

WHAT EVERY FIRST-YEAR FEMALE LAW STUDENT SHOULD KNOW*

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"I don't feel as intelligent now as I did before law school."

I. INTRODUCTION

What can first-year women law students expect during law school? Is law school still dominated by men or has legal education responded to the challenge to eliminate sex discrimination?¹ Is there anything women can do to minimize the effects of gender bias and maximize their law school experience? These are the questions addressed in this article. Unfortunately, numerous studies now have documented what the co-authors already knew from personal experience—women can expect a hostile environment while attending law school.²

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¹It has not been all that long since women have been admitted to law schools; one of the oldest and most prestigious law schools in the country, Harvard University, did not admit women until 1950, and a few other schools continued to exclude women until the 1960s and 1970s. See Cynthia Fuchs Epstein, *Women in Law* 50 (1981). The number of women attending law schools has increased sharply from 3.8% in 1963 to 33.5% in 1980. Epstein at 53. For the class entering law school in 1995, 44.8% were women. Law School Admission Council, "Average UGPA, Average LSAT and Counts by Ethnic Group—1991-92 to 1995-96 Matriculants at an ABA Approved Law School."

²We recognize that half of the "people" of color are women, too, and that racism in legal education is a serious problem. Of course, many of the findings and issues we discuss are applicable to racial discrimination, or even exacerbated by the virulence of racism. We have attempted, however, to

The statement quoted at the beginning of this article is indicative of what happens to women during law school. It appeared in 1991 as a question on a survey distributed at the nine law schools in Ohio. Students completing their first year of law school were asked to indicate either agreement or disagreement: an astounding 41% of females agreed!³ The law school experience resulted in lower self-esteem for almost half of the women attending law schools in Ohio. Male students apparently had a dramatically different experience: only 16.5% agreed with the statement.⁴ This is just one example of the phenomenon of gender-based law school experiences which occurs at all law schools in this country, both elite and non-elite.⁵ Another is what happened to women at one Ivy League school: men were three times as likely as women to be in the top tenth of the class after their first year, although both sexes entered law school with virtually identical stellar grade point averages and law school admissions test

indicate race-related data from the studies which provide such statistics; unfortunately, many studies do not address this issue. Moreover, attempting to identify experiences based on either race *or* sex fails to capture the complexity of what women of color experience. See L. Amede Obiora, Neither Here nor There: Of the Female in American Legal Education, 1996 Law & Soc. Inquiry 355 (1996) (cross-cultural and class-based, as well as gender, analysis of legal education), and Scott N. Ihrig, Sexual Orientation in Law School: Experiences of Gay, Lesbian, and Bisexual Law Students, 14 Law & Ineq. 555 (1996) (addressing law school experiences of gay, lesbian, and bisexual students).

³See Joan M. Krauskopf, Touching the Elephant: Perceptions of Gender Issues in Nine Law Schools, 44 J. Legal Educ. 311, 328 (1994). The Ohio Supreme Court and the Ohio Bar Association appointed a Joint Task Force on Gender Fairness to study Ohio's nine law schools with the goal of determining whether the percentage of female students and faculty who perceived gender-based problems was large enough to warrant taking action. The study, completed in 1994, was approached using a two-step methodology: first, the committee reviewed the existing literature, forming a bibliography and a list of problems; second, it set goals and created surveys to be mailed to all faculty and students appearing on each school's roster list. To insure accuracy, the committee hired professionals to conduct the survey. Three sample groups were compiled from the students who responded: 54.6% of respondents were females, 49.6% were males, and 47% were minority females. A sub-goal of the committee was to survey all female minority students, because little or no research had been done on women of color in law schools. The empirical findings of this study are broken down into two categories (male and female) in some portions of the article, and three categories (male, female, and minority female) in other portions.

⁴*Id.* at 328.

⁵While gender bias has been much noted for the severity of the problem at "elite" law schools in recent years, see, e.g., Guinier *infra* note 6, it is important to realize that this problem pervades all institutions of legal education, including the so-called second- and third-tier law schools examined in the Krauskopf and other studies cited in this article. The authors, while referring to this ranking hierarchy for purposes of discussing the studies reviewed in this article, object strongly to the elitism implicit in such rankings.

scores.⁶ These recent studies suggest there is a persistent “chill” in the climate facing first-year female law students.⁷

This article, a collaboration between law students and a professor, is in response to the extensive documentation of gender bias which pervades our law schools.⁸ We write for the women entering law school and the female

⁶See Lani Guinier, et al. Becoming Gentlemen: Women's Experiences at One Ivy League Law School, 143 U. Pa. L. Rev. 1, 26 (1994). Guinier and other University of Pennsylvania professors conducted a study of University of Pennsylvania law students in attendance between 1987 through 1992 with the goal of testing some of the assumptions made in recent research about the effect of gender on the law school experience. The authors called the methodology “three windows into the law school”: database one consisted of 366 students—51% of the enrollment—who responded to a questionnaire distributed into mail folders of each first, second, and third year student; database two consisted of the academic records of all 981 students at Penn Law during the five-year period; and database three consisted of qualitative data (narrative responses, observations, and meeting notes of various organizations). These authors subsequently expanded their study and conclusions into a book, Becoming Gentlemen: Women, Law School, and Institutional Change (1997).

⁷Roberta M. Hall, with the assistance of Bernice R. Sandler, The Classroom Climate: A Chilly One for Women?, Project on the Status and Education of Women, Association of American Colleges at 2, 8 (1982). This phrase was first coined in a report issued by the Association of American Colleges' Project on the Status and Education of Women. In its early study of women's experience in the higher education system, the Project found what it termed a “chilly climate.” It discovered that even though there were now approximately equal numbers of female students in higher education, women did not enjoy full equality of opportunity in the educational environment. The authors attributed the “chill” in the climate to such factors as: faculty bias (faculty overtly or inadvertently singling out or ignoring women, devaluing women for exhibiting “masculine” aggressive behavior, attributing women's success to luck or lack of difficulty of the task, and expecting less of their female students) and class participation patterns (everyday inequities in the ways men and women talk—men talk more often, for longer periods of time, and interrupt women more frequently than women interrupt men—result in a college classroom that is a “masculine” and competitive setting which disadvantages women).

⁸We are aware that not all law schools present the identical kinds and degrees of gender discrimination, but we believe it is present at all schools. For example, we are aware that not all law schools have found gender inequality in the performance of male and female law students as that so strongly documented in the Guinier study. See, e.g., Marsha Garrison, Brian Tomko, and Ivan Yip, Succeeding in Law School: A Comparison of Women's Experiences at Brooklyn Law School and the University of Pennsylvania, 3 Mich. J. of Gender & L. 515 (1996). Marsha Garrison and other researchers at Brooklyn Law School attempted to replicate the research conducted at the University of Pennsylvania Law School in order to test the experience-performance link found by that study. The Brooklyn study compared the grades and honors obtained by men and women in the 1990-93 graduating classes as well as 1994 and 1995. The researchers also administered the Pennsylvania survey instrument to approximately one-third of Brooklyn's first-year students and a somewhat smaller proportion of second- and third-year students, but did not conduct focus groups as did the Penn researchers. Since Brooklyn had already instituted several of the changes recommended in the Penn study, e.g., smaller classes and greater numbers of female faculty in the first year, the Brooklyn researchers had hypothesized that the experience of female students there would be different from that of their peers at Penn. In fact, they found that female students at Brooklyn were not comparatively disadvantaged with respect to grades or academic honors. *Id.* at 520. However, grade performance is not the sole measure of an experience; even the Brooklyn study found significant gender differentials when comparing other variables (“Brooklyn women reported significantly less voluntary classroom

faculty, students and graduates of these institutions in order to explore, explain, and, hopefully, empower us all to counter gender bias in the educational setting. Naturally, we hope that law school faculties, administrative personnel, and all students will be educated and motivated to create a more fair learning environment. First, we summarize aspects of the major studies examining women's experiences in law school; this data should warn incoming students to the problems ahead in law school, and to put them on alert. Next, we look at the contours of a primary, secondary and undergraduate education which "prepares" women for law school. It is not a surprise that law school is the way that it is; in many ways, law school is simply a continuation of an educational process that abysmally fails females and probably does not encourage males to reach their full potential either. Finally, we suggest strategies to both cope with and fight against the sexism embedded in the law school environment. We hope that, armed with this information, women will be empowered to demand and obtain an "equal"⁹ legal education. Law schools must be more responsive to the concerns of women in legal education.

II. STUDIES EXAMINING WOMEN'S EXPERIENCES IN LAW SCHOOL¹⁰

Most studies examining the law school experience from a woman's perspective focus on one or more of five areas: sexual harassment, classroom experiences, academic performance, perceptions of self, and interaction with faculty. Although it often is difficult to draw bright lines of distinction among these categories, specific findings are replicated in each of these broad areas and will be discussed accordingly. As noted above, we are aware that not all law schools present the identical kinds and degrees of gender discrimination. These comprehensive empirical studies include elite and non-elite schools in all geographic sections of the United

participation and more discomfort with their level of participation than did Brooklyn men. Women also reported significantly higher rates of anxiety, depression, sleeping difficulties, and crying.")

⁹What would constitute an "equal" education cannot even begin to be addressed in this article. However, we reject the notion of equality that would require women to be treated just like men (the norm) as if they *are* just like men, *i.e.*, "formal" equality. Rather, we embrace and demand substantive equality, commonly understood as the elimination of practices, laws, and conduct which create and maintain the material, social, sexual, and psychological subordination of women. See Mary Becker *et al.*, Taking Women Seriously: Cases and Materials on Feminist Jurisprudence, chapters two and three (1994).

¹⁰See Appendix A for a bibliography of these studies.

States, utilize various research methodologies, and survey both students and faculty of both sexes. However, the studies are consistent in their findings of gender bias, regardless of who conducts the study, professional researchers or committees of lawyers.

A. Sexual Harassment¹¹

Although women would like to believe that professors and students at the graduate level are intelligent and sensitive professionals who would not engage in sexual harassment, the studies report a different reality.¹² Typically, sexual harassment takes one of two forms: (1) *quid pro quo* harassment in which submission to sexual conduct is made a term or condition of an individual's education, e.g., "have sex with me if you want to pass this course," or (2) a hostile environment in which verbal or physical conduct of a sexual nature unreasonably interferes with an individual's performance or creates an intimidating, hostile, or offensive educational environment, such as a professor staring at a female student's breasts or a professor refusing to call on female students. The first kind of harassment is a type of blatant conduct that usually is easy to recognize and condemn. However, according to most experts in the employment context,¹³ less than five percent of sexually harassing conduct in the workplace is now of this nature.¹⁴

The more common form of harassment, hostile environment, is difficult to describe and define, particularly since men and women have differing

¹¹Sexual harassment is a recognized form of sex discrimination prohibited both in employment and education. See *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986) (Title VII, 42 U.S.C.A. § 2000e *et seq.*, prohibits sexual harassment in employment); Becker *supra* note 9 at 746-69 (materials discussing sexual harassment in employment); *Franklin v. Gwinnett County Public Sch.*, 112 S. Ct. 1028 (1992) (Title IX, 20 U.S.C.A. § 1681 *et seq.*, prohibits sexual harassment in both education); Becker *supra* note 9 at 708-18 (materials discussing sexual harassment in education). Title IX has been held applicable to both public and private educational institutions. See *Franklin, supra*, and *Alexander v. Yale Univ.*, 631 F.2d 178 (2d Cir. 1980).

¹²While we do not purport to explain why men sexually harass women, others have opined that there are various reasons: many men, as a result of socialization, can only relate to women as sex objects, not professional colleagues; others perceive women as unwanted competition and hope to force their exit; still others do not understand that their conduct is unwelcome. See generally, Morrison Torrey, *We Get the Message—Pornography in the Workplace*, 22 S.W. U. L. Rev. 53 (1992).

¹³There has been a great deal of research, and litigation, about sexual harassment in the workplace. We refer to that data since we have no reason to doubt its applicability in the educational context as well. In fact, it is directly relevant when female law students become employees as well as students, such as paid research assistants for professors.

¹⁴Torrey *supra* note 12 at 53, n. 17.

perspectives and experiences of it. For example, many men report that they would be flattered if a woman made a sexual proposition to them at work, while women feel insulted or threatened by sexual advances in the workplace.¹⁵ Similar differences in perspective may occur in the educational context. For example, when asked to explain the surprising performance differential between male and female students at University of Pennsylvania Law School, many male students denied the existence of gender bias and instead blamed, without any supporting data, factors such as undergraduate majors and even women's lack of participation in undergraduate sports.¹⁶ While it may be more difficult to identify and categorize hostile environment sexual harassment, it is just as pernicious as *quid pro quo* harassment not only because of its effects on individual victims and those women who witness it but also because it encourages other males to engage in similar conduct.

