

WOMEN IN LEGAL EDUCATION: WHAT IT'S LIKE TO BE PART OF A PERPETUAL FIRST WAVE OR THE CASE OF THE DISAPPEARING WOMEN

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INTRODUCTION

When I began my research in preparation for the hearings of the American Bar Association Commission on Women in the Profession,¹ I quickly realized

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I would like to thank Andrew Buck, Associate Professor of Economics, Temple University, for his invaluable assistance in helping to design the analysis of my statistical survey and for his suggestions generally; my student research assistant, Jennifer Hoagland, Temple University School of Law, Class of 1989, without whom this article would not have been completed; secretaries Mildred Woodson, David M. Bogan, and Vera McPhilomy for typing and retyping numerous drafts and charts; my colleagues at Temple, Professors Eli Lederman, John Lindsey, Joseph Marshall and Eddie Ohlbaum for their helpful suggestions on an early draft; Assistant Consultant on Legal Education for the American Bar Association Kathleen Grove, for supplying essential statistics on women law teachers and students; Executive Director Betsy Levin and Deputy Director Steven Smith of the Association of American Law Schools; and all the women law professors who came before me and served as role models, especially Professors Shirley Bysiewicz of the University of Connecticut School of Law and Mary Moers Wenig of the University of Bridgeport School of Law.

1. In announcing the establishment of the eleven member Commission on August 21, 1987, American Bar Association ("ABA") President Robert MacCrate stated, "More than 80% of women practicing law today entered the profession after 1970." A.B.A. Press Release on Commission on Women in the Profession (Aug. 21, 1987). The Commission was to study "the problems of gender bias, limits on opportunity and the parenting responsibilities of both men and women." *Id.*

The Commission held hearings during the ABA Midyear Meeting in Philadelphia on February 6 and 7, 1988. The hearings generated substantial publicity and awareness of the problems faced by women lawyers, *see, e.g.*, Moss, *Progress for Women? Yes, But . . .*, 74 A.B.A. J. 18 (1988); Abramson, *For Women Lawyers, An Uphill Struggle*, N.Y. Times, March 6, 1988, § 6 (Magazine), at 36; *Women in the Law Aren't Yet Equal Partners*, N.Y. Times, Feb. 12, 1988, at B7, col. 3; Weisenhaus, *Still a Long Way to Go for Women, Minorities*, Nat'l L.J., Feb. 8, 1988, at 1, col. 3.

On May 4, 1988, the ABA Commission released its Summary of Hearings. ABA, *Summary of Hearings ABA Commission on Women in the Profession* (Feb. 6-7, 1988) [hereinafter *ABA Commission Summary*]. In regard to "[t]he persistence of gender discrimination in the legal profession," the Summary states, "The barriers women face consist of overt discriminatory behavior, subtle attitudes and institutional structures." *Id.* at 2. The Summary notes,

Witnesses expressed their belief that women must still work harder and be better than men in order to be recognized and succeed. Individuals also testified that women walk a fine line between being regarded as too feminine (and thus not tough, lawyerlike or smart) or too tough (and thus unfeminine or not the kind of women male colleagues feel comfortable relating to).

Id. at 3-4. Regarding "[t]he need to examine legal education," the Summary states, Numerous witnesses identified law school as the starting place for changing attitudes and increasing awareness about issues of concern to women in the profession. According to witnesses, law school is the breeding ground for many of the discriminatory practices and attitudes and acceptance of traditional notions about women's capabilities and roles.

that I have been consistently a part of the first wave of women attempting to climb the ladder of legal education. This article, which grew out of my testimony before the ABA Commission, will include my own perceptions, an in-depth case study of five law schools with which I have been associated, and most of the available information and statistics on women in law schools, as teachers and students.²

I began law school at the Columbia University School of Law ("Columbia Law School") in the fall of 1965, and graduated in the spring of 1969. From 1969 to 1971 I attended a graduate program at the University of Pennsylvania Law School which involved working at the Voluntary Defender's Office of Philadelphia, and I also taught a juvenile law course as an adjunct professor at Rutgers, the State University of New Jersey School of Law, Camden ("Rutgers-Camden Law School") in the fall of 1970. In the fall of 1971, I started at Hofstra University School of Law ("Hofstra Law School") as a full-time teacher. I left to teach at Temple University School of Law ("Temple Law School"), my current place of employment, in January 1979. I chose to study these five schools in depth simply because I have some association with them. At the time

Individuals identified a number of problems in the law school environment including: increased incidents of harassment and hostility directed toward women students and faculty; the small number of tenured women (especially at the "elite" law schools); the failure of many schools to respond to complaints of harassment or gender bias in evaluations; and the need to elevate issues of significance to women's lives into the regular curriculum. Witnesses held that by educating students about problems of gender bias in the legal system while they are in law school, students will be better equipped to recognize and correct gender bias once they are in practice.

Id. at 7.

2. I have used the following yearly publications for many of the statistics in this article: A.B.A. SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR, A REVIEW OF LEGAL EDUCATION IN THE UNITED STATES (vols. published yearly 1960 through 1988) [hereinafter A.B.A. SECTION ON LEGAL EDUCATION]; ASSOCIATION OF AMERICAN LAW SCHOOLS, DIRECTORY OF LAW TEACHERS (vols. published yearly 1967-68 through 1987-88) [hereinafter AALS DIRECTORY]. Information for this article was also obtained from the following sources: C. EPSTEIN, *WOMEN IN LAW* (1981); K. MORELLO, *THE INVISIBLE BAR* (1986); Banks, *Gender Bias in the Classroom*, 38 J. LEGAL EDUC. 137 (1988); Barnes, *Women and Entrance to the Legal Profession*, 23 J. LEGAL EDUC. 276 (1970); Bysiewicz, *1972 AALS Questionnaire on Women in Legal Education*, 25 J. LEGAL EDUC. 503 (1973); Epstein, *Women Lawyers and Their Profession: Inconsistency of Social Controls and Their Consequences for Professional Performance*, in THE PROFESSIONAL WOMEN 669 (1971) [hereinafter Epstein, *Women Lawyers*]; Erickson, *Legal Education: The Last Academic Bastion of Sex Bias?*, 10 NOVA L.J. 457 (1986); Erickson, *Sex Bias in Law School Courses: Some Common Issues*, 38 J. LEGAL EDUC. 101 (1988); Faught, *Update: The Status of Women Faculty in Illinois Law Schools*, 74 ILL. B.J. 452 (1986); Fossum, *Women in the Legal Profession: A Progress Report*, 67 A.B.A. J. 578 (1981); Fossum, *Women Law Professors*, 1980 AM. B. FOUND. RES. J. 903; Jacobs, *Women in Law School: Structural Constraint and Personal Choice in the Formation of Professional Identity*, 24 J. LEGAL EDUC. 462 (1972); Jason, Moody, & Schuerger, *The Woman Law Student: The View From the Front of the Classroom*, 24 CLEV. ST. L. REV. 223 (1975); Robert & Winter, *Sex-Role and Success in Law School*, 29 J. LEGAL EDUC. 449 (1978); Wald, *Women in the Law: Stage Two*, 52 UMKC L. REV. 45 (1983); Weisberg, *Women in Law School Teaching: Problems and Progress*, 30 J. LEGAL EDUC. 226 (1979); White, *Women in the Law*, 65 MICH. L. REV. 1051 (1967); Winter, *Survey: Women Lawyers Work Harder, Are Paid Less, But They're Happy*, 69 A.B.A. J. 1384 (1983); Zenoff & Lorio, *What We Know, What We Think We Know, and What We Don't Know About Women Law Professors*, 25 ARIZ. L. REV. 869 (1983).

I started the study, I had no reason to believe that these institutions treated women faculty and students any differently than other schools of their type.³

The pattern that emerges through my experiences and through the study of relevant statistics is that women faculty members disappear at a substantially higher rate than men faculty members, and that women consistently are closed out of the higher ranks of legal education.⁴

I. WOMEN AS A MINORITY IN LEGAL EDUCATION

To climb the ladder of legal education, one must begin on the bottom rung as a student. When I entered Columbia Law School in 1965, women made up 4% of the enrolled first-year law students in the United States, a percentage which had remained relatively constant since 1947,⁵ and in 1969, when I graduated, 7%.⁶ In 1971, when I started teaching, their first-year numbers had increased to 12% and in 1986 they made up 41% of first-year classes.⁷ Lest anyone become overly optimistic about these 1986 statistics, it is important to keep in mind that women have made up over 50% of the college students in the United States since 1984;⁸ therefore, a substantial disappearance factor exists concerning women as law students.

In 1950, women made up 3.5% of the legal profession, but accounted for less than 0.5% of all tenure track teachers in law schools.⁹ Of approximately 1,239 law faculty members in 1950, only five were women.¹⁰ In 1960, women continued to make up only 3.5% of the legal profession but their law school number had increased to just over 0.5%; eleven of the approximately 1,645 tenure track teachers were women.¹¹ One could view this positively since the actual number of female faculty had more than doubled. By 1970, however, while

3. See *infra* notes 187-92 and accompanying text for a statistical analysis suggesting why women faculty fared worse at these institutions than at other institutions.

4. This phenomenon has been noted throughout higher education. See B. SANDLER, *THE CAMPUS CLIMATE REVISITED: CHILLY FOR WOMEN FACULTY, ADMINISTRATORS, AND GRADUATE STUDENTS* 13-17 (Project on the Status and Education of Women, Association of American Colleges, 1986) (women face many obstacles to successful academic careers).

5. See A.B.A., Office of Consultant on Legal Education, Enrollment Statistics at ABA Approved Law Schools, 1947-1986 (on file at *Temple Law Review* office) [hereinafter ABA Enrollment Statistics].

Many schools simply would not admit women. "Harvard, among the last to surrender, admitted women only in 1950, and as the last holdouts, Notre Dame admitted women in 1969 followed by Washington and Lee in 1972." C. EPSTEIN, *WOMEN IN LAW*, *supra* note 2, at 50.

6. ABA Enrollment Statistics, *supra* note 5.

7. *Id.* All references are to academic year unless otherwise noted, e.g., 1987 means fall 1987 through spring 1988.

8. AMERICAN COUNCIL ON EDUCATION, 1986-87 FACT BOOK ON HIGHER EDUCATION, Table No. 72 (1987).

9. Fossum, *Women Law Professors*, *supra* note 2, at 904-05. The five women teaching law in 1950 were assigned to courses in three areas: family law, trusts and estates, and legal research and writing. Ginsburg, *Women's Work: The Place of Women In Law Schools*, 32 J. LEGAL EDUC. 272 (1982).

10. Fossum, *Women Law Professors*, *supra* note 2, at 904-05.

11. *Id.*

4.9% of the legal profession consisted of women, the sixty-six tenure track women made up only 2.2% of all law school professors.¹²

Of the five schools that I have chosen to address in depth, only two had women on their faculties in 1970; one each at the University of Pennsylvania Law School¹³ and Rutgers-Camden.¹⁴ Columbia Law School did not hire its first woman until 1972, when the appointment of Ruth Bader Ginsburg to the faculty merited a major article in the *New York Times*.¹⁵ She remained the only woman, sometimes joined by a second,¹⁶ until 1979 when she was appointed to the District of Columbia Circuit Court of Appeals. Hofstra Law School, had two women on its founding faculty in 1970. In 1972, Temple Law School hired three full-time women.

The lack of women at the highest rank in legal education, the deanship,¹⁷ is best exemplified by the fact that in 1974 there were five women deans in the 157 ABA accredited law schools,¹⁸ and a sixth who was the dean of a then unaccredited, now accredited, law school.¹⁹ The five women made up 3.18% of law schools deans. By January of 1988, there were nine women deans in 174 ABA accredited law schools or 5.16% of the deans;²⁰ in fourteen years the number of

12. *Id.* at 906.

13. Hired in 1969.

14. Hired in 1967.

15. See *Columbia Law Snares a Prize in the Quest for Women Professors*, N.Y. Times, Jan. 26, 1972, at 39, col. 3.

In a new accelerating competition among the nation's law schools, Columbia University has just scored a major coup; its law school, to its undisguised glee, has just bid for and won a woman for the job of full professor—the first in its 114-year history.

The glee comes in part because the woman, Ruth Bader Ginsburg, is what the school's dean, Michael Sovern, calls 'so distinguished a scholar,' that her credentials and honors would stand out in any catalogue of professors.

