HOW TO EAT THE ELEPHANT IN THE LEGAL ACADEMY

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Persistent discrimination is one of the elephants in the legal academy. We need to eliminate it, and we all know that the only way to eat an elephant is one bite at a time. So here goes:

I'm Susan Rozelle, and I have begun to note all the ways in which United States law schools' institutional culture presumes the Ideal Worker: white, male, middle-class, middle-aged, and married to a woman who manages his home and his family life for him. We blindly continue to follow a variety of existing structural systems that both create and reinforce challenges for the many members of our community who fail to meet this embedded stereotype.

Workers are expected to be available by phone and email at all hours, though I humbly suggest that we in the academy very rarely face problems that cannot wait until morning. Events need attending in the early morning and in the evening, in conflict with child- or eldercare drop-offs, pick-ups, and bedtimes.

We are measured first by the amount of scholarship we produce, which is written during our "free" time, and of course those with fewer personal life obligations—as well as those with fewer teaching and service obligations—therefore are at an advantage. Who carries a disparate burden in these arenas? Women, minorities, and those who teach legal skills.

We are measured second by our teaching evaluations and by our collegiality, both of which fluctuate with the presence of implicit bias and how well we perform our types (a woman who is perceived either as "too masculine" or "too feminine," for example, will suffer in those arenas). And that is on top of my personal pet peeve: the abysmal lack of any sort of paid family leave at many schools, the lack of quality childcare options nationwide, and the persistent, unconscious discrimination documented in *Presumed Incompetent*[1] and

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1 PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA (Gabriella Gutiérrez y Muhs, Yolanda Flores-Niemann, Carmen G. González & Angela P. Harris eds., 2012).

addressed by the panelists prior to this "open mic" portion of the program.

So, how to eat this elephant? I would like to begin instituting—slowly, at a pace people can absorb—small changes that might add up to real benefits. And I am hopeful that we are beginning a real brainstorming session here, to generate lots of ideas. So just to get us started, here are some ideas I have had. Be kind; this is just brainstorming, and I would like to invoke the protections of the brainstorming stage of any collaborative problem-solving effort to insulate myself from criticism—or from the nasty kind of criticism, at least. I'm not committed to these, but I do want to start the conversation about where to take a first bite.

In that spirit, then, maybe we should consider:

- A shift from a facetime mindset that centers on when and where work is accomplished to a results-oriented mindset that centers on the actual work accomplished, with more reasonable expectations about what the appropriate quantity of that work is;
- Individualized attention to scheduling more generally, beginning with giving preference to those with caregiving responsibilities;
- And (now we get to the pie in the sky moment) maybe even an actual cap on the amount of scholarship that "counts" for tenure and other reviews, and some method of capping service obligations, too, together with normed limits on the work day that would make it okay to let email sit unanswered after hours, whatever those hours may be, such that the incentive to work incessantly for both men and women is at least lessened;
- As well as sensible, academy-wide, paid family leave policies, and on-site daycare options.

It would be great if institutionally, societally, we started expecting people to have more balance in their lives. Because part of the persistent discrimination, the elephant in the academy, is a function of the incompatibility of the Ideal Worker with the current reality of women's starring roles in every realm outside the workplace. We need a system-wide ratcheting back of our workloads. I mean, what if everyone felt like they could go to the gym regularly, get a full night's sleep, have outside interests? I'd like to normalize the practice of bringing children or others we're caring for to work with us, too; and to make it

okay for male colleagues to take family leave and actually be primary caregivers, just like their female colleagues.

I think the main agenda item is redesigning a workplace structure that is more compatible with other obligations. I have toyed with the idea of starting a wiki, where we can harness the power of the marketplace by posting information both about policies and about actual practices at various schools in addressing issues like family leave, on-site daycare, and the use of student evaluations. I'd like to move to a unified tenure-track, to dismantle that system for keeping women in their place. I know there are more, and I know all of these ideas are controversial, but I'm thrilled that we are talking about it. If we work together, one bite at a time, maybe we can eat this elephant.