A significant percentage of female students and faculty in law schools experience sexual harassment.¹⁷ In the Ohio study, almost 20% of female students report being subject to harassment in law school; 69% reported harassment in the form of improper comments.¹⁸ Of these women, 42% cited the source of harassment as male professors and 62% as male students.¹⁹ A majority of the faculty (54% men and 77% women) were aware of inappropriate behavior and sexual comments at their school.²⁰

Earlier, in 1986, Taunya Lovell Banks conducted a study to test the commonly accepted belief that the overt sexism existing in law school prior to the 1970s had subsided.²¹ Her surprising conclusion was that sexually

¹⁵*Id.* at 61-63. In her study of sexual harassment in the workplace, Barbara Gutek found that 67% of the men she surveyed said they would be flattered if a woman made a proposition to them at work, while only 17% of women said they would be flattered in the same situation. Barbara Gutek, *Sex and the Workplace: The Impact of Sexual Behavior and Harassment on Women, Men and Organizations* 97 (1985). On the other hand, 63% of women said they found sexual advances to be insulting, while only 15 percent of men felt that way.

¹⁶Guinier *supra* note 6 at 54.

¹⁷The co-authors personally know of no female student or professor who has not experienced sexual harassment in some form.

¹⁸Krauskopf *supra* note 3 at 325.

¹⁹*Id.*

²⁰*Id.* at 330.

²¹Taunya Lovell Banks, *Gender Bias in the Classroom*, 38 J. Legal Educ. 137, 140 (1986)[hereinafter Banks I]. Banks designed her study with three purposes: (1) to test the findings of a pilot study concluding that fewer women than men voluntarily participate in class, (2) to explore the reasons for women's silence in the classroom, and (3) to determine whether students think the sex of

offensive comments are common in law school classrooms: 47% of the female respondents said that their professors had used offensive "humor" in the classroom; some professors actually referred to women as "bitches."²² Interestingly, the sex of the professor made a difference both in how often the professor engaged in demeaning comments and in how much the humiliated student was called upon; respondents of both sexes perceived female professors to be more encouraging to students.²³

These findings were largely supported by an expanded study conducted by Banks during the 1987-88 and 1988-89 school years at 14 law schools.²⁴ In this study, more women than men believed that their professors did not encourage them.²⁵ Most unfortunate, however, was Banks' replicated finding that professors universally continued to make offensive comments in the classroom.²⁶ "Almost every school" reported "at least one professor" who, in the classroom, used the term "bitch" to refer to women.²⁷

For those who question the currency of the Banks studies, sexual harassment was found in all six Chicago law schools as recently as 1995.²⁸

the professor has any apparent effect on class participation and the use of offensive comments. The data was collected from 765 students who responded to a questionnaire distributed at five law schools selected to represent diversity in location, size, and funding source.

²²*Id.* at 144. Slightly over half of all respondents, both male and female, believed that their professors belittle or embarrass students.

²³*See id.* at 143.

²⁴Taunya Lovell Banks, Gender Bias in the Classroom, 14 So. Ill. L. J. 527, 528 (1990) [hereinafter Banks II]. Banks collected data over three years (including the five law schools of her original study) at 14 law schools: four of the schools were private, ten schools were public, four schools were located in the East, two in the West, four in the South or Southwest, four in the upper Midwest, but none in California or Chicago. Her sample consisted of approximately 1,930 responses to in-class surveys administered at each school from first- through third-year students. Approximately 60% of the respondents were men and 40% were women. In the latest compilation, approximately 14% of the respondents were people of color.

²⁵*See id.* at 530. The initial study did not find a statistically significant difference between male and female perceptions of the encouragement offered by their female professors; the expanded study had a significance rate for white women of .04.

²⁶*Id.* at 531.

²⁷*Id.*

²⁸Law School Outreach Project of the Gender Bias Free Jurisprudence Committee of the Chicago Bar Association's Alliance for Women, Women Students' Experiences of Gender Bias in Chicago Area Law Schools: A Step toward a Gender Bias Free Jurisprudence at iv (1995) [hereinafter CBA]. The CBA study examined the experiences at the six Chicago area law schools (DePaul, Northwestern, John Marshall, University of Chicago, IIT-Chicago Kent, and Loyola). The Committee first examined the literature addressing the history of women and legal education. The Committee then named six all-female investigative teams (comprised of one judge and one practicing attorney) who interviewed both

Examples provided in the study ranged from what might be perceived as fairly trivial behavior, *e.g.*, a male professor who gave unwanted attention, noticed by other students, to a female student on two separate occasions,²⁹ to more extreme conduct, *e.g.*, a male professor, in the company of two male students at a bar, who was overheard using the coarsest of language in "rating" women students in his class.³⁰ The problem of male professors dating female students was an issue to some degree at all of the schools, yet was described as a "forbidden" topic by female law professors who say neither faculty nor administration want to admit it exists, much less question the ethics (or lack thereof) involved.³¹ Male students were also named as sexual harassers by both students and teachers.³² The experiences described by the female students revealed not only the contamination of their education by gender bias, but also the persistence of overt sexist treatment by male professors, male classmates, and even the administration.³³

The American Bar Association's Commission on Women in the Profession conducted extensive hearings and received evidentiary submissions resulting in a report issued in 1996. This report documented an alarming "growing trend" of white male bias and bigotry toward female and minority faculty and students.³⁴ Again, the universal experience was

female students and professors to identify any barriers which may prevent or limit women from full participation in the legal profession. The teams held meetings with female law students at each school, using a format of prepared questions, and also held an open format group meeting with female professors from five of the six schools.

²⁹*Id.* at 28.

³⁰*Id.* Even the authors cannot agree among themselves as to the relative severity of certain types of sexually harassing conduct, demonstrating the subjectivity involved in the experience of sexual harassment. What is important is that the female students and faculty in these studies who self-report events such as these, *i.e.*, the victims, cited these occurrences as what they consider to be specific examples of sexual harassment.

³¹*Id.* Female professors characterize this conduct as deleterious for all students, but particularly for women students since it often creates a competitive paranoia among students and makes everyone believe that women use sex to get ahead. It is difficult to believe that professors do not, consciously or not, abuse their power in sexual relationships with students.

³²*Id.* at 30, 31.

³³*Id.* at 15.

³⁴American Bar Association Commission on Women in the Profession, Elusive Equality: The Experiences of Women in Legal Education at 8 (1996)[hereinafter ABA]. The ABA Commission on Women in the Profession conducted a series of hearings in 1994 and 1995 in response to reported incidents of chilly law school environments, bias, discrimination, and harassment. Its objectives were to obtain current information about the experiences of female students and faculty in American law

women under siege. Women who dared to express views perceived as “liberal” or “feminist” were attacked by white male students who self-identified as politically conservative and who fostered an overall antipathy towards outspoken women.³⁵ There is no safe place; even when women sought the support and community of women’s groups, they were subjected to degrading comments about both themselves and the organization.³⁶ While the Commission concluded that the testimony submitted was “most disturbing,” law schools appear unable or unwilling to respond to the disrespectful and even threatening behavior displayed by male law students toward female students and faculty.³⁷

B. Classroom Environment

The bias against women in the law school classroom appears on multiple levels, from the silencing of female students achieved by a variety of internal and external pressures to a pedagogical methodology, in both teaching and evaluation. The message that women are not welcome can be obvious, such as when a professor only calls on men, or more subtle, such as classroom walls covered with portraits of distinguished alumni or jurists, all of whom are white and male.³⁸

Study after study documents that women speak in class less than men, both in asking questions and volunteering answers as well as in time

schools, to determine whether conditions have improved in terms of gender discrimination, and to identify and promote methods for reducing or eliminating inhibiting barriers. At hearings held throughout the country, male and female faculty, deans, and students from 58 law schools testified about their own experiences. The representation of schools included large east and west coast institutions, small midwestern schools, state and private institutions, schools with strong national identities, and schools with developing or region-based identities. The Commission’s hope that gender bias would have disappeared with the increasing number of women and faculty present in legal education was not realized: the study found that many women still experience debilitating instances of gender bias and discrimination in law schools.

³⁵*Id.* at 9, 10.

³⁶*Id.* at 10. In many schools, women who posted news of their activities soon learned to be alert to vandalism and destruction of their property. *Id.* at 9.

³⁷*Id.* at 9.

³⁸*Id.* at 11. Presumably, these portraits reflect prior exclusionary practices which kept women and minorities out of law school and, thus, out of the judiciary. Their effect, however, transcends history to reinforce an environment in which white males continue to be acknowledged for their achievements while women and minorities are invisible, rendered “unsuccessful.” One of the student authors recalls her discomfort in a first-year classroom where the walls were covered with caricatures of the classic “attorney”: overweight, older, white males with barristers’ wigs.

speaking.³⁹ An overwhelming consensus of female students reported to the Chicago Bar Association study that male students dominate classroom discussion.⁴⁰ When women did speak, the professor often failed to acknowledge or validate their statements or gave credit to men for points that women had already made.⁴¹ Quite naturally, female students felt “silenced” by the treatment they received in class.⁴² The hostility of male students towards their female peers was found at all six Chicago law schools; negative stereotyping of women who spoke in class was rampant.⁴³ Female professors concurred in the belief that female students are given little respect by their peers.⁴⁴

A study led by Elizabeth Mertz utilized in-class observations and tape recordings of eight Contracts classes to test the hypothesis of differential classroom experience. The quantitative and qualitative analysis of the classroom data confirmed the findings of other studies: male students tend to participate at greater rates than female law students.⁴⁵ Mertz found that male students spoke as much as 54% more frequently than women.⁴⁶ In classes where mean speaker time was calculated, men spoke for longer

³⁹See CBA *supra* note 28 at 20, 21; Taber *infra* note 53 at 1242; Krauskopf *supra* note 3 at 325; Banks I *supra* note 21 at 141; Guinier *supra* note 6 at 33; ABA *supra* note 34 at 15.

⁴⁰CBA *supra* note 28 at 20, 31. See also Elizabeth Mertz with Wamucii Njogu and Susan Gooding, Race, Gender, and Status in Law School Education: A Study of Eight Contracts Classrooms, (1997) (manuscript under consideration for publication) [hereinafter Mertz]. This study contained detailed quantitative results of classroom dynamics and diversity in law school. Eight Contracts classes were studied nation-wide at two elite schools, one prestigious school, two regional schools, one local school, and one night school class. Five of the professors studied were men, three were women; two professors were of color while the other six were white. Data were collected by in-class observation and tape recordings of classroom interactions. The tapes were then transcribed, coded, and analyzed both quantitatively and qualitatively for speaker identification, gender, race, linguistic type, length of participation, and type of participation.

⁴¹*Id.* at 21.

⁴²*Id.* at 36. The student authors know what it feels like to be silenced in a first-year class. During their Criminal Law class the professor encouraged a male student to make the sexist argument that “she asked for it” in a discussion about rape. The male professor created an uncomfortable environment rather than a lively discussion. The women in class sat in silent fury. After class we compared notes; the women in the class realized that their response of silence was a refusal to “jump through the professor’s hoops.” Instead of feeling confident enough to protest what was happening in class, we were silent. We had already learned to feel powerless in class.

⁴³*Id.* at 32, 34.

⁴⁴*Id.* at 32.

⁴⁵Mertz *supra* note 40 at 46.

⁴⁶*Id.* at 47.

periods of time than female classmates—sometimes as much as 71% more.⁴⁷ Mertz also incorporated a race variable into the student participation study. The study concluded that discrepancies in the participation rates of minority students fluctuated more widely than for gender. For instance, in the majority of the classrooms studied, minority students volunteered less in comparison to white students.⁴⁸

A study of Boalt Hall at the University of California⁴⁹ also reviewed classroom participation, perceptions of self, perceptions of faculty and academic experience for first, second, and third-year men and women. The Boalt study found that women were much less likely to participate in class than men.⁵⁰ A majority of the women responding stated that they never asked questions or volunteered answers; two-thirds of the white men, on the other hand, stated that they had done both with some frequency.⁵¹ It is even more shocking to see that nearly 40% of the women said they lost confidence when they were in class, compared to only 21% of the male respondents.⁵²

Similarly, male students at Stanford Law School reported they were more likely than female students to ask questions in class and to volunteer answers.⁵³ At Ohio law schools, male students interact and participate

⁴⁷*Id.* at 50.