Id.

Ruth Bader Ginsburg tied for first place upon graduation from Columbia in 1959, *id.*, worked at Columbia from 1961 to 1963, and taught at Rutgers, the State University of New Jersey, Newark since 1963; yet Columbia did not discover this "distinguished scholar" until 1972.

Several deans were interviewed regarding her appointment, and, as the article reported, "The lack of available women in the past, they said, was the reason for the present paucity of female faculty members." *Id.*

16. See *infra* appendix, table 1 (Columbia women faculty members).

17. Cf. B. SANDLER, *supra* note 4, at 13-15 (women face many obstacles in achieving academic leadership); Connell, *College Presidents Profiled in Survey*, Phila. Inquirer, March 28, 1988, § A, at 3, col. 3 (1986 survey showed that only 9.5% of presidents of higher education institutions were women; this figure includes presidents of women's institutions).

18. Jean Camper Cahn, Antioch School of Law; Judith Grant McKelvey, Golden Gate University School of Law; Soia Mentschikoff, University of Miami School of Law; Dorothy W. Nelson, University of Southern California Law Center; Judith T. Younger, Syracuse University College of Law.

19. Virginia Ann Church, Lewis University College of Law, now Northern Illinois University College of Law.

20. Jacqueline Allee, St. Thomas University School of Law; Nina S. Appel, Loyola University School of Law, Chicago; Barbara A. Black, Columbia University School of Law; Mary Doyle, University of Miami School of Law; Janet A. Johnson, Pace University School of Law; Marjorie Fine Knowles, Georgia State University College of Law; Barbara B. Lewis, University of Louisville

women deans was less than two percentage points greater.

The statistics provided by the Office of the Consultant on Legal Education for the ABA show that full-time women faculty members made up 20.4% of all full-time faculty in 1986.²¹ However, the ABA includes in its count professional skills teachers who are on a separate tenure track. Professional skills teachers are clinicians and legal writing teachers. Women make up over 40% of clinical law teachers,²² and over two thirds of the legal writing teachers.²³

For the five schools studied in depth, I chose to count only those teachers with visibility and power within their school; namely, tenured or tenure track regular assistant professors, associate professors, or professors. These are the individuals who teach large required first year courses and heavily subscribed upperclass courses. They are normally the only teachers entitled to vote at faculty meetings. Included are teachers also holding administrative positions within their law schools and "look see" visitors,²⁴ but excluded are those holding university administrative positions outside their law schools and those whose titles are qualified by labels such as clinical or emeritus. Also excluded are those on leave for more than six months.²⁵

School of Law; Susan Westerberg Prager, University of California at Los Angeles School of Law; Marilyn V. Yarbough, University of Tennessee College of Law.

21. See A.B.A., Office of Consultant on Legal Education, Statistics on Teachers at ABA Approved Law Schools, 1972-1986 (on file at *Temple Law Review* office). Every study more detailed than the ABA's has found a smaller percentage of women law professors when only tenure track positions are considered. "A comparison of men and women 'new hires' for 1981-82 shows that 54% of the women but only 28% of the men were hired in nontenured-track positions." Zenoff & Lorio, *supra* note 2, at 873.

Faught, in his detailed study of women faculty at Illinois law schools, *supra* note 2, at 454, states that women made up 22.5% of all full time faculty in 1984. However, they only made up 17.9% of full time faculty members with the right to vote on all matters at faculty meetings. *Id.* at 455.

22. R. Chused, The Hiring and Retention of Minority and Female Faculty in American Law Schools, at 26, Table 2, Hiring Trends for Female Faculty (1988) (on file at *Temple Law Review* office) (women make up 40.7% of tenure track clinical faculty and 40.0% of contract status clinical faculty). Professor Chused's detailed survey of 149 schools, based on data for the 1980-81 academic year and the 1986-87 academic year, was performed at the request of the Board of Governors of the Society of American Law Teachers ("SALT"). The results of earlier SALT studies are reported in Lawrence, *Minority Hiring in AALS Law Schools: The Need for Voluntary Quotas*, 20 U.S.F. L. REV. 429 (1986) and Chambers, *SALT Survey: Women in Law School Teaching*, 1983 SALT Newsletter 1, 3 (1983).

23. Chused, *supra* note 22, at 26, Table 2 (women make up 68.4% of contract status legal writing faculty).

24. "Look see" visitors are those under consideration for a regular tenure track positions. "True" visitors are those hired for only one year to substitute for regular faculty members on leave.

25. All of my statistics and tables include only those law school teachers described.

My statistics were compiled by first reviewing all AALS Directories from 1968 to 1987 to determine the employment history of all faculty members within the class I have defined. Detailed lists showing the name, hiring date, promotion dates, tenuring dates, leave dates, and, if applicable, departure dates, were sent to the Deans of the five schools. Two dean's offices were able to confirm or correct all the information. The other three found it extremely burdensome to attempt to do so, but two did partially confirm. I then created two simplified lists for each school; one of all faculty from 1970 to date by their tenure status and one of all current faculty with their rank and tenure status.

Today in legal education a substantial debate rages over whether clinicians should be tenured. Very few people even discuss whether legal writing instructors should be tenured. In the world of legal education, clinicians and legal writing instructors are viewed as holding bottom of the ladder positions. They normally are paid less than regular faculty members.²⁶ Law schools have created a new caste system, and the lowest caste is comprised of women.²⁷ I believe that clinicians perform perhaps the most valuable teaching function. They work one on one with students in the setting of real or simulated cases. They teach students how to take established doctrine or develop new doctrine to assist actual or simulated clients. They normally devote more hours in the school than regular faculty members. Students may learn more from them than they do from the regular faculty. However, by its nature, clinical work exposes teachers to only a limited number of students. The great bulk of law schools in this country do not consider clinicians tenure track teachers, or, if they do, a separate tenure track is provided. Most have not tenured any clinicians or, if they have, only one or two. Few have tenured clinicians as regular faculty members with all the rights of regular faculty members and with no modifier next to their title of assistant professor, associate professor, or professor. Faculties that have tenured clinicians as regular professors find that they soon move out of clinical work.²⁸ If clinical work is equally valued, why do teachers want to get out of it as soon as they possibly can? Some schools create a separate clinical tenure track which does not allow clinicians to move into regular teaching. Such is the case at Columbia Law School, where clinicians do not have the right to vote at faculty meetings.

We do not distinguish between our tax professors and our criminal law professors, but we do distinguish our clinicians; "all animals are equal but some animals are more equal than others."²⁹ From the students' perspectives, the teachers in front of the classroom are the regular faculty members. These are the ones to whom they are exposed in their first year of law school and in their basic upperclass courses.

The in-depth study of the five schools shows that the percentage of women currently tenured is substantially lower than the percentage of men currently tenured: 10.7% women and 89.3% men.³⁰ It shows that women make up a smaller percentage of the untenured faculty than men, 35% women to 65%

Four deans were able to confirm or correct these lists. For the fifth school, senior, tenured faculty members confirmed and corrected the lists. At various times during the data gathering process, I conferred with senior, tenured faculty members at four of the five schools.

26. Chused, *supra* note 22, at 20-22.

27. *Id.* at 21.

28. Temple is one such school. At least five tenured faculty members initially came to Temple as clinical professors. Three of them left clinical work completely and are "regular" teachers; one retains some supervisory clinical authority but is primarily a "regular" teacher; the fifth is a "regular" teacher who has maintained possibly a half-time clinical contract. All are men.

29. G. ORWELL, *ANIMAL FARM* 148 (1954).

30. See *infra* appendix, table 5 (Current tenured faculty 1987). The figures shown in table 5 for the five schools were added together to arrive at the total percentages of women and men.

men.³¹ In relative terms, women make up three times as many of the untenured faculty as of tenured faculty. This would seem to bode well for the future. It does not when one takes into account the fact that at the five schools studied women are tenured at a substantially lower rate than men: 31% of female candidates and 60.5% of male candidates, hired and eligible for tenure between 1970 and 1987.³² In 1987 women comprised an average of 45% of the students at the five schools.³³

II. FIVE SCHOOL STUDY

Discrimination against women today may be more severe in the academy than it is in private practice.³⁴ In private practice, there are certain objective indicators of successful performance, such as the amount of business brought in and the number of cases won. In law school, one "earns" tenure on the basis of good scholarship, good teaching, and good service.³⁵ To quote from one of the tenurial reports at Temple Law School, "[a]cceptable teaching is in the eye of the beholder." When the beholders are primarily white males judging women and minorities,³⁶ the results can be devastating.³⁷ The problems of minority women are the most severe. They "face 'double discrimination': once for being female and once for being racially or ethnically different."³⁸

31. See *infra* appendix, table 5 (Current untenured faculty 1987). The figures shown in table 5 for the five schools were added together to arrive at the total percentages of women and men.

32. See *infra* appendix, table 2 (Total faculty tenured of those hired and eligible for tenure between 1970 and 1987). The figures shown in table 2 for the five schools were added together to arrive at a total percentage of women and men. See also Zenoff & Lorio, *supra* note 2, at 886 (larger percentage of men than women promoted to full law professor rank). The same pattern holds true for all women academics. See B. SANDLER, *supra* note 4, at 2 (women faculty less likely to be tenured than men in academe in general).

33. See A.B.A. SECTION ON LEGAL EDUCATION, *supra* note 2, Fall 1987, at 36, 39-40, 50 (1988). The student enrollment statistics used throughout this article, unless otherwise noted, are based upon the enrollment of students seeking a J.D. degree and do not include candidates for post-J.D. degrees.

34. See C. EPSTEIN, *WOMEN IN LAW*, *supra* note 2, at 230-31.

35. See *id.*

36. The current situation for minority law school faculty members and students is in many ways similar to, but often worse than, that for women. See, e.g., Bell, *Strangers in Academic Paradise: Law Teacher of Color in Still White Schools*, 20 U.S.F. L. REV. 385 (1986); Brooks, *Anti-Minority Mindset in the Law School Personnel Process: Toward an Understanding of Racial Mindsets*, 5 LAW & EQUALITY 1 (1987); Hamlar, *Minority Tokenism in American Law Schools*, 26 HOW. L.J. 443 (1983); Lawrence, *supra* note 22, at 429; Moran, *Commentary: The Implications of Being a Society of One*, 20 U.S.F. L. REV. 503 (1986). See also Burleigh, *Black Women Lawyers: Coping With Dual Discrimination*, 74 A.B.A. J. 64 (June, 1988).

The situation for Hispanic law professors is probably the worst. "The Hispanic proportion of majority run faculties went from 0.5% [in 1980-81] to only 0.7% [in 1986-87]." Chused, *supra* note 22, at 2. See Davila, *The Underrepresentation of Hispanic Attorneys in Corporate Law Firms*, 39 STAN. L. REV. 1403 (1987).

37. "Each sex is often more comfortable with its own members, and the implications of this for women in academe are substantial. The discomfort of some men may make it difficult for them to mentor or sponsor women, so that women may be at a distinct disadvantage in professional advancement." B. SANDLER, *supra* note 4, at 8.

38. *Id.* at 13. See K. MORELLO, *supra* note 2, at 143-72 (double impairment faced by black

As you read, I hope you will consider not only the statistical information, bleak in and of itself, but also what the statistical information means in the cost to women faculty and students. The women who have not gotten tenure and who have disappeared in far higher proportion than their male colleagues, are not merely statistics. The cost to those women in time, energy, and disappointment is enormous. The cost to the institutions that failed to tenure them, in the loss of the women's different perspectives³⁹ and great abilities, is also enormous. Finally, there is the cost to the students, both female and male, who suffer from a lack of the different perspectives which women bring to an important profession at its gateway, the law schools.

I am a tenured full professor, which puts me in the company of an exceedingly small number of women faculty members at the most senior rank.⁴⁰ One study showed that the average age of law school faculty members in 1973 was forty-one.⁴¹ At forty-four having started full-time law teaching in 1971, I am one of the most senior women in this profession. My status evokes more guilt than pride; the type of guilt felt by the few who survived when so many others did not. My perspective, however, has been shaped by my experiences. I was one of the few who taught a course in women and the law at a time when no casebooks for the course existed. I was elected Secretary of the Section on Women in Legal Education of the Association of American Law Schools ("AALS") in 1972, because, at the first AALS convention I attended, there were only twelve women at the Section meeting held in a small back room. I have been active with the Section over the years, and chaired it during the 1986-87 aca-

women lawyers); Moran, *supra* note 36, at 512-13. See also Menges & Exum, *Barriers to the Progress of Women and Minority Faculty*, 54 J. HIGHER EDUC. 123, 127 (1983).

