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Learning Disabilities and the Legal Writer

Gerald Lebovits



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Learning Disabilities and the Legal Writer

Upward of 15% of Americans — lawyers included, readers of this column included — are learning disabled to some degree.¹ The effects of LD, short for learning disabled or learning disability, make lawyering especially difficult. Diagnosing and compensating for LD is essential.

The phrase “learning disability” carries a negative connotation. Stereotypes and myths abound. Some believe that the LD can’t learn, have low IQs, or don’t try hard enough.² That’s nonsense. Some of the greatest thinkers and writers of the 20th Century have been LD. Among them: Alexander Graham Bell, Simón Bolívar, Winston Churchill, Walt Disney, Thomas Edison, Albert Einstein, George Patton, Nelson Rockefeller, and Woodrow Wilson. There’s a correlation between creativity and LD.

How the LD’s brain computes information makes reading, writing, speaking, and math difficult. But solutions are available. And the methods the LD should use to write clearly and coherently apply to all legal writers.

A learning disability is a neurological disorder that affects the brain’s ability to receive, store, and respond to information.³ It afflicts adults and children. Science recognizes no single, known cause for LD. Suspected contributors include exposure to toxins like lead,⁴ pregnancy or birth problems, head injuries, nutritional deprivation, and heredity.⁵ LDs manifest themselves differently in different people. LDs are lifelong challenges. No common cure or quick fix is available. With support and intervention, however, the LD can overcome obstacles

and become successful in school, work, and life.

“Learning Disability” is an umbrella phrase, often encompassing a number of other, more specific disabilities like attention deficit hyperactivity disorder (ADHD),⁶ dysnomia,⁷ discalculia,⁸ dyslexia, and dysgraphia. This column addresses dyslexia and dysgraphia — LDs that affect lawyers’ writing the most. Dyslexia, the most common LD, is characterized by problems reading and understanding the written or spoken word.⁹ Dysgraphia

affects writing and organizational abilities and is characterized by poor spelling, handwriting, and written expression.¹⁰

Dyslexia

Dyslexia is more than reversing letters while reading. Dyslexics do not read backwards, although reversing letter sequence is sometimes a symptom. Dyslexics have difficulty reading and writing. Many also have problems expressing themselves. Dyslexia’s warning signs include difficulty organizing thoughts, understanding that words are made up of sounds, pronouncing words, and spelling.¹¹ Professionals can identify the disability through testing. Self-diagnosis is a starting point. But professional help is necessary because each LD’s treatment differs.

Dyslexics think more in pictures rather than in words. Their brains

process information slowly because they transfer their pictures into words and vice versa.¹² When they encounter words that can’t be put into pictures like “the,” “was,” or “and,” the dyslexic might get confused or frustrated. That affects their concentration and confidence.

The more complex a written language is, the more pronounced the LD’s symptoms become. English has about 1,120 different ways of spelling its 40 phonemes — the sounds that create words. By comparison, Italian needs only 33 letter combinations to spell out its 25 phonemes.¹³ The result is that Italian dyslexics read and write better than American dyslexics.

Dyslexia affects an LD lawyer’s writing. Often dyslexics will leave words out of their sentences, alter quotations from citations, or cite improperly by giving inaccurate page and volume numbers. The best remedies for

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this are rigorous editing, checking, and re-checking sentences, citations, and quotations — and then having someone else edit their work. In the computer age, an LD lawyer’s inability to quote accurately can be corrected by cutting and pasting a quotation from a reliable source into a word-processed document.

Dysgraphia

Dysgraphia is characterized by poor handwriting. Dysgraphics have poor motor skills. They sometimes can’t even determine which hand is dominant. The solution to illegible handwriting is to rely on word processors, speech-recognition software, or dictation.

A dysgraphic’s poor typing skills can cancel out a word processor’s benefits. Dysgraphia’s symptoms will adversely affect how a document looks

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— a problem because presentation counts for so much in legal writing. In WordPerfect, users can fix formatting issues like spacing and margin errors by using the “Reveal Codes” option. Press Alt + F3 and edit the document through the codes shown in a separate window at the bottom of the screen. Word doesn’t have a code function that

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allows its users to edit every aspect of a document. But in Word 2002, the user can control formatting by using the “Reveal Formatting” function from the drop-down menu.

Both dyslexia and dysgraphia can profoundly impair a lawyer’s writing. Dyslexics are unable to read and edit accurately what’s been written. Dysgraphics have poor motor and organizational skills. Because the LD often suffer from more than one disorder, with each LD having a unique combination of symptoms, the rest of this column will use the all-inclusive “LD” to refer to the effects that dyslexia and dysgraphia have on legal writing.

