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YET ANOTHER GENDER STUDY? A CRITIQUE OF THE HARVARD STUDY AND A PROPOSAL FOR CHANGE

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In an earlier article I posed the following question:

[I]magine someone describing an educational program to you with the following aspects: after completing the first year, a substantial number of students feel less intelligent than when they matriculated; rewards are based on grades achieved at the beginning of the program, not the end; students receive no feedback, except at the student's initiative to review graded exams after a course has ended; faculty scholarship in the field is selected and published by students, not by peer review; up to forty percent of the students experience depression or other symptoms as a result of their education experience; about a third of students are bored often or almost always in class, believe that much of what they are taught is irrelevant to the real world and is meaningless to them; and the teachers have no training in educational practices — many have no experience in the field, either.¹

* Professor of Law, DePaul University College of Law. I thank Heather Heiman and Jessica Smith, research assistants who have provided invaluable assistance in researching and writing this essay. Also, the Dean's Faculty Research Fund of DePaul University College of Law also supported this project. This essay evolved from a speech I gave at the 2006 Conference *Results: Legal Education, Institutional Change and a Decade of Gender Studies*, sponsored by the Harvard Journal of Law & Gender, Harvard Law Review, and Harvard Civil Rights-Civil Liberties Law Review to discuss the implications of the *Study on Women's Experiences at Harvard Law School* (the "Harvard Study") issued by the Harvard Working Group on Student Experiences (February 2004), available at <http://www.law.harvard.edu/students/experiences/>.

1. Morrison Torrey, *You Call That Education?*, 19 WIS. WOMEN'S L.J. 93, 98-99 (2004)

As we all know, that is legal education today. It is not, however, a complete description. Over the past few decades numerous studies have also revealed that women, men of color, and lesbian/gay/bisexual/transgendered/questioning ("LGBTQ") students often have a substantially different legal education experience than white, male heterosexuals do.² Study after study has found that members of these groups, and most particularly women, speak less in class than white men;³ perform worse, both by internal and external standards, than white men;⁴ experience more negative physical, psychological and emotional reactions than white men;⁵ and, in general, have a less satisfactory legal education than white men.⁶ These findings have been relatively consistent regardless of who conducts the study (students, faculty, professional researchers, or committees of lawyers) or the law school's elitism, geographic area, funding, and size.⁷ This 'chilly climate'⁸ has been documented in five general areas: sexual harassment, classroom environment, academic performance, perceptions of self, and interaction with faculty.⁹

The Harvard Study, which precipitated this essay, is an amazing project, not the least of which for it being student initiated and conducted.¹⁰ I have nothing but awe and admiration for the students and

(footnotes omitted).

2. Janice L. Austin, *Results From a Survey: Gay, Lesbian and Bisexual Students' Attitudes About Law School*, 48 J. LEGAL EDUC. 157, 164-67 (1998).

3. Morrison Torrey et al., *What Every First Year Female Law Student Should Know*, 7 COLUM. J. GENDER & L. 267, 275 (1998).

4. *Id.* at 285-88.

5. *Id.* at 289-91.

6. *Id.* at 275-79; see also *infra* app.; HARVARD WORKING GROUP ON STUDENT EXPERIENCES, STUDY ON WOMEN'S EXPERIENCES AT HARVARD LAW SCHOOL 1, 22 (2004), available at <http://www.law.harvard.edu/students/experiences/> [hereinafter HARVARD STUDY]. However, the Harvard Study, did not attempt to seriously analyze any category other than gender. The Working Group noted: "[We] also made optional the question asking students to identify their race because we did not want students to be concerned that answering the questions about race, gender, and 1L section might identify them." *Id.* at 12.

7. See *infra* app.

8. The reference to the "chilly climate" is a phrase coined in an early report issued by the Association of American Colleges' Project on the Status and Education of Women, which documented that even though there were approximately equal numbers of female and male students in higher education, women still did not enjoy equal opportunities. Roberta M. Hall & Bernice R. Sandler, *Project on the Status and Educ. of Women, The Classroom Climate: A Chilly One for Women?*, ASS'N AM. CS. 2, 8 (1982).

9. I used these five categories for organizational purposes in *What Every First Year Female Law Student Should Know*. Torrey et al., *supra* note 3, at 270.

10. The Harvard Study was apparently not supported by all Harvard Law School faculty. For instance, two classes were not monitored because of faculty objections, and not all professors advertised the survey to their students as requested. HARVARD STUDY, *supra* note 6, at 10. Additionally, only about half of first-year students, forty percent of second-year students, and thirty-three percent of third-year students returned the survey

others involved. Yet, for the most part, the Study simply replicated what we already know from numerous studies conducted over the past thirty years.¹¹ The wonderful empirical work of the Harvard Study is neither new nor startling but simply reinforces the persistence of bias in many forms.¹² However, it does provoke the question of exactly when we have enough "evidence" of the gender, race, and heterosexual bias in legal education for legal educators to take this problem seriously. How many more studies do we need? The problems are clearly identified and the solutions are not a great mystery.

However, the Harvard Study did prompt a new perspective for me. After writing several articles addressing gender and legal education, I have come to the realization that even though female students were subjected to a greater quantity (and sometimes different quality) of negative law school experiences, substantial numbers of men are also being deprived of a quality legal education.¹³ Apparently law school is a positive learning experience for hardly anyone! I propose a different take on the gender studies. Instead of simply emphasizing the greater number of women experiencing adverse effects, let us consider also the large number of men who also suffer in the current environment.

In other words, even though numerous studies have rendered the sexual, racial, and heterosexual biases of the law school experience irrefutable,¹⁴ it has become more and more clear that the current state of legal education fails a substantial number of white, heterosexual males as well. For example, while forty-one percent of females completing their first year of law school in Ohio agreed with the statement "Before law school I thought of myself as intelligent and articulate, but often I don't feel that way about myself now," 16.5 percent of male students also reported a loss of confidence and self-esteem.¹⁵ This percentage is not an insignificant number. Similarly, while over half of the female students at Boalt Hall at the University of California felt intelligent and articulate prior to law school but not during law school, almost a third of the male students concurred.¹⁶ Thus, although

portion of the Study. *Id.* at 15.

11. As early as 1973, legal educators have complained about the lack of a response to gender bias in legal education studies. See generally Jon Richardson, *Does Anyone Care For More Hemlock*, 25 J. LEGAL EDUC. 427 (1973).