39. There is no question that having women on law school faculties makes a difference and that the difference is multifaceted. The informal referral system, crucial in placing students in jobs, is composed predominantly of male faculty. Male professors are more likely to recruit male students, with whom they have greater contact and from whom they expect more. In addition, larger numbers of women faculty members lifted the lone woman's burden of being seen as the representative of all women. Token women appear to be more burdened by assignments and student demands than their male colleagues. Looked upon as the advocate for women students, the only woman member on many committees, and the women students' "friend" generally, the lone woman faculty member is expected to serve in many capacities no matter what her interests or personality.

The presence of women on faculty also insures that women's interests are protected. When women sit on committees fewer sexist comments are made and women candidates' positive attributes are probably focused upon. At Harvard and elsewhere, some new faculty members were young women active in women's groups. These women helped mobilize some older women faculty members into participation and inspired them to become moving forces themselves. But perhaps most important, the presence of more women faculty members alleviated the students' sense that the one woman in the school was unique in some manner.

C. EPSTEIN, *WOMEN IN LAW*, *supra* note 2, at 233.

40. One of my fields is Criminal Law, which I have taught since 1971. The AALS DIRECTORY for the 1987-88 academic year lists six women and 237 men who have taught Criminal Justice courses for over 10 years. 1987-88 AALS DIRECTORY, *supra* note 2, at 925-26. Cf. B. SANDLER, *supra* note 4, at 2 (the higher the academic rank, the fewer the women).

41. Jason, Moody, & Schuerger, *supra* note 2, at 228.

demic year. I have served as the faculty advisor to the Women's Law Caucuses at Hofstra and Temple Law Schools. I chaired the Temple University Committee on the Status of Women, participated in the Metropolitan Law Women's Organization in New York, and founded the Delaware Valley Law Women's Organization in Philadelphia.

I am an only child. Most studies show that successful women are only children, oldest children, or children in a family of only female children.⁴² I attended all girls' schools⁴³ until I went to law school: a Catholic elementary school, Hunter College High School, and Barnard College. I am unmarried. Studies show that more professional women as compared to professional men of similar rank, are unmarried, or, if married, are without children.⁴⁴

A. Columbia Law School

1. Columbia Then

When I entered Columbia Law School in 1965, there were twenty female and 280 male students. The common perception among the twenty of us was that Columbia had had a quota of twenty women per year,⁴⁵ including a quota of four from Barnard College, Columbia University's women's college. The class was alphabetically divided into two sections of 150 each. We were assigned, again in alphabetical order, the same seat in each class.

The twenty women stuck out like sore thumbs.⁴⁶ The common assumption on the part of the men, both faculty and students, was that we were there for one

42. See, e.g., M. HENNIG & A. JARDIN, *THE MANAGERIAL WOMAN* 99 (paper reprint 1978) (study of women enrolled in M.B.A. program at Harvard Business School).

43. See generally J. CHURGIN, *THE NEW WOMAN AND THE OLD ACADEME: SEXISM AND HIGHER EDUCATION* 94-104 (1978) (women succeed best in women's colleges); Belash, *Why Girls' Schools Remain Necessary*, N.Y. Times, Feb. 22, 1988, § A, at 19, col. 1; Tidball, *Baccalaureate Origins of Recent Natural Science Doctorates*, 57 J. HIGHER EDUC. 606, 614 (1986).

44. A nationwide survey of lawyers conducted in 1983 for the American Bar Association Journal showed that 85% of the male lawyers were married but only 54% of the female lawyers; that only 8% of the male lawyers had never been married but 32% of the female lawyers had never been married. Winter, *supra* note 2, at 1385. See also White, *supra* note 2, at 1065 (1965 survey of lawyers showed 83.2% of men and 69% of women married at time of study).

As for children, the 1983 ABA survey showed that 59% of women lawyers had none, but only 24% of male lawyers had none. Winter, *supra* note 2, at 1388. See also C. EPSTEIN, *WOMEN IN LAW*, *supra* note 2, at 358-79 (discussion of impact of children on legal careers); Goldberg, *Is This All There Is?—Women and Job Satisfaction*, 74 A.B.A. J., June 1988, at 72 (far more women lawyers childless than male lawyers). See *infra* notes 234-42 and accompanying text for additional information on families and legal careers.

45. The ABA's statistics indicate that Columbia's entering class of 1965 included 18 women out of 300 students and the entering class of 1966 included 19 women out of 311 students. A.B.A. SECTION ON LEGAL EDUCATION, *supra* note 2, Fall 1965 (1966) and Fall 1966 (1967). However, Columbia University Law School's own statistics show that the entering class of 1966 included 20 women, making up 6% of the class. Letter from Yvonne Tenney, Executive Assistant to the Dean, Columbia University School of Law, to Marina Angel (Jan. 28, 1988) (Table on Women at Columbia Law School enclosed with letter) (copy on file at Temple Law Review office). See C. EPSTEIN, *WOMEN IN LAW*, *supra* note 2, at 52.

46. See Greenberger, *Why Does Equality Still Not Come Naturally?*, 12 HUM. RIGHTS, Spring 1984, at 16, 17.

of two reasons: to get a husband, which meant we were normal but not suited to be lawyers, or because we liked the law, which meant we were weird.⁴⁷ I fell into the weird category.

It is not surprising that in those early days, women did extraordinarily well in law school. A detailed study of women graduates of Columbia Law School published in 1951 shows that the 245 women who graduated between 1929, the first year Columbia Law School graduated a woman, and 1950 were academically superior to the men.⁴⁸ However, only one woman who graduated from Columbia Law School entered legal education, as a faculty member of both the University of Chicago and Harvard Law Schools. That woman was Soia Mentschikoff, whom Columbia Law School would not hire, thereby losing her and her husband, Karl Llewellyn, to the University of Chicago.⁴⁹ My own recollection is that of the twenty of us who entered in 1965, four were on law review, four were on the second journal, all but one were on the dean's list, and that one was at least in the top half of the class. Studies since have shown that women's grades and academic standings are at least as high as men's.⁵⁰ Such facts should not be surprising given the great self selection process, a process that continues today; we were all in law school because we wanted to be there.⁵¹ For too many of the men, law school was simply something to do after obtaining a B.A.—a degree which might not lead to "respectable" employment.

It is my perception, and studies seem to agree, that women went to law school, and continue to go to law school, for substantially more idealistic reasons than men.⁵² The history of women lawyers in this country shows that, in large numbers, they were concerned about children, family, civil rights, and those generally in the position of the underdog.⁵³ I went to law school because I was interested in civil rights, constitutional law, criminal law, and family law. Women may have been, and may still be, interested in certain fields, but, even if not interested, they traditionally were relegated to the fields of family law, trusts and estates, and research. If women entered teaching, these were the fields they

47. See C. EPSTEIN, *WOMEN IN LAW*, *supra* note 2, at 63; White, *supra* note 2, at 1052; Wilson, *How Women Betray Themselves*, 10 NOVA L.J. 889, 892 (1986).

48. Fische, *Statistical Survey of Columbia Law School Alumnae—A Tribute to Women*, 37 WOMEN LAW. J., Summer 1951, at 38, 38.

49. Karl Llewellyn left Columbia to become a Professor of Law at the University of Chicago Law School in 1951. Soia Mentschikoff, however, was listed by Chicago as a Professorial Lecturer from 1951 through 1962. Starting in 1963, she was listed as a Professor. AALS DIRECTORY, *supra* note 2 (vols. 1951-52 through 1963-64).

50. Fossum, *Law Professors: A Profile of the Teaching Branch of the Legal Profession*, 1980 AM. B. FOUND. RES. J. 501, 533; Jacobs, *supra* note 2, at 468-69; White, *supra* note 2, at 1072-73, 1088; Winter, *supra* note 2, at 1385. *Contra Developments*, 32 J. LEGAL EDUC. 424, 424 (1982) (unpublished "[i]nformation compiled by the then dean of one of the nation's leading law schools indicates that . . . women [were] slightly underrepresented in the top graduates of leading law schools").

51. Barnes, *supra* note 2, at 290-91; Dinerman, *Sex Discrimination in the Legal Profession*, 55 A.B.A. J. 951, 953 (1969); Fossum, *supra* note 50, at 533-34.

52. Stevens, *Law Schools and Law Students*, 59 VA. L. REV. 551, 611-13 (1973).

53. K. MORELLO, *supra* note 2, at 108-42 (women lawyers as rebels and reformers).

taught,⁵⁴ and, if they practiced, these were areas of their practice.⁵⁵ Although women are now found in every specialty, the numbers are still higher in "people related" fields.⁵⁶ Over the years, my own juvenile law class has been composed primarily of women. In spring 1988, there were eighteen women and eleven men. However, the law school curriculum was not, and is not, geared to the particular interests of women.⁵⁷

There were no women professors at Columbia in 1965. There was one woman graduate student teaching a small legal writing section and she later became a full tenured professor at one of the other five schools studied. Not only was there a lack of women professors as role models,⁵⁸ but women's perspectives were totally lacking from any of the courses or discussions. Studies indicate that women law students, as compared to men law students, are "silent in class."⁵⁹ Even if they speak in their first year, they speak substantially less in later years as they learn that their viewpoints are not responded to or valued.⁶⁰

Columbia Law School brings in the first-year class early for two weeks of intensive work in a legal process course. This course, like all other basic courses at Columbia Law School, is taught by what is labeled the "Socratic method."⁶¹

54. Ginsburg, *supra* note 9, at 272; Zenoff & Lorio, *supra* note 2, at 880.

55. Barnes, *supra* note 2, at 277, 292-93; White, *supra* note 2, at 1060, 1062; Zenoff & Lorio, *supra* note 2, at 880.

56. C. EPSTEIN, WOMEN IN LAW, *supra* note 2, at 120.

57. See C. EPSTEIN, WOMEN IN LAW, *supra* note 2, at 235; Erickson, *Sex Bias in Law School Courses*, *supra* note 2.

58. See *supra* note 39 for a discussion of the effect this lack of role models has on women.

59. Banks, *supra* note 2, at 139; Barnes, *supra* note 2, at 291; Jacobs, *supra* note 2, at 470; Robert & Winter, *supra* note 2, at 450.

60. See *infra* note 228 and accompanying text for a discussion of women's performance in class.

61. One hoped that the "Socratic method" was finally dying, but a recent article by Professor Anthony D'Amato of Northwestern University Law School, *The Decline and Fall of Law Teaching in the Age of Student Consumerism*, 37 J. LEGAL EDUC. 461 (1987), proves it to be alive and well and now buttressed by the latest jargon about "K-lines" (knowledge-lines), see *id.* at 463 (quoting M. MINSKY, *THE SOCIETY OF THE MIND* 82 (1986)).

[I]n the Good Socratic Method the answer is not implied in, or deductively derivable from, the question. Instead, the professor 'plugs in' to the student's mental wavelength, making sure, by question-and-answer, that the student's mind is *precisely at the point where the existing mental pathways will lead to the wrong answer.*

Id. at 466 (emphasis in the original).

By this process, which assumes that the law school professor is always smarter than the student and always knows the right answer, Professor D'Amato's protagonist and alter ego, Professor Smith, leads his pet pupil, Ms. Brown, "though humor (satire, irony, exaggeration, the coupling of absurd propositions)," *id.*, to the brilliant conclusion that "we could have had a pregnant bull." *Id.* at 467-68. This is all supposed to be good for Ms. Brown, even though "Ms. Brown may not realize that she has received Smith's highest compliment until she looks back on it ten years later." *Id.* at 473.

Throughout the article, Professor Smith is portrayed as god-like—he has more "K-lines" than anyone else and can create them in others—and students as child-like. *Id.* at 462.

Professor Smith tried to interfere with the students' minds because, after all, students coming to law school cannot be expected to have the subtle and intricate mental pathways in their minds that are necessary to deal with the complex legal task of interpreting and articulating real-world facts in light of shifting and often ambiguous and problematic legal norms, principles, rules, theories, and litigation strategies. Hence, a good law school

If Socrates really used this method, he wasn't given the hemlock soon enough. The "Socratic method" is based on several premises. First, the teacher is "God = Socrates." Second, there is truth, and "God = Socrates" knows what it is. Third, the students are blithering idiots, who wouldn't recognize the truth if they fell over it, and who, therefore, must be dragged, through total ridicule, to the truth as "God = Socrates" sees it.