LD and Legal Writing

Writing is the most difficult activity the LD can perform. Practicing law revolves around documents. Writing letters, contracts, briefs, memorandums, motions, orders, and stipulations are daily rituals for lawyers. To the LD, writing is a slow, tedious struggle. But LD’s effects can be mitigated.

A learning disability in writing affects four main areas: spelling, punctuation, sequencing ideas, and handwriting.¹⁴ Spelling is affected because the LD often can’t distinguish between sound and meaning. Some words are spelled correctly phonetically; others are difficult to spell from their letters’ sounds. For example, the LD might spell “any,” “said,” and “because” like

“eny,” “sed,” and “becos.”¹⁵ To cope with impaired spelling, LD lawyers should:

- Create mnemonic devices to remember how to spell tricky words — like mnemonic;¹⁶
- Continuously practice reading and seeing words; and
- Use word-processing software to draft their documents and spell check every time they exit a file.

LD writers can forget to capitalize a sentence’s first word or use periods. Basic grammatical errors can make the LD lawyer’s writing difficult to read. To remedy punctuation problems and to make the LD aware of grammar’s importance, the LD lawyer should:

- Practice correcting sentences written without capital letters or punctuation;
- Write out sentences someone reads to them and edit those sentences;
- Read sentences aloud to understand where punctuation should be;
- Use the grammar check on WordPerfect or Word.

LD writers can have difficulty memorizing the sequence of movements that make up writing each letter. It’s hard for them to remember how to write some round letters. (That’s why some believe that LD is backward writing rather than a complex cognitive disorder.) The LD can get confused between a “b” and “d” or a “p” and “q.” The best way to combat this confusion is to write in cursive or to use a word processor.

Critical for lawyers is the ability to tell a coherent story. LD writers can find it difficult to sequence ideas or tell a story in the correct order. To improve their ability to write logically, LD lawyers should:

- Outline before beginning any significant piece of writing;

- Write a paragraph for each major point and review it before finishing a first draft;
- Organize facts chronologically;
- Organize a legal argument by issue; within each issue, in the following order, start with your point, provide the legal rules, apply law to fact, rebut the other side’s law and fact, and state the relief requested;
- Introduce something before explaining it;
- Watch out for undefined acronyms;
- Discuss things once, all in one place; and
- Organize the document’s parts into increasingly smaller units using thesis paragraphs, topic sentences, and thesis sentences.

To improve their writing abilities in general, LD lawyers should also:

- Start early;
- Find a mentor to edit and teach writing and citing;
- Edit and re-edit, producing several drafts;
- When editing, check off corrections to avoid missing them;
- Read the final draft aloud forward and backward a few times;
- Edit on a hard copy rather than on the computer screen.
- Manage time carefully — leaving enough time to edit repeatedly; and
- Keep their workspace organized and uncluttered.

Reasonable Accommodations

Under the Americans with Disabilities Act (ADA) of 1990 and the Individuals with Disabilities Education Act (IDEA) of 1997, those with special needs must be placed on equal footing with those without disabilities.

The road to becoming a lawyer is grueling for all, and especially for the LD. A person must first conquer the law school admission test (LSAT), law-school exams, the Multistate Professional Responsibility Exam (MPRE), and the bar exam. These difficult tasks require students to analyze complex

facts in light of applicable law. Under the ADA, LDs are entitled to a reasonable accommodation during these exams if their major life activities of reading and writing are substantially limited.¹⁷ Accommodations for LD students include:

- Extra time for exams;
- Large-print exams;
- A separate testing room;
- Administering oral rather than written exams;
- Allowing oral answers rather than requiring written ones;
- Giving the student a reader; and
- Letting the LD student use a word processor.¹⁸

Once out of law school and admitted to the bar, practicing lawyers receive no accommodations from clients or courts. The practice of law is unforgiving. Thus, LD lawyers must get professional treatment or develop coping strategies.

Coping Strategies from Successful LD Lawyers

LD lawyers can do extremely well, despite the myths and false assumptions they encounter. New York's David Boies is a successful litigator who has written a well-received memoir, *Courting Justice* (2004). Boies, a dyslexic, has coped by abandoning the written word. As Boies has said, "I trained myself to listen well."¹⁹ His strategy is to argue without notes. That means he'll know his case cold because he memorizes details. Not using notes also lets him maintain eye-contact with his listeners.