12. See generally HARVARD STUDY, *supra* note 6, at 4-7.

13. See, e.g., Torrey, *supra* note 1; Torrey et al., *supra* note 3; Morrison Torrey et al., *Teaching Law in the Feminist Manner: A Commentary from Experience*, 13 HARV. WOMEN'S L.J. 87 (1990).

14. Torrey, *supra* note 1, at 93-94 n.1.

15. Joan M. Krauskopf, *Touching the Elephant: Perceptions of Gender Issues in Nine Law Schools*, 44 J. LEGAL EDUC. 311, 328 (1994).

16. Suzanne Homer & Lois Schwartz, *Admitted But Not Accepted: Outsiders Take an*

one in two female students lost confidence, so did almost one in three male students.¹⁷ Data like this leads to the conclusion that the current state of legal education is not benefitting males, either. Those in legal education must finally admit that times have changed.

In this essay I offer several comments on the Harvard Study as well as a proposal for what must happen before we can shift the enormous inertia and the entrenched power hierarchy to create an educational environment that benefits all students striving to become lawyers. Inevitably, this will also result in lawyers who are more satisfied with their professional life¹⁸ as well as improving legal services in this country.¹⁹

I. COMMENT: SEXUAL HARASSMENT AND LEGAL EDUCATION

One of the major omissions of the Harvard Study was any inquiry concerning the existence and impact of sexual harassment at Harvard Law School.²⁰ Admittedly, measuring sexual harassment can be a difficult proposition since it can be more subjective than the easily quantifiable grade point average, course selection, or rate of class participation. Further complicating matters is the fact that reality is a gendered experience. As earlier studies of sexual harassment in the workplace have discovered, men and women have very different experiences of sexual harassment, including perceptions of exactly what constitutes harassing behavior.²¹

Inside Look at Law School, 5 BERKELEY WOMEN'S L.J. 1, 33 (1989-1990). After controlling for ethnicity, the reactions of people of color also showed a consistent pattern. A stunning fifty-seven percent of the women of color and forty-one percent of the men of color agreed with the statement, compared with twenty-five percent of white men. *Id.* Still, those numbers reflect that one out of four white men also were diminished by attending law school. *Id.*

17. *Id.*

18. Many studies suggest that the current state of legal education results in personal difficulties for many students that are connected to problems and dissatisfaction with their professional lives. See Deborah Rhode, *Kicking the Socratic Method and Other Reforms of Law Schools*, CHRON. HIGHER EDUC., Jan. 26, 2001, at B15.

19. For example, Roger Schechter suggests that the Socratic Method contributes to the "Civility Crisis" because students presumably model themselves after professors' classroom behavior, in essence treating others rudely and abusing power. Roger E. Schechter, *Changing Law Schools to Make Less Nasty Lawyers*, 10 GEO. J. LEGAL ETHICS 367, 378-84 (1996).

20. See generally HARVARD STUDY, *supra* note 6, at 10-17.

21. See Morrison Torrey, *We Get the Message - Pornography in the Workplace*, 22 SW. U. L. REV. 53, 67 (1992). For example, while both sexes tend to find *quid pro quo* demands to be sexually harassing, more women than men find subtle or non-coercive sexual conduct objectionable. Men perceive subtle or non-coercive sexual conduct to be innocuous, trivial, or acceptable behavior. *Id.* Without a doubt, men are the primary harassers whether the victim is female or male. *Id.* The motivation, however, varies depending on the sex of the

In previous studies sexual harassment was found to be pervasive at the law schools examined.²² For example, both female students and female professors at all six Chicago area law schools cited occurrences they considered to be sexual harassment.²³ In the Ohio study, almost twenty percent of females reported being sexually harassed.²⁴ In addition, approximately half of the female respondents to a questionnaire sent to students at five diverse law schools reported sexual harassment.²⁵ These statistics leave little doubt that sexual harassment in legal education is rampant.

This conclusion is not surprising as studies reflecting life in law school are entirely consistent with not only women's experiences in the workplace,²⁶ but also their *entire* educational encounter. After publishing studies documenting sexual harassment in public education,²⁷ the American Association of University Women (AAUW)

victim. *Id.* Several reasons have been offered to explain male-female harassment: "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." MARY BECKER, CYNTHIA GRANT BOWMAN & MORRISON TORREY, CASES AND MATERIALS ON FEMINIST JURISPRUDENCE: TAKING WOMEN SERIOUSLY 916 n.1 (2001) (citing Torrey, *supra* note 22). Male on male harassment, on the other hand, is an attempt to enforce "the traditional heterosexual male gender role." Craig R. Waldo et al., *Are Men Sexually Harassed? If So, by Whom?*, 22 LAW & HUM. BEHAV. 59, 61 (1998).

22. Torrey et al., *supra* note 3, at 271-75.

23. *Id.* at 273-74 (citing LAW SCHOOL OUTREACH PROJECT OF THE GENDER BIAS FREE JURISPRUDENCE COMM. OF THE CHI. BAR ASS'N, ALLIANCE FOR WOMEN, WOMEN STUDENTS' EXPERIENCES OF GENDER BIAS IN CHICAGO AREA LAW SCHOOLS: A STEP TOWARD A GENDER BIAS FREE JURISPRUDENCE iv (1995)).

24. *Id.* at 272 (citing Krauskopf, *supra* note 15, at 325).

25. *Id.* at 272-73 (citing Taunya Lovell Banks, *Gender Bias in the Classroom*, 38 J. LEGAL EDUC. 137, 140 (1986)).

26. For example, the National Women's Law Center cites statistics that have over half of working women experiencing some form of sexual harassment on the job. National Women's Law Center, *Sexual Harassment in the Workplace*, <http://www.nwlc.org/details.cfm?id=459§ion=employment> (citing Louise F. Fitzgerald & Sandra L. Shulman, *Sexual Harassment: A Research Analysis and Agenda for the 1990s*, 42 J. VOCATIONAL BEHAV. 5, 7 (1993)) (last visited Mar. 30, 2007).

