Classroom Incivilities, Gender, Authenticity and Orthodoxy, and the Limits of Hard Work: Four Lenses for Interpreting a "Failed" Teaching Experience

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INTRODUCTION

This is a story of teaching success; it is also a story of teaching failure. Both stories are mine, and both can be framed in multiple ways. In the Hollywood version of the story, I would be transformed from the teacher students hate to the one students elect teacher of the year: the ugly duckling transformed into the swan. Life being more complicated than a Hollywood movie, success and failure are not always so distinct. My initial teaching ‘failures’ were accompanied by a tenure denial, an event that might well have been career ending. I wrote this article in an attempt to make sense of painful experiences and to move beyond them. I share it because I am persuaded that it can help others, whether struggling in the classroom, experiencing that unmentionable — a tenure denial, trying to mentor struggling younger colleagues, or trying to create an environment in which all young faculty can succeed.2

1. Thanks to Kellye Teste for suggesting that I needed to provide an introductory frame for the story that follows and for providing some of the language used here.

2. As I circulated this essay to friends and colleagues, I found it generated strong and contradictory reactions, not so much to the content of the piece, the lenses, but as to whether or not I should publish it. Those who thought I should not publish it fell into three camps. The first consisted of good friends who care about me and worried that publishing such a personal and self-revealing piece would harm my career. The second consisted of colleagues who simply seemed perplexed as to why I would want to publish such a piece. The third consisted of colleagues who thought I just needed to move on and get over it and that I should do so by closing the door on that chapter of my life and never mentioning it again. I suspect that the reactions said more about the readers than about the essay. Other readers, however, were more supportive, especially younger women of color who were themselves struggling with negative evaluations in the classroom. For a horrifying narrative of how bad it can get for such colleagues, see Pamela J. Smith, Teaching the Retrenchment Generation: When Sapphire Meets Socrates at the Intersection of Race, Gender, and Authority, 6 WM. & MARY J. WOMEN & L. 53 (1999); see also Richard Delgado, Minority Law Professors’ Lives: The Bell-Delgado Survey, 24 HARV. C.R.-C.L. L. REV. 349 (1989); Kathryn Pourmand Nordick, A Critical Look at Student Resistance to Non-Traditional Law School Professors, 27 W. NEW ENG. L. REV. 173 (2005) (offering a student’s perspective). Their responses convinced me that it is important for younger, struggling teachers to know that their older, apparently successful colleagues have undergone, and survived, similar traumas.
FOUR LENSES

is my attempt to analyze my experience through four different lenses and to share the lessons learned.

I. MY STORY

Seventeen years ago, the first phase of my teaching career came to an involuntary close when I was finally, after three grueling years of trying to avoid the result, denied tenure by a young, fourth-tier law school, which I call New Law School (NLS) in this essay. At the time, NLS was an institution with a history of periodically eating its young: refusing to promote or tenure any faculty who did not fit into the reigning orthodoxy of teaching, for which the code words were ‘analytically rigorous.’ I was only one among the many who were eaten.

The professional failure was intertwined with a more personal failure. Having come to this first teaching job with ideals, inspiration, and my share of misconceptions about teaching, I failed to find my way to that creative partnership with my students that could result in mutual satisfaction and a successful learning experience.

A. Pre-Teaching

I attended law school in the early years of women’s increasing enrollment levels and enjoyed my law school experience at Harvard more than many of my classmates, especially the other women. My relatively positive experience happened fortuitously, thanks to two factors. In my first-year section, I connected with a young teacher who was himself finding his way toward new approaches to law and teaching. Then, I acted on his advice that “law school is neither theoretical nor practical enough. It operates on an unsatisfying middle level of decontextualized doctrine. In choosing courses, go for the clinical courses and the legal theory courses.”

I loved the clinical, legal history, and legal theory courses I took, but, agreeing with my mentor, I did not find the traditional doctrinal courses particularly satisfying. In addition, I was horrified as I watched classmates with less fortunate experiences struggle to make sense of the process. I particularly remember one very bright housemate who received an unheard-of D in her property class and

3. As with most aspects of this essay, my choice to use a fictitious name for the institution drew contradictory reactions and advice from readers. I recognize that any reader who cares can determine the name of the institution easily enough. But my many goals in writing this piece do not include muddying the name of what is now a very different institution.
afterwards wailed, “I don’t understand what Professor X wants!” By the end of my three years, I was thoroughly dissatisfied with traditional legal education, and I would never have dreamed that I might end up teaching traditional doctrinal law school courses.4

From law school I went to a staff attorney position with one of the better legal services programs in the country. My years there were happy ones. I enjoyed my work, was good at it, and received enthusiastic reviews from our litigation coordinator. My skills were those of the litigator: writing, speaking, and legal analysis, along with a fondness for supervising law students and a willingness to perform the drudge work often involved in keeping resource materials organized for our public benefits unit. From an office politics viewpoint, however, I tended to operate on the margins and had begun to think that opportunities for advancement within the organization would not be forthcoming. Though my law school clinical supervisor was a good friend of the director of the program, I had not pursued the connection.5 When the staff later unionized, I was not active in the union, largely because the issues that concerned me most were not the traditional issues of wages and working conditions, governed by the Wagner Act.6

I applied for a clinical teaching position at NLS, not a conventional teaching job, at a time in my life when I was feeling tired — burnt out, I thought — after five years in my legal services job. As it happened, I was pregnant, not burnt out, and I heard nothing from NLS for many months. By the time NLS called to inquire whether I might consider a tenure-track position teaching classroom courses, not only had I just given birth, but the Reagan Revolution had arrived, bringing budget cuts in federally funded programs. The budget cuts put both my position and my then-husband’s position at risk, so I blithely responded, “of course” to NLS’s inquiry.

Toward the end of my maternity leave, a supervisory position coordinating public benefits litigation throughout the state opened that was perfect for me, except that it would have required extensive travel, travel that was not appealing for the mother of a newborn. In a time of program budget cutbacks, crisis for the program, and given my situation, I was no doubt an implausible candidate from the viewpoint of the program’s managers, although

4. I have discussed some of my objections to traditional legal education in greater detail in an earlier article. Deborah Maranville, Infusing Passion and Context into the Traditional Curriculum Through Experiential Learning, 51 J. LEGAL EDUC. 51 (2001).

5. As I have since learned about myself, I will take charge when needed, but I am not the type of person who needs to be at the center of power.

I was otherwise the most logical person for the job. The timing was wrong, and someone else was chosen. This experience crystallized my inchoate sense that I was harming my career by refusing to ‘play the game.’

Thus, when I arrived at NLS, I did so vowing not to be naïve, to figure out what had to be done to gain tenure, and to do it.

B. Pre-Tenure at NLS

From my own law school experience, I brought to my first law school teaching job a dislike of conventional law school teaching methods and an inclination to teach experientially. Having never taught before, much trial and error experimentation lay ahead of me. In retrospect, it is easy to see that I was entering into an academic culture built on values and a teaching style that clashed sharply with both my inclinations and my strengths. As a stranger to failure — a deficit that was soon to be cured — I did not see the implications of that clash coming.

1. Institutional Expectations

The sympathetic faculty with whom I had carpooled and dined during the hiring process began socializing me into the teaching culture. Among other pieces of advice, they had encouraged me to repeat the phrase ‘analytically rigorous’ whenever possible during the interviews as teaching was discussed. After I was hired, the key faculty who controlled tenure votes quickly took up the task of communicating expectations. Though most of them were only five years older than I, they were of a different generation, traditional in their approach to teaching, and deeply invested in shaping the barely ten-year-old institution they helped found.