⁴⁸*Id.* at 72.

⁴⁹Suzanne Homer and Lois Schwartz, Admitted But Not Accepted: Outsiders Take an Inside Look at Law School, 5 Berkeley Women's L.J. 1 (1989-90). This study was designed to test the hypothesis that women and men experienced law school differently. The study utilized a 19-page questionnaire which was given to all first, second, and third-year students at Boalt in March of 1988. Out of 860 questionnaires that were distributed, 667 (78%) were completed and returned. The questionnaires focused on self-esteem as the primary and organizing variable. The survey was divided into six parts: (1) career plans and goals; (2) academic experience in law school; (3) psychological and emotional reactions to the academic experience; (4) academic performance; (5) demographic information; and (6) open-ended comments. *Id.* at 23-25.

⁵⁰*Id.* at 28.

⁵¹*Id.* at 29.

⁵²*Id.* at 33. The Boalt study also examined gender differences among people of color. The study found that the gender differences existed but less dramatically for people of color. *Id.* at 28. Women of color stated that they participated in class less than any other group. *Id.*

⁵³Janet Taber, *et al.* Gender, Legal Education, and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates, 40 Stan. L. Rev. 1209 (1988). The 1986 study compared the responses of female and male Stanford law students and graduates to questionnaires concerning their experiences in law school and the legal profession; their reasoning about legal issues with moral overtones; and their experiences of both physical and psychic stress resulting from attending law school. The purpose of the study was twofold: (1) to determine if differences exist in these areas and, if so, (2)

more often than female students by as much as 15%.⁵⁴ The Banks study also found that men tend to participate voluntarily more than women: 17.6% of the female respondents in her study never participated in classroom discussion, while only 9.6% of the men never volunteered their ideas.⁵⁵ When asked to explain why they did not participate, more women than men responded that insecurity resulting from the demands of the Socratic method kept them quiet in class.⁵⁶ The women interviewed by Banks in her later study identified the large classrooms and the competitive nature of the law school classrooms as things they most disliked about law school.⁵⁷ Large classrooms foster a sense of isolation and alienation.⁵⁸ Banks hypothesizes that the late bloomer or outsider, unfamiliar with the law school process, is penalized because the first year, the year when the most support is needed, is the year students receive the least amount of support from classmates and little encouragement from law teachers if students do not speak their language.⁵⁹

The Guinier study built on the methodologies and findings of prior studies in a comprehensive questionnaire. This study revealed that female law students at Penn are significantly more likely than male law students to report that they "never" or "only occasionally" ask questions or volunteer answers in class; men report a participation rate that is almost twice as frequent as that reported by women.⁶⁰ Women responded that men enjoy greater peer tolerance of their remarks, receive more attention from faculty during class, are called upon more frequently, and enjoy more post-class "follow-up" than women.⁶¹ This study, too, noted the disparate impact of the Socratic method on women: the performance aspect of a large Socratic classroom actually disabled some female students from

what factors help to explain the differences. Of the entire population of 516 students enrolled in the law school who were surveyed, 66% responded: 45.2% females and 54.8% males (which roughly corresponded to the total percentages of each gender at Stanford in 1986).

⁵⁴Krauskopf *supra* note 3 at 325.

⁵⁵Banks I *supra* note 21 at 141.

⁵⁶*Id.* at 142.

⁵⁷Banks II *supra* note 24 at 534.

⁵⁸*Id.* People of color also reported feeling terribly alienated by being in large classes, especially when there are so few people of color in most law schools.

⁵⁹*Id.* First-year grades often determine who gets the prestigious or well-paying jobs.

⁶⁰Guinier *supra* note 6 at 33.

⁶¹*Id.*

performing up to their own expectations.⁶² The authors of the study hypothesized that there is a formal link between classroom participation and exam success, and that students who were alienated by the formal classroom methodology and hierarchy might not be psychologically prepared to succeed on formal examinations.⁶³

Despite achieving grades and honors that were proportionate to their male classmates, the Brooklyn women also exhibited attitudes that were significantly different from those of their male colleagues—and similar to those described by the Penn researchers.⁶⁴ Brooklyn women reported significantly less voluntary classroom participation and more discomfort with their level of participation than did Brooklyn men.⁶⁵

First-year women at Yale, too, expressed feelings of isolation as a result of their negative classroom experiences.⁶⁶ Many of the women feared speaking in class because they might be “laughed at” or would be forced to “sit in awkward silence as ‘victims’ of the Socratic method.”⁶⁷ These women were uncomfortable with the aggressive, competitive nature of the classroom because they did not think that they were properly prepared for intimidation and confrontation—to make adversaries of classmates, to defend positions assigned to them regardless of personal beliefs, and to fight back.⁶⁸ Still other women, because of lowered confidence, felt their answers and comments were not important enough to take up class time.⁶⁹ The feeling that women were invisible and unwelcome in the classroom and not worthy of faculty notice apparently was compounded by the problem of an aggressive classroom.⁷⁰

⁶²*Id.* at 63.

⁶³*Id.* at 64.

⁶⁴Garrison *supra* note 8 at 6.

⁶⁵*Id.*

⁶⁶Catherine Weiss & Louise Melling, The Legal Education of Twenty Women, 40 Stan. L. Rev. 1299, 1333 (1988). Weiss & Melling interviewed twenty female law students who had just completed their first year at Yale Law School. The women interviewed had organized their own women’s support group in response to their first year experiences. The interviews, lasting from two to four hours, used a format of open-ended questions. All of the women interviewed were heterosexual; two were of color; and most were from middle-class backgrounds. The students’ ages ranged from 21 to 33, with the average being 24 years of age.

⁶⁷*Id.* at 1327.

⁶⁸*Id.* at 1338.

⁶⁹*Id.* at 1328.

⁷⁰*Id.* at 1337.

Finally, the lack of women standing in front of the class as authority figures and role models negatively affects female law students. Krauskopf relates the lower classroom participation rate for female students to the low percentage of female faculty, particularly in the first-year curriculum.⁷¹ Students report that having older, white males as the majority of their first-year professors creates the perception that a lawyer is an older, white, aggressive male. This perception spills over from gender to race: students of color were found to have more extensive classroom performance when the professor was also a minority.⁷² The absence of female professors during the all-important first year sends the message that women are not part of “real” law.⁷³ Moreover, when students were asked to specify the gender of the professor that most encourages students, a majority of both male and female students believe that female professors are more encouraging.⁷⁴ However, there is a headwind against female faculty which is recognized primarily by female students: 18% of men and 48% of women agreed that female faculty have a heavier burden to prove their competence.⁷⁵

Even when male and female students are not “treated” differently, the classroom environment adversely affects women more than men. For instance, the “Socratic” method is frequently mentioned as a problem for female law students. Although rigid and exclusive use of this method seems to be waning in most law schools, it remains the traditional teaching methodology. This teaching method is based loosely on the dialogue created by Socrates and his students in which he asked the students questions, rather than lecturing them, in order for the students to discover “truths.” The law school adaptation is to ask questions of students to force them to ultimately infer generalities from specific questions about specific

⁷¹Krauskopf *supra* note 3 at 335 (the study hypothesizes that students may be more comfortable with teachers whose gender and race are the same as their own); *see also* Linda R. Hirshman, Nobody in Here But Us Chickens: Legal Education and the Virtues of the Ruler, 45 Stan. L. Rev. 905 (1993). Hirshman hypothesizes that students identify with people who are like them, feeling that they, too, belong and are therefore free to express their ideas. Thus, hiring professors based upon the needs of individual students adds the value of empathy to the classroom setting.

⁷²Mertz *supra* note 40 at 73, 80. Specifically, in two small Contracts classes taught by a professor of color, minority students were the dominant speakers. There appeared to be a strong role modeling, or encouraging effect, on minority student participation. *Id.* at 81.

⁷³CBA *supra* note 28 at 50, 51.

⁷⁴Banks I *supra* note 21 at 144.

⁷⁵Krauskopf *supra* note 3 at 327. Over 70% of minority women perceived this greater burden on female faculty.

cases.⁷⁶ Although not integral to the process, legal education has incorporated elements of hostility, competitiveness, and humiliation into what is, essentially, an abuse of the method.⁷⁷ While it is difficult to believe that any student, male or female, can thrive in a learning environment in which "mistakes" or ignorance result in humiliation, women seem to be most affected.

Many female professors criticize the Socratic method, particularly during the first-year, as confrontational and subject to abuse.⁷⁸ These professors note that women who displayed a lack of confidence in a Socratic setting seemed to blossom when taught in a less intimidating manner.⁷⁹

Criticism of the Socratic method is not novel. In 1986 Jennifer Jaff argued that:

1) some of us cannot make those deductions on our own; 2) some of us make them, but not until late in our law school careers; 3) there is no harm in teachers making their reasons explicit, for even when teachers tell students what is "going on," students still have to test that information and somehow make it their own to be able to use it; and 4) there is harm in teachers not being explicit, since students really suffer from their confusion as well as from the disempowerment and consequent self-devaluation that result from the questioning they are subjected to. Students consistently complain about the insensitivity of law teachers, their "hide-the-ball" tactics.⁸⁰

To our knowledge, there are no studies validating the Socratic method as either an effective or an essential way to teach the law. Many studies, however, conclude the Socratic method confuses and frightens rather than

⁷⁶See generally Jennifer Jaff, Frame-Shifting: An Empowering Methodology for Teaching and Learning Legal Reasoning, 36 J. Legal Educ. 249 (1986).

⁷⁷The stereotypical Socratic classroom appeared in the movie The Paper Chase in which Professor Kingsfield terrorized the class, humiliating any student who was unable to answer his questions to his satisfaction.

⁷⁸CBA *supra* note 28 at 22, 32.

⁷⁹*Id.* The student authors witnessed this "blossoming" in our only non-Socratic first-year class. We had one professor who deliberately and expressly taught her class using a more relaxed format. She positively affirmed all students' contributions instead of forcing students to articulate the exact legal premise she was seeking. The atmosphere of the class was starkly different: women who never spoke in other classes found themselves volunteering and participating fully in this class. On the other hand, there were male classmates who groaned, rolled their eyes, and complained after classes that the professor was not distinguishing between "right" and "wrong" answers or was "babying" us.

⁸⁰Becker *supra* note 9 at 835, quoting Jaff *supra* note 76 at 259-60.

encourages and enlightens many students and has been shown to be disparately harsh on female students. Why do law professors continue to rely upon it? In addition to pedagogical ignorance, less innocent explanations have been suggested: "it maintains the mystification of the legal process; it is an exercise of power in hierarchical relationships; it furthers the patriarchal power of the teacher while simultaneously devaluing students and undermining their confidence and self-esteem."⁸¹

Interestingly, these implications are not lost on first-year female students. More women than men are aware that the Socratic method often leads students not to their own conclusions but to the teacher's own views.⁸² Krauskopf reasoned that female students may negatively react to the Socratic method because they are resistant to what they perceive as "narrow-mindedness" in an approach where the professor is always right.⁸³

As more and more questions are being asked about what happens in law school to women, other, often fundamental, issues emerge. For instance, do men and women reason differently? Sandra Janoff designed a study to test the applicability of Carol Gilligan's findings⁸⁴ about variations in the

⁸¹Becker *supra* note 9 at 835, quoting Jaff *supra* note 76 at 260-61. Many law professors are noting the negative effects of the silencing of women and are exploring methods to end it. See, e.g., Stephanie M. Wildman, The Classroom Climate: Encouraging Student Involvement, 4 Berkeley Women's L.J. 326 (1989-90); The Question of Silence: Techniques to Ensure Full Class Participation, 38 J. Legal Educ. 147 (1988); Morrison Torrey, Jackie Casey, and Karin Olson, Teaching Law in a Feminist Manner: A Commentary from Experience, 13 Harv. Women's L.J. 87 (1990); K.C. Worden, Overshooting the Target: A Feminist Deconstruction of Legal Education, 34 Am. U.L. Rev. 1141 (1985). Several scholarly journals have recognized the need to address feminist concerns, and have prepared symposium volumes on these issues. See, e.g., 42 Fla. L. Rev. (1990); 14 So. Ill. U.L.J. (1990); 24 Ga. L. Rev. (1990); 1989 U. Chi. Legal F.; 38 J. Legal Educ. (1988) 16 N.M.L. Rev. (1986); 10 Nova L. Rev. (1986).