All lawyers remember the first time they were called on in class. I actually responded when the teacher called on "Mr. Angel" and I gave a short answer to what I had been asked. Once this particular teacher, like most of the teachers, had latched on to a pupil, he did so for at least fifteen or twenty minutes. For a reason which I did not understand at the time, he ignored my response and went back to torturing the student he had been torturing before me. After being ignored for ten minutes, I finally sat down, not understanding what had happened. Three classes later, the light dawned when the teacher summarized the materials we had been covering by making the point I had made. I learned the lesson that giving the wrong answer subjected a student to ridicule and torture; giving the right answer, and destroying the teacher's lesson plan for the next three hours, caused a student to be ignored. On only two or three occasions during my three years of law school did I ever volunteer in a large class, although I did tend to talk more in small seminars where the "Socratic method" was not practiced in the usual fashion. As a student, I watched how my teachers were teaching, silently vowing that if I ever taught I would teach in exactly the opposite manner.

When a teacher addresses a class, even if it is a class of 150, that teacher is talking to you. During the first two weeks of class, I remember teachers telling me that hard work was good for me—that it would "make a man out of me." I found it difficult to credit that statement. Having gone to all girls' schools hearing that hard work would "put hair on my chest" amazed me even more. I couldn't imagine why I would want hair on my chest.

Needless to say, the classroom climate and discussions at Columbia Law School were totally male-oriented.⁶² We were treated to three years of "the

teacher has to begin by assuming that the minds of her students have to be changed, a notion encapsulated in the cliché that law school is supposed to teach a student to think like a lawyer.

Id. at 470. Following this statement is Professor D'Amato's bottom line definition of the legal skills taught in three years of law school. "Lawyering is preeminently problem-solving; thinking like a lawyer is having the ability to look at some facts, decide what is missing and what could be added, and relating those facts to 'the law' in such a way as to solve the client's problem." *Id.* at 470-71. These would seem to be basic skills needed by every human being to survive in this world. Professor D'Amato and his god-like colleagues do not have a monopoly on them. Professor D'Amato should be exposed to an evening division class at Temple Law School composed of doctors, police officers, secretaries, and business people, among others. He could also profit from reading LEVIN, *THE SOCRATIC METHOD* (1987).

62. Ruth Bader Ginsburg wrote in 1971, "Two jobs merit immediate attention: 1) the elimination from law school texts and classroom presentations of attempts at comic relief via stereotyped characterizations of women; 2) the infusion into standard curricular offerings of material on sex-based discrimination." Ginsburg, *Treatment of Women by the Law: Awakening Consciousness in the Law Schools*, 5 VAL. U.L. REV. 480, 481 (1971).

reasonable man's"⁶³ perspective on the world. From my perspective, the classes had little to nothing to do with what I was concerned about. Even though the traditional ladies' day⁶⁴ which I experienced seems to have disappeared from virtually all law schools, other blatant forms of sexism abound. Women students can't feel welcome when they hear teachers remark, "[y]our ideas are garbage because they are women's stuff," "one cannot get a good maid or secretary any more because all the women are in law school," or it was "better when law school was made up of all men."⁶⁵

One never forgets the psychological torture of waiting for first year, first term grades to be posted; somehow teachers don't manage to finish them in anything less than a month and a half following exams. The level of hysteria reached by first year law students is enormous. Unfortunately, one of my second semester teachers, in front of several students, told me I was doing "swimmingly" and announced several of my grades which were in the A+/A range. Since this was done before others had their grades, word swept through the entire first year class, and within one hour I was treated to looks and expressions

63. "I find that at Common Law a reasonable woman does not exist." A.P. HERBERT, UNCOMMON LAW 6 (1935).

A brief description of an actual case I handled should suffice to show the incalculable harm that the law has done to women in the name of "the reasonable man." In *Elizabeth Schmidt v. Suffolk County Police Department*, No. GCS-29509-73 (N.Y. State Div. of Human Rights, April 4, 1974) (copy on file at *Temple Law Review* office), a woman applied to take a promotional examination for police sergeant in 1967. *Id.* at 3. She was notified in writing that she was "ineligible" since she was not serving as a "Police Patrolman" but as a "Policewoman." *Id.*

In 1971 she applied to take two promotional examinations: Police Sergeant and Policewoman Sergeant. *Id.* She was again notified she was ineligible for the position of Police Sergeant but took the examination for Policewoman Sergeant. *Id.* It was shown that the two examinations were identical. *Id.* at 3-4. Her score would have placed her No. 41 or 42 on a list of 151 male police officers who passed the test, and she should have been promoted on May 8, 1972. *Id.* at 4. She was not promoted. *Id.* at 5.

Eight days before the hearing on her charge of discrimination, Ms. Schmidt, a detective, was permanently transferred to uniform patrol duty. *Id.* at 5. At the hearing, "Respondent Commissioner Eugene Kelly testified, 'We have plenty of detectives who have been broken and sent back to uniform. We have plenty of detectives who were demoted and transferred to uniform,' but that he was unaware of any detective who had otherwise been assigned to uniform patrol." *Id.*

On April 4, 1974, the Commissioner of the New York State Division of Human Rights found in favor of Ms. Schmidt on claims of sex discrimination and retaliation for filing the complaint with the Division. *Id.* at 6-7. The police department appealed to the State Human Rights Appeal Board, which affirmed on November 20, 1974. They then appealed to the New York Supreme Court, Appellate Division, which affirmed the State Human Rights Appeal Board's order. State Div. of Human Rights *ex rel. Schmidt v. Suffolk County Police Dept.*, 48 A.D.2d 913, 372 N.Y.S.2d 991 (mem.), *leave to appeal denied mem.*, 37 N.Y.2d 711, 378 N.Y.S.2d 1025, and 38 N.Y.2d 706, 381 N.Y.S.2d 1026 (1975).

Since the complainant was supposedly represented by the State Human Rights Commission, she did not receive reasonable attorney's fees and costs. She did not receive her promotion until 1976, nine years after she first applied to take the promotional examination.

64. "Ladies' day" was the day women law students were called on exclusively. For my class, it occurred on Valentine's Day. See Erickson, *Legal Education*, *supra* note 2, at 457; Fossum, *Women in the Law: A Reflection on Portia*, 69 A.B.A. J. 1389, 1389 (1983); Wilson, *supra* note 47, at 891.

65. Banks, *supra* note 2, at 144.

of hatred for taking "honors away from the men."⁶⁶ Needless to say, having never faced this kind of hostility, my second semester was not a delight.

At the end of my first year, one of the teachers asked me to be his research assistant for a book he was writing. For one hour he gave me instructions on what he wanted done, and then left for Europe for the summer. I spent a month and a half alone in the library doing someone else's research, a process which I found boring and totally unsatisfying.

The Wall Street Firm

In June I received an unsolicited offer to work for a major Wall Street firm during July of that summer. Even though I thought I was not interested in Wall Street firms, I told myself that I was being narrow-minded in deciding, sight unseen, that I would not like Wall Street. I accepted the offer, and was assigned to a senior litigation partner to work on a case involving a bankrupt boat. The research included admiralty law and bankruptcy law, both of which I knew nothing about and never wanted to know anything about. In addition, I couldn't have cared less which group of rich people got the silly boat.

However, I learned my greatest Wall Street lesson during my first day at the firm. I knew that summer associates were invited to go to lunch with several partners on their first day. At 11:30 I received a phone call and was told to meet the partners in the firm's main lobby for lunch. I met the three of them, and we went up the elevator of One Chase Manhattan Plaza to the Wall Street Club. When the four of us walked up to the maitre d', he looked at me, looked at the most important man there, and asked, "Is the young lady with you?" I thought to myself, "No, I am just the puppy dog that they took out for a walk." When they indicated that I was with them, he announced that women were not allowed into the main dining room of the Wall Street Club, and that we would all have to eat in the ladies' dining room. Although I was certainly young and naive at the time, I understood that major law firm attorneys conducted business during lunch and dinner, and I was not even allowed in the room.⁶⁷ The three men seemed mildly embarrassed, but as we walked down a long corridor, passing dining room after dining room, one of the men tried to lighten the situation by saying that he bet it was the last door before the kitchen. It was. Being far more polite in my younger days, I said nothing but told myself that this was the last time I would even think about working for a major law firm.

The other major learning experience at the firm came from being chased around the desk by the litigation partner to whom I was assigned.⁶⁸ In 1966,

66. Cf. Greenberger, *supra* note 46, at 16 (male hostility to women taking Law School Aptitude Test during 1960s).

67. See generally, e.g., C. EPSTEIN, *WOMEN IN LAW*, *supra* note 2, at 283-86; Burns, *The Exclusion of Women from Influential Men's Clubs: The Inner Sanctum and the Myth of Full Equality*, 18 HARV. C.R.-C.L. L. REV. 321 (1983); Goodwin, *Challenging the Private Club: Sex Discrimination Plaintiffs Barred at the Door*, 13 SW. U.L. REV. 237 (1982); Comment, *Private Clubs: A Sanctuary for Discrimination?* 40 BAYLOR L. REV. 71 (1988); Comment, *Sex Discrimination in Private Clubs*, 29 HAST. L.J. 417 (1977).

68. Cf. *When the Bottom Line is the Bottom Line, Not Even a Partner is Safe*, N.Y. Times, May

sexual harassment was not a common term and was a subject about which women did not speak except to other women. There was no recourse except to handle it in the best way one could. My method of handling it, both as a law student and as an employee, was to pretend that I didn't understand what was happening. With this particular partner, I simply referred to his wife and children every time he made a suggestive remark. After two or three weeks, he must have decided that I was either a blithering idiot or not interested—probably a blithering idiot because I failed to respond to him.

Let me digress from the chronology at this point to note that sexual harassment has long been, and continues to be, a problem for women both in law school and practice. Too many male faculty members view the classroom as a "happy hunting ground" and believe that the women have been admitted to law school for their personal review and amusement. When this topic is raised with male faculty members, the immediate response is a statement about how many happy marriages have evolved from relationships between law professors and their students. My response is to ask how many women students were auditioned before the one to whom the faculty member is now purportedly happily married. Why do some women students go along with this? Often because there is no way to complain and no one to whom to complain. Even if there is, some students are impressed with their teachers.⁶⁹ Do not forget, "God = Socrates" is on a raised platform, performing before students three hours a week, fourteen weeks a semester. This individual seemingly can do things with the law that students can only aspire to do. It is not always obvious to law students that the only reason their teachers appear so amazingly competent is because they have the power to choose the book everyone has to read, they have *usually* read the entire book before the students, they may have read several other books on the subject they are teaching, and they are "God = Socrates" on a raised platform who can start or stop discussions whenever they desire. Although the explicit power play of good grades for sex is seldom used, the hope or actual offer of help from a faculty member is always present.

The year I chaired the Temple University Committee on the Status of Women, a sexual harassment policy was passed which prohibits even "consensual" relationships between faculty members and their students while those students are under the faculty member's direct control (in classes, thesis advisees, research assistants, etc.).⁷⁰ A similar policy has since been adopted by the Univer-

13, 1988, § B, at 6, col. 1 (partner dismissed for sending associate away on assignment so that he could be alone with associate's wife).

69. Comment, *The Need for Universities to Have Rules on Consensual Sexual Relations Between Faculty Members and Students*, 21 COLUM. J.L. & SOC. PROB. 137, 140-41 (1988).

70. A. The principle of professional ethnics embodied here is that, *while a student is a student of a particular instructor*, the student is not available for any sort of sexual or romantic advances or relationship.

B. A student is a student of a particular instructor:

(1) when a student is registered in a course taught by the instructor and has not yet received a final grade; or
(2) when a student is assigned to be advised by a particular instructor,

sity of Iowa⁷¹ and New York University.⁷² Having been a woman student at two law schools, and a teacher at three, I am well aware of the degree to which sexual harassment still exists. Having served as the faculty advisor to the Women's Law Caucuses at two law schools, I heard, and continue to hear, the complaints. The problem remains that any disciplinary action against a faculty member under the procedures of most universities must start with the faculty of which that teacher is a member. Given the small size of most law school faculties, the chance that any complaint by any single woman student against one of the male teachers will be taken seriously is close to zero.