27. See AM. ASS'N UNIV. WOMEN EDUC. FOUND., HOSTILE HALLWAYS: BULLYING, TEASING, AND SEXUAL HARASSMENT IN SCHOOL (2001) [hereinafter 2001 HOSTILE HALLWAYS]; AM. ASS'N UNIV. WOMEN EDUC. FOUND., HOSTILE HALLWAYS: THE AAUW SURVEY ON SEXUAL HARASSMENT IN AMERICA'S SCHOOL (1993). Some of the major findings of the 2001 Study of eighth grade to eleventh grade students include: (1) "Girls are more likely than boys to experience sexual harassment ever (83 percent vs. 79 percent) or often (30 percent vs. 24 percent);" (2) "Three-quarters of students (76 percent) experience non-physical sexual harassment at some point in their school lives, more than half (54 percent) often or occasionally;" (3) "Six in 10 students (58 percent) experience physical sexual harassment at some point in their school lives, one-third (32 percent) often or occasionally;" (4) "One-third (32 percent) of students are afraid of being sexually harassed. Girls are more than twice as likely as boys to feel this way (44 percent vs. 20 percent);" (5) "Nearly half (47 percent) of all students who experience sexual harassment feel very or somewhat upset right afterward;" and (6) "Students who experience sexual harassment are most likely to react by avoiding the person who bothered or harassed them (40 percent), talking less in

Educational Foundation issued a report in 2005 addressing the situation on college campuses.²⁸ It revealed the prevalence of sexual harassment, as nearly two-thirds of all college students experience some type of sexual harassment.²⁹ Although male and female students were found to be nearly equally likely to be sexually harassed,³⁰ the nature of that harassment is dramatically different: “[f]emale students are more likely to be the target of sexual jokes, comments, gestures, or looks. Male students are more likely to be called gay or a homophobic name.”³¹

Moreover, male and female college students react very differently to being sexually harassed.³² Just as studies in the workplace have found,³³ women tend to internalize more, becoming upset and feeling

embarrassed, angry, less confident, afraid, worried about whether they can have a happy relationship, confused, or conflicted about who they are, or disappointed in their college experience. Female students are also more likely to change their behavior in some way as a result of the experience. For example, more than half of female victims avoid the person who harassed them or avoid a particular building or place on campus. Female victims are more likely to find it hard to pay attention in class or have trouble sleeping as a result of sexual harassment.³⁴

class (24 percent), not wanting to go to school (22 percent), changing their seat in class to get farther away from someone (21 percent), and finding it hard to pay attention in school (20 percent).” 2001 HOSTILE HALLWAYS at 4. Other behavioral impacts of sexual harassment include: “finding it hard to study” (13 percent boys versus 20 percent girls); “mak[ing] a lower grade on a test or paper than you think you otherwise would have” (10 percent boys versus 16 percent girls); “mak[ing] a lower grade in a class than you think you otherwise would have” (8 percent boys versus 14 percent girls); “hav[ing] trouble sleeping” (9 percent boys versus 20 percent girls); and “los[ing] your appetite/not be interested in eating” (8 percent boys versus 23 percent girls). *Id.* at fig. 26.

28. CATHERINE HILL & ELENA SILVA, AM. ASS’N UNIV. WOMEN EDUC. FOUND., DRAWING THE LINE: SEXUAL HARASSMENT ON CAMPUS (2005).

29. *Id.* at 2-3.

A majority of college students experience sexual harassment. More than one-third encounter sexual harassment during their first year. A majority of students experience non-contact forms of harassment — from sexual remarks to electronic messages — and nearly one-third experience some form of physical harassment, such as being touched, grabbed, or forced to do something sexual. Sexual harassment occurs nearly everywhere on campus, including student housing and classrooms. It happens on large and small campuses, at public and private colleges and universities, and at two-year and four-year institutions. It is most common at large universities, four-year institutions, and private colleges.

Id.

30. *Id.* at 3.

31. *Id.*

32. HILL & SILVA, *supra* note 28, at 3.

33. Torrey, *supra* note 21, at 68-69.

34. HILL & SILVA, *supra* note 28, at 3. Some of the students’ documented reactions to

Obviously, these kinds of reactions inevitably affect how students perform and feel about their educational experience. Although the negative impact is felt by substantially more female students, male students are not unaffected; for example, while thirty-five percent of females felt less confident, sixteen percent of males also expressed a loss of confidence.³⁵

These results are consistent with studies in the workplace finding that sexual harassment victims "reported deterioration in their ability to work with others on the job, in their time and attendance at work, and to the quantity or quality of their work."³⁶ Other responses recorded included "severe physical, emotional and psychological problems as a result of being subjected to sexual harassment."³⁷ In fact, the stress caused by sexual harassment has been recognized as a diagnosable problem by the American Psychiatric Association.³⁸ Directly applicable to the educational context is the typical female victim's "internalization of the harassment . . . result[ing] in lowered feelings of competence" occurring when "poor performance (due to stress) or poor evaluations (due to not cooperating with harassment) are attributed by the victim to her lack of skill rather than to situational factors."³⁹

In sum, a lifetime of sexual harassment in educational environments has already eroded female students' confidence and ability to perform before they even enter law school.⁴⁰ To a lesser, but still

sexual harassment experiences were: "[F]elt less confident or sure of themselves" (13 percent female versus 16 percent males); "Felt disappointed with their college experience" (18 percent females versus 11 percent males); "Worried about whether they could have a successful career or work life" (8 percent females versus 6 percent males); "Worried about whether they have what it takes to graduate from college" (5 percent females and 5 percent males); and "Worried about whether they have what it takes to continue their education beyond college" (5 percent females and 4 percent males). *Id.* at fig. 7. The study found that these reactions translated into negative effects: "Found it hard to study or to pay attention in class" (16 percent females versus 8 percent males); "Had trouble sleeping" (16 percent females versus 6 percent males); "Lost their appetite/not interested in eating" (13 percent females versus 4 percent males); "Did not participate as much in class" (10 percent females versus 6 percent males); and "Skipped a class or dropped a course" (9 percent females versus 4 percent males). *Id.* at fig. 9.

35. *Id.* at fig. 7.

36. Torrey, *supra* note 21, at 68 (footnote omitted).

37. *Id.* The kinds of physical symptoms "suffered by victims include high blood pressure, nausea, sleeping disorders, headaches, eating disorders and stress." *Id.* (footnote omitted).

38. *Id.* "Stress effects can be manifested in a variety of ways: (1) 'work performance stress, which includes distraction from tasks, dread of work, and an inability to work,' or (2) 'emotional stress, which covers a range of responses, including anger, fear for physical safety, anxiety, depression, guilt, humiliation, and embarrassment.'" *Id.* (footnotes omitted).