⁸²Krauskopf *supra* note 3 at 334.

⁸³*Id.* The authors find the Brooklyn Law School study revealing when examining the link between these indices of the classroom environment and academic performance. At the time the study was conducted, Brooklyn Law School had already adopted many of the recommendations made by the University of Pennsylvania study: 37% of tenure/tenure-track professors are women, students at Brooklyn are placed in small class groups during their first year, and there is minimal use of the Socratic method. The relatively equal academic performance of men and female students at Brooklyn were matched by relatively equal participation in the Law School's informal learning environment. Garrison *supra* note 8 at 10.

⁸⁴Carol Gilligan, In a Different Voice: Psychological Theory and Women's Development (1982) (author discussing differences between a girl's and a boy's resolution of a moral dilemma, suggesting that boys rely on abstract rules while girls see "a world comprised of relationships rather than of people standing alone, a world that coheres through human connection rather than through systems of rules"). There have been numerous criticisms of Gilligan's methods in general and her conclusions. See, e.g., Linda K. Kerber, Catherine G. Greeno, Eleanor E. Macoby, Zella Luria, Carol B. Stack, and Carol Gilligan, On In a Different Voice: An Interdisciplinary Forum, 11 Signs 304 (1986); Judy Auerback,

moral reasoning of men and women to legal education.⁸⁵ She discovered that: (1) there is a significant difference in the "care" orientation of women and men at the beginning of their first year, with women reasoning predominantly "from a perspective concerned with connectedness, preventing harm, maintaining relationships, and responding to need;" (2) male students are more likely to associate moral conflicts with "rights;" (3) all students exhibited a greater "care" orientation at the beginning of the first year than at the end; (4) among all students a "rights" orientation was more pronounced at the end of first year; (5) women's "care" responses decreased significantly so that at the end of first year there was no real difference in the "care" orientations of women and men; and (6) at the end of first year there was no significant difference between the "rights" orientations of women and men.⁸⁶ This dramatic transformation in how women reason, the shift from caring relations to rights, is likely to contribute to their feelings of alienation. The evidence reveals that rather than challenge this mandate of male moral reasoning, female students submerge or deny the perspectives they brought with them to law school in order to survive. This is to be expected in light of the disabling events of the women's first year which serve to diminish, rather than enhance, self-confidence. The institutional norm based on male values and perspectives, however, remains intact.⁸⁷

Linda Blum, Vicki Smith, and Christine Williams, Commentary, On Gilligan's In a Different Voice, 11 Feminist Studies 149 (1985).

⁸⁵Sandra Janoff, The Influence of Legal Education on Moral Reasoning, 76 Minn. L. Rev. 194 (1991).

⁸⁶Becker *supra* note 9 at 836-40, summarizing and quoting Janoff *supra* note 85 at 217, 222, 226-34, 238.

⁸⁷The authors of the Stanford Project concluded that:

Differential rates of classroom participation may be one of the most concrete manifestations of Elkin's observation that "[l]egal education is a man's world and reflects the traditional array of 'masculine virtues.'" If Elkins is correct, and subtle aspects of traditional legal education deny or even denigrate certain aspects of women's personal beliefs and values, then lower rates of class participation may reflect women's withdrawal from certain dimensions of the law school experience.

Taber *supra* note 53 at 1256. See also ABA *supra* note 34 at 21 (the law has developed and continues to develop in the United States with a bias toward the male perspective); Guinier *supra* note 6 at 43 (some women who felt alienated yet did well academically stated that they did not recognize their former selves, whom they perceived as submerged in the pursuit of succeeding as a "social male").

Robert Granfield conducted a study at Harvard Law School in an attempt to empirically test the theory of gender differences in law school.⁸⁸ Granfield hypothesized that differences in the law school experience are less related to gender than they are mediated by such variables as occupational goals, social class, and race.⁸⁹ Generally, his study concluded that women's perceptions "emerge not from inherent qualities within women, but from qualities that spring from actual contextual dimensions within individual biographies."⁹⁰ However, this conclusion was based more upon women's political ideologies and occupational goals than on differences in the way that women think and learn. In fact, "[i]nitial comparisons between males and females attending Harvard Law School appeared consistent with the findings of earlier research" done at other schools.⁹¹ Granfield admitted that "[t]hese initial findings could be interpreted as supporting the contention that at least a significant majority of women, as a social group, have experiences and perceptions that are more common to female law students than their male counterparts."⁹²

Finally, curriculum and classroom materials, specifically casebooks and treatises, contribute to an environment in which women are outsiders or simply invisible. As part of an inquiry about how law school courses deal with women and subjects of concern to them, several feminist scholars analyzed the treatment of rape in the classroom.⁹³ They reviewed criminal

⁸⁸Robert Granfield, *Conceptualizing the Different Voice: Women, Occupational Goals, and Legal Education*, 16 J.L. & Pol'y 1 (1994). Granfield used data collected as part of a larger project associated with law school socialization to examine the degree of perception differences among women attending an elite law school. The earlier study surveyed 50% of the 1,540 students attending Harvard Law School in 1987 regarding their orientations toward law and legal practice. Questionnaires were returned by 391 participants: 38% female, 20% of whom were of color, and 12% of whom reported having a working-class background. In-depth interviews with 103 students supplemented the survey. *Id.* at 6,7.

⁸⁹*Id.* at 1.

⁹⁰*Id.* at 19.

⁹¹*Id.* at 7-8. The findings of the Harvard study were similar to the overarching themes found throughout this article. A majority of women, 53 %, reported feeling that faculty members were biased against women. In addition, women at Harvard reported having gained greater competence while in law school less often than men (less than 60 % of the women compared to nearly three-fourths of the men). Even the interviews with women revealed that many described being personally alienated from the process of legal education; female students found that the emphasis placed on objectivity, neutrality, and instrumentality was particularly disturbing. *Id.* at 8-10.

⁹²*Id.* at 8.

⁹³One out of every three women will be the victim of a rape during her lifetime. *Sharing the Burden of Abuse: Men Take Steps Against Male Violence*, Boston Globe, Oct. 17, 1990 81, at 1, col. 2 (citing Federal Bureau of Investigation statistics). For more information about rape and its impact

law casebooks,⁹⁴ treatises,⁹⁵ traditional classroom materials, as well as some classroom discussions.⁹⁶ Their universal conclusion was that rape was, in fact, not taken seriously, in time spent on the topic or in quality of text and class discussion. This analysis of the failure to include as well as issues of importance to women has now been extended to almost all substantive areas, *e.g.*, Constitutional Law,⁹⁷ Torts,⁹⁸ and Contracts.⁹⁹

C. Academic Performance

In light of the above findings, it would indeed be surprising if women ever realized academic success at law school; it is astonishing that some women at some law schools are able to achieve or exceed their academic expectations. Many legal institutions report that the number of women succeeding academically does not equal the number of women in attendance nor the proportion of men achieving academic success.

Because of the correlation Guinier found between classroom participation and exam success, the University of Pennsylvania study also examined the academic performance of first-year law students. Although men and women entered law school with equally impressive LSAT scores and undergraduate grade point averages, men consistently had better grade

on women and society, *see generally* Morrison Torrey, When Will We Be Believed? Rape Myths and the Idea of a Fair Trial in Rape Prosecutions, 24 U.C. Davis L. Rev. 1013 (1991).

⁹⁴Nancy S. Erickson, Final Report: "Sex Bias in the Teaching of Criminal Law", 42 Rutgers L. Rev. 309 (Winter 1990); Nancy S. Erickson, Sex Bias in Law School Courses: Some Common Issues, 38 J. Legal Ed. 101 (Winter 1986); Nancy S. Erickson, Legal Education: The Last Academic Bastion of Sex Bias? 10 Nova L.J. 457 (Winter 1986).

⁹⁵Mary Irene Coombs, Crime in the Stacks, or A Tale of a Text: A Feminist Response to a Criminal Law Textbook, 38 J. Legal Ed. 117 (1988).

⁹⁶*See, e.g.*, Nancy S. Erickson and Mary Ann Lamanna, Sex-Bias Topics in the Criminal Law Course: A Survey of Criminal Law Professors, 24 U. Mich. J. of L. Ref. 189, 208 (1990) (even though rape is one of the most frequently included topics in the criminal law course, *i.e.*, elements of the crime were covered by 86.3% of the professors responding to the survey, on average the teachers spent just over one and one-half hours on the topic). *See also*, Susan Estrich, Teaching Rape Law, 102 Yale L.J. 509 (Nov. 1992); James J. Tomkovicz, On Teaching Rape: Reasons, Risks, and Rewards, 102 Yale L.J. 481 (Nov. 1992).

⁹⁷Mary E. Becker, Obscuring the Struggle: Sex Discrimination, Social Security, and Stone, Seidman, Sunstein & Tushnet's Constitutional Law, 89 Colum. L. Rev. 264 (1989).

⁹⁸Lucinda M. Finley, A Break in the Silence: Including Women's Issues in a Torts Course, 1 Yale J.L. & Feminism 41 (1989).

⁹⁹Mary Joe Frug, Re-Reading Contracts: A Feminist Analysis of a Contracts Casebook, 34 Am. U.L. Rev. 1065 (Summer 1985).

point averages in law school.¹⁰⁰ This trend remained consistent throughout the three years of school.¹⁰¹ First-year males were three times more likely to be in the top ten percent than their female counterparts; during their second and third years, men were twice as likely to be in the top ten percent.¹⁰² Because of these disparities, women were under-represented in positions of prominence, such as Law Review (prestigious student academic journal in which membership is usually limited to the top ranking students) and Order of the Coif (honorary society to which the top ten percent of graduating students are elected).¹⁰³

Linda F. Wightman also chronicled the differences in academic performance between male and female law students.¹⁰⁴ She discovered interesting information by comparing both LSAT scores and grade point averages as predictors of success in law school. Previous studies have documented the pattern of higher LSAT scores for men than for women.¹⁰⁵ Consistent with using the LSAT as a predictor of law school performance,

¹⁰⁰Guinier *supra* note 6 at 23.

¹⁰¹*Id.* at 23.

¹⁰²*Id.* at 26.

¹⁰³*Id.* at 27.

¹⁰⁴Linda F. Wightman, Women in Legal Education: A Comparison of the Law School Performance and Law School Experiences of Women and Men, Law School Admission Council Inc. Research Report Series (1996) at 5. This longitudinal study used a base sample which included approximately 29,000 students who entered law school in 1991 at 163 different ABA-approved law schools. *Id.* Her goals in conducting the study were twofold: (1) "to provide data on a national basis to examine issues of gender differences in legal education that heretofore have been studied primarily on a small scale or within individual schools" and (2) "to explore a variety of factors in addition to the traditional predictors in order to expand the definition of background characteristics and other variables that might be related to future academic performance in law school as well as overall satisfaction with law school." *Id.* at 1. In addition to gender, Wightman studied ethnicity (Asian-American, Black, Mexican-American, other Hispanic, and white) and its interaction with gender. The results were even more startling than those for gender alone—adding ethnicity to the prediction equation greatly increases the residual, meaning that ethnicity is a powerful predictor of over- and under-prediction of academic performance in law school. The study found that the residuals between white women and women of color and between white men and men of color are both statistically and practically significant. Essentially, the data shows the largest positive residuals for Black students in law school. The study stressed the importance of ethnicity in predicting under-performance in law school. *Id.* at 23-27.

¹⁰⁵*Id.* at 14, n. 5. This difference is approximately equal to those found in other standardized tests, such as the Graduate Record Examinations ("GRE") Analytical and the Scholastic Aptitude Test ("SAT") Verbal measures, and larger than the differences found in the GRE Verbal, Graduate Management Admission Test ("GMAT") Verbal, and the Medical College Admission Test ("MCAT") Verbal Reasoning measures. *Id.* at 15.

women earn slightly lower first-year grades than men.¹⁰⁶ However, this contrasts with what occurs in other graduate schools where standardized tests under-predict female first-year performance.¹⁰⁷ Furthermore, women traditionally earn higher grades than men in high school, undergraduate school and graduate schools other than law school. Thus, the undergraduate grade point average over-predicts female first-year performance.¹⁰⁸ In other words, one would expect women would continue their stronger previous academic performance, enabling them to surpass their male law school classmates' grade point averages.¹⁰⁹ The study, however, concluded that "many female law students are not performing academically as well as they could be or should be in the current legal education environment."¹¹⁰

Noting the disparity of performance between male and female students, Linda Hirshman calculated and prepared a re-ranking of what U.S. News and World Report considers the "top" twenty law schools in America, based on "women's potential."¹¹¹ At a majority of the elite schools reviewed, women did not make law review in proportion to their number in the student body. This differential can be quite extreme: at the 15th-ranked University of Southern California, where 41% of the student population was female, only 26% of the members of law review were women; at the fourth-ranked University of Chicago, where 44% of the student population was female, only 30% of the members of law review were women.¹¹²

The Boalt Hall study confirmed the hypothesis that women do not perform as well as men, at least in the critical first year.¹¹³ An astounding two-thirds of all women thought that their grades did not fairly evaluate their abilities or the time they spent studying.¹¹⁴ Not surprisingly, a

¹⁰⁶*Id.* at 14.

