteristics as presumptively related to the disability may result in systematic underestimation of these individuals' talents and abilities, an outcome that the disability rights movement has long opposed.[136]

To be sure, the mere fact that the iceberg model is susceptible to overbreadth does not necessarily mean it produces overly broad outcomes in practice. Individuals with disabilities, as the sole gatekeepers to the details of their personal experiences, could be understood as possessing entirely accurate information about how their disabilities affect their lives, which would in turn indicate that judicial deference to these accounts is appropriate as long as the accounts are truthful. But a body of research from social psychology casts doubt on this possibility. Many studies have indicated that whereas observers are more likely to attribute a person's hardships to factors within that individual's control — a phenomenon known as the "fundamental attribution error"[137] —

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[134] The so-called "windfall" argument is widely touted among advocates of narrow coverage for disability statutes. *See, e.g.*, Felix v. N.Y.C. Transit Auth., 324 F.3d 102, 107 (2d Cir. 2003) (asserting that requiring the accommodation Ms. Felix requested "would transform the ADA from an act that prohibits discrimination into an act that requires treating people with disabilities better than others who are not disabled but have the same impairment for which accommodation is sought"). Commentators who favor greater enforcement or broader coverage have vigorously contested the idea. *See, e.g.*, Anderson, *supra* note 48, at 381–82; Lawrence D. Rosenthal, *Reasonable Accommodations for Individuals Regarded as Having Disabilities Under the Americans with Disabilities Act? Why "No" Should Not Be the Answer*, 36 SETON HALL L. REV. 895, 908–09 (2006) (listing cases that have rejected the "windfall" argument).

[135] Elyn Saks, for instance, eventually became a law professor at the University of Southern California, *see* SAKS, *supra* note 56, at 239, and Matt Long, although he had to relearn how to walk after his bicycle accident, eventually competed in a marathon again, *see* LONG WITH BUTLER, *supra* note 62, at 253–68. These examples are exceptional, of course, but these memoirs also offer more mundane illustrations of the aspects of personality that are unaffected by disability, such as Mr. Long's love of steak. *See id.* at 234.

[136] *See, e.g.*, BAGENSTOS, *supra* note 52, at 90–94; Samuel R. Bagenstos, *Justice Ginsburg and the Judicial Role in Expanding "We the People": The Disability Rights Cases*, 104 COLUM. L. REV. 49, 50–51 (2004) ("[E]ven when well-intentioned, the attitudes of pity, charity, and inspiration treated people with disabilities as fundamentally separate from the 'We the People' who make up our civic community.").

[137] THE BLACKWELL ENCYCLOPEDIA OF SOCIAL PSYCHOLOGY 72–73 (Antony S.R. Manstead et al. eds., 1995) [hereinafter BLACKWELL ENCYCLOPEDIA]; *see also* RICHARD NISBETT & LEE ROSS, HUMAN INFERENCE: STRATEGIES AND SHORTCOMINGS OF SOCIAL JUDGMENT 31 (1980).

people are more likely to attribute their own hardships to factors outside of their control — a phenomenon known as the "self-serving bias."[138] Applied to the nexus inquiry, these theories suggest, first, that courts and employers may tend erroneously to attribute hardships in the lives of individuals with disabilities to factors within their control, rather than to their disabilities. Second, these theories of attribution suggest that individuals with disabilities, and perhaps their advocates as well, may erroneously attribute these same hardships to factors outside of their control, such as their disabilities. A possible inference is that while the nexus analysis of the typical court will be underinclusive, the nexus analysis of a typical individual with a disability will be overinclusive.

Even assuming that plaintiffs with disabilities report accurately in litigation on the nature and impacts of their disabilities as they experience them, there likely remains a gap between that subjective experience and the barriers that the disability actually entails. Ignoring that gap might serve individuals with disabilities poorly. If overinclusive notions of disabilities' effects become widely accepted, they could lead to widespread underestimation of the capabilities of individuals with disabilities, thereby actually restricting their access to employment and other goods. They could also become self-fulfilling prophecies, causing individuals with disabilities to doubt their own talents — an outcome at odds with the participation and integration goals of the disability rights statutes.[139] Thus, the apparent generosity of the iceberg model belies troubling philosophical foundations.