Disillusionment with Law School

To end the digression and continue with my life at Columbia Law School, I returned early in August to participate in the law review after finishing my stint on Wall Street. Columbia had a summer program at Leyden in the Netherlands and I had heard that good students were chosen as research assistants to the Columbia professors teaching in that summer program. One day I saw a teacher in the program and approached him about participating the following summer. His first reaction was that you had to be on law review. I said I was. His next reaction was that it was only open to men because 95% of the students participating from Europe were men and there would be a problem with the dormitories. I pointed out that 5% of the students participating were women and that they had to live somewhere. He finally remarked that the program was only open to men. Since I dropped out of Columbia Law School within a few weeks I did not file a complaint, but I gather that the next year a woman student did, having received the same response, in writing, from the same teacher. Some "adjustment" was made.

On law review I was given three weeks to write the definitive constitutional law article on jury discrimination. It struck me as more than a bit ridiculous to give a student, whose curriculum had not yet included a constitutional law course, such an assignment. My classes made no more sense to me than that particular assignment. It became clear to me then that there was a conflict between the reasons I had gone to law school, and what I was being pushed to be by the status system at Columbia Law School. That system consisted of Wall Street firms, prominent federal clerkships, and making money. There is extensive literature on the confusion and hostility that women law students feel when they try to balance their own personal priorities against those of a legal system that is not only not geared to their priorities but is in complete conflict with

whether the instructor is serving as an undergraduate advisor, graduate advisor, or member of a thesis or dissertation committee; or

- (3) at other times when an instructor has a relationship with a student such that a student's activities at the University are being supervised or evaluated by the instructor.

Temple University, Policy Prohibiting Sexual Harassment of Students (Nov. 14, 1985).

71. See Comment, *supra* note 69, at 146-47.

72. See N.Y. Times, April 22, 1988, § B, at 5, col. 4.

them.⁷³

This was also the time when I began to think about the abstract possibility of marriage and children. It was clear to me that I was working incredibly hard with very long hours to maintain the kind of grades that I had been achieving. Coming from a traditional Greek-American background it had also been made clear to me that the roles of wife and mother were difficult and time-consuming. I realized it would be impossible to find a man to share even half the job of running a home and raising children. And even if I managed, I would be competing professionally with men married to women who were carrying 100% of the job of running a home and raising children.⁷⁴ It seemed clear that the possibility of combining marriage and children with a successful legal career was close to zero. Given a choice between the two, I decided that I would make a miserable wife and mother if I were unhappy, and therefore, those goals would probably have to be set aside in favor of a professional career. Although I consciously reached this conclusion at an early age, I don't believe most professional women do. The statistics indicating the differences between professional men and women in marriage rates and parental status show that most professional women learned this lesson the hard way, because they didn't think it out ahead of time.⁷⁵

Becoming increasingly unhappy with Columbia Law School, I began to contemplate dropping out.⁷⁶ Not dropping out of law, but dropping out of law

73. Thus, the women lawyers studied experienced simultaneously the expectations linked to the status of lawyer, those linked to the hybrid status of woman lawyer, and those associated with their status as women. Since these expectations were apt to be contradictory, considerable ambivalence occurred.

Epstein, *Women Lawyers*, *supra* note 2, at 670. "As a result, many women experienced confusion or hostility, and some deviated from professional norms or withdrew entirely from the discomfort which the ambiguity created." *Id.* See Jacobs, *supra* note 2, at 464-65; Robert & Winter, *supra* note 2, at 449-50.

74. Men are expected to profess a vocation, and to also be married; the statuses of male and professional are complimentary. Just the opposite case obtains for women, and therefore there has been no development of normative prescriptions for the professional female. Indeed, it has been pointed out . . . that women with careers have hitherto been under pressure to perform very well on the job and with equal devotion and proficiency in their domestic lives.

Jacobs, *supra* note 2, at 464-65.

A recent N.Y. Times article reported on a survey which showed that 91% of married women claimed they did most of the food shopping for the household, while 15% of the married men claimed they did; that 90% of the married women claimed they did most of the cooking, while 15% of the married men claimed they did. N.Y. Times, Feb. 24, 1988, § A, at 1, col. 1. Even accepting the beliefs of the married men, it is clear that married women still perform most of the work of running a household. See also *infra* note 234 regarding law students' expectation that women will spend more time raising children than men.

75. See statistics regarding marital status for male and female lawyers in *supra* note 44 and accompanying text. See generally Graham, *It's Getting Better*, 72 A.B.A. J., Dec. 1986, at 54; Handler, *Diapers and Depositions*, 71 A.B.A. J., Apr. 1985, at 66; Seidenberg, *A Neglected Minority—Women in Law School*, 10 NOVA L.J. 843, 844 (1986); Weisberg, *Barred from the Bar: Women and Legal Education in the United States 1870-1890*, 28 J. LEGAL EDUC. 485, 492-93 (1977).

76. See C. EPSTEIN, *WOMEN IN LAW*, *supra* note 2, at 61 (some women may have dropped out of law school because it was punishing environment for women).

school in order to regain my perspective, and to see if I could fit my values and goals into a system that seemed to be in conflict with them. I talked with two male teachers, and both had very little notion what I was talking about. In fact, one suggested that I had chosen the wrong field and that perhaps I should consider becoming a social worker.⁷⁷ Shortly into the first semester of the second year, I did drop out of Columbia Law School. However, I notified the placement office of my availability for law related jobs during the year. The one thing for which I thank Columbia was their referral to the NAACP Legal Defense Fund for a job that was exactly what I needed. Prior to that call, I had received a call from a Wall Street firm that wanted me to sit in a back room and catalogue documents for eight months in an antitrust case. I explained to the partner that I'd had enough of abstract legal reasoning and working with pieces of paper, and that I was far more concerned about people. He responded that that was not what law was all about.

At the time, the NAACP Legal Defense Fund had mounted a massive attack on the constitutionality of the death sentence. A major part of that attack was an equal protection argument in cases involving the death sentence for sex related crimes.⁷⁸ This was my first exposure to empirical research in the law. The study had been put together by Professors Anthony Amsterdam and Marvin Wolfgang, both then of the University of Pennsylvania. I spent approximately seven months traveling around Florida and Virginia by myself, going through courthouse records and newspaper files, and interviewing defense attorneys. I learned everything one ever wanted to know or didn't want to know about the crime of rape, a crime which was never mentioned in my three years of law school. The literature shows that many male professors either avoid this crime completely, or, if they try to handle it, call on women students as a source of amusement for themselves and the male students in the class.⁷⁹

One of the most important lessons I learned during that time came in the first two weeks. Although I had been told to spend as much money as I needed to feel safe and comfortable, I realized I was eating all my evening meals, which consisted of Big Macs, Whoppers, and Colonel Sander's chicken, in my hotel room. Two weeks of such a diet could drive anyone to distraction, and I started to examine the reasons for shying away from restaurants. In discussing it with myself, I discovered the reason was because a nice Greek-American girl does not walk into a restaurant by herself at night. Once I understood this, I also understood that I was condemned to seven months of junk food unless I was capable of changing. Taking one's self out to dinner at the age of twenty-two in 1966 was not easy. But once the ice was broken, I realized that there were many social conventions that I would have to break if I were to survive as a woman lawyer.

77. Cf. White, *supra* note 2, at 1069 (survey showed that perception that women become lawyers to be "social workers" is mistaken).

78. Wolfgang & Riedel, *Race, Judicial Discretion, and the Death Penalty*, 407 ANNALS 119, 126-33 (1973).

79. C. EPSTEIN, *WOMEN IN LAW*, *supra* note 2, at 66; Greenberger, *supra* note 46, at 17.

Finishing Law School

I returned to Columbia Law School the following fall semester with my priorities in order. I did not rejoin the law review and I did not take the courses I was supposed to take. I took only the courses I wanted to take and, since there were few courses of any interest to me at that time, I signed up for a number of independent study credits with teachers I found to be empathetic. I wrote papers on topics that I felt were important, including one on battered children for a criminology seminar.

My lessons in reality continued. I learned that the rumor that had run rampant in the school about my reason for dropping out was that I was pregnant. It never occurred to the men that someone with my grades would have dropped out because they hated the place.

During the 1967-68 academic year, Columbia University was hit by student disturbances. The following year, my final year in law school, a series of university wide faculty student committees were established as a method of reform. I was co-chair of the student committee working on the search for a new president of Columbia University. We set up a meeting with the trustee committee working on the search, and they invited the student committee to dinner at the Columbia University Club. With my usual compulsiveness, I arrived early and the receptionist told me to wait in the lobby. A few minutes later, a liveried butler came over and asked me what I was doing there. I told him I was a student at Columbia Law School chairing the student presidential search committee and that I had a dinner meeting with the trustee search committee. He stated that a member of the Club had complained because women were not allowed in the public areas of the Columbia University Club, and that I would have to wait in the third floor ladies room.⁸⁰ Again, being more polite at that time, I did not verbalize my thoughts. I had spent four years at Barnard College, Columbia's women's college, and had graduated from there. I was spending three years at Columbia Law School and was graduating from there, yet I was not welcome at the Columbia University Club. I suggested that I wait in the dining room we were to use, a suggestion he found acceptable. Several years later, the Columbia University Club, faced with large operating losses,⁸¹ closed and that night I went out and celebrated. The building was later sold to the Reverend Sun Myung Moon's Unification Church for use as its American headquarters.⁸²

When it came time to look for a job, I knew I wanted to be in Professor Anthony Amsterdam's graduate LL.M. program in criminal law and litigation at the University of Pennsylvania. Since the acceptance date for the program was extremely late, I knew I had to explore other options. The only similar graduate program was the Georgetown Prettyman Fellowship Program. I applied and was invited for an interview. One of the men who interviewed me

80. Women were allowed to join in 1972. *Columbia University Club Votes to Allow Women Membership*, N.Y. Times, May 18, 1972, at 27, col. 6. See *supra* note 67 and accompanying text for a similar incident of sex discrimination.

81. *Columbia Club Petitions to Dissolve*, N.Y. Times, May 25, 1974, at 33, col. 2.

82. *Moon's Church Buys Former Columbia Club*, N.Y. Times, May 7, 1975, at 38, col. 1.

clearly was uneasy and told me that they never had had a woman in the program. He sent me to perhaps the only woman in criminal law whom he knew about, Barbara A. Babcock,⁸³ who was then the head of the Washington Legal Aid Office. I was stunned to see a woman in such a position and my first words were to congratulate her. After my appearance at the Georgetown program, another woman was appointed a Prettyman Fellow.

Two other job possibilities had been suggested to me, the Criminal Division of the U.S. Attorney's Office and the Manhattan District Attorney's Office. Robert Morgenthau was then the U.S. Attorney in Manhattan. I knew, however, that he had never had a woman in the Criminal Division and that the office didn't want one. The appointment of a woman came two years later after Robert Morgenthau was replaced by Whitney North Seymour, an appointment that also merited an article in the *New York Times*.⁸⁴ The District Attorney for Manhattan in 1969 was Frank Hogan and, knowing that he did have some women working in his office, I applied. At the interview with a Bureau Chief, I expressed an interest in trial work but was told I would be considered only for the Appeals Bureau, where several women were already working and where they "probably did not want any more." Hogan's Executive Assistant District Attorney later explained in a letter to me that "most of [the women who had worked in the office] failed to demonstrate such an aptitude [for trial work]."⁸⁵ Frank Hogan was on the board of trustees of Columbia University. The trustees were present at the Columbia graduation and knew me from my work on the search committee. They noted the number of awards I had racked up at graduation. Hogan personally asked me if I was interested in working for him. He had never seen my application nor my letter. When I relayed to him what had occurred during my interview, he was surprised and stated that the Assistant District Attorney who interviewed me was a difficult person with whom to work. Since I had already been admitted to the graduate program at the University of Pennsylvania where I spent two years, I dropped the matter.

2. Columbia Update

There are some, but not enough, signs of progress at Columbia Law School. On February 1, 1986, Barbara Black was appointed Dean of Columbia Law School, making her one of nine women deans in 174 accredited law schools.⁸⁶ Also, in 1987, Columbia Law School admitted 144 women to its first year class,

83. Director, Legal Aid Agency for the District of Columbia (subsequently renamed Public Defender Service); now Professor of Law, Stanford Law School.