The late Jeffrey Gallett often spoke about his profound LD. Required inspirational reading is his *The Judge Who Could Not Tell His Right From His Left and Other Tales of Learning Disabilities*.²⁰ By the time he was 46 years old, he was a New York City Family Court judge who had written five books, 40 articles, and over 30 published opinions. At 50, he was a Bankruptcy Judge for the Southern District of New York. Yet when he was 34, Judge Gallett discovered that he was dyslexic, dysgraphic, and discal-

culaic.²¹ He was, he said, "a kind of talking frog — a learning disabled judge."²²

By the time Judge Gallet was diagnosed, he had learned strategies to mitigate his LD. He used word processors, dictaphones, and computers instead of hand-writing documents.²³ Instead of doing math in his head, Judge Gallet used a calculator. His only concession was that he wouldn't see subtitled movies.²⁴

An LD is a gift.²⁵ For the LD lawyer, the key to writing well isn't to work harder, faster, longer. It's to develop efficient strategies to compensate. With perseverance, determination, and a good attitude, the LD can become prolific, adept writers. ■

1. Unmesh Kher, *Deconstructing Dyslexia*, Time, Mar. 26, 2001, at 56, 56.

2. *LD Myths*, County College of Morris, at <http://www.ccm.edu/horizons/LDmyth.html> (visited May 5, 2005).

3. *LD at a Glance*, Nat'l Ctr. for Learning Disabilities, at http://www.ncl.org/LDInfoZone/InfoZone_FactSheet_LD.cfm (visited May 5, 2005).

4. *Id.*

5. *Genetic Cause of Dyslexia*, Med. Research News, at <http://www.newsmedical.net/?id=8147> (Mar. 3, 2005).

6. ADHD, formerly called ADD, is characterized by difficulties focusing and controlling impulses and affects about two million American children. Nat'l Inst. of Mental Health, at <http://www.nimh.nih.gov/publicat/adhd.cfm> (visited May 5, 2005).

7. Dysnomia is characterized by a verbal difficulty recalling names or remembering words. Nalanda Inst., at <http://www.nalandainstitute.org/asfiles/types.asp#dysnomia> (visited May 5, 2005).

8. Discalculia has trouble with basic math problems and retaining basic math facts like the multiplication table. Nat'l Ctr. for Learning Disabilities, at http://www.ncl.org/LDInfoZone/InfoZone_FactSheet_Dyscalculia.cfm (visited May 5, 2005).

9. Suzanne Day, *Dyslexia: A Misunderstood Learning Difficulty, But Also a Hidden Gift*, Canada's Christian Community Online, at <http://www.christianity.ca/education/homeschooling/2004/07.000.html> (visited May 5, 2005).

10. Nat'l Ctr. for Learning Disabilities, at http://www.ncl.org/LDInfoZone/InfoZone_FactSheet_Dysgraphia.cfm (visited May 5, 2005).

11. Nat'l Ctr. for Learning Disabilities, at http://www.ncl.org/LDInfoZone/InfoZone_FactSheet_Dyslexia.cfm (visited May 5, 2005).

12. *Why is Dyslexia a Gift?*, <http://www.dyslexia.com> (visited May 5, 2005).

13. Kher, *supra* note 1, at 56.

14. John Bradford, *Dyslexia and Writing*, Dyslexia Online Magazine, at <http://www.dyslexia-parent.com/mag40.html> (visited May 5, 2005).

15. *Id.*

16. Think "Men never escape Mounties on nags in Canada."

17. See, e.g., *Bartlett v. N.Y.S. Bd. Law Examiners*, No. 93 CIV 4986, 2001 U.S. Dist. LEXIS 11926, at *163 (S.D.N.Y. Aug. 15, 2001) (granting dyslexic-plaintiff accommodation under ADA to take New York bar exam). Some contend that the LD label is applied loosely and gives undeserving students an advantage during exams.

18. M. Kay Runyan & Joseph F. Smith, Jr., *Identifying and Accommodating Learning Disabled Law School Students*, 41 J. Legal Educ. 317, 328 (1991).

19. Dan Lynch, *David Boies Talks on Politics and the Need to Listen*, Miami Daily Bus. Rev., Feb. 16, 2005, at 1.

20. 37 Buff. L. Rev. 739 (1989).

21. *Id.* at 743.

22. *Id.* at 740.

23. *Id.* at 750.

24. *Id.*

25. See generally Ronald D. Davis, *The Gift of Dyslexia* (rev. ed. 1997).

GERALD LEBOVITS is a judge of the New York City Civil Court, Housing Part, in New York County and an adjunct at New York Law School. He thanks court attorney Justin J. Campoli and David Koshers, a New York Law School student, for assisting in researching this column. Judge Lebovits's e-mail address is GLEbovits@aol.com.