IV. RECOMMENDATIONS FOR DECISIONMAKERS

The foregoing discussion demonstrates that courts have not yet devised a method for analyzing the connection between a disability and a requested accommodation that mediates perfectly among the competing values that this analysis implicates. The bridge model tends to be overly restrictive, the constellation model inequitable, and the iceberg model patronizing. Perhaps because disability law is an inherently subjective discipline, drawing its substance from deeply personal iden-

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[138] BLACKWELL ENCYCLOPEDIA, *supra* note 137, at 74–75; *see also* NISBETT & ROSS, *supra* note 137, at 231–37. These theories relate to civil rights laws in interesting ways, some of which legal scholars have noted. For instance, Professor Ward Farnsworth has suggested that in employment discrimination lawsuits, self-serving bias may lead to both spurious claims — by employees who want to believe that an adverse employment action was due to a characteristic outside their control, such as race or sex, rather than poor work performance — and spurious defenses — by employers who do not want to believe that they discriminate. *See* Ward Farnsworth, Essay, *The Legal Regulation of Self-Serving Bias*, 37 U.C. DAVIS L. REV. 567, 593–95 (2003).

[139] *See generally* ROBERT K. MERTON, SOCIAL THEORY AND SOCIAL STRUCTURE 475–90 (enlarged ed. 1968) (introducing and defining the influential concept of the self-fulfilling prophecy).

ties and interactions, no single logical model can satisfactorily meet every situation it confronts. To resolve this apparent stalemate, judges should use awareness of the flaws of each logical formulation to supplement and improve the model. By simply being aware of the assumptions that inform their intuitions about disability, judges and other decisionmakers could soften those assumptions while remaining faithful to their intuitions. And nonjudicial decisionmakers could engage in a similar process. Most reasonable accommodation requests, after all, do not reach a court: instead, they are negotiated with employers, government agencies, landlords, and businesses.[140] Although these actors' reasoning is not captured in judicial opinions for public scrutiny, it seems likely to fall into the same general categories as that employed by judges. Because these actors often interact with individuals requesting reasonable accommodations on a personal basis, they are arguably in at least as good a position to consciously correct for biases and flawed assumptions.

Adjusting rules to account for real-world circumstances is a familiar tactic in American legal thought;[141] this proposal simply applies it on a smaller scale. Judges of the bridge persuasion, for instance, could recognize the model's tendency to produce artificially cramped outcomes and adjust their logic to encompass the complex causative dynamics that characterize real disabilities. Constellation-oriented judges could consciously apply a more permissive standard in situations that risk triggering unfavorable cultural attitudes. And judges of the iceberg school could temper their deference by applying heightened skepticism to claims with some indicia of self-serving bias. What is noteworthy about these compromise positions is that they trend toward a middle ground, showing that the logic of the three models need not be outcome-determinative.

Consider, for example, a hypothetical scenario that resembles somewhat the facts of *Prindable v. Association of Apartment Owners of 2987 Kalakaua*.[142] A housing rental applicant seeks an exception to a policy prohibiting house pets. She has been diagnosed with obsessive-compulsive disorder, which substantially limits her ability to work.[143]

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[140] For a study of the dynamics of informal requests for workplace accommodation, see Anna T. Florey & David A. Harrison, *Responses to Informal Accommodation Requests from Employees with Disabilities: Multistudy Evidence on Willingness to Comply*, 43 ACAD. MGMT. J. 224 (2000).

[141] *See, e.g.*, Roscoe Pound, *Law in Books and Law in Action*, 44 AM. L. REV. 12, 23 (1910) ("[L]egislation has always brought with it an imperative theory of law . . . and a resulting tendency to overlook the necessity of squaring the rules upon the statute book with the demands of human reason and the exigencies of human conduct.").

[142] 304 F. Supp. 2d 1245 (D. Haw. 2003).

[143] *See generally* AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 456–462 (4th ed., text rev. 2000) ("Obsessions or compulsions . . . can be highly disruptive to overall functioning." *Id.* at 458.).

In fact, the applicant lost her job as a bank teller when her distracting obsessions caused her to make costly mistakes.[144] The applicant asserts that the presence of her trusted dog, although it does not have special training, helps to soothe the anxiety that accompanies her condition. The landlord rejects the applicant, refusing to make an exception to the pet policy, and the applicant sues. Assuming that working is the only major life activity that is substantially limited by the applicant's obsessive-compulsive disorder, is the exception she requests sufficiently connected to her inability to work?