39. *Id.* at 69 (citing Joy A. Livingston, *Responses to Sexual Harassment on the Job: Legal, Organizational, and Individual Actions*, 38 J. SOC. ISSUES 5, 16 (1982)).

40. See Torrey et al., *supra* note 3, at 271-75.

unacceptable degree, male students have also been victimized. There is no reason to believe that legal education will be different from either the undergraduate or, for that matter, workplace experiences. The documented impact of sexual harassment in these environments has been to undermine self-confidence, make it more difficult to pay attention in class and to study, inhibit class participation, generate anxiety, cause trouble sleeping and eating, result in lower grades than anticipated, and discourage victims from pursuing particular courses and careers.⁴¹ The Harvard Study unfortunately did not gather data on this issue that could possibly account, at least in part, for female (and male) under-performance and feelings of incompetence and/or loss of confidence as well as their adverse physical, psychological and emotional reactions.⁴²

II. COMMENT: PEDAGOGY AND ITS EFFECT ON THE CLASSROOM ENVIRONMENT⁴³

While there may not be complete agreement and a stable theory about pedagogy, there is a consensus that active, or participatory, learning is the most effective.⁴⁴ Nonetheless, the Socratic Method persists as the prevalent, and idealized, legal pedagogy⁴⁵ even though it has been documented to result in discouraging, depressing, demeaning, and decreasing self-esteem of students,⁴⁶ particularly women and men of color.⁴⁷ With overwhelming empirical data establishing that "the Socratic Method does not work all that well for what [now

41. See generally *id.*

42. See generally HARVARD STUDY, *supra* note 6.

43. This essay is limited to methodology and evaluation and does not address the implications of curriculum and text selection. Obviously *what* is taught is just as important, perhaps more important, than *how* it is taught. See Torrey et al., *supra* note 3, at 284-85 (briefly discussing these aspects).

44. See Torrey, *supra* note 1, at 103, n.42. I am aware of no empirical research that validates the Socratic Method as an effective pedagogical system, and no other graduate school employs it. *Id.* at 106-07.

45. *Id.* at 102; see also Cynthia Hawkins-Leon, *The Socratic Method-Problem Method Dichotomy: The Debate Over Teaching Method*, 1998 BYU EDUC. & L.J. 1, 5.

46. Torrey, *supra* note 1, at 104.

47. *Id.* at 105. One author argues that the "Socratic Method's disparate impact upon women law students" should provide a basis for "constitutional redress under the equal protection doctrine." Tanisha Makeba Bailey, *The Master's Tools: Deconstructing the Socratic Method and Its Disparate Impact on Women Through the Prism of the Equal Protection Doctrine*, 3 MARGINS 125, 125 (2003). Of course, when Langdell initiated the Socratic Method and case system at Harvard Law School, students were all white and male. Torrey, *supra* note 1, at 104. Today almost half of all law students are female, and the minority population, while still too small, has improved. *Id.* For a general discussion of the Socratic Method see Torrey et al., *supra* note 3, at 280-82; Torrey, *supra* note 1, at 100-09.

constitutes] the majority of students,"⁴⁸ it is astounding that law teachers have failed to respond⁴⁹ especially when there is absolutely no evidence that "white men cannot learn equally well with other methods"⁵⁰ of teaching or that, in fact, they do all that well with the Socratic Method, either.⁵¹ Unfortunately, the Harvard Study did not explore the problem of teaching methodology.⁵²

Naturally, the overwhelming negative data about the Socratic Method⁵³ raises the question of why law schools persist in a pedagogy that demeans, discourages, depresses, and decreases students' self-esteem.⁵⁴ Interestingly, research has discovered that "the more years a professor has been teaching, the less willing he or she is to either change his or her teaching methods or to experiment with new ways of teaching" and "the greater the reliance on the Socratic Method."⁵⁵ No doubt economics and large class sizes also play a role.⁵⁶

A. Increased Anxiety and Depression

Fear and anxiety actually inhibit, not encourage, learning.⁵⁷ Unfortunately, intimidation and passivity are endemic to the current incarnation of the Socratic Method in legal education.⁵⁸ Its deployment

48. Torrey, *supra* note 1, at 105.

49. *Id.*; see also Hawkins-Leon, *supra* note 45, at 6-7.

50. Torrey, *supra* note 1, at 105.

51. See Hawkins-Leon, *supra* note 45, at 6-7.

52. HARVARD STUDY, *supra* note 6, at 19. "The variation in gender patterns between courses suggests that further research should be done to determine possible course-specific factors that may influence the pattern of participation. Unfortunately, our sample size was insufficient for comparisons of participation patterns between different teaching methods (e.g., Socratic v. non-Socratic courses)." *Id.* However, the Study did provide a revealing quote by a male third-year student (3L):

The school manages to take 500 of the brightest and most motivated students in any field in the country and systematically pacify and alienate large proportions of them, so that by the time they are in their third year, many if not most students rarely attend class, do the reading, or care a fig about law.

Id. at 21.

53. Torrey, *supra* note 1, at 105.

54. *Id.* at 104-05.

55. *Id.* at 104 (citing Steven I. Friedland, *How We Teach: A Survey of Teaching Techniques in American Law Schools*, 20 SEATTLE U. L. REV. 1, 39-40 (1996)). On the other hand, when the Socratic Method was compared to its most common alternative, the problem method, professors who used the problem method rated it as "much better by a margin of 4 to 1 in its development of student abilities." See Hawkins-Leon, *supra* note 45, at 11.