One of our first events was a discussion of teaching at the dean’s house, which overlooked the water. The dean, an energetic and engaging former adjunct professor and Seattle law firm partner, attempted to balance the influence of the dominant group by including a young tenure-track faculty member and a brilliant and creative visitor in the discussion, yet the messages were clear: Use the Socratic method; be tough and demanding; and be — yes — ‘analytically rigorous.’ At this and later discussions of teaching, the topics of concern were such matters as: “Should the faculty member walk out on class if the students are not prepared?” and “When grading exams should the faculty member grade down for poor spelling?” These messages of the dominant culture reinforced my
worst tendencies — inclinations to be overly judgmental, perfectionistic, and serious. No one talked about the performance aspects of teaching, such as hooking the students or being enthusiastic and energetic. The need to be oneself in the classroom was given at best perfunctory lip service. Nor did my colleagues suggest that good student evaluations were desirable or important. On the contrary, the impression conveyed was that outstanding student evaluations were likely to be a sign that a teacher was being insufficiently rigorous. Insufficient rigor was to be avoided at all costs.

These initial messages about teaching were communicated against a backdrop that further reinforced my serious and judgmental tendencies. Two tenure denials had taken place in the previous year, one involving a woman. The air was filled with gossip about those tenure denials as well as other, earlier promotion and tenure denials. The air was also heavy with gossip about denials of pre-tenure promotion to the position of associate professor, some based on perceived problems with teaching. During my first semester at NLS, the school tenured its first woman (other than the director of the library). She had written the required law review article, and she taught in a traditional Socratic style. Though the vote was in a session closed to junior faculty, the initial discussion was in open session. Warm wishes and enthusiasm were absent, and the message from the senior faculty was one of harsh judgment, not welcome. She was voted tenure, but with an implicit message that those who followed would have to meet a higher standard.

2. Writing

I was fortunate to be hired in a class of five new faculty members. Along with other younger faculty we coalesced in varying degrees into an intellectual support group, as well as becoming social friends. I had entered academia without understanding that I might want to have a long-term agenda for my writing. My writing goal was simply to figure out whether I had overcome writer's block to a degree that I might be capable of writing a publishable article.

My early education at a small-town public high school in Shelton, Washington, wasn't bad given the time and place, and I did a reasonable amount of writing. The emphasis, however, had been on product, not process, and I typically finished papers in one draft and only under the pressure of a deadline — late at night or, on the most memorable occasion, writing a short story in the class period before it was due. In college I avoided papers because I couldn’t find
'truth' in fifteen pages. I always preferred final exams because the misery was over in a fixed period of time. I dropped two classes in order to avoid final papers. It was only being a lawyer that got me past writer's block. Being a lawyer meant that my point of view was dictated and my task was simply to figure out how to argue in favor of a predetermined end. Within that framework, I learned that multiple drafts made for a better product and that I am not enough of an adrenaline junkie to enjoy turning out brief after brief at the last minute.

Given my history, a psychic might well have predicted that any tenure difficulties I encountered would be the result of failing to publish as required, as happens to so many would-be academics. At NLS, however, writing turned out to be the least of my worries. Blessed with brilliant junior colleagues willing to comment and critique my efforts, I managed to write a review essay and a lengthy article and placed both well by the standards of the institution. With an additional piece in draft form and lengthy teaching materials, I clearly satisfied the institution's quantity expectations for writing, which were in the process of changing from one to two articles. My articles were timely, thoughtful, and well-written, and only the most disingenuous or narrow-minded of my colleagues argued that I failed to satisfy the publication requirements. Some were not beyond that tactic, arguing that I failed to propose a solution to the problem I addressed.

3. Teaching

My problem at tenure time was teaching, or more specifically, teaching evaluations by students. Some were just plain awful. Others were extremely mixed. A few, mostly in smaller classes or seminars, were reasonably good, but none were stellar.

Established law school policy provided that first-year teachers were not permitted to teach first-year classes. One of my colleagues who was new to teaching taught a negotiations course in the summer before I started and was initially told that, assuming a successful negotiations course, he would teach first-year torts in the fall. The students loved him, as they continued to do throughout his time at NLS. By contrast, the faculty who visited his course found him insufficiently 'rigorous' to take over a first-year class, and he was scratched from the first-year line-up. Not only was this a blow from which he never recovered, but it was also an important message to the rest of the new faculty.
In my first year, I taught trial advocacy in the fall and administrative law and community property in the spring semester. I had no particular teaching or scholarly interest in community property. Perhaps it was a bad sign that I did not have the option in any of the three classes I taught of trying to emulate a successful version of any course that I had taken as a student. Although I received credit for my successful completion of an administrative law course, it was the only course in law school that I never attended after the first week. The other two courses I had not taken even nominally.

Trial advocacy was not a grand success, but it seemed to go reasonably well, although my evaluations were nothing impressive. I felt a bit of a fraud teaching trial advocacy. Though I had handled many administrative hearings and several bench trials, as well as numerous complex summary judgment motions and a few appeals, I had tried no cases to a jury. My tenure track compatriots who taught trial advocacy were in much the same boat, and many of the core skills of trial advocacy, such as asking open-ended or leading questions, were thoroughly familiar.

Trial advocacy was a simulation-based course. For each class students prepared and performed a part of a trial and my job was to provide feedback, or 'critique.' The process of providing feedback was not an easy one for me. I am not the intuitive type and I require time, and often contrast with other observations, to surface and articulate my reactions. Thus, trying to respond to a five-minute performance immediately with three helpful points challenged me, to say the least. In retrospect, two points seem clear about my teaching of trial advocacy both in that first year and later. First, the judgmental climate of the law school encouraged me to be overly critical and insufficiently encouraging to my trial advocacy students. At some point in my teaching career, although I don't recall whether it was in the first year, I followed the dominant wisdom and walked out of a trial advocacy class because the students were apparently unprepared. Second, my own reaction against the lack of feedback typically given to law students led me to equate a maximum volume of feedback with good teaching, despite signs that such a volume was simply overwhelming.  

7. See, e.g., Victor M. Goode, There Is a Method(ology) to This Madness: A Review and Analysis of Feedback in the Clinical Process, 53 Okla. L. Rev. 223, 273 (2000) ("Teachers should learn not to overdo it. Too much feedback, whether positive or negative, can generate cognitive overload and a decreased perception in the student of teacher confidence in their ability and a corresponding decrease in their perceptions of control.").
The spring semester courses of my first year in teaching were considerably more problematic than the trial advocacy course. Inspired by a fascinating syllabus created by Gerald Frug at Harvard and passed on by a law school classmate who had been teaching for several years, I approached administrative law with a grand theoretical overview. I went so far as to tell the students that my focus would not be doctrine because the commercial outline on administrative law was a good one. In the community property course, I had no grand plan. Had anyone asked me, I would have said that, of the two courses, community property was the better received by the students. Thus, when the student evaluations came back, I was shocked to discover that a good quarter of the students in my community property course thought the course was horrid and that my administrative law students were at least somewhat more generous.

b. Low Points

The problems with my teaching were exemplified by three painful incidents.

The first incident stemmed from one of my frustrations with traditional legal education: the oft-noted failure of the teachers to provide useful feedback. I recall going to look at my final torts examination with several classmates. Our grades ranged from an A- through a B-, duly noted on papers otherwise devoid of comments. We passed the papers around trying to determine what differentiated the A- paper from the B-, or any in between, with absolutely no guidance. I never again reviewed a law school examination.

Reacting against this experience, in my initial years of teaching civil procedure, I gave a midterm practice examination. I prepared model answers and a discussion of these answers, deeming myself a worthy teacher for making a special effort to provide feedback. I commented on each exam and, in keeping with the institutional ethos, red-penciled spelling errors. After returning the practice exams, however, I received, instead of thanks for my efforts, a copy of my model answer anonymously marked up in kind, critiquing perceived spelling and grammar errors. I read hostility in every red mark on the page, as no doubt my students had on the receiving end of my criticisms. Having survived my own legal education a bit bewildered by my seemingly random grades, but with my self-esteem relatively intact, I had failed to attune myself to the loss of confidence and alienation so typical among first-year law students. I had failed to appreciate the impact my torrent of negative
comments would have on the students, naively expecting gratitude and appreciation for my hard work.