¹⁰⁷*Id.* at 14-15.

¹⁰⁸*Id.* at 15, 27.

¹⁰⁹*Id.*

¹¹⁰*Id.* at 27.

¹¹¹Linda R. Hirshman, Law Schools Where Women Can Excel, *Glamour Magazine* 122 (Sept. 1995).

¹¹²*Id.*

¹¹³Homer & Schwartz *supra* note 49 at 30.

¹¹⁴*Id.*

majority of the women surveyed were dissatisfied with their grades; while a majority of men expressed satisfaction with their academic performance.¹¹⁵

Perhaps one of the contributing factors to this poor performance is the evaluation method used in first-year: typically the entire grade for a course will be based on a closed book, limited time final examination. There are several problems with this: (1) even though anonymous (identified only by an exam number), the gender of the student can fairly accurately be determined in handwritten exams, thus allowing for gender bias, conscious or not, in grading; (2) it provides no interim feedback, which may be more essential for female students who are having to adapt to and become proficient at a pedagogy more suitable to men; and (3) such exams tend to better evaluate responses to time pressure, individualistic merit, and reasoning (considered by many to be male-dominated traits) and less well at evaluating creativity, nurturance and motivation (considered by many to be female-dominated traits).¹¹⁶ We are unaware of any studies validating this evaluation methodology or even establishing that the one set of traits it identifies and rewards are more important than others in order to be a good lawyer.¹¹⁷

D. Perceptions of Self

The gendered law school experience is taking its toll on how female law students think of themselves, especially in their first year. As described above, the hostile classroom has a measurable, detrimental effect on women's self-confidence. Studies report that feelings of powerlessness, alienation, and self-doubt directly result from the law school experience.¹¹⁸

¹¹⁵*Id.*

¹¹⁶See Phyllis Teitelbaum, Feminist Theory and Standardized Testing, at 324-35, in *Gender/Body/Knowledge: Feminist Reconstructions of Being and Knowing* (Alison M. Jaggar & Susan R. Bordo, eds. 1989).

¹¹⁷The student authors are of the opinion that this method is very unlike the practice of law where a prudent attorney takes time to consult other resources before providing an opinion. We do note, however, that it minimizes the time and involvement required of professors utilizing this single exam as the sole evaluation instrument.

¹¹⁸See Krauskopf *supra* note 3 at 328; CBA *supra* note 28 at 32; Guinier *supra* note 6 at 64; Taber *supra* note 53 at 1225; and Weiss & Melling *supra* note 66 at 1299.

It is not unusual for women to even suffer physiological responses to the stress.¹¹⁹

Although women admitted to law school have proven themselves to be academically comparable to men admitted to law school, at least as measured by standardized tests (LSATs) and undergraduate grade point averages, law school results in a diminishment, rather than a development, of their intellectual confidence.¹²⁰ Krauskopf reported that more female students than male (by 20 to 30 percentage points) perceived particular burdens in their environment, and more female students (by 10 to 25 percentage points) indicated lower self-confidence after law school.¹²¹ The differences were even greater between the male sample and the minority-female sample, where women were additionally burdened by their race.¹²²

The Guinier study also noted the link between low self-confidence and poor classroom performance.¹²³ Women are more apt to internalize the absence of positive feedback, even when a professor's aloofness stretches across gender lines.¹²⁴ Several women could not learn in the intimidating environment of first-year classes, reporting that their voices were "stolen" from them. Many female students with academic difficulties blamed themselves; self-aware students sought counseling and/or female peers for support.¹²⁵ Even the women who did well academically commented that they did not recognize their former selves in the "successful law student."¹²⁶

The Brooklyn Law School students had similar responses to the issues confronted by the Penn survey, despite their proportionate academic achievements in relation to male counterparts. Women reported significantly higher rates of anxiety, depression, sleeping difficulties, and crying than male respondents.¹²⁷ The data also revealed that women's discomfort with classroom participation is more likely if that classroom

¹¹⁹Taber *supra* note 53 at 1229.

¹²⁰Krauskopf *supra* note 3 at 328.

¹²¹*Id.* at 334.

¹²²*Id.*

¹²³Guinier *supra* note 6 at 64.

¹²⁴*Id.* at 64.

¹²⁵*Id.* at 43.

¹²⁶*Id.*

¹²⁷Garrison *supra* note 8 at 531.

participation is infrequent.¹²⁸ The authors of the study hypothesize that low participation produces discomfort which in turn produces depression, but it is also possible that depression produces discomfort, which in turn produces low participation.¹²⁹

Taber compared the responses of female and male law students at Stanford on questions involving their coping strategies for stress and psychological distress.¹³⁰ The Stanford study discovered that slightly more women had negative psychological reactions to their law school experience, reporting insomnia, crying spells, and nightmares.¹³¹

The Boalt Hall study also showed how grade performance had a detrimental effect on the women's perceptions of self. Differences between the responses of men and women in terms of their self-perceptions were statistically significant.¹³² Due to their academic performance, 27% of women questioned their ability to practice law.¹³³ Only 19% of men responded similarly.¹³⁴ Thus, it is not a shock that nearly one-third of all women said they only sometimes or rarely felt as competent as others, in comparison to similar responses from a mere 11% of the men.¹³⁵ Sadly, we see that women's perceptions of self deteriorate while in law school as evidenced by the fact that a majority of women (51%) agreed with the statement that they felt intelligent and articulate prior to law school, but not while at Boalt. Only 29% of the male respondents agreed with that statement.¹³⁶

The report about female law students at Yale, containing mostly qualitative data, was shocking in its subjects' candor about their law school

¹²⁸*Id.* at 536.

¹²⁹*Id.*

¹³⁰Taber *supra* note 53 at 1225. It is important at this point to note that Stanford students may have more options upon graduation, regardless of sex, and thus some pressures felt at Stanford may be somewhat different than career pressures felt at other schools.

¹³¹*Id.* at 1221,1227.

¹³²Homer & Schwartz *supra* note 49 at 33.

¹³³*Id.* at 30.

¹³⁴*Id.* As for people of color, the results were similar: 39% of the women of color expressed self-doubts as did 28% of the men of color. *Id.* at 31.

¹³⁵*Id.* at 33.

¹³⁶*Id.* When ethnicity was controlled, the reactions of people of color also showed a consistent pattern—a stunning 57% of the women of color and 41% of the men of color agreed with the statement, compared with only 25% of white men. *Id.*

experience. The women, used to academic success, were extremely self-critical, considering themselves to be failures when they did not live up to their personal expectations.¹³⁷ Additionally, the female students often felt confused by desires to fulfill roles as both wife and mother as well as lawyer; they felt guilt from the realization that they probably could not be successful at both mothering and lawyering.¹³⁸ This inner struggle of being unable to accommodate both ambition and nurturing impulses was a source of alienation for most of the women in the study.¹³⁹

This alienation was also discovered by the ABA's Commission on Women in the Profession: female students frequently reported feelings of isolation from other students (notwithstanding the significant increase in the number of female students in law school), friends, and family.¹⁴⁰ This major study also reported that every study which has focused on female law students has documented the loss of self-confidence as a result of the law school experience.¹⁴¹ No one involved in legal education should be satisfied with a process that results in lower, rather than higher, self-confidence for graduates.

E. Interaction with Faculty

In addition to the problems discussed above, female respondents in many studies expressed strong feelings of alienation from faculty. Women students at Penn indicated they were unable to approach faculty, or, once engaged in conversation, to sustain a useful interaction.¹⁴² Only 40% of the women surveyed felt "very comfortable" interacting with their professors outside of the classroom, whereas 60% of the male students agreed.¹⁴³

Student interaction and perceptions of faculty were also a concern in the Boalt Hall study. The findings at Boalt confirm that women and men have different perceptions of the faculty. Consistent with the findings from

¹³⁷Weiss & Melling *supra* note 66 at 1299, 1318.

¹³⁸*Id.* at 1315-16.

¹³⁹*Id.* at 1318.

¹⁴⁰ABA *supra* note 34 at 12.

¹⁴¹The Commission noted that some data indicate that, overall, men lose as much self-esteem in law school as women, but hypothesized that since men start law school with significantly higher levels than women do, the effect of their loss is not as devastating as it is for women. *Id.* at 13.

¹⁴²Guinier *supra* note 6 at 35.

¹⁴³*Id.*

other studies, 77% of all female respondents felt unsure of themselves when a professor disagreed with them, whereas only 57% of the men felt that way.¹⁴⁴ This study also underscored the need to increase female faculty at our law schools: nearly three-fourths of women said that the small number of female professors deprived them of role models in the legal profession.¹⁴⁵ Furthermore, a majority of women in ethnic categories felt more comfortable with a female professor's approach to the material: 46% of women said they were more likely to speak in a class that was taught by a female professor.¹⁴⁶ White men, however, did not feel a difference in comfort (61%) or participation (72%) levels due to the gender of the professor.¹⁴⁷

Some studies suggest that female professors are perceived as (and may be) more accessible to both male and female students.¹⁴⁸ Unfortunately, while the number of female students enrolled in law schools approaches 50%, faculties are lagging far behind in equal representation.¹⁴⁹ Because the percentage of female law students far exceeds the percentage of female faculty, female professors are often over-extended by the demands to spend more time mentoring students.¹⁵⁰ When female students turn to female

¹⁴⁴Homer & Schwartz *supra* note 49 at 33.

¹⁴⁵*Id.* at 34. Similarly, nearly three-quarters of the students of color felt that the lower number of professors of color had deprived them of a role model in the legal profession. *Id.* at 35.

¹⁴⁶*Id.* at 35

¹⁴⁷*Id.* at 34. Men of color were twice as likely to feel more comfortable or speak in a class taught by a female professor as their white male counterparts. When it came to professors of color, 37% of people of color stated that they were more comfortable to speak in class or approach (47%) such a professor. *Id.*

¹⁴⁸ABA *supra* note 34 at 27; CBA *supra* note 28 at 51.

¹⁴⁹For example, in the top ranked law schools (per U.S. News & World Report), female tenure track or tenured faculty comprise a minuscule percentage of the faculty, especially when contrasted to the number of female students enrolled in the second and third year. For example, there are:

39% students to 13% faculty at Harvard;
42% students to 16% faculty at Michigan;
44% students to 13% faculty at Chicago;
43% students to 15% faculty at Northwestern;
42% students to 17% faculty at Yale.

Hirshman *supra* note 71 at 122.

¹⁵⁰ABA *supra* note 34 at 27.

faculty for advice and counseling, there simply are not enough female professors to perform these mentoring roles.¹⁵¹

A second consequence of having few, if any, female teachers, especially in first-year courses, is that female students' impression of the law and legal education is the implicit portrayal of older white males as the authority on law.¹⁵² At a time when female students are subjected to hostility and harassment, there are few female role models to prove that women can prevail and succeed at law. During their legal education, women feel like outsiders, ultimately alienated from their own sense of being as well as from their peers and faculty.

Having summarized the data about women's experiences in law school, it is important to place those experiences in the continuum of education. Is law school unique, or is it a logical extension of an educational environment that very early on teaches women that they are inferior?

III. THE EDUCATIONAL PROCESS LEADING TO LAW SCHOOL

It should not be surprising that law schools cheat women of an "equal" education—in fact, the situation is simply a continuation of a process that began with kindergarten for most girls. It is ironic that education, often touted as the best means of creating an even playing field for all members of American society regardless of their class, sex, or race, serves to perpetuate subordination.