56. Hawkins-Leon, *supra* note 45, at 1.

57. Torrey, *supra* note 1, at 104 (footnote omitted).

58. See generally *id.* at 103-09; see also David Franklin, *Trials of Socrates: The Way We Teach Law is Worse Than Sexist. It's Idiotic*, SLATE, June 31, 1997, <http://www.slate.com/id/3133/>.

is boring and stifles creativity⁵⁹ as well as disempowering students;⁶⁰ often results in student cynicism and/or obsequiousness;⁶¹ reinforces student subordination and passivity;⁶² utilizes a presumption of definable, universal terms contrary to contemporary post-modernist theory;⁶³ and does not account for the variety of learning styles of students⁶⁴ such as visual or "connected" learning.⁶⁵ The Socratic Method favors auditory learners with an emphasis on logical intelligence (usually associated more with males) as opposed to other kinds of intelligences (such as linguistic, more often identified with women).⁶⁶

The Socratic Method classroom also fosters competition, not collaboration and cooperation, both shown to improve learning and retention.⁶⁷ Simply put, it reinforces a hierarchy in which the teacher is the depository of all knowledge.⁶⁸ As Deborah Rhode as noted,

[T]he highly competitive atmosphere of law schools, coupled with the lack of feedback and personal support structures, leaves many students with personal difficulties that set the stage for problems in their future practice. Although the psychological profile of entering law-school students matches that of the public generally, an estimated 20 to 40 percent of those who graduate leave with

59. Torrey, *supra* note 1, at 106.

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.* (footnotes omitted). For example, educational theory has found that every individual learns differently:

Approximately 20 to 30 percent of the school-aged population remembers what is heard; 40 percent recalls well visually the things that are seen or read; many must write or use their fingers in some manipulative way to help them remember basic facts; other people cannot internalize information or skills unless they use them in real-life activities such as actually writing a letter to learn the correct format.

MARIE CARBO, RITA DUNN & KENNETH DUNN, *TEACHING STUDENTS TO READ THROUGH THEIR INDIVIDUAL LEARNING STYLES* 13 (1986). See generally Marge Philbin & Elizabeth Meier, *A Survey of Gender and Learning Styles*, 32 *SEX ROLES* 485 (1995); Richard E. Maryer & Laura J. Massa, *Three Facets of Visual and Verbal Learners: Cognitive Ability, Cognitive Style, and Learning Preference*, 95 *J. EDUC. PSYCH.* 833 (2003); Sabine E. Severiens & Geert T.M. ten Dam, *Gender Differences in Learning Styles: A Narrative Review and Quantitative Meta-Analysis*, 27 *HIGHER EDUC.* 487 (1994).

66. Kirsten A. Dauphinais, *Valuing and Nurturing Multiple Intelligences in Legal Education: A Paradigm Shift*, 11 *WASH. & LEE RACE & ETHNIC ANC. L.J.* 1, 27 (2005); Frank R. Strong, *The Pedagogic Training of a Law Faculty*, 25 *J. LEGAL EDUC.* 226, 235 (1972-1973).

67. Torrey, *supra* note 1, at 103. See generally Clifford S. Zimmerman, "Thinking Beyond My Own Interpretation." *Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum*, 31 *ARIZ. ST. L.J.* 957 (1999).

68. Torrey, *supra* note 1, at 104.

some psychological dysfunction including depression, substance abuse, and various stress-related disorders. Such problems are not inherent byproducts of a demanding professional education; medical students do not experience similar difficulties.⁶⁹

Not surprisingly, female law students in multiple studies report significantly higher rates of anxiety, depression, sleeping difficulties, and crying than male respondents.⁷⁰ The Harvard Study found that two-thirds of the sixteen percent of law students visiting Harvard Mental Health Services were female.⁷¹ Apparently, the Socratic Method actually makes law students sick!

B. Lower Rates of Class Participation

Lower rates of class participation by female law students, both in asking questions and volunteering answers as well as in time speaking,⁷² have been documented in every study, including the Harvard Study.⁷³ For example, at Boalt Hall at the University of California, a majority of women responding stated that they never asked questions or volunteered answers; however, one-third of the white men responded similarly.⁷⁴ At Penn Law, male law students reported a participation rate almost twice that of female law students.⁷⁵ Another study found that while 17.6 percent of females students reported never participating in classroom discussion, 9.6 percent of men remained silent, too.⁷⁶ First year women at Yale Law expressed a fear

69. Deborah Rhode, *supra* note 18; see also Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337 (1997).

70. Torrey et al., *supra* note 3, at 289. One Harvard female 3L responded that she knew "many people who cried their way through 1L year." HARVARD STUDY, *supra* note 6, at 23.

71. *Id.* at 5. The Study warns, however, that it did not have "information on the prevalence of preexisting conditions, visits to non-Harvard providers, the extent of Harvard health insurance coverage, or the purpose for or type of visit." *Id.*; see also *id.* at 23.

72. See HARVARD STUDY, *supra* note 6, at 18; Torrey et al., *supra* note 3, at 275-80.

73. See HARVARD STUDY, *supra* note 6, at 18 ("[W]e found significant gender differences in classroom participation by students in the classes we monitored."); Torrey et al., *supra* note 3, at 275-80.

74. Torrey et al., *supra* note 3, at 277 (citing Homer & Schwartz, *supra* note 9, at 29). Male students at Stanford Law self-reported a greater likelihood of participation, too. *Id.* (citing Janet 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)).

75. *Id.* at 278 (citing Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1, 33 (1994)). Many female students reported feeling disabled from participation by the large classrooms and the Socratic Method. *Id.* at 278-79.

76. *Id.* at 278 (citing Banks, *supra* note 25, at 141). When asked to explain their lack of participation, "more women than men responded that insecurity resulting from the demands of the Socratic [M]ethod kept them quiet in class." *Id.* (citing Banks, *supra* note

of speaking in class, uncomfortable with the aggressive, competitive Socratic Method classroom.⁷⁷ Even the Brooklyn Law School Study, in which female students were found to achieve grades and honors proportionate to the males,⁷⁸ discovered less female participation and more discomfort.⁷⁹

The Harvard Study revealed similar results — a gender disparity in student comments in class with male students being fifty percent more likely to volunteer than female students, and more likely to volunteer multiple times in a class.⁸⁰ Males were a whopping 142 percent more likely to speak voluntarily three or more times in a class.⁸¹ Additionally, in the first year ten percent of students accounted for almost half of class participation but females constituted only twenty percent of that active group.⁸² These patterns varied greatly depending on the specific course being monitored,⁸³ but the Harvard Study did not identify variables such as subject matter, gender of professor, text utilized, pedagogy, or evaluation methods which could possibly explain these discrepancies.⁸⁴

Over the years studies have offered various explanations, both hypothetical and anecdotal, for the low participation rates: the isolation and alienation of large classrooms;⁸⁵ the anxiety of the Socratic Method;⁸⁶ the aggressive, competitive nature of the classroom;⁸⁷ sexual harassment;⁸⁸ and the rampant negative stereotyping of women

25, at 142).

77. *Id.* at 279 (citing Catherine Weiss & Louise Melling, *The Legal Education of Twenty Women*, 40 STAN. L. REV. 1299, 1327-28, 1333, 1337-39 (1988)).