Though I believe I stopped correcting for spelling, in the classroom I was similarly ill-attuned to the needs of individual students and to taking the temperature of the class as a whole. This gave rise to the second painful incident at the end of my third year of teaching civil procedure. The incident occurred toward the end of my third year of teaching civil procedure, and it illustrates all too starkly the deficits in my teaching skills. As the class proceeded to a close, I was questioning one of my best students, a young woman named Marisa. She was responding beautifully, so I kept up the questions — this was play, I thought, for both of us. Class ended, and I realized to my chagrin and horror that I had unwittingly succeeded in reducing her to tears. I don’t recall whether I said anything to her about the incident or apologized, but I suspect that I did neither, being uncomfortable and unskilled at ‘process talk.’

The third incident, which took place the same year, capped a reasonably successful experience teaching a small administrative law class. The class was small, of course, because my reputation as a teacher was not one that drew crowds. Fortunately, the size of the class made it easier for me to experiment with my approach. Because I was teaching the class in a year in which I was not under review for promotion or tenure, it did not require a Socratically-taught three-period sequence of classes suitable for in-person viewing by the promotion and tenure committee and later videotape review by the rest of the faculty.

Among the students in the class were several who had taken my civil procedure class the previous year and with whom I had become quite friendly. As I recall, the students were graded on the basis of a paper, an in-class exercise, and a final examination. The result of averaging several grades was to flatten the curve considerably. Unwilling to give a final grade of A to students for whom the grades on individual assignments averaged out to a lesser grade, my final grades were not generous. One of the students to whom I was closest came to me after the grades were posted to suggest that although the class had been a good one, she and others would be unwilling to take another course from me, given the stringency of my grading.

c. Bright Spots

I do not want to give the impression that I had no strengths as a teacher. In fact, I had several: I worked extremely hard; I cared deeply about my students; I was fascinated by the problem of how
to teach analytical skills explicitly and effectively to a group of first-year students with widely varying abilities, and I thought long and hard about it; and I was open to experimenting with a range of teaching methods.

Before my fourth year at NLS, two of my legal writing colleagues obtained a grant from the Fund for the Improvement of Postsecondary Education (FIPSE) to bring to the law school the "Writing Across the Curriculum" approaches developed at the undergraduate level. The grant provided stipends to encourage the faculty to attend a summer workshop on the topic and to develop "Writing Across the Curriculum" efforts in their classes. I volunteered for the effort and began collaborating with the director of our legal writing program on a project in my civil procedure course. In contrast to the traditional first-year common law courses, civil procedure cases tend to be relatively long, and I used a book that did not edit the cases heavily. We began with relatively simple efforts—offering the students a briefing format subdivided into more sections than typical with a structured approach to identifying the issue and holding and suggesting techniques such as paragraph summaries and charts for analyzing the reasoning of a case.

As the semester progressed, I gave the students a fill-in-the-blank chart summarizing the conceptual framework for subject matter jurisdiction. To my surprise, virtually everyone in the class was confused, even the students who seemed most on top of the material, and no one could complete the chart successfully. We were so surprised by these results that the legal writing director presented a similar chart to her legal writing students asking them to fill in the elements of negligence. The results were the same. Yet I include this story in my successes, not my failures, because this was my first lesson in the importance of what is now termed "classroom assessment," or finding out what is really happening in the classroom, as opposed to what the teacher thinks is happening.

Over the course of several years, our collaboration grew into a five hundred page "Study Guide for Civil Procedure," a workbook with goals for each class, instruction in techniques for analyzing cases and rules and synthesizing legal doctrine, conceptual framework charts, preparation questions, extended hypotheticals, and

9. For background information on the Writing Across the Curriculum (WAC) program, see WRITING ACROSS THE CURRICULUM: A GUIDE TO DEVELOPING PROGRAMS (Susan H. McLeod & Margot Soven eds., 1992).
drafting exercises. As with my efforts to provide feedback in trial advocacy, much of it was overkill. Contrary to my initial hopes that it would reach the students who struggled the most to learn legal analysis, it seemed to benefit primarily the most linear and diligent students. I considered trying to have it published, but it was too tied to my own teaching style and the particular casebook I used, and I dropped the idea after the tenure denial. I have been reminded by my former student, Paula Lustbader,\textsuperscript{11} that her successful academic support initiatives were inspired in part by my study guide. In my low moments, Paula has cheered me up by suggesting that, although I was not a charismatic teacher for whom traditional lecture or the Socratic method worked well, I had enough of a gift for teaching to migrate toward experiments with small group work and other techniques that were more consistent with my strengths.

\textit{d. Help}

In my last two years of teaching I sought help from a variety of sources in an effort to improve my student evaluations enough to alter an initially unfavorable decision on tenure. The most useful assistance came from a gifted teacher trained in English who worked part-time for our legal writing program as a writing consultant. Anne Enquist began her work with me in the winter of 1988 by attending several of my civil procedure classes. Her initial assignment for me was a revelation: "Write down all the adjectives you can think of that might describe your teaching. Then decide which three you would most like your students to use when they describe your class and circle them." To think about who I was as a teacher and who I wanted to be — what a shift in thinking after the oppressive orthodoxy that surrounded me.

Ultimately, Anne sat in on virtually all of my civil procedure classes in my final year. She suggested that I hire a consultant from a local college to come to several sessions of my class at the beginning of the year, and I did. After sitting through the introductory class, on which I spent considerable time trying to hook the students from the start, his comment was "what's the problem?"

Anne also noticed a couple months into the course that one of my students sitting in the front of the class was disengaged, arriving in class without his book and expressing frustration to the other students. At Anne's suggestion, I took two steps. The first step, aimed at the class as a whole, was to take ten minutes of class

\textsuperscript{11} Paula is a gifted and intuitive teacher who has been a national leader in both developing academic support programs and expanding the range of teaching approaches in law schools.
time to identify what I was trying to accomplish and what the students should have learned by that point. My effort seemed to reassure the class. The second step, aimed at the particular student, was to call him aside for a chat outside class. I noted in my most sympathetic and nonjudgmental manner that he seemed frustrated and asked him to meet with me. The student in question was a tall white male who fit my image of a privileged frat boy. To my surprise, I learned that he was the first in his family to attend college, much less a graduate program, and that he felt insecure and overwhelmed by law school. I sympathized and gave him tips, and though I did not turn him into a fan, I succeeded in neutralizing him as a negative force in the classroom.

After attending a conference that included a session on memorable teachers, Anne noted that the memorable teachers were a diverse group, but they seemed to share two characteristics: energy and enthusiasm. Energy and enthusiasm — those two simple words seemed to capture the essence of good teaching. Still, they were not easy words for me to hear. Because I so disliked traditional legal education, I had often found it difficult to muster enthusiasm for what I was doing in the classroom, especially when I felt constrained by the dominant orthodoxy.

Energy, at times, had been in even shorter supply. My years at NLS, unfortunately, were filled with both energy-draining daily circumstances and family crises. Commuting, giving birth to a second child, and child-rearing were challenging enough. They were accompanied by a deteriorating marriage, a child with expressive aphasia, and a mother who suffered a serious brain aneurysm and resultant disabilities.

This combination of circumstances made it difficult to project the energy and enthusiasm required for good teaching. An excerpt from one of the letters opposing tenure for me was, unfortunately, at times all too accurate: “A cursory review of the available video tapes of Professor Maranville’s classes will reveal why the student evaluations are so bad. The instructor is not enthusiastic about her work. She appears to be bored and it is clear why students select anyone else for their upper level courses.”

As experienced teachers will appreciate, apart from the difficulties caused by the crises in my family life, the simple fact that I had been so unsuccessful in the classroom made future success more difficult. I have come to recognize that in most endeavors success builds success. When we experience success and that success is recognized, it is easier to believe in ourselves and to project the confidence and enthusiasm that is central to success in so many fields. My experience, however, had been just the reverse.
My feelings on entering the classroom must have been a bit like those of unsuccessful students who grow to fear and hate organized schooling. As Wilbert McKeachie has noted regarding the negative effect of low student ratings on motivation, "[i]f a teacher is already anxious, then ratings that confirm the impression that students are bored or dissatisfied are not likely to increase the teacher's motivation and eagerness to enter the classroom and face the students."\(^{12}\) So it was for me.