Free public education, of course, was not always free and open to people of color and women. The original justification for barring women from the schoolhouse was based on both biological and social grounds, described by Florence Howe:

Scientific belief held not only that the brains of women were smaller than those of men, but also that brain size was directly related to intelligence, and that hence women were less capable than men of academic learning. More important, however, was the medical assumption that only one bodily organ functioned optimally at any one time. Thus, if women used their brains during adolescence, their uterine development would be disturbed and their child-bearing abilities impaired, perhaps so severely as to cause the production of malformed or dead infants. Indeed, higher education might in and of itself sterilize

¹⁵¹CBA *supra* note 28 at 51.

¹⁵²*Id.* at 50.

women...[F]or the female scholar, intense study directly inhibited her ability to bear children, or to bear healthy normal ones, capable of surviving past infancy.¹⁵³

Not until the latter part of the 19th century were girls admitted to public elementary schools. It took almost 200 years after the first American college was founded for women to be allowed to attend a coeducational college (although they had a different program of study from the males) and the first female undergraduate program began.¹⁵⁴ It took Emancipation before female slaves were entitled to public education; before that many states made it a crime to teach slaves to read.¹⁵⁵ Unfortunately, even though women are now, for the most part, admitted to public schools,¹⁵⁶ gender bias is still prevalent.

In 1994 Myra and David Sadker, after decades of studying sexism in education, published a devastating critique of public school education, entitled Failing at Fairness: How America's Schools Cheat Girls. The authors found persistent patterns of teaching, both conscious and unconscious, which subordinated girls: "[s]itting in the same classroom, reading the same textbook, listening to the same teacher, boys and girls receive very different educations."¹⁵⁷ For instance, girls receive less attention from the teacher while males get more attention, interact more with the teacher, and are asked better questions.¹⁵⁸ When teachers spend more time with the boys, both boys and girls learn that girls do not deserve attention. Even today most textbooks fail to include women or portray them in rigid sex role stereotypes (limited to wife and mother); from these

¹⁵³Florence Howe, Myths of Coeducation 210 (1984), cited in Mary Becker *et al.*, Cases and Materials on Feminist Jurisprudence: Taking Women Seriously at 645 (1994).

¹⁵⁴Becker *supra* note 9 at 645-46, citing Deborah L. Rhode, Association and Assimilation, 81 Nw. U. L. Rev. 106, 128-36 (1986).

¹⁵⁵Becker *supra* note 9 at 646, citing Angela Y. Davis, Women, Race & Class 106 (1981).

¹⁵⁶Not until 1996 did the Supreme Court hold that all-male public military colleges must admit women. U.S. v. Virginia, 518 U.S. 515 (1996) (the Virginia Military Institute's categorical exclusion of women denies equal protection to women). As a result, the Citadel, the only other all-male public military college, has also admitted women to the class of 2000. See Sybil Fix, The Post and Courier, Sixth woman applies for Citadel admission, Aug. 8, 1996, § B, pg. 4.

¹⁵⁷Sadker and Sadker, Failing at Fairness 1(1994).

¹⁵⁸*Id.* at 1. The Sadkers do not suggest that this bias is conscious. Rather, they believe it is so pervasive and "normal" that it becomes invisible. In fact, when teachers were asked why they spend more time helping the boys, responses were often "because boys need it more" or "boys have trouble reading, writing, doing math. They can't even sit still. They need me more." *Id.* at 5.

portrayals girls learn that to be female is to be absent in the development of our society.¹⁵⁹

Sexual harassment by male students, and sometimes teachers, reinforces this denial of full participation to girls: sexually denigrating comments, pinching, touching, propositioning, sexual assault, and other forms of harassment tell girls they are sexual objects for boys to enjoy, humiliate, and even terrorize.¹⁶⁰ Typically, girls internalize this harassment and remain silent rather than protesting. Ultimately, this and the other lessons of silence result in girls growing quieter as they grow older. In coeducational college classes women are less likely to speak than they would have been in grade school.¹⁶¹ The Sadkers summarize the results of these patterns of sexism:

Each time a girl opens a book and reads a womanless history, she learns she is worth less. Each time the teacher passes over a girl to elicit the ideas and opinions of boys, that girl is conditioned to be silent and to defer. As teachers use their expertise to question, praise, probe, clarify and correct boys, they help these male students sharpen ideas, refine their thinking, gain their voice, and achieve more. When female students are offered the leftovers of teacher time and attention, morsels of amorphous feedback, they achieve less.

Then girls and women learn to speak softly or not at all; to submerge honest feelings, withhold opinions, and defer to boys; to avoid math and science as male domains; to value neatness and quiet more than assertiveness and creativity; to emphasize appearance and hide intelligence. Through this curriculum in

¹⁵⁹*Id.* at 6-8. The Sadkers refer to analyses performed in the 1970s of the best-selling history books:

More space was given to the six-shooter than to the women's suffrage movement. In fact, the typical history text gave only two sentences to enfranchising half the population. Science texts continued the picture of a one-gender world, with the exception of Marie Curie who was permitted to stand behind her husband and peer over his shoulder as he looked into a microscope. [Marie Curie is the only person to be awarded the Nobel Prize in two different fields.]

Id. at 7. Regrettably, the Sadkers have found that the history and science textbooks used today have not improved much. *Id.* Dale Spender states that in almost every form of curriculum material there are more images of men than women, and women are most often represented in a reproductive capacity. Dale Spender, *Education or Indoctrination?* in *Learning to Lose: Sexism and Education* (Spender & Elizabeth Sarah, eds., 1988) at 25.

¹⁶⁰Sadker and Sadker *supra* note 157 at 9.

¹⁶¹*Id.* at 10.

sexism they are turned into educational spectators instead of players; but education is not a spectator sport.¹⁶²

The effect of this secondhand education is a "loss of self-esteem, decline in achievement, and elimination of career options."¹⁶³

But girls do not start out as secondhand students. In the early grades, girls score higher or equal to boys in almost every standardized measure of achievement and psychological well-being.¹⁶⁴ By the time they graduate from high school and college, however, they have irretrievably lost ground: in high school girls score lower on SAT and ACT tests, resulting in more scholarships and loans awarded to boys. Later, women score lower on all sections of the Graduate Record Exam as well as on most other tests needed to enter professional schools.¹⁶⁵ Even worse, girls often internalize these gender biases, causing problems that extend beyond academics: life-threatening eating disorders among girls are rampant; teen-age pregnancy forces girls out of school; and, as they progress through school their self-esteem plummets and the incidence of clinical depression climbs.¹⁶⁶

Another, perhaps more fundamental pedagogical concern, is whether boys and girls actually learn differently. Some studies seem to "indicate that girls learn better through collaboration and 'connected' knowing, and boys thrive on individualistic, aggressive styles."¹⁶⁷ Regardless of these

¹⁶²*Id.* at 13.

¹⁶³*Id.* at 1.

¹⁶⁴*Id.* at 13.

¹⁶⁵*Id.* at 13-14. See also, Katherine Connor and Ellen J. Vargyas, The Legal Implications of Gender Bias in Standardized Testing, 7 Berkeley Women's L.J. 13 (1992). In an essay exploring sex bias in college admissions tests and the consequences of the score differential for women, Phyllis Teitelbaum asserts that these standardized tests are formatted to reflect an androcentric type of learning, e.g., quantitative and solitary rather than social and emotional. Many questions are subjective and value-laden; multiple-choice questions are dualistic and must be selected as "right" or "wrong" without any degree of variation; and "feminine" skills such as creativity, nurturance, and motivation are not tested while time pressure, individualistic merit, reasoning, and other male-dominated traits are. Teitelbaum, Feminist Theory and Standardized Testing, in Gender/Body/Knowledge: Feminist Reconstructions of Being and Knowing 328-30 (Alison M. Jaggar & Susan R. Bordo, eds., 1989).

¹⁶⁶Sadker and Sadker *supra* note 157 at 14.

¹⁶⁷Becker *supra* note 9 at 646, [Mary Field Belenky, Blythe McVicker Clinchy, Nancy Rule Goldberger, and Jill Mattuck Tarule, Women's Ways of Knowing: The Development of Self, Voice, and Mind 102 (1986).]

studies, maybe even in spite of them, the norm remains the learning style at which men excel—competition rather than cooperation.¹⁶⁸

According to Barbara Anne Murphy, schools actually “amplify” sex roles and sex stereotypes;¹⁶⁹ they teach boys and girls that girls are inferior and indoctrinate girls to accept their inferior status:

As part of the system of patriarchy, education plays an active role in perpetuating the status quo of unequal social and economic roles of women and men within our society. The educational system perpetuates this status quo through the quality of the curriculum, through the quality of the educational environment, and through subtle discrimination tactics.¹⁷⁰

Unfortunately, law school appears to perpetuate all of the problems identified above.

In law school, women are also absent from most of the texts, or portrayed in stereotypical fashion as victims, prostitutes, or gold-diggers. In other words, law school texts are not much different than grade school texts in how they deal with women, over one-half of the population. Additionally, the law school studies discussed in Part II documented how males garner more classroom attention, asking and answering more questions than female students. Women are discouraged from evaluating cases on their own terms, emotional as well as intellectual. The Socratic method thrives on competition between teacher and student, and infuses the classroom with hostility rather than cooperation. The single, end-of-term, limited-time examination frustrates many of the “feminine” skills, instead emphasizing and rewarding the more “masculine” skills. Sexual harassment by both peers and professors is rampant. From the classroom full of portraits of distinguished alumna, all white and male, to the disproportionately large number of male students on law review at many schools, women are made to feel unwanted and less worthy of becoming lawyers.

¹⁶⁸Dale Spender asserts that stratification is fundamental to maintaining male supremacy, and that competition is a (male) by-product of stratification. She believes that education should be a cooperative venture, but, in the male view, cooperation constitutes cheating. This institutional bias against cooperation further inhibits women’s learning processes. Spender, *Educational Institutions: Where Cooperation is Called Cheating*, 39-47, in *Learning to Lose: Sexism and Education* (Spender & Elizabeth Sarah, eds. 1988).

¹⁶⁹Barbara Anne Murphy, *Education: An Illusion for Women*, 35 Cal. Rev. of Law and Women’s Studies 19, 28 (1993).

¹⁷⁰*Id.* at 49.

Thus, sadly, we see that law school is not the beginning of an inferior education for women, but simply a continuation of a lifetime of learning filled with sexism and subordination.

IV. STRATEGIES TO COPE WITH AND FIGHT AGAINST SEXISM IN LEGAL EDUCATION

As the information above so strongly shows, legal education is rife with gender bias against women. In a way, Parts II and III are a type of "consciousness raising."¹⁷¹ The next step is to consider strategies for both coping with and challenging the law school experience. The student authors feel strongly that our first year would have been much less painful if we had been more prepared—both in terms of awareness and ability to protest. We offer strategies at two levels, both micro (personal) and macro (institutional).

A. Micro-Level Strategies: The Female Law Student

While matriculating law students of both genders are kept in the dark about what first year (and law school in general) is all about, this anxiety-ridden situation is exacerbated for female students who also suffer from discrimination. Female students often experience these effects without ever identifying the nature and cause of the stress they feel. First-years quickly learn that the only people who want to talk with them about law school are those who are equally involved and confused—fellow students. As a result, the first-year woman usually does not have an informed and available source when she is feeling alienated, powerless, and unwanted. It is likely that she has no one to provide advice about how to survive a hostile class,

¹⁷¹Consciousness raising is considered by many feminists to be the essential methodology for uncovering women's reality. See, e.g., Becker *supra* note 9 at 52-59. The authors had an opportunity to present portions of this article to first-year female students at DePaul University College of Law at a program sponsored by the DePaul Women's Law Caucus. It became obvious to the authors, and all present, that while the first-year female students were experiencing many of the problems and traumas identified in the studies summarized in Part II, they (1) ascribed their reactions to individual failures, not systemic discrimination, and (2) believed they alone had these feelings of inadequacy. This is not an uncommon occurrence. Homer and Schwartz write that the women in their study were "unaware that these responses were commonplace and valid. Indeed, a substantial number of women were genuinely shocked to find that they were not alone in their feelings, which they had attributed to personal failings..." Homer & Schwartz *supra* note 49 at 4. Several second and third-year women attending the program expressed shock and sudden realization that what they had felt during first-year resulted from a gender-based, common experience.

what to do about sexual harassment she may experience, or to direct her to any resources intended to help her cope.