78. *Id.*

79. *Id.* (citing Marsha Garrison *et al.*, *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, 524-25 (1996)).

80. HARVARD STUDY, *supra* note 6, at 4.

81. *Id.* at 18. In contrast, professors were found to follow up student comments more often if they were made by a female: they were seventeen percent less likely to question a male student further. *Id.*

82. *Id.* at 4-5. Interestingly, the Harvard Study did not gather data about student perceptions relating to gendered class participation, whether professors called on volunteering male and female students differently, or the duration and quality of student comments. *Id.* at 11. Also, the Harvard Study counted prolonged back-and-forth between a student and professor as a single, stand-alone comment by the student. *Id.* at 11.

83. *Id.* at 19.

84. *Id.* Nonetheless, the Harvard Study identified some trends, such as the greater the overall participation rates, the greater the gender disparity; in courses taught by women (five of the thirty-two courses), male students spoke even more. *Id.* This latter finding, however, is consistent with the former since female professors had higher overall student participation. *Id.*

85. Torrey *et al.*, *supra* note 3, at 278.

86. *Id.* at 278-79.

87. *Id.* at 279.

88. *Id.* at 271-75.

who speak in class, among others.⁸⁹ While the Harvard Study documented the gender disparity as well as generally low participation rates, it offered no explanations of causes of this trend.

C. Changes in Values and Perspectives

Supporters of the Socratic Method are known for their adamant defense of the pedagogy, most notably that it teaches law students to "think like lawyers."⁹⁰ Even if this were true, the question remains: is this a legitimate or desirable goal? Usually, to "think like a lawyer" translates into denying emotions or the ability to "feel" like a compassionate human being who is not only an advocate, but also a member of society.⁹¹ As Catharine MacKinnon has noted, "law school . . . tells you that to become a lawyer means to forget your feelings, forget your community, most of all, if you are a woman, forget your experience."⁹² It is time for legal education to stop teaching students to compartmentalize rather than integrate their emotional and rational selves.

More women than men believe that the Socratic Method often leads students to their teachers' views rather than encouraging students to form their own conclusions.⁹³ This spills over into what is known as "moral reasoning."⁹⁴ One study found that the substantial

89. *Id.* at 279. However, some commentators suggest that the lack of participation is not correlated to learning. For example, one of the Deans attending the Harvard Conference related her experience of non-participation in classroom discussion but did not believe it adversely affected her ability to learn. A female first-year (1L) student's comment echoes this attitude in the Harvard Study:

I have felt there is no space for people who just absorb and listen in law school and then reflect on it later. As a person who absorbs information best through this method instead of just talking when I feel like it, I have felt that there is little room for that learning technique in law school.

HARVARD STUDY, *supra* note 6, at 18. Homer and Schwartz proffer an alternative interpretation: silence can be a form of resistance. Torrey et al., *supra* note 3, at 299 (citing Homer & Schwartz, *supra* note 15, at 38).

90. See Kurt M. Saunders and Linda Levine, *Learning To Think Like A Lawyer*, 29 U.S.F. L. Rev. 121 (1994).

91. CATHARINE MACKINNON, *On Collaboration*, in *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND THE LAW* 198, 205 (1987).

92. *Id.*

93. Torrey et al., *supra* note 3, at 282 (citing Krauskopf, *supra* note 15, at 334).

94. Carol Gilligan addressed gender differences in moral development by critiquing previous scales that ignored or undervalued the relational, caring voice (presumably "female") and over-valued logic and abstract rules (presumably "male"). See generally CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* (1982). The Harvard Study illustrates this difference: women law students (forty-one percent) were much more likely than men (twenty-two percent) to choose "helping others" as one of the three most important factors in their career. HARVARD STUDY, *supra* note 6, at 32. Still, one out of five male students did rank "helping others" as a career priority. *Id.*

difference in the "care" versus the "rights" orientation of women and men at the start of law school was soon erased — at the completion of the first year there was no significant difference between the moral reasoning orientation of the genders.⁹⁵ Although this shift from caring relations to rights is more dramatic for women, male students with a similar reasoning predominantly from a perspective concerned with connectedness are also affected.⁹⁶ Furthermore, although many studies suggest that "law students are socialized to value the male voice over the female voice,"⁹⁷ often resulting in the silencing of the female voice,⁹⁸ the monolithic view of the "male voice" inevitably excludes the voices of many non-traditional men as well.

This negative impact of the first year's denigration and denial of emotions can be seen in the decreased "care" orientation of both men and women.⁹⁹ As the Harvard Study found, second- and third-year men were significantly less likely to rank highly a career involving "helping others" than were first-year men.¹⁰⁰ As the data reveals, rather than challenge the mandate of male moral reasoning, many male as well as female students submerge or deny the perspectives they brought with them to law school in order to survive.¹⁰¹

D. Role of the Evaluation Method

The Harvard Study considered the role of the evaluation method only in first-year courses;¹⁰² it concluded that the gender disparity persisted across 1L courses without regard to the exam types utilized — in-class (typically three hours), take-home (typically eight hours), open-book, or restricted-materials.¹⁰³ As the Study itself noted, however, the limited range of evaluation options in the first year did not permit a full analysis.¹⁰⁴ It may be that the single, end-of-term exam,

95. Torrey et al., *supra* note 3, at 282-83 (citing Sandra Janoff, *The Influence of Legal Education on Moral Reasoning*, 76 MINN. L. REV. 194, 217, 222, 226-34, 238 (1991)).

96. *Id.*

97. Cheryl M. Herden, *Women in Legal Education: A Feminist Analysis of Law School*, 63 REV. JUR. U.P.R. 551, 560 (1994).

98. *See generally id.* at 559-61.

99. Torrey et al., *supra* note 3, at 283.

100. HARVARD STUDY, *supra* note 6, at 32. A quote by a female 3L in the Harvard Study provides a glimpse into this phenomenon: "I've been surprised by the number of people that I see disengaged from life at HLS — both academic and extracurricular. There are lots of people who stop vocalizing what they are passionate about after their first year." *Id.* at 24.