\textit{e. The Tenure Denial}

The effort I put into my study guide was not helpful in changing the minds of my adversaries on the faculty. If anything, it was counterproductive on that front, as illustrated by the following comment from one of the letters opposing my tenure: "Professor Maranville generally aims her teaching to the bottom part of the class. Instead of a demanding graduate level experience, it is a remedial, make certain everyone understands the basics, approach. It implies to students they need not grapple with difficult complexities of many issues."

Likewise, my efforts to improve my classroom teaching proved to be too little, too late. Because the tenure clock had changed while I was at NLS, I had the option of going up again after an initial negative vote. The second vote was nominally favorable, but heavily split. Unsurprisingly, my application for tenure encountered difficulty when it was reviewed by the main campus committee.\(^{13}\) Able advocacy on the part of my supporters identified procedural grounds on which the president of the university remanded my case to the main campus committee for reconsideration the following year. Although I won a moral victory by changing the committee vote to a split vote in my favor, ultimately that was not enough to change the mind of a president wedded to the wisdom that lifetime tenure should not be granted in a close case.

\textbf{C. Post-NLS: Serendipity and Silver Linings}

At this point in my account the reader might well ask: "Why on earth is this woman still teaching?" The question is a good one. One

\begin{itemize}
  \item \textsuperscript{12} William J. McKeachie, \textit{Student Ratings: The Validity of Use}, 52 AM. PSYCHOLOGIST 1218, 1219 (1997).
  \item \textsuperscript{13} At least it is unsurprising in retrospect. I was too naive — perhaps because I had been too privileged — to understand at the time. Compare the experience of Janis L. McDonald, \textit{Looking in the Honest Mirror of Privilege: "Polite White" Reflections}, 12 COLUM. J. GENDER & L. 650, 655-56 n.9 (2003).
\end{itemize}
reason is that I moved from teaching traditional classroom courses to clinical teaching — the type of instruction that had triggered my initial interest in law school teaching. I have remained in academia because, despite the painful teaching experiences I endured at NLS, I enjoyed working with students and loved many aspects of teaching. In addition, the support I had received both from colleagues and from students suggested to me that I had useful contributions to make to legal education.

After the tenure denial, I assumed that I would leave teaching and return to practice. Through a serendipitous combination of circumstances, however, I ended up at the University of Washington Law School helping to expand a fledgling clinical program. I am now fortunate to have a position as a tenured full professor at a first-tier law school.

In this new life, I have had the freedom to develop my own approach to teaching, and my experience teaching in the clinic has been successful. Generally, my teaching evaluations rank at or above the law school's median. Occasionally, they are outstanding. In addition to teaching in the clinic, for several years I taught a feminist legal theory course, which also was highly successful. I have been a diligent participant in teaching workshops, finding inspiration in the growing literature on alternative approaches in the classroom. Occasional forays into more traditional classrooms as a guest lecturer gave reason to hope that I had learned enough about both teaching and myself to return to the large classroom with more satisfying results.

One of my passions is integrating experiential learning into the traditional law school classroom. As I considered possible approaches to pursuing that passion, I was forced to consider the possibility of returning to the large classroom setting on a regular basis. I knew, however, that I could not face that task until I made sense of my past.

II. FOUR LENSES FOR INTERPRETING THE STORY

Looking back on my story with a degree of distance and experience, I have identified four lenses through which to interpret my experience. The first one derives from research on "classroom incivilities"\(^{14}\) with which I became acquainted in the late 1990s. The remaining lenses I pondered as I endured the experience: gender,

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14. See infra notes 16-17 and accompanying text.
authenticity and orthodoxy, and "hard work as the solution to all problems."

A. Research on Classroom Incivilities

In 1996, Robert Boice, a psychology professor and experienced mentor of teachers, published a very interesting article titled Classroom Incivilities. In it he argued that student evaluations of faculty are lowest where faculty or students engage in behaviors that Boice labeled "classroom incivilities." In reaching this conclusion, Boice drew in part on laboratory simulation research done by P. Kearney and T.G. Plax, finding that "the ways in which teachers present themselves socially" are a critical factor in generating incivilities by students. This research looked at two continua of teacher behavior. The first continuum addressed teacher motivation of students using "prosocial motivators (such as 'Do you understand?' and 'You can do better!') [rather than] antisocial motivators, such as threats and guilt induction." The second continuum addressed teacher behaviors considered "immediate" (because of verbal and nonverbal signals of warmth, friendliness, and liking) or 'distant'. These behaviors "include forward body leans, . . . eye contact, and other behaviors that signal close-ness."

Before encountering Kearney and Plax's research, Boice had undertaken a field study of classroom incivilities by observing classrooms in which he identified a range of student and teacher behaviors observed in the classroom and obtained rankings by novice teachers and students on which behaviors were most disturbing. His results were remarkably consistent with that of Kearney and Plax's laboratory simulations. The most damaging behavior by teachers involved "[t]eachers alienating themselves

16. Id. at 453-54.
18. Id. (citing P. Kearney & T.G. Plax, Student Resistance to Control, in POWER IN THE CLASSROOM 85 (V.P. Richmond & J.C. McCroskey eds., 1992)).
19. Id. (citing P. Kearney & T.G. Plax, Student Resistance to Control, in POWER IN THE CLASSROOM 85 (V.P. Richmond & J.C. McCroskey eds., 1992)).
21. BOICE, supra note 17, at 85-88.
from students with negative comments and nonimmediacies such as
stiff, unsmiling nonverbals."

Joseph Lowman's popular book on college teaching predates
Boice's article, but his comments on the importance of "affective
messages" and the dangers of "control messages" are consistent with
Boice's research. In addition, Lowman builds on research concern-
ing small groups to suggest that a college class has both task needs
(meeting course objectives) and maintenance needs, "primarily
needs for control and affection." Because "both types of need must
be met and . . . groups vacillate over time between emphasis on task
needs and emphasis on maintenance needs," Lowman argues that
"recognizing and attempting to meet the emotional needs of group
members from the outset leads to greater work (or learning) in the
long run."

What lessons do I find in this research for evaluating my
painful experiences in the classroom? Looking back, it seems to me
that three critical forces — the institutional climate at NLS, my own
response to that climate, and my personal circumstances — all led
me to engage in classroom incivilities, and I have no doubt that
those incivilities contributed to my mixed and negative students
evaluations.

As described earlier, the institutional climate encouraged the
use of threats and guilt as motivators, such as walking out of class
if the students were unprepared and grading down for incorrect
spelling and poor attendance. The faculty who set the tone for the
institution did not discuss the use of encouragement — Boice's
"prosocial" motivators — and, in fact, teachers who encouraged their
students seemed to be viewed as inappropriately coddling them. One
younger colleague who arrived after I did was reputed to take a very
deferential approach to her students. She won the best teacher
award on several occasions, but was criticized by faculty for being
insufficiently rigorous. Nor were friendliness and warmth — Boice's
"immediacies" — discussed, except to the extent that such behavior
was implicitly discouraged when young faculty members were
cautions about the need to establish their authority in the
classroom.

As the teaching low points described above illustrate, I initially
relied on threats rather than encouragement in the classroom, a
factor that alienated students. No doubt I overreacted to what I

22. Id. at 86.
24. Id. at 60.
25. Id.
perceived to be the institutional message. I don't know whether my more senior colleagues would disagree with my description of the institutional message concerning encouragement. At least some of them, however, were quite capable of charm outside the classroom, and I suspect that they might deny any inconsistency between being 'tough' and 'analytically rigorous,' on the one hand, and communicating friendliness, on the other.26

Looking back, I would say that I communicated a fair amount of warmth and friendliness outside the classroom when I interacted with students individually. Inside the classroom was another matter. An obvious way to communicate warmth and friendliness is by engaging in small talk with students before class.27 Small talk has never been my forte, in any setting, and three factors were present that undoubtedly reduced my inclination and skill in that direction. When I am focused on a task, such as teaching a class, I am less inclined to engage in small talk. When I am tired or stressed, as I so often was in that era, small talk comes less easily. When I am self-conscious, rather than focused on putting others at ease, as was undoubtedly true as I struggled to find a comfort level in the classroom, I find small talk more difficult. Even now that I know about the classroom incivilities research, I still find that it requires a special effort to be sure I attend to small talk before class.