84. *U.S. Prosecutors Joined by Woman*, N.Y. Times, Sept. 6, 1970, at 54, col. 1.

The article reported, "Harold Baer, Jr., who heads the criminal division, said, 'She'll get the regular assignments everybody else gets, and it'll be fun to see how it works.'" *Id.* See Ginsburg, *supra* note 9, at 273 (U.S. Attorney's Office traditionally would not hire women for criminal division).

85. Letter from David S. Worgan to Marina Angel (Feb. 26, 1969) (on file at *Temple Law Review* office).

86. See *supra* note 20 and accompanying text for a list of the nine women deans and the law schools by which they were employed.

or 45% of the class.⁸⁷ From 1980 to 1986 women had comprised 31% to 39% of the first year classes.⁸⁸ Having a woman dean does make a difference.

The bad news is that between 1972 and 1980, Columbia Law School had only one or two women faculty members each year.⁸⁹ In a recent letter, Columbia stated that it currently has five full professors who are women.⁹⁰ Only three of these, including Barbara Black, are regular professors.⁹¹ The other two are clinicians. At the associate professor level, Columbia indicated four; however, only two are regular professors, the other two are clinicians.⁹² At the assistant professor level, they indicate one for 100% of its assistant professors, but that one is a clinician.⁹³ But looking at the statistics as given, it is easy to see that many of Columbia Law School's clinicians, its second class citizens, are women.

From 1970 to 1987, Columbia Law School had a total of 112 teachers on its faculty,⁹⁴ sixty-six of whom were hired and eligible for tenure between 1970 and 1987. There were fifteen women.⁹⁵ Only five women, or 33.3% of the women, were tenured during this time, while twenty-nine men, or 56.9% of the men, were tenured during the same period.⁹⁶ It is interesting to note that four of the five women tenured had spouses who were tenured at Columbia. Columbia currently has three women who are tenured full professors, accounting for 7.7% of the tenured faculty at this rank.⁹⁷ They also account for 7.7% of the total current tenured faculty.⁹⁸ It has two untenured women associate professors. There were only six women at Columbia in 1987 out of a total faculty of fifty-one, or 11.8% of the faculty.⁹⁹ The three untenured women make up 25% of the untenured faculty.¹⁰⁰

In 1974 the women students at Columbia, together with women students from New York University Law School, filed a lawsuit against several of the leading Wall Street firms for discriminating against women.¹⁰¹ The suit was settled by means of a consent decree which resulted in better hiring and promo-

87. Letter from Yvonne Tenney to Marina Angel (Jan. 28, 1988) (Table On Women at Columbia Law School attached to letter) (on file at *Temple Law Review* office).

88. *Id.*

89. See *infra* appendix, table 1 (Columbia women faculty members).

90. Letter, *supra* note 87.

91. *Id.*

92. *Id.*

93. *Id.*

94. See *infra* appendix, table 3 (Total faculty serving between 1970 and 1987, tenured and untenured).

95. See *infra* appendix, table 2 (Total faculty hired and eligible for tenure between 1970 and 1987).

96. See *id.* (Total faculty tenured of those hired and eligible for tenure between 1970 and 1987).

97. See *infra* appendix, table 6 (Professor, Tenured).

98. See *infra* appendix, table 5 (Current tenured faculty 1987), and table 6 (Total Faculty, Tenured).

99. See *infra* appendix, table 5 (Current total faculty 1987).

100. See *infra* appendix, table 6 (Associate Professor, Untenured).

101. C. EPSTEIN, *WOMEN IN LAW*, *supra* note 2, at 72, 184-86; Fossum, *Women in the Legal Profession*, *supra* note 2, at 582; N.Y. Times, May 8, 1977, at 13, col. 1; Wall St. J., May 9, 1977, at 21, col. 1.

tion practices for women.¹⁰² Women comprised 42.5% of the students at Columbia during the 1987-88 academic year.¹⁰³

B. The University of Pennsylvania Law School

From the fall of 1969 through the summer of 1971, I was in an LL.M. program in criminal law and litigation at the University of Pennsylvania Law School ("Penn Program"). The program was totally clinical and we worked for the Voluntary Defenders' Office of Philadelphia and, for a short period, Community Legal Services of Philadelphia. I was the only woman to participate in the Penn Program, and I was only the second woman in the Voluntary Defenders' Office.¹⁰⁴ To all of the men in the Penn Program and the Defenders' Office, the epitome of success was trying major felony jury cases in state and federal court. When I spent one of the two years, at my request, in the juvenile division of the Defenders' Office, everyone again thought I was crazy.

The statistics for the University of Pennsylvania Law School show an abysmal record regarding women faculty members. From 1970 to 1981, the University of Pennsylvania Law School had only one or two women on the faculty each year.¹⁰⁵ During the period from 1970 to 1987, it had only nine women on its faculty, the lowest number by far of the five schools studied, and tenured only four.¹⁰⁶ There are only two untenured women on its faculty today.¹⁰⁷ From 1970 to 1987, the University of Pennsylvania Law School had a total of seventy-five different teachers on its faculty,¹⁰⁸ forty-eight of whom were hired and eligible for tenure between 1970 and 1987.¹⁰⁹ Three women, or 37.5% of the women, were tenured during this time period, while twenty-nine men, or 72.5% of the men, were tenured during the same period.¹¹⁰ The University of Pennsylvania Law School currently has one woman who is a tenured full professor, accounting for 5.6% of the tenured faculty at this rank.¹¹¹ It has two tenured women associate professors.¹¹² There were only five women at the Law School in 1987 out of a total faculty of thirty-one, or 16.1% of the faculty.¹¹³ The

102. See Wall St. J., May 9, 1977, at 21, col. 1; N.Y. Times, May 8, 1977, at 13, col. 1.

103. See A.B.A. SECTION ON LEGAL EDUCATION, *supra* note 2, Fall 1987, at 39 (1988).

104. Carolyn Temin, now a judge of the Philadelphia Court of Common Pleas, preceded me.

105. See *infra* appendix, table 1 (Pennsylvania Law School women faculty members).

106. See *infra* appendix, table 3 (Total faculty tenured between 1970 and 1987, including those hired before 1970).

107. See *infra* appendix, table 3 (Untenured faculty in 1987, including those hired before 1970) and table 5 (Current untenured faculty 1987).

108. See *infra* appendix, table 3 (Total faculty serving between 1970 and 1987, tenured and untenured), and table 4 (Total faculty serving between 1970-1987, tenured and untenured).

109. See *infra* appendix, table 2 (Total faculty hired and eligible for tenure between 1970 and 1987).

110. See *id.* (Total faculty tenured of those hired and eligible for tenure between 1970 and 1987).

111. See *infra* appendix, table 6 (Professor, Tenured).

112. See *infra* appendix, table 6 (Associate Professor, Tenured).

113. See *infra* appendix, table 5 (Current total faculty 1987).

tenured women make up 13% of the tenured faculty.¹¹⁴ The two untenured women assistant professors make up 25% of the untenured faculty.¹¹⁵ Women comprised 39.9% of the students at the University of Pennsylvania Law School in 1987, the lowest percentage of the five schools studied.¹¹⁶ Commentators have noted that the supposedly "elite" law schools have the worst records on women faculty and students.¹¹⁷

C. Rutgers-Camden Law School

In the spring of 1970, I approached the dean of Rutgers-Camden Law School suggesting that I teach juvenile law as an adjunct. I taught the course in the fall of 1970 because I was particularly interested in the field and I thought I wanted to be a full-time law teacher. In 1970, Rutgers-Camden had one female faculty member,¹¹⁸ who was later tenured. From 1973 to 1984, Rutgers-Camden had between four and six women on its faculty each year, except for 1981 when it had only three.¹¹⁹

Rutgers-Camden Law School has had a total of sixteen women on its faculty. Unfortunately most of their experiences proved to be short term. From 1970 to 1987, Rutgers had a total of seventy-nine teachers¹²⁰ on its faculty, sixty-five of whom were hired and eligible for tenure between 1970 and 1987.¹²¹ Two women, or 13.3% of the women, were tenured during this time, while twenty-five men, or 50% of the men, were tenured during the same period.¹²² In 1987, Rutgers-Camden had only one woman who was a tenured full professor (it is the only one of the five schools that has had only one woman tenured full professor in its history) or 4.3% of the tenured faculty at this rank.¹²³ It had one woman untenured professor, two women tenured associate professors, or 40% of the tenured faculty at this rank, three untenured women associate professors, and one untenured woman assistant professor.¹²⁴ There were eight women at Rutgers-Camden in 1987 of a total faculty of thirty-six, or 22.2% of

114. See *infra* appendix, table 5 (Current untenured faculty 1987), and table 6 (Total Faculty, Untenured).

115. See *infra* appendix, table 5 (Current untenured faculty 1987), and table 6 (Total Faculty, Untenured).

116. See A.B.A. SECTION ON LEGAL EDUCATION, *supra* note 2, Fall 1987, at 50 (1988).

117. See, e.g., K. MORELLO, *supra* note 2, at 88-107; Kay, *The Need for Self-Imposed Quotas in Academic Employment*, 1979 WASH. U.L.Q. 137, 139; Weisberg, *supra* note 2, at 229; accord B. SANDLER, *supra* note 4, at 2.

118. See *infra* appendix, table 1 (Rutgers-Camden women faculty members).

119. See *id.*

120. See *infra* appendix, table 3 (Total faculty serving between 1970 and 1987, tenured and untenured), and table 4 (Total faculty serving between 1970-1987, tenured and untenured).

121. See *infra* appendix, table 2 (Total faculty hired and eligible for tenure between 1970 and 1987).

122. See *id.* (Total faculty tenured of those hired and eligible for tenure between 1970 and 1987).

123. See *infra* appendix, table 6 (Professor, Tenured).

124. See *id.* (Professor, Untenured; Associate Professor; Assistant Professor).

the faculty.¹²⁵ Women comprised 10.7% of the tenured faculty,¹²⁶ 62.5% of the untenured faculty,¹²⁷ and 45.1% of the students at Rutgers-Camden in 1987.¹²⁸

D. Hofstra Law School

When I decided to go into full-time teaching, I contacted two faculty members at Columbia Law School whom I believed would be empathetic and helpful. By then, I knew that there was an "old boys network"¹²⁹ and that Columbia Law School was a traditional "feeder" school.¹³⁰ Both were surprised at my interest in teaching and managed to suggest only two schools to me, Hofstra Law School, a new and therefore unaccredited school that had opened in 1970, and Rutgers-Camden, where I had already found a part-time job and received a full-time job offer. In 1970, there were 146 accredited schools in the United States. After mentioning to one of the teachers that I had heard of the American Association of Law Schools faculty recruiting convention, the main "hiring hall" for law school professors,¹³¹ I was given the worst piece of professional advice of my life. He stated that the convention was for the "peons" and that Columbia Law School people "didn't do it that way." Therefore, I was shut out of the major hiring process in legal education and was referred to only two schools. I do not believe this is the way Columbia Law School would have responded to a male graduate with my academic record and credentials.

Because my family was in the New York area, and because Hofstra Law School was new and seemed to be doing things differently, I chose to go there.

125. See *infra* appendix, table 5 (Current total faculty 1987).

126. See *infra* appendix, table 5 (Current tenured faculty 1987), and table 6 (Total Faculty, Tenured).

127. See *infra* appendix, table 5 (Current untenured faculty 1987), and table 6 (Total Faculty, Tenured and Untenured).

128. See A.B.A. SECTION ON LEGAL EDUCATION, *supra* note 2, Fall 1987, at 36 (1988).

129. See Kay, *supra* note 117, at 140; Lawrence, *supra* note 22, at 435-36; Zenoff & Lorio, *supra* note 2, at 896.

130. The fact that 59 percent of all law teachers in this study earned the J.D. degree from one of only 20 law schools gives some notion of the extent to which graduates of these 20 law schools dominated the field of legal education. Indeed, among the tenure track faculty at the 20 producer law schools in 1975-76, almost 90 percent held J.D. degrees from this same group of institutions.

Fossum, *supra* note 50, at 528.

[T]hese law schools possess the contacts necessary to effectively place their graduates on the faculties of other law schools, and unless lawyers who are interested in teaching gain access to these networks of contacts, they may have difficulty procuring positions on law school faculties or, once hired, may face limited opportunities for advancement.