101. Torrey et al., *supra* note 3, at 283.

102. HARVARD STUDY, *supra* note 6, at 25.

103. *Id.* at 26. Note that "the chief exception was that women were significantly more likely to do well in courses with in-class restricted materials exams." *Id.*

104. *Id.* The options of essays, problem sets, weekly exercises, or other evaluation

which provides no interim feedback,¹⁰⁵ considered essential in adult learning and which may be even more important for female students who are having to adapt to and become proficient at a pedagogy more suitable to men,¹⁰⁶ is partially responsible for women receiving lower grades than men in law school. Furthermore, 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, collaboration, and motivation (considered by many to be female-dominated traits).¹⁰⁷ In any event, adult learning theory has documented the importance of interim feedback for both genders. Law professors are notorious for their failure to provide any interim feedback.¹⁰⁸ Clearly, both genders are harmed by this.¹⁰⁹ Unfortunately, the Harvard Study did not address this aspect of legal education.

III. COMMENT: ACADEMIC PERFORMANCE

The Harvard Study found that women were well represented in voluntary journals but severely underrepresented on the (partially) grade-based Law Review, with only thirty-six percent female membership on average.¹¹⁰ In addition, "[w]omen have been underrepresented on the Law Review for the past six years relative to the student population."¹¹¹ The Harvard Study also discovered that men received higher grades than women in 1L courses: thirty-one percent of the grades for men were A- or better compared with twenty-five percent of women's grades.¹¹² Graduation honors were similarly skewed, with men more likely to graduate magna cum laude and less likely to graduate without Latin honors.¹¹³ It is difficult, if not impossible, statistically to overcome the first year disparity in grades. Clearly, something about the first year experience leads to female under-performance.

These findings are consistent with many other studies.¹¹⁴ For example, the Penn Law Study discovered that even though men and

methods were not examined. *Id.*

105. See Torrey et al., *supra* note 3, at 288, for further discussion of the problems with a single, limited-time final examination.

106. *Id.* at 288.

107. *Id.*

108. *Id.* at 289.

109. *Id.*

110. HARVARD STUDY, *supra* note 6, at 5.

111. *Id.* at 20.

112. *Id.* at 6, 26.

113. *Id.* at 6, 25. Unfortunately, the disparities have increased in more recent years. *Id.* at 26.

114. See Torrey et. al, *supra* note 3, at 285-88.

women had approximately the same grade point average and LSAT scores when entering law school,¹¹⁵ it did not take long for that to dramatically change — 1L men were three times more likely to be in the top ten percent and twice as likely in the final two years of law school.¹¹⁶

IV. COMMENT: PERCEPTIONS OF SELF

The Harvard Study asked survey participants to self-assess their legal abilities and skills.¹¹⁷ Consistent with results from other studies, women rated themselves significantly lower than men: thirty-three percent of males ranked themselves in the top quintile of their class compared with only fifteen percent of females.¹¹⁸ These lower ratings were consistent in legal reasoning skills, quantitative problem-solving skills, and the ability to think quickly on their feet, argue orally, write briefs and persuade others.¹¹⁹

While researchers have not definitively identified the cause of this gender disparity in self-perception, many explanations have been suggested, such as the absence of female professors during the all-important first year, sending the message that women are not part of “real” law.¹²⁰ The first year has an inordinate effect on the law school experience for women. After completing the first year, women law students report a shocking loss of self-esteem and confidence.¹²¹

115. *Id.* at 285.

116. *Id.* at 285-86 (citing Guinier, *supra* note 75, at 23, 26).

117. HARVARD STUDY, *supra* note 6, at 22. The survey largely framed its questions about skills based on those identified in the AMERICAN BAR ASSOCIATION, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT: AN EDUCATIONAL CONTINUUM (1992) [hereinafter MACCRATE REPORT]. *Id.* at 13. The MacCrate Report found that legal education is currently failing everyone: law students do not feel sufficiently prepared to practice law, practitioners agree, and academic work of law professors is generally not relevant to the practice of law. MACCRATE REPORT, *supra* note 118, at 5. Ironically, one of the MacCrate recommendations was to shift away from the Socratic Method to a more active learning pedagogy. *Id.* at 23.

118. HARVARD STUDY, *supra* note 6, at 22. For a fuller discussion of the other studies documenting this issue, see Torrey et. al, *supra* note 3, at 288-91.

119. HARVARD STUDY, *supra* note 6, at 22. Several quotes illustrate this finding: a female 3L said, “I was confident in my abilities and was recognized as being talented by my peers and supervisors before law school. My first two years of law school absolutely destroyed that” while a male 3L stated: “I walked in the door confident, and I’m going to leave the same.” *Id.* at 21-22. Another female 3L replied: “I found that most of my experiences at the law school have caused me to feel insecure and have resulted in a low self-esteem.” *Id.* at 20.

120. Torrey et al., *supra* note 3, at 280 (citing 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 50, 51 (1995)).

121. HARVARD STUDY, *supra* note 6, at 21-22.

In the critical first year, studies confirm that a substantial number of female students also believed that their grades did not fairly evaluate their abilities or the time they spent studying.¹²² Many female law students feel that they are not performing as well as they could be or should be in the current legal educational environment. The Harvard Study confirms this through the grade distribution discrepancies it documents.¹²³ No one involved in legal education should be satisfied with this result, or an educational experience that translates into lower, rather than higher, self-confidence.

Law school causes a shocking number of women and men to lose confidence when in class: forty percent of women and twenty-one percent of men.¹²⁴ As a result of their academic performance, twenty-seven percent of females law students and nineteen percent of males questioned their ability to practice law;¹²⁵ almost one-third of females and one in ten males reported seldom if ever feeling as competent as others.¹²⁶ An astounding fifty-one percent of women and twenty-nine percent of men said they felt intelligent and articulate prior to matriculation, but not while at Boalt Hall.¹²⁷ Female law students at Yale foundered during law school, all the more surprising because they were used to, and expected, academic success.¹²⁸

V. COMMENT: LACK OF FEMALE AND MINORITY PROFESSORS

The value of role models is indisputable. So is setting an example of equitable treatment. In several studies both male and female students responded that women professors encourage students more.¹²⁹ The Harvard Study found greater overall participation rates in classes taught by women.¹³⁰ It also found that a female student in a course taught by a female professor was more likely than students in a course with a male professor to receive a grade of "A" or "A+," although it was unclear why this is so.¹³¹ As Linda Hirshman discovered, law schools with higher numbers of female professors produced

122. Torrey et al., *supra* note 3, at 287 (citing Homer & Schwartz, *supra* note 16, at 30).

123. See *supra* Part III.

124. Torrey et al., *supra* note 3, at 277 (citing Homer & Schwartz, *supra* note 16, at 33).

125. *Id.* (citing Homer & Schwartz, *supra* note 16, at 30).