Smiling is another obvious way of communicating warmth and friendliness. Yet I have never been the smiley type. Once again, tiredness and stress likely reduced the frequency with which I smiled. In addition, my years in teaching have taught me that when I am thinking hard, really concentrating, I take on a stern, perhaps even angry, look. Large classroom teaching required considerable concentration for me, a fact that no doubt further decreased my smiling-quotient. Thus, I am confident that I typically failed Boice's "immediacies" criterion for avoiding classroom incivilities.

B. Gender

Both then and now, gender seemed an obvious lens through which to view this experience, given the law school's history of denying promotion or tenure to women, although the link between gender and my loss of tenure is complex. The link was complicated

26. On reading an earlier draft of this essay, a male colleague who started at NLS with me commented, "I was struck by how 'being tough' had a different meaning for you than for me." E-mail from Professor Pierre Schlag to Professor Deborah Maranville (Jan. 9, 2002) (on file with author).
27. LOWMAN, supra note 23, at 71.
in three ways. First, the role of gender in the tenure process was intertwined with, and sometimes obscured by, other factors. NLS had an unsavory record of denying women promotion and tenure; indeed, the woman who was denied tenure after me, the last one to date, was rumored to have received a six-figure settlement for her sex discrimination claim. Yet several capable men were also denied tenure in the years just before and after, although their teaching styles were not typically 'male.' Second, the role of gender was mediated by other factors. The teaching orthodoxy imposed by the institution was not explicitly gender based, but it clearly seemed to have a differential impact on women. The major articulated reason for denying me tenure — poor teaching evaluations — was indeed an objectively identifiable criterion. My teaching evaluations were problematic. Third, whether gender played a role in the students' giving me poor teaching evaluations is difficult to discern.

Because the evaluations were the stated reason for my tenure denial, I begin this section by addressing this third issue, before returning to the larger picture.

1. Gender and Teaching Evaluations

a. The Research

Since the 1970s, a considerable body of research has been published concerning the effects of the teacher's gender on student evaluations.\(^{28}\) Composed of both laboratory experiments and analyses of actual student evaluations of faculty, the research has produced conflicting and sometimes inconsistent results. Thus, few across-the-board generalizations can be made.\(^ {29}\)

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\(^{28}\) See infra notes 31, 33, 36, 40-43.

\(^{29}\) Perhaps this statement should come as no surprise. Gender, after all, is a social category, and its meaning changes over time and across locations. For instance, one might expect the significance of teacher gender for teaching evaluations to be different in a traditionally male institution that resisted the entry of women students and teachers than in a traditionally coeducational institution. Similarly, as sex role expectations for men and women have changed in recent decades and women have entered university teaching, one might expect gender to have a different value in student evaluations over time. Indeed, the most recent studies confirm that students have differing expectations for male and female teachers, but suggest that overall this now may translate into higher evaluations for female teachers, at least in some settings. See, e.g., Harvey R. Freeman, Student Evaluations of College Instructors: Effects of Type of Course Taught, Instructor Gender and Gender Role, and Student Gender, 86 J. EDUC. PSYCHOL. 627, 629 (1994) (speculating that a 1974 categorization of stereotypical male and female characteristics may no longer be valid in light of changing definitions of masculinity and femininity); Christine M. Bachen et al., Assessing the Role of Gender in College Students' Evaluations of Faculty, 48 COMM. EDUC. 193, 200 (1999). In a study of
Much of the research is focused on undergraduate education. In 1992, Kenneth Feldman reviewed this research — both laboratory experiments and studies of actual evaluations — and found that most experiments and studies showed no differences in ratings between male and female teachers. Interestingly, where differences did occur, the laboratory evaluations favored the male teachers, but the actual evaluations favored the female teachers.

A 1991 book-length study stopped short of pointing to actual differences in student evaluations based on gender, but it found some possible explanations for lower ratings for women. The study, based on interviews, classroom observation, and student evaluations, confirmed that male and female teachers differ in their attitudes toward students and that students expect these differences. The study observed that "women professors were criticized
for 'not smiling enough' in class or for being 'dull,' or 'unexciting,' or 'too formal.'"\textsuperscript{35}

In a 1995 article, Susan Basow found differences based on student gender between male and female teacher evaluations, but the differences expressed no overall preference for male or female teachers.\textsuperscript{36} Basow studied student evaluations over four years at a private liberal arts college and found "ratings of male professors . . . [were] unaffected by student gender," while "female professors tended to receive their highest ratings from female students and their lowest ratings from male students."\textsuperscript{37} Ratings also varied by "divisional affiliation of the course."\textsuperscript{38} Basow concluded that "gender effects on students' ratings of instructors may not be practically significant, at least in the aggregate," but "for individual professors, the results of gender variables may be more than negligible if all the small influences occur simultaneously."\textsuperscript{39} In a later book chapter, Basow included a checklist of twelve factors that increase the "evaluation bias risk" that results in negative evaluations.\textsuperscript{40} These factors include: "female professor, male students, traditional gender role attitudes of students,\textsuperscript{41} stereotypic male discipline/subject area, nonexpressive/non-nurturant personality traits, nonexpressive/non-nurturant behaviors, lecture-based teaching style, untenured professor status, lower-level (e.g. introductory) course, 'tough' grader,\textsuperscript{42} feminist reputation, [and] additional minority cue (race, ethnicity, sexual orientation)."\textsuperscript{43}

\textsuperscript{35} Id. at 110.


\textsuperscript{37} Id. at 656.

\textsuperscript{38} Id.

\textsuperscript{39} Id. at 662.

\textsuperscript{40} Susan A. Basow, \textit{Student Evaluations: The Role of Gender Bias and Teaching Styles}, in \textit{CAREER STRATEGIES FOR WOMEN IN ACADEME: ARMING ATHENA} 135, 150 (Lynn H. Collins et al. eds., 1998).

\textsuperscript{41} See also Bachen et al., supra note 29, at 193 (presenting a survey of undergraduates about experiences with male and female teachers that showed "assessments of faculty were further influenced by the strength of students' gender schema").

\textsuperscript{42} See also Laura I. Langbein, \textit{The Validity of Student Evaluations of Teaching}, 27 PS: POL. SCI. & POL. 545, 551 (1994) (citing a study of American University student evaluations for faculty teaching in the School of Public Affairs, which found an interaction between teacher gender and expected grades: "The lower the expected grade, the more poorly the female instructor is evaluated relative to a comparable male colleague").

\textsuperscript{43} Basow, supra note 40, at 150. In two recent studies, female students, but not male students, were likely to rate same-sex teachers higher than opposite sex teachers on some dimensions. Centra & Gaubatz, supra note 29, at 32; Therese Lueck et al., Mass Communication Course Evaluations: An Exploratory Study on the Effect of Gender (Aug.
The evidence concerning gender bias in law school evaluations is primarily anecdotal in nature. It seems to suggest, however, not only that the risk factors identified by Basow would apply to law school teaching as well, but also that gender bias in law schools may have been more skewed against women than in undergraduate schools.

b. The Significance of the Research for My Experience

Does the picture that emerges from this research on teaching evaluations and gender shed any light on my experience at NLS? I see two implications. First, the research suggests that if gender played a direct role in my teaching evaluations, it was probably a secondary role. Basow notes that typically “about 90% of the variance in students’ overall ratings of their professors” is due to factors relevant to quality of teaching. This assertion seems consistent with the fact that some other female faculty received perfectly acceptable teaching evaluations, and one received the professor of the year teaching award. In addition, it seems consistent with the fact that relatively ungendered explanations, like the classroom incivilities research, may explain my difficulties.