1. Speak Often and Speak with Authority

The hostile atmosphere of the first-year classroom can be met head-on with two simple strategies: speak often and speak with authority. As the above discussion demonstrates, it is well-documented that women contribute less than men to classroom discussion for many reasons, including anger and intimidation. Silence, however, offers no more than subsistence survival for women; to be a productive law student, women must force themselves to speak. The student authors discovered that women participating in class serves a larger purpose than individual goals (such as reasoning through a particular issue or keeping yourself involved in the discussion): the female student's voice enriches the classroom experience for all by including the female perspective. It also asserts that women belong in the classroom and will not be forced out.¹⁷²

The problem is how to enable yourself to speak in what is, essentially, a hostile environment. One of the student authors got over her stage fright when she became so angry by the discussion occurring that she was oblivious to the "correctness" of her response; she simply reacted and did not consider any repercussions. And she does not regret speaking. One female professor offers suggestions for the fearful student: (1) get together with a friend and have him/her take notes for a one-half hour period while

¹⁷²Homer and Schwartz offer an alternative interpretation of silence in the classroom:

[There is] an underlying assumption that silence is a personal failing of women rather than a healthy reaction to an unreceptive academic setting...[There is a] possibility that students' disinclination to participate may result from boredom, hostility, or the accurate perception that their consciousness is unwelcome in a learning process distinctly keyed to mainstream legal premises and doctrine.

Silence may be perceived as a manifestation of [Mari] Matsuda's theory of dual consciousness; it can be a viable tactic rather than a sign of inadequacy. Some women (and men) simply may not want or need to speak in response to an interrogation technique they find insulting to their privacy and dignity. Forced classroom participation may be irrelevant to the nature and quality of learning for many students and is justified only for the convenience or ego gratification of the professors. Silence appears to have evolved into a deliberate expression of resistance by many students to an educational system unresponsive to the free expression of nonconforming ideas.

Homer and Schwartz *supra* note 49 at 38. While we recognize that silence can be a form of resistance, we offer these suggestions for women whose classroom silence is not a conscious choice.

you compose yourself to speak; (2) pretend you are playing a "role;" (3) be an advocate for a certain view, *i.e.*, think of yourself as a "lawyer"; (4) talk to your friends after class for feedback and reassurance that your contribution was meaningful; and (5) don't hesitate to visit your professor during office hours to explain to him/her that you are working on participating more in class.¹⁷³ Remember that most first-year grades are based on the single, end-of-term exam and do not factor-in classroom participation; therefore, any comments you make in class are highly unlikely to affect your grade.

Learn from the Yale first-year women and form a support network with other women in your class. Perhaps you could agree that at least one of you will speak every day in class. Encourage other women to speak out in class to "liberate" class discussion. After class, be supportive and tell women who speak in class that you appreciate their efforts and insights.

Once you begin to speak, in order to succeed in an institution whose values and methods of assessment are driven by a male norm, it is important to choose your words carefully and speak them loudly and assertively. Language scholars have identified hyper-correct grammar, super-polite forms, and questioning as distinctive characteristics of women's speech. Specifically, women were found to: (a) ask more questions; (b) make statements in a questioning tone; (c) use more tag questions ("don't you think?"); (d) lead off with questions to ensure a listener's attention; and (e) to use more "hedges" or qualifiers and intensifiers ("really").¹⁷⁴ To be taken more seriously in the male domain, it may be necessary to adopt the more "masculine" speech patterns.¹⁷⁵ However, note that this strategy is not without its drawbacks: not only may you have to learn what may amount to a new language, but you may be tagged as "unfeminine" or too aggressive.

On the other hand, the more difficult task would seem to be to force the class to accept, appreciate, and learn from the more "female" style of communication, which tends to be collaborative, as opposed to competitive and individualistic. Patterns which seem to be central to speech among

¹⁷³See Stephanie M. Wildman, *The Classroom Climate: Encouraging Student Involvement*, 4 Berkeley Women's L.J. 326, 329-30 (1989-90).

¹⁷⁴See generally, Robin Lakoff, *Language and Woman's Place* 53-6 (1975).

¹⁷⁵The student authors witnessed male (and some female) classmates immediately discount the female student in our class who began every answer with: "I don't know if this is right, but..." Moans and groans when she said this signified that she was not taken seriously as soon as she began speaking, regardless of the content of her comments.

women are only seen as “weaker” or less valuable when contrasted to the “male” norm of domination.¹⁷⁶ The challenge is to affirm rather than deny patterns found in women’s speech, asserting their equal validity in the study and practice of law.

2. Seek a Safe Place

Although the classroom is often the biggest hurdle for female law students, the negative effects of competition—more strongly felt by women—can also be experienced in the libraries, lounges, and cafeterias where law students study. As a first-year, one of the authors was so intimidated by the race to get the “best” outlines, make appointments with professors, and compare how much work one had done the prior weekend, that she consciously interacted only with the five women of her study group while preparing for final exams. Study groups, typically composed of five or fewer students who collaborate on course outlines and class preparations, can be extremely productive; you may wish to consider an all-women group. The benefits of an all-women study group are numerous: sharing fears often normalizes the experience, other women may have developed valuable coping techniques, and shy classmates with valuable insights may feel more comfortable speaking.

Another solution is simply to avoid the competitive study environment by shunning the libraries, lounges, and cafeterias where frenzied students are most visible. Instead, study at undergraduate libraries or even public libraries.

3. Safety in Numbers

Seriously consider joining the school’s women’s organization, usually the Women’s Law Caucus. These groups are open to first-year students and sometimes assign them to upperclass mentors. A women’s law organization offers a forum for women’s voices and a connection to female alumnae, often a valuable resource. You can ask the group to sponsor programs about the first-year experience, sexual harassment, studying for exams, and any other concerns you may have. The group’s office can also

¹⁷⁶See Barrie Thorne, Cheris Kramarae, and Nancy Henley, *Language, Gender and Society: Opening a Second Decade of Research*, in *Language, Gender and Society* 7, 18-19 (Thorne, Kramarae, and Henley, eds. 1983).

be a depository for materials addressing gender bias in law schools, for example, copies of the studies cited in this article.

Students often undervalue the power of petitions to convince the administration to remedy discrimination. A written demand, supported by a substantial number of signatures, can be quite persuasive, especially during times of diminishing applicant pools. Law schools do not want negative publicity about the treatment of almost half of their student population and target group for recruitment.

Finally, encourage your classmates to take faculty evaluations seriously. Although the anonymity provides protection, it also renders comments more suspect. Take the time on the evaluation to be specific, providing examples to illustrate your comments. Meet with other students before the date of evaluations to formulate credible critiques that will have the most impact.¹⁷⁷

4. *Keep a Journal*

Keep a journal to record events that occur and your responses, being as candid as possible about feelings of marginalization, helplessness, or other reactions, even if you are ashamed or embarrassed of them. The act of recording events and feelings can be a way to make the events more real (not just something you imagined as a hyper-sensitive, over-emotional woman) and to validate your reactions. The journal can serve as a "safe" outlet in an atmosphere which puts women's speech at risk and which is not conducive to personalized discourse. Furthermore, the journal represents written documentation for later use, whether you are comparing notes with female peers or making a more formal complaint.

A journal also can be used as a type of class "record," documenting what happens in the classroom, *e.g.*, keeping track of the number of male versus female students called upon or volunteering, the amount of time

¹⁷⁷Evaluations can be problematic for female faculty members. For instance, female professors' teaching evaluations may suffer if they are being judged against a "male" standard (typically more Socratic, aggressive, and authoritarian). One friendly reader frequently receives comments such as "she needs to nail people more"; "sometimes creates the impression that everyone is right, in one way or another"; and "she lets people blather on too long—shut them up!" Based upon the data reviewed in Part II, these kinds of remarks may be gender-based as well, *i.e.*, it is more likely that male students will rate female professors negatively if they do not comport to the "male" standard. These kinds of comments can adversely affect female teachers' promotion and tenure potential. Students should consider urging schools to revise evaluation forms so that, while still maintaining anonymity, the gender of the respondent is obtainable (and race if anonymity can still be preserved). Review your school's evaluation instrument and consider other revisions that will more easily and appropriately reflect any gender dynamics occurring.

each student speaks, the professor's response to their comments, and sexist remarks which may be uttered in class. Perhaps the responsibility for the simple recording of classroom occurrences could be shared by many students, so that no one female student must focus solely on recordkeeping to the detriment of her own class participation.

5. Formally Address Your Concerns

A personal experience with sexism in law school can be addressed in different ways in different fora. In the classroom, everyone present may benefit from an immediate and direct vocal confrontation of the gender issue.¹⁷⁸ Women are experts when it comes to gender bias, and clearly can speak with authority on the issue. Their perspectives and analysis can provide valuable insight to the rest of the class. However, female students who are not comfortable with such a direct public confrontation have the option to meet with the professor after class to raise the issue. Unless circumstances indicate differently, many professors do not want to sanction, implicitly or explicitly, gender discrimination in their classrooms. A friendly discussion during office hours may be all that is required for the problem to be aired and for a solution to be found.

Unfortunately, when a complaint is too serious to be addressed at the time and place of the offense, more formal procedures may be necessary. Every law school either has, or should have, a formal complaint procedure. When you arrive at your law school, ask for a copy of your school's policy if it is not automatically included in your orientation materials. Insist that the policy be given to all students if it has not already been distributed. Familiarize yourself immediately with the policy so that you are aware of the kind of conduct the school says it will not tolerate. If your school does not have a gender discrimination policy, begin a campaign to force the school to adopt one. In seeking advice about complaints, consider the Dean of Students and other administrative personnel who are there to assist students. If you do not feel comfortable consulting them, seek the university's sexual harassment officer for advice.

¹⁷⁸See Angela P. Harris and Marjorie M. Schultz, *Another Critique of Pure Reason: Toward Civic Virtue in Legal Education*, 45 Stan. L. Rev. 1773 (1993). Marjorie Schultz finds that the presence of formerly excluded groups in the classroom results in their comments (admittedly spoken less often and less freely than those by the white males) raising fundamental challenges to the ordinary classroom dialogue.

6. Activism in Your Own Law School Community

There are many ways that a student can become active in changing her own law school environment. However, these strategies involve other members of the community as well—administration, professors, and other students.

We believe that law school faculties are responsible for fostering a healthy atmosphere, conducive to learning, for all students. You should demand that professors refuse to tolerate bias of any kind in their classroom or work environment. Professors of both sexes should strive to make their classroom a safe environment for all students to freely discuss their ideas, provided that the discussion does not silence students who have historically been excluded from the debate, *i.e.*, women and other students of color.¹⁷⁹ You might consider drafting a “Statement of Intention to Not Permit Racism and Sexism in the Classroom” and ask all teachers to sign the statement. You can then post the endorsed statement on bulletin boards and publish it in the school newspaper, noting those teachers who refused to sign.

You can encourage faculty to more directly incorporate substantive material addressing women’s issues and concerns, and, in the process, identify gender implications of rules and practices which might otherwise appear “neutral” or “objective.” When professors adopt materials that ignore women and/or represent them in limited and limiting ways, students should object in teacher evaluations, petitions, and other public ways. There are now sufficient articles critiquing the traditional presentations so that no professor can legitimately plead ignorance about the concerns of almost half of their students. If there are no non-discriminatory casebooks in the substantive area, professors should assign supplementary materials to correct the bias.¹⁸⁰

The curriculum itself should be scrutinized carefully by female students. It is imperative for all students, male and female, to have a voice—through surveys, representation on curriculum committees, or semester-end evaluations—in selecting the courses that are offered.

¹⁷⁹We do not discuss hate speech codes in these recommendations, but they are another response to the extraordinary increase in hostility towards minority and female students during the past two decades. For an exploration of hate speech codes, see Becker *supra* note 9 at 718-26.

¹⁸⁰A good source of such materials for every substantive area is Sharon Rush, *et al.* eds., Feminist Jurisprudence, Women and the Law: Critical Essays, Articles and Bibliographies (1997).

Courses in Feminist Legal Theory,¹⁸¹ Sex Discrimination, and Women and the Law should be offered on a regular basis, acknowledged as a legitimate and important part of the curriculum. Often these classes become a safe haven for students to share and explore their feelings and thoughts about the patriarchal nature of the law without feeling threatened. In some instances it may be appropriate to limit enrollment to women only.¹⁸² Enroll in as many of these courses as you possibly can; the more informed you are about how the law subordinates women, the more comfortable you will be in challenging that subordination.