126. *Id.* (citing Homer & Schwartz, *supra* note 16, at 33).

127. *Id.*

128. *Id.* at 290-91 (citing Weiss & Melling, *supra* note 77, at 1318).

129. *Id.* at 280 (citing Banks, *supra* note 25, at 144).

130. HARVARD STUDY, *supra* note 6, at 19. Additionally, the Harvard Study identified a trend of women students "being overrepresented in attendance in 2L/3L courses taught by women . . ." *Id.* at 29.

131. *Id.* at 26.

better academic achievement by female students, and female students were often also more satisfied with their law school experience when there was higher female representation in the staff and faculty.¹³² The Ohio study related lower classroom participation by female students to the low percentage of female faculty, particularly in the first year.¹³³ When both male and female students were asked to identify the gender of the professor that most encourages students, a majority of both responded "female."¹³⁴

Unfortunately, we seem to be backsliding in this area, as Marjorie Kornhauser recently found:

[A]lthough the number of women law professors has greatly increased over the past three decades, women are still underrepresented on faculties and disproportionately hold less prestigious and non-tenured positions such as librarians, clinicians, and legal research and writing instructors. Within tenure track positions women have made great strides but disturbing inequalities remain. For example, women are underrepresented as deans, hired at lower ranks than men, and gain tenure at a lower rate than men do.¹³⁵

Professor Kornhauser also identified widespread gender segregation in terms of the courses that male and female professors teach.¹³⁶ With the increase in numbers of women teachers there has been a parallel increase in the belief that some courses are "male" or "female."¹³⁷

132. See generally LINDA R. HIRSHMAN, *THE WOMAN'S GUIDE TO LAW SCHOOL* (1999).

133. Torrey et al., *supra* note 3, at 280 (citing Krauskopf, *supra* note 15, at 335).

134. *Id.* (citing Banks, *supra* note 25, at 144).

135. Marjorie E. Kornhauser, *Rooms of Their Own: An Empirical Study of Occupational Segregation by Gender Among Law Professors*, 73 UMKC L. REV. 293, 294 (2004) (footnotes omitted). Moreover, in terms of equity, she discovered that

[w]omen's successful access to the law profession over the past several decades has not been accompanied by equal success in their progression within the profession. Compared to similarly qualified male lawyers, female lawyers as a group earn less money, are promoted less frequently, occupy fewer positions of power, and tend to practice in less prestigious areas of the law.

Id. at 293 (footnotes omitted).

136. *Id.* at 295.

137. *Id.* at 297. Professor Kornhauser offers persuasive statistical evidence to support this conclusion. *Id.* at 295-96. She states that:

Women, for example, disproportionately teach skills courses and courses relating to families, teach gender and law courses almost exclusively, and also are concentrated in the less prestigious estates and trust courses, while men with equal backgrounds disproportionately teach the high status constitutional law courses. The 'pink ghetto' phenomenon in legal research and writing courses, which often include courses such as Legal Method, Legal Practice, Trial Advocacy, and Lawyering Skills, are well known and well studied.

Id. at 296-97 (footnotes omitted).

This, and other, data, led Richard Neumann to conclude that “[t]he statistics create the impression that women are welcome in legal education in subservient roles but otherwise are greeted, at best, with ambivalence.”¹³⁸ Indeed, women are overrepresented in the insecure, low status, and low-paid positions.¹³⁹

VI. PROPOSALS

First and foremost, law school administration and faculties must be committed to not only eliminating the gender, race, and heterosexual bias in legal education but also to improving the entire legal education experience for *everyone*. I have little confidence that anything will change until this happens, and on bad days, I have little faith that it will happen. Administrators must show leadership. Deans must make reform a top priority, as it directly affects the educational experience of over half of enrolled students, and arguably, the quality of education for all law students.¹⁴⁰ The elimination of racial, sexual, and heterosexual bias in law school and the creation of a positive learning environment for all students should be the measure of an administration. Reform can begin with these five steps:

1. Create, and fund, a commitment to hire more women and men of color and treat them fairly.
2. Ensure women and men of color are teaching in the first-year curriculum.

138. Richard K. Neumann, Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEGAL EDUC. 313, 352 (2000).

139. *Id.* at 350-51. This vicious circle was described by Richard Neumann:

The producer schools [where about half of law teachers received their own education] enroll female students at roughly the same rates as other schools do. But at the producer schools women appear to graduate with lower grades than men, are more often cut off from valuable academic credentials (such as law review), and are perhaps less favorably credentialed in other ways. Thus, even if the faculty hiring market were completely unbiased, women graduating from the producer schools might be less competitive in that market than men who graduated from the same schools. Moreover, the faculties at producer schools include fewer women than elsewhere. If those figures are the tip of an iceberg, they suggest that below the water line we would find that female students at producer schools see fewer academic role models, get less mentoring, and in general encounter a more hostile academic environment. . . . If all this is true, one can understand why fewer of those women would want to return to legal education as teachers or would feel capable of doing so.

Id.

140. Ironically, my experience in this area has been discouraging. For example, I asked a former associate dean to be a friendly reader for my “You Call That Education?” article, and one of his few comments was “this is gratuitous feminism.” See Torrey et al., *supra* note 3.

3. Devote substantial resources and require faculty development to improve teaching.

4. Evaluate, and reward, faculty based on their teaching.

5. Don't just pass racial and sexual harassment policies. Enforce them. Educate the entire law school community about expectations. Set a goal of zero tolerance and exert real, substantial efforts to achieve it.

If it takes overwhelming evidence of the gender, racial and heterosexual bias in legal education to get deans and faculties to pay attention, we now have it. It exists everywhere and has been documented at Harvard, Yale, Penn, Stanford, Columbia, Texas, Davis, Brooklyn, all six Chicago-area law schools, all nine Ohio law schools, Washington, and numerous other law schools.¹⁴¹ We know that legal education not only harms women, but also men of color, and lesbian, gay, bisexual, transgendered, and queer students. A large number of white, heterosexual men are also suffering. There is something fundamentally wrong with a professional education that not only makes students physically and psychologically ill but also results in graduates feeling less confident and competent than when they matriculated. Additionally, according to both recent graduates and practitioners, they are not even prepared to practice law! It is time for deans and faculties to put students first, not themselves.

141. See *infra* app.

APPENDIX

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