Second, although gender was probably not a primary factor in my teaching difficulties, the research suggests that I was indeed at risk for gender-biased evaluations. I was an untenured female


44. The following examples are representative. In a memoir, the first woman law professor at Southern Methodist University Law School recalled that “[t]he students came to law school expecting to be taught by a clone of Kingsfield and instead they got me. They felt cheated and said so in their evaluations.” Ellen K. Solender, The Story of a Self-Effacing Feminist Law Professor, 4 AM. U. J. GENDER SOC. POL'y & L. 249, 254 (1995). In a survey of students at nine Ohio law schools, 48% of all women, 73% of minority women, and 18% of men believed that “female faculty have [a] heavier burden than males to prove competence.” Joan M. Krauskopf, Touching the Elephant: Perceptions of Gender Issues in Nine Law Schools, 44 J. LEGAL EDUC. 311, 314 (1994). In a survey of students at five law schools across the country, “[t]here was also evidence of hostility toward female professors from several respondents, primarily younger white males, at various schools. One student referred to a female professor as a ‘liberal bitch.’” Taunya Lovell Banks, Gender Bias in the Classroom, 38 J. LEGAL EDUC. 137, 145 (1988). The author of an article on expectations for women teaching law “examined all the course evaluations from first year courses” for four semesters, comprising “40 courses; 32 were taught by men, and 8 were taught by women. . . . 2,270 evaluations in all; 1,730 for men, and 540 for women.” Christine Haight Farley, Confronting Expectations: Women in the Legal Academy, 8 YALE J.L. & FEMINISM 333, 337 (1996). The author concluded both that students have different expectations for women than men and that women get evaluations that are favorable, but not as favorable as the men’s. Id.

45. Basow, supra note 36, at 662.
professor, teaching, at least in some cases, introductory courses to primarily male students in a traditionally male discipline, and engaging in "nonexpressive/non-nurturant" behaviors. I was also a tough grader who most probably had a feminist reputation. In other words, at least seven of Basow's eleven risk factors were present in my case. Plus, I was teaching civil procedure and administrative law, two courses that tend to be among the most difficult for law students.

2. Gender and the Big Picture

As I pull away from the details of the research on student evaluations and think about the larger picture, it seems clear to me that gender played an important role in my story, apart from the narrow question of gender bias in student evaluations.

NLS had the norms of a predominantly male institution. Social scientists suggest that unless a minority group reaches a critical mass — typically estimated at fifteen to thirty-five percent — members of that group will be viewed as representatives of the group, not as individuals. Overall at NLS, there were about twenty-eight tenure-track faculty and thirty-eight full-time faculty. With only two tenured women, including the librarian who

46. The gender disparity among the students, however, was relatively small. In 1982 the entering class was 44% women; in 1986 the number was 45%. NLS Alumni Bulletins (on file with author).

47. As to Basow's other four factors: (1) NLS is located in a relatively liberal part of the country, so I would hesitate to suggest that the gender attitudes of my students were unusually traditional, although that was undoubtedly true for some individuals. (2) In my large classes my teaching style varied somewhat, and I am reluctant to translate the research on lecture versus discussion in the undergraduate context to the law school context where the norm is the not-so-warm-and-fuzzy Socratic method. (3) At that stage in my life my personality would probably have fallen in the middle range on a nurturant/expressive scale, although my in-class behavior was often non-nurturant and nonexpressive. (4) I did not present an additional minority cue.

48. See, e.g., Martha Chamallas, The Shadow of Professor Kingsfield: Contemporary Dilemmas Facing Women Law Professors, 11 WM. & MARY J. WOMEN & L. 195, 196 n.6 (2005) (citing ROSABETH MOSS KANTER, MEN AND WOMEN OF THE CORPORATION 209 (1977)). Based on earlier reading and my own experience in law school, I have long believed twenty-five percent to be the key figure. My law school class had fourteen and one-half percent women, but my section had twenty-five percent, which I suspect explains why the women in my section didn't particularly bond together, but the women in the section that had the fewest women did.

49. These numbers are taken from the AALS Directory for 1985-86 and 1986-87. No additional tenure-track women were hired until after I left NLS and the woman who was hired concurrently with me left for a visiting position in 1986-87 and a permanent position the following year. As is often the case even now, women held the majority of non-tenure-track teaching faculty positions during this time — six or eight women in
was the sole tenured full professor, and no more than three additional tenure-track women, the institution had not hired enough women faculty for women to reach this critical mass. To a lesser extent, the student body was predominantly male. From the history of the institution and the numbers themselves, it seems reasonable to conclude that NLS was an institution where women were viewed as representatives of the female gender, not as individuals. Thus, they were more likely to be stereotyped. I certainly was conscious of these numbers and of NLS's negative history with respect to promoting and tenuring women.

Gender undoubtedly affected my expectations and concerns as I began my teaching career, although probably less than it should have. Having succeeded all my life, I think it truly did not occur to me that I might not succeed again.

Gender was implicated in the institution's policies — or lack thereof — around maternity or parental leave. NLS had no formal policies and no history of informal accommodations. The woman who received tenure the year that I arrived had been pregnant when she was hired, unbeknownst to the institution. Perhaps as a result of the absence of policies, she chose to take no time off, despite the arrival of her son by Caesarean section, and reportedly taught from a stretcher within a week or so of the delivery. Due to both this precedent and my role as the primary provider for my family, after my second year of teaching I felt obliged to return to the classroom without formal time off less than two months after giving birth. This early return to work added stress to my life, which probably detracted from my teaching.

Gender affected my options and choices about how to present myself, as well as my colleagues' responses. Given that my years at NLS coincided with my childbearing years, I faced choices about child care. Because I had a very non-fussy baby, I was able to bring my infant daughter to work with me two days a week for the first semester after she was born without fear that my colleagues would be disturbed by a crying baby. Nonetheless, the baby was there, and on one occasion I discreetly\(^50\) nursed her while interviewing a prospective faculty member. I learned, much later, that this act was commented on, unfavorably, by one of my male colleagues.

\(^{50}\) By discreetly, I mean with a receiving blanket covering both her head, my breast, and my shoulder.
Gender affected my expectations for myself concerning my family responsibilities, despite the fact that my then-husband worked part-time during this period, was an excellent and willing cook, and did a large share of the household tasks. I expected myself to perform traditionally female activities, such as volunteering in my daughter’s classroom, especially when I taught in the evening, and participating in the PTA. I expected much more of myself than many men do (including my then-husband) when my mother became ill.

Gendered experiences and gendered expectations helped drain the energy and enthusiasm that I needed to succeed.

C. Authenticity and Orthodoxy

A third lens for analyzing my experience is perhaps best captured by the contrast between two words: authenticity and orthodoxy. “Be yourself” is textbook advice for teachers: be who you are, work with your own personality, and do not try to be someone else. In other words, be authentic. Advice to “be yourself,” however, often fails to acknowledge that our work environments are not equally welcoming to all “selves.” It can be risky to “be yourself.” Risks can arise from a variety of factors, ranging from membership in various minority groups, to personality conflicts, to lack of fit between group and individual goals. Analyzing how these risks manifest themselves in daily life, and how different individuals and groups respond to them is an important theme in much of the critical feminist, race, and sexual orientation literature concerning the entry of minorities into the legal profession and other work environments.

On some level, most of us recognize these risks and we react by modifying our behavior in large and small ways. We manage the cues we send to others: we consider when to voice our concerns, when to hold back, when to engage in self-promotion, and when to recede into the background. In making these decisions, we perform a risk assessment, at least implicitly, and that assessment is based on our view of the dominant culture: who holds power, what the power-holders value, and what punishment is imposed on those who depart from the norms. Thus, we are less likely to be ourselves in an environment that values one way of doing things and punishes deviants.

In their provocative article, *Working Identity*, Devon W. Carbado and Mitu Gulati analyze this process as they consider the

way that outsiders perform identity work in their employment. They note that the process of negotiating identity in a way that will avoid negative stereotypes is fraught with complexity, given that the attempt to avoid one negative stereotype may simply trigger another. They observe, "[p]erforming one's outsider status in a way that satisfies insiders requires care. As with acting, the ability to negotiate different institutional cultures takes skill. The individual must acquire that skill or cultural capital. That easy ways to acquire or learn that skill exist is by no means clear." It is also by no means clear that care and skill will be sufficient in every situation. For example, the environment at NLS exhibited both an orthodoxy and a willingness to punish deviants by denying promotion or tenure. Women teaching in that environment thus faced a double bind: risk being 'inauthentic' and likely face negative consequences on teaching evaluations, or risk being punished at promotion and tenure time for failing to conform.