Id. at 547.

131. The Association of American Law Schools sponsors an annual Faculty Recruitment Conference every fall. See Zillman, Angel, Laitos, Pring, & Tomain, *Uncloaking Law School Hiring: A Recruit's Guide to the AALS Faculty Recruitment Conference*, — J. LEGAL EDUC. — (1988) (scheduled for publication). See generally Bruce & Swygert, *The Faculty Hiring Process*, 18 HOUST. L. REV. 215, 233-35 (1981). AALS statistics show that as early as 1982, women made up 23.1% of the faculty candidates registering for that Conference. AALS, Memorandum 88-30, Association Actions Designed to Assist Schools in Their Affirmative Action Efforts, Table No. 2 (April 15, 1988) (on file at Temple Law Review office).

When it opened in 1970, Hofstra Law School had a founding faculty of eight people, two of whom were women.¹³² Women, therefore, constituted 25% of the faculty in 1970. When I joined the faculty in 1971, there were three women of a total of eleven, or 27.3% of the total faculty.¹³³ In 1970, women constituted 10% of the first year enrollment in all American law schools. Hofstra Law School's founding class had 18% women. In 1971, women constituted 12% of all first year law students, yet Hofstra Law School had 21% in its first year class. With this auspicious beginning, I finally thought things were changing. However, what I observed at the law school from the fall of 1971 when I started, to December of 1978 when I left, was a revolving door for women. Between 1970 and 1987, fourteen women passed through Hofstra Law School.¹³⁴ Five of them were tenured.¹³⁵ In 1987, it had four women on its faculty of twenty-eight or 14.3%,¹³⁶ a substantially lower percentage than its percentages in 1970 and 1971.¹³⁷ Two of the women were tenured, two untenured.¹³⁸ Another woman had been voted tenure as a clinical professor.

My naivete continued in this first teaching position. During my first two years, I was assigned six of seven new courses. Three of those courses had no casebooks: women and the law, juvenile law, and corrections. When there is no casebook, one must invent a casebook before teaching the course by finding and organizing the cases and materials. It was not until years later that I realized that such course assignments were ridiculous and inappropriate for a new teacher. It is difficult enough for a new teacher to master three or four new subject matter areas within the first two years of teaching, to get the actual teaching under control, and to begin research.

At the end of two years, the dean wanted to know where my first article was, a matter which had never been raised with me before. Obviously I had no notion of what the process to tenure and promotion was. I needed mentoring and there were no mentors.¹³⁹ I am not sure whether the men felt uncomfortable mentoring a woman, or whether the women did not seek out male mentors, but helpful advice was not given. During my second year of teaching, there was an investigation of salary discrimination on the basis of sex at Hofstra University. I found out that I was, by far, the lowest paid teacher at the law school, even though young men, with academic credentials no less recent or better than mine, had been hired later than I. When I attempted to discuss this with the faculty, I was told privately by several members of the faculty that it would not be good for my career if I made a fuss. By that point, I was thoroughly dis-

132. See *infra* appendix, table 1 (Hofstra faculty members, 1970).

133. See *id.* (Hofstra faculty members, 1971).

134. See *infra* appendix, table 3 (Total faculty serving between 1970 and 1987, tenured and untenured), and table 4 (same).

135. See *infra* appendix, table 4 (All tenured faculty 1970-1987).

136. See *infra* appendix, table 5 (Current total faculty 1987).

137. See *infra* appendix, table 1 (Hofstra faculty members, 1970, 1971).

138. See *infra* appendix, table 6 (Total Faculty, Tenured and Untenured).

139. Cf. Moran, *supra* note 36, at 508; cf. also B. SANDLER, *supra* note 4, at 8.

gusted and decided to resign. One senior faculty member convinced me not to resign, but rather to take a leave of absence.

I took a two year leave to go into private practice with a small firm, specializing in professional unionization, civil service law, and employment discrimination. I had no firm plan to return to Hofstra. However, deans can make a difference. While I was gone, Monroe Freedman was appointed dean of Hofstra Law School, and he knew of my record and my reputation as a teacher from both students and faculty. He made a concerted effort to convince me to come back—finally as an associate professor. Monroe Freedman's deanship lasted from 1973 to the spring of 1977. During his deanship, Hofstra Law School had six women faculty members, the largest number it has ever had at one time.¹⁴⁰ In the last year of his deanship, the entering class consisted of 49.6% women, a percentage Hofstra Law School has never again matched.¹⁴¹

After Monroe Freedman resigned as dean, conditions deteriorated for women. One example, not unique to Hofstra Law School, is the conversation among faculty members over lunch. There was no eating facility anywhere near the law school, so we were all "forced" to eat lunch together in the faculty lounge. Year after year, early in the fall semester, the conversation involved the new first year class and the "blond in the third row with the big tits." There seemed always to have been one in the third row of the first year class every year that I was there. The first, second, and perhaps third time, I said nothing. By the fourth time, when there was a lull in the description, I piped up with, "Do you know the airline pilot in the second row who drives a Ferrari?" They all agreed they did. I said, "He looks like he's well hung." Shocked silence greeted my statement, together with looks that indicated I was insane. However, the comments stopped, at least in my presence, with the exception of graduation. For graduation, the faculty sat on the stage in full view of students and their families. The conversation around me too often consisted of, "Where were we hiding that one for three years? She's very well built." This attitude demonstrated that women students were still being viewed as slabs of meat who were there for the gratification of male faculty members.¹⁴²

Hofstra Law School has had a total of fourteen women on its faculty.¹⁴³ From 1970 to 1987, it had a total of fifty-nine teachers on its faculty,¹⁴⁴ fifty-five of whom were hired and eligible for tenure between 1970 and 1987.¹⁴⁵ Five women, or 35.7% of the women, were tenured during that time, while twenty men, or 48.8% of the men,¹⁴⁶ were tenured during the same period. Hofstra

140. See *infra* appendix, table 1 (Hofstra women faculty members).

141. See A.B.A. SECTION ON LEGAL EDUCATION, *supra* note 2, Fall 1976, at 26 (1977).

142. See *supra* note 69 and accompanying text for a discussion of how male faculty members view female students.

143. See *infra* appendix, table 3 (Total faculty serving between 1970 and 1987, tenured and untenured), and table 4 (same).

144. See *id.*

145. See *infra* appendix, table 2 (Total faculty hired and eligible for tenure between 1970 and 1987).

146. See *id.* (Total faculty tenured of those hired and eligible for tenure between 1970 and 1987).

Law School currently has only one woman who is a tenured full professor, or 5.6% of the tenured faculty at this rank.¹⁴⁷ It has one woman tenured associate professor, or 50% of the tenured faculty at this rank, and two women untenured assistant professors, or 40% of the untenured faculty at this rank.¹⁴⁸ There were four women at Hofstra Law School in 1987 of a total faculty of twenty-eight, or 14.3% of the faculty.¹⁴⁹ Thus, women comprised 10% of the tenured faculty,¹⁵⁰ 25% of the untenured faculty,¹⁵¹ and 46.1% of the students at Hofstra Law School in 1987.¹⁵²

E. Temple Law School

For several years, the then dean, and now president of Temple University, Peter Liacouras, had been trying to recruit me to Temple Law School. I had refused to consider a move since my family ties were still in the New York area. In the spring of 1978, his annual phone call was different. Instead of inviting me to teach at Temple Law School, he invited me to teach for the summer in Temple Law School's summer program in Greece. I accepted that offer. Four deans had passed through Hofstra Law School in eight years, and life was not good. During the summer in Greece, when Liacouras repeated his offer to consider Temple Law School, I finally agreed. It looked like the world was better; again, individuals can make a difference. Joseph Marshall was acting dean during the 1971-72 academic year, and Peter Liacouras became dean in June, 1972. Until then, Temple Law School had had no women and no minorities on its faculty. By the fall of 1972, there were three women appointed to the regular faculty:¹⁵³ one black woman, one who also held the position of assistant dean. Additionally, two black males were appointed to the faculty. When I joined the faculty in 1979, there were five women¹⁵⁴—three tenured, myself, and an untenured black woman—and three tenured black males. A 1981 SALT study of minority groups in law school teaching showed that only four schools of the ninety-four responding to the survey had four or more minority members on their faculties in 1981.¹⁵⁵ I was tenured at Temple Law School with the rank of full professor during the 1979-80 school year under Acting Dean Joseph Marshall.

Temple Law School's percentage of female students has been extremely high over a substantial period of time. In 1970, the percentage of women in the student body was only 9.2%.¹⁵⁶ By 1975, 37% of the students were female¹⁵⁷

147. See *infra* appendix, table 6 (Professor, Tenured).

148. See *id.* (Associate Professor; Assistant Professor).

149. See *infra* appendix, table 5 (Current total faculty 1987).

150. See *infra* appendix, table 5 (Current tenured faculty 1987), and table 6 (Total Faculty, Tenured).

151. See *infra* appendix, table 5 (Current untenured faculty 1987), and table 6 (Total Faculty, Untenured).

152. See A.B.A. SECTION ON LEGAL EDUCATION, *supra* note 2, Fall, 1987, at 40 (1988).

153. See *infra* appendix, table 1 (Temple women faculty members).

154. See *id.*

155. See Chambers, *supra* note 22, at 441.

156. Memorandum from Donna Claxton Deming, Assistant Dean, Temple University School

when the national average was 23.4%.¹⁵⁸ By 1980, 42% of the students were female¹⁵⁹ when the national average was 34.2%.¹⁶⁰ By 1987, 49% of the students were women.¹⁶¹ In 1986, Temple's first-year class was made up of 51% women.¹⁶²

Temple Law School was able to achieve these percentages because in 1975, Dean Peter Liacouras put into place a part-time day program aimed primarily at returning women with child care responsibilities. In 1977, he put in a part-time extended day program aimed primarily at the same group.¹⁶³ The statistics over the years show that the students taking advantage of these programs are overwhelmingly women.¹⁶⁴ These students finish law school in four years instead of three. The programs are one reason why Temple Law School was able to increase its percentage of women in the student body. The school's general special admission procedures are also conducive to a diversified student body.

However, the millennium still has not arrived. In my years at Temple Law School, I became aware that women were leaving the faculty at a far higher rate than men, and that different standards were being applied to women. After checking the actual statistics I was shocked. From the time I arrived at Temple Law School in January of 1979 to 1987, nineteen men, seventeen white males and two black males were tenured. Every single man who entered the door of the law school during that time period with the expectation of continued employment was tenured.¹⁶⁵ During the same period, three women were tenured, including myself. Seven women came onto the faculty with the expectation of continued employment, and four disappeared. Two after one year each, two after two years each.

In January, 1979, there were five women out of a total faculty of thirty-seven. Women, therefore, comprised 13.5% of the faculty.¹⁶⁶ In January, 1988, there were seven women out of a total faculty of forty-one, or 17.1%.¹⁶⁷ How did this happen? In 1984, the administration and some of the faculty made a great internal fuss because the school had hired three women in one year: one Asian-American, one Black, and one Hispanic. What no one seemed to notice

of Law, to James Strazella, Acting Dean, Temple University School of Law (Feb. 3, 1988) (regarding women at Temple Law School) (on file at *Temple Law Review* office).

157. *Id.*

158. A.B.A., Office of the Consultant on Legal Education, Enrollment Statistics at A.B.A.-Approved Law Schools, 1947-1986 (on file at *Temple Law Review* office).

159. Memorandum, *supra* note 156.

160. A.B.A., Office of the Consultant on Legal Education, *supra* note 158.

161. Memorandum, *supra* note 156.

162. A.B.A., Office of the Consultant on Legal Education, *supra* note 158.

163. See Temple University School of Law, 1988-89 Bulletin, at 7; Memorandum, *supra* note 156.

164. Memorandum, *supra* note 156.

165. One of the men was voted tenure by the faculty, but left the school before his tenure went into effect for the next academic year. In the early 1970's a woman was also voted tenure by the faculty, but also left the school before her tenure went into effect. Both these individuals are reported in my statistics, therefore, as untenured.

166. See *infra* appendix, table 1 (Temple faculty members).

167. See *id.*

except me, was that Temple Law School had lost three women in the prior two years, resulting in a net gain of zero. However, because Temple had hired three women, there was apparently no longer a "need" to hire more.