Under the bridge model, the dog does not have an obvious connection to the major life activity of working, since its purpose is not to help the applicant work or find a job. Under the logic of *Felix*, the applicant's inability to work is not the direct cause of her need for an exception to the pet policy.[145] However, under an expanded conception of causation that takes account of the intricate real-world interplay between disability, environment, and individual action, the applicant can nonetheless argue that her ability to live with the dog is in fact causally related to the major life activity of working. The dog's soothing effect might mitigate the applicant's symptoms to the degree that, perhaps in combination with other types of treatment, she would be able to find and keep a job. If the applicant has effectively established this chain of logic in her brief, then the newly enlightened bridge judge should deny summary judgment for the defendant.

The constellation judge's initial instinct may also be toward summary disposition, as the applicant's description of the function her dog performs seems to fit the image of a pet better than that of a traditional service animal. The judge is likely to perceive the dog's therapeutic value as closely mirroring the companionship value that a pet has to a nondisabled person. But the constellation judge should second-guess her first reaction, as subtle cultural biases may cause subconscious suspicion of the applicant's disability. Obsessive-compulsive disorder's status as a psychological disability — one that tends to be invisible — makes it likely that observers systematically underestimate its effects.[146] And pervasive myths about obsessive-compulsive disorder may distort the court's judgment with regard to the plaintiff's individual needs.[147] Yet in spite of these considerations, the court may be jus-

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144 *Cf.* BELL, *supra* note 62, at 20–23 (describing incidents in which the author was rebuked at work for mistakes he made while distracted by symptoms of obsessive-compulsive disorder).

145 *Cf.* Felix v. N.Y.C. Transit Auth., 324 F.3d 102, 107 (2d Cir. 2003) ("If the requested accommodation addressed a limitation caused by Felix's insomnia, it would be covered by the ADA.").

146 *See* Davis, *supra* note 1, at 180–89.

147 *See, e.g.*, *Common Assumptions About OCD Make Explaining It Harder*, TIME TO CHANGE (Sept. 8, 2012, 2:19 PM), http://www.time-to-change.org.uk/blog/ocd-stereotypes-worlds-maddest-job-interview-channel-4.

tified in awarding summary judgment to the landlord depending on whether the plaintiff has pled sufficient facts connecting the dog to the disability. Such facts could include a doctor's recommendation, the plaintiff's own testimony of past success in using a dog as part of a treatment regimen, or evidence that others with the same condition have obtained relief using therapy animals. The purpose of second-guessing the initial reaction is to open up the inquiry to these additional, useful data points.

Finally, the iceberg judge is likely predisposed to assume the dog is sufficiently related to the disability without additional scrutiny. In light of the inaccuracy and paternalistic effects that can sometimes result from application of the iceberg model, however, this judge should test her hypothesis. Such scrutiny is especially important if the applicant's own assessment of her need may be tainted by self-serving bias. Here, though, application of that theory seems strained, since the applicant has not yet been deprived of her dog's company. Thus, the fact that she has not been able to work cannot be erroneously blamed on her dog's absence. It could be blamed, erroneously or otherwise, on her disability, but that would have little to do with the landlord's refusal to grant the requested exception. In the absence of other facts that conform to the pattern of self-serving bias, the iceberg judge need not compensate for this type of error. The plaintiff could simply be lying, of course, so the court in this case should still give strong consideration to corroborating factors like medical opinions.

CONCLUSION

Determining whether the reasonable accommodation that an individual requests is sufficiently connected to her disability can be a messy process. Judges have applied a variety of logical mechanisms to the nexus questions they confront, and none of these mechanisms is without significant flaws. But the virtues of each model counsel against starting from scratch. The bridge model attempts to bring analytical crispness to an otherwise murky field. The constellation model recognizes the importance of human intuition to the process of reasonable accommodation. The iceberg model is undoubtedly the product of progressive impulses. Thus, instead of championing a single approach, this Note promotes a mixed methodology that favors empathy for opposing positions over singularity of purpose. It suggests that the compromise positions that could be dismissed as temporary, second-best settlements may be surprisingly coherent and desirable as long-term solutions.