In addition, my story must be considered in light of its era. One of the key challenges to teaching in a way that felt 'authentic' was that I lacked appropriate models. Although the Society for American Law Teachers (SALT) was beginning to address this problem at its periodic conferences, these efforts were still in their infancy. Thus, when I departed from the orthodoxy, when I developed a study guide for civil procedure, or when I used simulations and other methods in administrative law, I had to expend additional time and energy making my own way. While that was in many ways rejuvenating, it created more work, exacerbating the challenges that I describe in the next section.

Thus, I can only speculate whether being more authentic in the classroom would have improved my teaching evaluations, avoided a tenure fight, or increased my odds of winning the fight by giving me more ammunition once the battle reached the main campus. I suspect that the answers are 'maybe,' 'no' and 'not enough.'

D. Letting Go of the "Hard Work Solves All Problems" Mindset

As I reached the end of my time at NLS, I often joked with my sisters that the universe is trying to teach me a lesson, but I must

53. Id. at 1300 (citation omitted).
54. Fortunately, more resources are available to teachers entering the profession now, including the AALS Workshops for New Law Teachers, http://www.aals.org/events_nlt.php (last visited Mar. 8, 2006), and materials and conferences sponsored by the Institute for Law School Teaching, http://law.gonzaga.edu/Programs/Institute+for+Law+School+Teaching/ (last visited Mar. 8, 2006).
be a particularly recalcitrant student. I keep getting more opportunities to learn the same lesson: Hard work does not solve all problems. Hard work did not result in tenure at NLS. Hard work did not bring my mother back after her stroke. Hard work did not save my marriage. Hard work on my part could not make my daughter’s path an easy one. Why did I have such difficulty learning that lesson? And why was it such an important lesson for me to learn?

1. The Difficulty of the Lesson

Like many of my colleagues in academia, I suspect, I was both something of a drudge and very much a perfectionist during my formative years. In junior high, I was preternaturally responsible and exceedingly grade conscious. In my brief moment of rebellion in eighth grade, when I intentionally failed a history test, I was well aware that (1) I had enough A’s (as I recall, ten was the magic number) to make up for the F so long as the teacher did not punish me for my impertinence and (2) eighth grade did not count for college admission. It was not until spring quarter of my third year in college that I first turned in a paper late and, when I did, I was more than a little surprised that no penalty seemed to attach to that act. Until I entered law school, my success as a student seemed to correlate with my hard work. Similarly, as an attorney, though working hard did not guarantee success, it certainly seemed to increase the odds. Thus, my default response when I faced a problem was to work harder, and that response was thoroughly ingrained. Like Pavlov’s dog, when the bell rang, I knew what to do. And like Pavlov’s dog, once I was conditioned to respond in that way, I did not easily let go of that response.

The “hard work solves all problems” mindset was no doubt reinforced by the lessons I learned following my father up mountains from an early age. A key lesson in climbing mountains,

55. Like many law students, I found my law school grades random. In the first year they correlated with how much I liked the class. After that, they failed to correlate with how hard I worked, how much I liked the class, or how well I thought I performed on the test.

56. Cf. Susan Daicoff, Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism, 46 AM. U. L. REV. 1337, 1396 (1997) (noting the results of one study showing that of attorneys representing children in protection proceedings, “most . . . had no beneficial effect on the outcome of the proceedings,” but “those who did differed from the rest in that they . . . spent more time on their cases”).

especially the large glacier climbs, is that if you can keep going, even when you think you can’t, you’ll eventually reach the top. I learned that lesson thoroughly during my adolescence, undertaking my first overnight climb at age twelve, and climbing Mt. Whitney and Mt. Rainer at age sixteen.

I suspect that the tendency toward perfectionism and hard work is common among lawyers. Such an inference can be drawn from the results of a study Leonard Chusmir performed, which indicates that “lawyers are more often achievement motivated, with only moderate needs for power and relatively low needs for affiliation [with affiliation described as the desire for friendship, love, or belonging].” The theme is also consistent with articles on “workaholics” directed at lawyers that note the mixed messages sent by a society that gives lip service to ‘balance’ but accolades to those lawyers who put work ahead of family and other emotional needs. Hard work is often motivated in significant part by a desire for control, perhaps driven by early histories of loss. In addition, much of lawyering is about trying to exert control over the unknown. Litigators try to control the outcome of settlements or trials by preparing exhaustively. Transactional lawyers try to control the future by anticipating everything that might go wrong.

2. The Importance of the Lesson

At least one thoughtful commentator about teaching has argued that often working less can be the key to success. In his book, Advice for New Teachers: Nihil Nimus, Robert Boice contends that the most successful college faculty are those who work in small increments and learn to pace themselves, both beginning work and stopping


60. Though I am aware of no research on this subject, based on conversation with colleagues and classmates, I would venture to guess that a significant number of successful lawyers have such circumstances in their past. For a discussion of the need for control in adult children of alcoholic parents, see CLAUDIA BLACK, IT WILL NEVER HAPPEN TO ME: GROWING UP WITH ADDICTS AS YOUNGSTERS, ADOLESCENTS, ADULTS 47-50 (2d ed. 2001).

61. Transactional lawyers may be criticized for taking their work to such extremes that they get in the way of the ‘deal.’
work before ready. This advice is counter to what Boice defines as the common Romantic view that one must wait for the muse to strike and when it strikes work furiously until exhausted. Yet, once articulated, Boice's advice has a certain intuitive appeal. Working in small increments means we get a regular sense of accomplishment; pacing ourselves means we can keep going over the long haul, and beginning and stopping before ready allows us to enjoy what we're doing.

In his very interesting book on the law of time, Todd Rakoff argues that the cyclic rhythms of the work week alternating with the day of rest, a rhythm found throughout the major religious systems of the world, is central to creating a well-ordered life. Implicit in his argument is the view that hard work alone does not solve all problems, and even for those problems requiring hard work, balance is needed.

Our common lore is filled with stories of the major scientific insight that arrives “out of the blue” when the scientist is “off duty”: Archimedes screams “Eureka!” in the bathtub when he recognizes that two objects of equal weight will displace different volumes of water unless they have equal density; hit by an apple while sitting under a tree, Newton “discovers” gravity. These stories acknowledge that sometimes the mind does its best work when it is in repose.

I have already alluded to the central importance of energy and enthusiasm for good teaching. Energy and enthusiasm are difficult to muster during bad times. Even during good times, working excessively will drain the double-E from all but the most high-energy among us. For those of us who are more introverted, working excessively may make it more difficult for us to muster the energy necessary to reach out to our students and build rapport with them.

In addition, as I heard from students concerning my study guide for civil procedure and have been reminded periodically, when I am working excessively hard on teaching, it sometimes means that I am working my students harder than their other teachers. Such a result can generate resentment, especially for stressed first-year students.

3. The Complexity of the Lesson

Still, hard work is necessary and often does pay. I do not suggest that we should all become slackers, but rather I am

62. BOICE, supra note 17, at 15-16, 18.
suggesting that even the most driven and energetic among us have limits. We all need some space in our lives for sleep and renewal and human connection. We now live in a culture of '24/7' that encourages us to forget our limits, and that forgetfulness eventually catches up with us.64

CONCLUSION

A. Translating the Lessons into the Classroom

I began this article in the summer of 2000. Since that time, I have returned to teaching first-year civil procedure four times, armed with the lessons discussed in this article.

My old discomfort with the traditional doctrinal law school teaching approach has evolved into a functional approach to doctrine as the building block of arguments. Though I still do not care much about legal doctrine in the abstract, I enjoy the craft of lawyering and take great pleasure in building an argument that manifestly works on behalf of a client I care about. As the rules are the building blocks of legal argument, my goals include helping students efficiently learn the rules, the basic case and statute reading skills, and the additional analytical skills that will help them enjoy the craft of making effective legal arguments.