In terms of how students are evaluated, you should ask any teachers who continue to give handwritten, limited time, closed book exams to reconsider. There is no valid pedagogical reason why professors cannot give take-home exams which are to be typed, particularly since this format seems to be the least discriminatory for all students.¹⁸³ The administration should be lobbied to encourage and facilitate take-home exams; after all, it will mean fewer employees necessary to monitor exams.

All professors should be required to hold sufficient office hours to permit all students an opportunity to consult with them, especially for classes which continue for a second term. This is essential not only during the semester, but also to provide appropriate feedback to students after exams. This allows students to complete the educational component of the course. A grade standing by itself is not very helpful to students wanting to know how to improve their skills and develop exam-taking strategies.¹⁸⁴ Consulting with professors outside of class, during office hours, may be especially important to female students who are struggling to succeed in the law school environment. Of course, students should exercise initiative in making appointments and being prepared in order to make that time productive.

¹⁸¹There are now at least four nationally recognized casebooks on feminist legal theory: Mary Becker, et al. *Cases and Materials in Feminist Jurisprudence: Taking Women Seriously* (1994); Beverly Balos & Mary Louise Fellows, *Law and Violence Against Women: Cases and Materials on Systems of Oppression* (1994); Katharine T. Bartlett, *Gender and Law: Theory, Doctrine, Commentary* (1993); and Mary Joe Frug, *Women and the Law* (1992).

¹⁸²For a discussion of one all-female course, see Melissa Harrison, *A Time of 'Passionate Learning': Using Feminism, Law, and Literature to Create a Learning Community*, 60 Tenn. L. Rev. 363 (1993) (a group of third-year female students solicited a professor to direct an independent study in feminist theory and the law because no such course was offered in the regular curriculum).

¹⁸³ABA *supra* note 34 at 18, 39-40.

¹⁸⁴The student authors experienced a great deal of frustration with professors who refused to review exams with them after the semester ended.

Students should ask all female professors to be available for advising female students about issues of concern. While this might represent an additional strain on female teachers who may already have an overload of committee and other assignments (because there are not enough female faculty to provide for the "representation" of women in such groups), students should tell the teacher how important this is to them. There are many options available: (1) formal mentoring relationships could be established; (2) teachers could meet with student groups on an informal but regular basis, *e.g.*, every Tuesday a female professor (on a rotational basis) would lunch with female students in the cafeteria; (3) students could be hired as research assistants; or (4) limited opportunities, such as Guided Research or Independent Study, could be made available to female students. At the beginning of the school year, the Women's Law Caucus should sponsor a program in which all female law professors are invited to attend, introduce themselves, and talk about their work.

All law school administrations have a duty to ensure that every student receives an equal, harassment-free education. Orientation Week is the perfect time for the administration to articulate this duty and to explain its non-discrimination and sexual harassment policies, emphasizing its intent to enforce such policies fully.¹⁸⁵ All students will then be on notice about conduct which will not be tolerated. Upper class students should receive the written policies every year in order to reinforce the administration's commitment. If your law school is not doing this, go to the Dean of Students and ask that the administration agree to do so next year.

The administration itself should minimize the effects of a hostile atmosphere by sponsoring programs, dialogues, and other means of communication focusing on concerns of female students. Be creative in providing suggestions to the administration about what it can do, *e.g.*, in addition to sponsoring panels of female graduates talking about how they accommodate personal and professional lives, ask the library to showcase articles and books by women and materials addressing women's concerns.

Maintaining an open communication vehicle is important if the administration wishes to quickly identify and remedy problems which may

¹⁸⁵Orientation Week can provide other opportunities as well. For instance, DePaul University offers undergraduates a "Discover Chicago" program. In 1996, the Director of Women's Studies developed an all-women orientation group which experienced an intense immersion into feminism in Chicago, talking with Chicago's feminist leaders (including the president of the Chicago chapter of NOW and former gubernatorial candidate Dawn Clark Netsch), watching a female condom demonstration, viewing a women's art studio, visiting the Women's Self-Employment Project, and, finally, volunteering at a homeless women's shelter. Orientation Week could be a vehicle for discussing experiences of female and minority law students in order to alert incoming first-years.

arise. In fact, the ABA Report suggests that schools establish a standing committee to address gender issues.¹⁸⁶ Deans should actively solicit regular input from women's organizations. It may be necessary for the Women's Law Caucus to initiate this relationship.¹⁸⁷

Finally, as suggested by many studies, more female law professors should be hired, especially to teach first-year classes.¹⁸⁸ Both the faculty and administration should understand the need for more female teachers and commit to recruiting and hiring women in order to redress male-heavy teaching rosters. Student representatives should be active in articulating this need and in achieving it through their participation as members on Faculty Hiring Committees.

B. Macro Level Strategies: The Institution of Legal Education

What we now know about gender discrimination in legal education mirrors what we have known about women practicing law: the outright exclusion of women has been replaced by subtler forms of discrimination against them.¹⁸⁹ What we do not know is whether women will simply leave the profession or stay and restructure the legal workplace to meet their needs. However, since the number of women attending law school remains fairly stable, women who want to maximize their law school education will have to meet a daunting challenge.¹⁹⁰

All of the individual strategies suggested above must be instigated on a mass level as well. We are not talking about simply stopping sexual harassment (which has proven to not be so simple over the past thirty years); what is necessary is a transformation in what is taught, the way it is taught, and who teaches it. The dominant legal ideology of analytical reasoning must recognize the validity and power of emotions and

¹⁸⁶ABA *supra* note 34 at 46.

¹⁸⁷While we recognize this places a great deal of the responsibility on women's groups, it reflects a reality in which many law school administrations simply do not initiate relationships with student groups.

¹⁸⁸See CBA *supra* note 28 at 59.

¹⁸⁹See The First Year Report of the New Jersey Supreme Court Task Force on Women in the Courts (1984), reprinted in 9 Women's Rts. L. Rep. 129 (1986). By the mid-nineties, over 27 states and the District of Columbia had issued gender bias reports.

¹⁹⁰While the student authors, recognizing the enormity of the challenge, believe that no change is too small, the older, more worn-out law professor believes that anything short of a revolution is too small.

experience in establishing a system of justice. As has been said so often, the diversity that women and people of color can bring to the enterprise will enrich, not diminish, the law.¹⁹¹ How can this be achieved?

First, all law schools must reaffirm their commitment to non-discrimination, issuing policies and enforcing them. The Dean should appoint a standing Committee on Gender Issues (composed of students, faculty and administration) to provide not only advice but also an appropriate place where complaints and problems can be lodged.

Second, all law schools should require every student to be competent in less adversarial skills, such as interviewing clients and alternative dispute resolution, as well as more traditional adversarial skills, generally associated with litigation. Not all lawyers will be litigators; and, even if they are, the daily tasks involved in lawyering are more dependent on "people" skills.¹⁹²

Third, all professors should be encouraged to incorporate perspectives and experiences different from the white male "norm" in their teaching, especially in order to expose the falsity of the concept of their, or anybody else's, "neutrality."

Fourth, since women are a majority of the population, it would not seem unreasonable to require all students to take at least one course focusing on women in order to be considered competent to practice law.

Fifth, the classic law school teaching pedagogy, the Socratic method, must be eliminated or substantially modified. If, as much data suggests, women and men learn differently, why should the process favoring men be exclusively used at law schools, or even dominant? Given the historical and continuing oppression of women, it is only fair to utilize a teaching method which does not contribute to this oppression. At the very least, professors should incorporate both styles, especially since there is no evidence that a more cooperative and collaborative learning environment would adversely affect men. We might discover that both male and female

¹⁹¹Of course, this diversity should be expanded to include people of all sexual orientations and physical abilities.

¹⁹²Although, as a former trial attorney, the law professor believes that aggression in the courtroom is not always productive. Being a person that the jury can believe and trust is essential; adversarial hired guns are typically not all that attractive to anyone, much less juries, except in movies and the minds of the culprits themselves.

law students learn better when not subjected to the tyranny of the Socratic method.¹⁹³

Finally more women and people of color must be hired to teach at every law school in the country. At no school are female teachers represented in proportion to female students; white male teachers are over-represented.

Law schools that are recalcitrant in embracing these suggestions need to be exposed. It is the responsibility of all faculty, graduates, students and applicants to ask their school how it is responding to gender bias.¹⁹⁴ Why should women attend institutions which intentionally maintain a sexist environment, particularly in times of declining applications?¹⁹⁵ Accreditation should be withheld from any school not willing to establish and implement a plan to eliminate gender bias at their institution.

CONCLUSION

We are now armed with enough substantive data to object to the current status of legal education. There can be no doubt that law schools and legal education implicitly favor men over women in almost every way imaginable. But it does not have to be this way; there is no evidence that the profession will be destroyed if the subordination of women is ended. This article documents the multiple forms and manifestations of gender bias in legal education for the sole purpose of motivating us all to change it. As teachers, we are responsible for providing the best learning experience for all students. As students, we are responsible for protesting and changing any learning experience which diminishes rather than enriches us. What are we waiting for?

¹⁹³The point here, as throughout this article, is not to benefit women at the expense of male law students. We do not believe that any of our suggestions will be detrimental to male students; in fact, we believe their legal education will be enriched as well. It is essentially a masculine proposition that if women win, men lose; women believe we can both win.

¹⁹⁴Mary Becker has provided an excellent guide for applicants, even providing specific questions. See Mary Becker, Questions Women (and Men) Should Ask When Selecting a Law School, 11 Wis. Women's L. J. 417 (1997).

¹⁹⁵Jennifer Gerarda Brown proposes an answer to this question that deserves serious consideration: the founding of a women's law school devoted to single-sex education. Brown, To Give Them Countenance: The Case for a Women's Law School in the 1990s (paper on file with authors). Using the successes of women's organizations (such as legal sororities, women's clubs, and women's colleges) as historical examples of institutions where women derived encouragement and a sense of legitimacy, she convincingly argues that an all-female environment can counter what she identifies as the three central problems for women in legal education: alienation, silence, and underachievement. She is pragmatic, offering solutions for legal and practical obstacles to her proposition.

APPENDIX A

American Bar Association Commission on Women in the Profession, Elusive Equality: The Experiences of Women in Legal Education (1996).

Banks, Taunya Lovell, Gender Bias in the Classroom, 14 So. Ill. L. J. 527, 528 (1990).

Banks, Taunya Lovell, Gender Bias in the Classroom, 38 J. Legal Educ. 137 (1986).

Garrison, Marsha, Brian Tomko, and Ivan Yip, Succeeding in Law School: A Comparison of Women's Experiences at Brooklyn Law School and the University of Pennsylvania, 3 Mich. J. of Gender & Law 1 (1996).

Guinier, Lani, Michelle Fine, and Jane Balin, with Ann Bartow and Deborah Lee Stachel, Becoming Gentlemen: Women's Experiences at One Ivy League Law School, 143 U. Pa. L. Rev. 1 (1994).

Granfield, Robert, Conceptualizing the Different Voice: Women, Occupational Goals, and Legal Education, 16 J.L. & Pol'y 1 (Jan. 1994).

Hirshman, Linda R., Law Schools Where Women Can Excel, Glamour Magazine at 122 (Sept. 1995).

Homer, Suzanne and Lois Schwartz, Admitted But Not Accepted: Outsiders Take an Inside Look at Law School, 5 Berkeley Women's L.J. 1 (1989-90).

Krauskopf, Joan M., Touching the Elephant: Perceptions of Gender Issues in Nine Law Schools, 44 J. Legal Educ. 311 (1994).

Law School Outreach Project of the Gender Bias Free Jurisprudence Committee of the Chicago Bar Association's Alliance for Women, Women Students' Experiences of Gender Bias in Chicago Area Law Schools: A Step toward a Gender Bias Free Jurisprudence (1995).

Mertz, Beth Mertz with Wamucii Njogu and Susan Gooding, Race, Gender, and Status in Law School Education: A Study of Eight Contracts Classrooms (1997)(submitted for publication).

Taber, Janet, Marquerite T. Grant, Mary T. Huser, Rise B. Norman, James R. Sutton, Clarence C. Wong, Louise E. Parker, and Claire Picard, Gender, Legal Education, and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates, 40 Stan. L. Rev. 1209 (1988).

Weiss, Catherine and Louise Melling, Gender and the Law: Essay. The Legal Education of Twenty Women, 40 Stan. L. Rev. 1299 (1988).

Wightman, Linda F., Women in Legal Education: A Comparison of the Law School Performance and Law School Experiences of Women and Men, Law School Admission Council Research Report Series (1996).