In my view, law school beats the passion out of at least a third of students by relying on a de-contextualized first-year curriculum with few reminders that law is about people. Thus, I view my role as helping students develop their passion by providing context for what lawyers do in the world. For example, I incorporate a straightforward simulation exercise into my course and assign a policy paper designed to demonstrate why people care about civil procedure. Equally importantly, I work to build community and provide a supportive context that encourages students to speak with their own voices. For instance, I invite students to my home for a potluck each quarter, and I encourage my students to work in groups to complete their assignments.

My approach to teaching is also based upon the personal lessons from the era of my tenure denial. My experiences with tenure denial and the spectrum of major personal losses described in this essay — my mother’s major disability and eventual death, the break-up of my marriage, and my younger daughter’s learning disabilities — taught me personal lessons that provide grounding for my teaching.

64. Only two years ago, I lost a colleague to suicide, a woman who was productive in the extreme but whose failure to learn this lesson was fatal.
I have learned new ways of relating to people and have acquired a greater appreciation for differences, recognizing that intellect is not the most important thing in life, and letting go of my identity as a spelling snob. Though many of my colleagues perceive me as comfortable dealing with emotions, I did not start life this way; my comfort with feelings and heart are a recent achievement.

Carrying these lessons over into my teaching, I try to let go of my tendency to be judgmental and to start with a presumption of good faith. When students are not doing their work, I assume they are dealing with a life crisis, confronting a mental block, or learning to deal with procrastination, rather than manifesting laziness or incompetence.

My initial return to the civil procedure classroom did not generate the positive student evaluations that I sought, for reasons I believe are best explained by two of the lenses discussed in this article. First, classroom incivilities: I was familiar with Robert Boice’s argument that exams are a critical time in maintaining connection with students, and I attempted to prepare the students for the exam through posting sample exams on my website and giving an exam preparation session. Contrary to my intent, the way I structured the exam and especially my approach to grading were perceived as excessively demanding by my students. Second, I tried to do far too much in the first year, having learned the "hard work does not solve all problems" lesson only intellectually. After ten years of teaching civil procedure, I have finally met my own standard for success. I continue to struggle with the ‘classroom megalomania’ of trying to accomplish too many goals and students continue to push back at times. The quality of the student work and small signs of appreciation — gifts or oral and written thank-yous from students — tell me that civil procedure is finally working for the students as well as for me.

B. Tenure Denials

Though I originally thought of this essay as one about teaching, it is also a story about a denial of tenure. The teaching issues and the tenure denial are inextricably intertwined, so this attempt to analyze my story would be incomplete without a few separate words concerning the environment we create around the tenure process and the importance of “breaking the silence” around the struggles and pain that accompany it.

1. Overseeing Tenure: “Strict Fathers” or “Nurturing Parents”?

My individual struggle at NLS was part of a broader struggle for control over the direction of the institution: Would it be a culture of criticism or a culture of support? In retrospect, this struggle is perhaps best captured by the dueling metaphors that, according to linguist George Lakoff, underlie American visions of government. These metaphors are based on two distinct visions of the family: as headed by either the “strict father” or the “nurturing parent.”66 The strict father, according to Lakoff, views the world as a dangerous place in which children require strict rules enforced through rewards and punishment to achieve the self-discipline necessary to operate morally.67 Once children reach adulthood, they must “sink or swim by themselves.”68 The nurturing parent, by contrast, believes that “[c]hildren become responsible, self-disciplined, and self-reliant through being cared for and respected, and through caring for others.”69 Lakoff argues that most Americans have internalized both visions to some extent and may apply one vision as parents and another in the workplace.70

As I look back on my time at NLS, the “strict father” approach seems to capture the perspective of the key faculty. Motivated by a desire to hold the institution to high standards, the “strict fathers” favored using criticism, fear, and punishment to motivate students and new faculty to excel. Promotion and tenure, or good grades, were awarded to those who met the standards. They were denied to those who failed. At times, this approach resonated sufficiently with other faculty, including myself. This enabled the “strict fathers” to garner a majority vote on most issues.

Though NLS in the 1980s was an extreme case, all faculties face the task of deciding what approach will ultimately generate the most creative and productive faculty, and in doing so, they must choose between the “strict father” and the “nurturing parent” models. I believe that if they choose the “nurturing parent” approach, they will see that meritorious teachers and scholars are made, not found. Academic institutions create conditions that can bring out the best or the worst in their junior faculty, and our disagreements about what methods will bring out the best in our

67. Id. at 65-66.
68. Id. at 66.
69. Id. at 109.
70. Id. at 65, 108.
teachers replicate our disagreements about what will bring out the best in our students.

2. Not the Mark of Cain

Though the subject is not much acknowledged, at least in polite company, a non-trivial number of scholars either receive the supposed "mark of Cain,"71 a tenure denial, or resign before completing the process.72 Others achieve tenure, but only over significant opposition. It seems likely that white women or people of color make up a disproportionate number of both groups,73 but the fear surrounding the tenure process imposes a significant toll on all who go through it. In addition, although tenure denial forces many out of academia, others find new positions within academia and often go on to successful academic careers.

Denials of tenure are discussed occasionally in legal literature, but mostly in contexts that are abstract and relatively dispassionate, such as employment discrimination or the legitimacy of considering 'collegiality' in tenure decisions. A few highly visible, hotly contested tenure cases, especially those at high status institutions, generate newspaper coverage and hallway gossip.74 And a very few of the stories are told in academic literature, mostly

71. This language came from a faculty meeting in which a former colleague who was trying to convince our faculty to hire someone who had, years previously, been denied tenure, asked us to get past the "mark of Cain." This phrase refers to the biblical story, set out in Genesis 4, of the first children of Adam and Eve: Cain and Abel. "Cain murdered his brother [Abel] out of jealousy," and was condemned to be a fugitive; "God 'set a mark upon Cain' to protect him in his wanderings. The 'mark of Cain' now refers to an individual's or humankind's sinful nature." Answers.com: Cain and Abel Bible, http://www.answers.com/cain%20and%20abel (last visited Mar. 8, 2006) (citing 4 Genesis).

72. White women and both men and women of color are more likely to resign than white men. Deborah Jones Merritt & Barbara F. Reskin, New Directions for Women in the Legal Academy, 53 J. LEGAL EDUC. 489, 491 (2003); Report of the AALS Special Committee on Tenure and the Tenuring Process, 42 J. LEGAL EDUC. 477, 485-86 (1992). Thus, I should not have been surprised when a research assistant told me that she was especially interested in my essay because her sister had recently been denied tenure by a top-twenty law school.

73. Report of the AALS Special Committee on Tenure and the Tenuring Process, supra note 72, at 485-86 (reporting that women and minorities who are considered for tenure are not denied it in significantly greater numbers than white men, but they resign prior to consideration much more frequently, and the disparity is greater for minorities than women). Certainly not all such resignations can be linked to difficult experiences with teaching or promotion and tenure expectations, but I suspect that many of them are.

74. For a compilation of such instances, see Nancy Levit, Keeping Feminism in Its Place: Sex Segregation and the Domestication of Female Academics, 49 U. KAN. L. REV. 775, 793-94 nn.68-69 (2001).
by or about white women or faculty of color who have in some fashion been vindicated after a bruising battle, either by obtaining tenure despite an initial denial or by settling a discrimination claim. These are the 'easy' cases, the ones in which the teller of the story can assert with some inner confidence and external proof that the tenure denial was 'wrong.'

The more complex story told here is implicit in some discussions by critical race theorists. By the time the tenure vote arrives, a promising faculty member may not look objectively meritorious because the conditions she faced along the tenure path caused her to lose her way either as a teacher or a scholar. Perhaps it is impossible to prevent entirely such off-course trajectories, but surely, avoiding them is a worthy and achievable goal.

I am persuaded that talking about this subject is a good thing, on the theory that the traumas that we push under the rug and do not come to terms with will continue to haunt us, both individually and collectively. I am persuaded that these conversations should not be restricted to those who see themselves as 'outsiders.' I hope that this essay will help stimulate the collective conversations that can help faculties of good will succeed in their efforts to diversify.