Temple Law School has had a total of seventeen women on its faculty.¹⁶⁸ From 1970 to 1987, it had a total of eighty-two teachers on its faculty,¹⁶⁹ sixty-four of whom were hired and eligible for tenure between 1970 and 1987.¹⁷⁰ Six women, or 35.3% of the women, were tenured during that time, while thirty-five men, or 74.5% of the men, were tenured during the same period.¹⁷¹ Temple Law School had the worst record of the five schools in terms of discrepancy between the tenure rate for women and that for men.¹⁷² In 1987, it had three women tenured as full professors or 10.7% of the tenured faculty at this rank, and one woman tenured associate professor.¹⁷³ It had three women untenured assistant professors.¹⁷⁴ There were seven women at Temple Law School in 1987 of a total faculty of forty-one, or 17.1% of the faculty.¹⁷⁵ Women made up 12.1% of the tenured faculty, and 37.5% of the untenured faculty in 1987.¹⁷⁶ These statistics exist in a school whose student body consisted of 48.8% women in 1987 and 37% women in 1975.¹⁷⁷

III. TENURE

Most male law school faculty members would be shocked by an accusation that they intentionally or even unconsciously discriminate against women in the hiring and tenuring processes.¹⁷⁸ Nevertheless, the fact remains that the group doing the hiring and the tenuring is overwhelming white male, and the groups being reviewed include white and minority females and minority males. When presented with statistics which show that for some time there has been a large enough pool from which to select women teachers,¹⁷⁹ and that the number of women teachers does not bear a reasonable relationship to the number of women lawyers and students, almost all male law school faculty members instantly shift into a defensive posture. They begin to attack the women who were eliminated during the tenure process. "They" either "chose to leave for other reasons" or

168. See *infra* appendix, table 3 (Total faculty serving between 1970 and 1987, tenured and untenured), and table 4 (same).

169. See *id.*

170. See *infra* appendix, table 2 (Total faculty hired and eligible for tenure between 1970 and 1987).

171. See *id.* (Total faculty tenured of those hired and eligible for tenure between 1970 and 1987).

172. See *id.*

173. See *infra* appendix, table 6 (Professor; Associate Professor).

174. See *id.* (Assistant Professor).

175. See *infra* appendix, table 5 (Current total faculty 1987).

176. See *infra* appendix, table 5 (Current tenured faculty 1987; Current untenured faculty 1987), and table 6 (Total Faculty, Tenured and Untenured).

177. See Memorandum, *supra* note 156.

178. Cf. Lawrence, *supra* note 22, at 438.

179. See *supra* notes 9-12 and accompanying text for statistics showing that the percentage of women lawyers is greater than the percentage of women law professors.

were "inadequate." Lawyers are able to rationalize better than most people. Law school professors, each a "God = Socrates," can rationalize anything, since few of them deal with the real world. At many schools tenure standards exist primarily for women, who in large numbers fail to meet them.¹⁸⁰

A. The Numbers

Considering all the women and men who were hired in tenure track positions between 1970 and 1987 at the five schools studied, the probability that any given faculty member was tenured was 53.3%.¹⁸¹ The probability that that

180. Traditionally tenure denial cases and refusal to hire cases did not receive publicity, but three recent cases involving women faculty members have been reported in the press.

Clare Dalton failed to receive the two-thirds vote of the tenured faculty required for tenure at Harvard Law School. Moss, *Would This Happen to a Man?*, 74 A.B.A. J., June 1988, at 50. The N.Y. Times reported that 50 black students occupied the outer office of the Dean of Harvard Law School on May 10, 1988, demanding increased efforts to recruit women and minority faculty members. N.Y. Times, May 11, 1988, § A, at 18, col. 3. The school was reported to have 57 tenured faculty members, two of whom were black men, and five of whom were white women. *Id.*

Drucilla Cornell, by one vote, failed to receive the two-thirds vote of the tenured faculty required for tenure at the University of Pennsylvania Law School, despite the fact that tenure was recommended by her tenure committee. Phila. Inquirer, April 24, 1988, § B, at 1, col. 2; Moss, *supra*, at 50; Phila. Inquirer, March 21, 1988, § B, at 3, col. 4.

Jean Dubofsky, 45, who resigned as Chief Justice of the Colorado Supreme Court to accept a one year visiting professorship at the University of Colorado Law School, failed to receive the two-thirds vote required to become a tenure-track professor. Rocky Mountain News, Mar. 9, 1988, at 10, col. 1. See also Boulder Camera, Mar. 13, 1988, at 1, 12; Boulder Camera, Mar. 12, 1988, at 1; Boulder Camera, Mar. 10, 1988, at 1; Rocky Mountain News, Mar. 10, 1988, at 1.

181. The following table was used to determine these probabilities. The table is based on all faculty members hired and eligible for tenure at the five schools between 1970 and 1987. It is broken down into two rows based on the sex of the faculty members. The table is further divided into three columns of tenured, left without tenure, and currently untenured faculty members. Each cell of the table contains a percentage of the total number of faculty hired and eligible for tenure between 1970 and 1987 (i.e., the percentage of tenured women or tenured men). The figures to the right of the table represent the overall percentage of women and men; the figures below the table represent the number of both sexes that are tenured, left without tenure, or are currently untenured, as a percentage of the total number of faculty hired and eligible for tenure between 1970 and 1987.

		Tenured	Left Without Tenure	Currently Untenured	
Women		.070	.111	.050	.231
Men		.463	.211	.094	.768
		.533	.322	.144	
Total	298	Tenured 159	Left Without Tenure 96	Currently Untenured 43	
Women	69	21	33	15	
Men	229	138	63	28	

To find the percentage of faculty members in each category, multiply the figure in the table by 100.

To determine the probability of a woman faculty member being tenured, use the following equation: P (tenured women faculty) divided by (women faculty) = X. Using the figures from the table, (.070) divided by (.231) = .303; or the probability that any woman faculty member is tenured is

faculty member was a tenured woman was 7.0%,¹⁸² and the probability that the faculty member was a tenured man was 46.3%.¹⁸³ Again, considering all the women and men who were hired in tenure track positions between 1970 and 1987 at the five schools studied, the probability that any female faculty member was tenured was 30.3%, the probability that she left without tenure was 48%.¹⁸⁴ The probability that any male faculty member was tenured was 60.3%,¹⁸⁵ the probability that he left without tenure was 27.5%.¹⁸⁶

The five schools I chose to study are all large, northeastern schools, located in heavily populated urban or suburban areas. According to Professor Chused's study, such schools should have among the highest percentages of women faculty members,¹⁸⁷ and yet they do not. Two of the schools, Columbia Law School and the University of Pennsylvania Law School, are traditionally regarded as "elite" schools and studies indicate that such schools have the lowest percentage of women faculty members.¹⁸⁸ But what explains Temple Law School, Rutgers-Camden Law School (both state related institutions), and Hofstra Law School? After reviewing an earlier draft of this article, Professor Chused reran his statistics and discovered that a major factor relating to the number of women on a faculty was the number of *tenured* women on that faculty. The magic number appears to be 12%.¹⁸⁹ Professor Chused noted,

At schools with higher proportions of tenured women, untenured women were denied tenure much less often, left at lower rates and obtained tenure at higher rates than men. At schools with lower proportions of tenured women, the untenured women were denied tenure much more often, left at higher rates and obtained tenure at lower rates.¹⁹⁰

At the five schools, women currently make up an average of 10.7% of the tenured faculty.¹⁹¹ At only two schools does the percentage exceed 12%: Temple Law School 12.1% and the University of Pennsylvania Law School, 13%.¹⁹² The five schools average 37.4 faculty members.¹⁹³ Four and one-half women would have to be tenured to constitute 12% of the tenured faculty. If only one

30.3%. For men, $P(\text{tenured faculty men faculty}) \div (\text{men faculty}) = X$, or $(.463) \div \text{by } (.768) = .603$; or the probability that any man faculty member is tenured is 60.3%.

182. See *supra* note 181.

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.*

187. Chused, *supra* note 22, at 15-16.

188. *Id.* at 17-20.

189. *Id.*

190. *Id.* at 20.

191. See *infra* appendix, table 5 (Current tenured faculty 1987), and table 6 (Total Faculty, Tenured). The figures shown in table 5 for the five schools were added together to arrive at the total percentages of women and men.

192. See *infra* appendix, table 5 (Current tenured faculty 1987), and table 6 (Total Faculty, Tenured). The percentages for the other schools in the study are: Columbia, 7.7%; Hofstra, 10%; Rutgers-Camden, 10.7%.

193. See *infra* appendix, table 5 (Columbia, 51; Hofstra, 28; Pennsylvania, 31; Rutgers-Cam-

woman is tenured and she is a "Queen Bee,"¹⁹⁴ she is unlikely to be an advocate for tenuring other women. If she has a feminist consciousness, her opinions can be easily dismissed. If one of each exists, they cancel each other out. A critical mass of more than four is needed.

B. The Tenure Review Process

1. Collegiality

A key, but often not formally listed criterion for tenure, is "collegiality." This roughly means how well one fits in with the rest of the faculty and how much one is liked. When "the rest" consist of males judging females, it is not surprising that females are found not to fit. People tend to relate more easily and more comfortably with those of the same sex and the same race—such problems with collegiality as a criterion have been noted in the legal literature.¹⁹⁵ There is a large body of sociological literature, with Gilligan's book, *In a Different Voice*,¹⁹⁶ being but one example, indicating that there are substantially different male and female views and styles of dealing with the world. People are more comfortable with those whose style matches their own.¹⁹⁷

There is a difference between formal and informal tenure review processes.¹⁹⁸ The formal process usually has some criteria, e.g., good teaching, good research, and good service, which are evaluated periodically, usually with written reports by a panel composed of three or four tenured faculty members.

den, 36; Temple, 41). The figures shown in table 5 for the five schools were added together to arrive at the total percentages of women and men.

194. See *infra* notes 199-200 and accompanying text for a discussion of the "Queen Bee" phenomenon.

195. "Does collegiality mean fitting in? Is conformity a measure of job success?" Cooper, *Title VII in the Academy: Barriers to Equality to Faculty Women*, 16 U.C. DAVIS L. REV. 975, 981 n.29 (1983); "This Article advocates and proposes a more exacting judicial review of faculty tenure cases that are based on collegiality or other such personality criteria." Zirkel, *Personality as a Criterion for Faculty Tenure: The Enemy it is Us*, 33 CLEV. ST. L. REV. 223, 224 (1984); Professor Zirkel gives examples "often associated with a disfavored, or uncollegial, personality." *Id.* at 235. "Moreover, female faculty members who are considered to be demurely 'old fashioned' or modishly 'assertive' are particularly susceptible to charges that their personality interfered with their job performance." *Id.* at 236-37 (footnote omitted). See, C. EPSTEIN, *WOMEN IN LAW*, Chapter 15, Ambivalence and Collegiality, *supra* note 2, at 265; B. SANDLER, *supra* note 4, at 7-9 ("Collegiality: Can a Woman be 'One of the Boys'?").

196. C. GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* (1982).

197. "Special attention should be given when the evaluator is of a different sex or race than that of the person being evaluated." Biernat, *Subjective Criteria in Faculty Employment Decisions Under Title VII: A Camouflage for Discrimination and Sexual Harassment*, 20 U.C. DAVIS L. REV. 501, 547 (1987); see B. SANDLER, *supra* note 4, at 8.

198. [M]ost institutions have both a formal and informal evaluation process. The formal process is defined specifically by each institution, while the informal process depends on the interest level of senior faculty members who observe their new colleague in a variety of informal settings and begin to form opinions on this individual. The informal process occurs continuously from the time of initial appointment; the formal evaluation occurs at several discrete points in time.

Biernat, *supra* note 197, at 509.

The informal process starts from the day one walks in the door. If a faculty member doesn't enjoy the little jokes told about women in the faculty lounge, if she is not interested in the latest football ratings, if she doesn't drink beer with the boys, if she doesn't join the Friday afternoon poker games in the faculty lounge, she is not collegial. If a younger faculty member, facing some difficulty with teaching or research, opens up to an older professor for advice and guidance, the admitted "mistakes," reservations, or uncertainties may be brought up when she is later considered for tenure.

Some of the women who survived the hiring and tenuring processes did so because they adopted a male style or one that was not threatening to male faculty members. These women are on the faculty because they are "one of the boys" or serve as a cheerleader for the boys. The label "Queen Bee" has been used to describe this type of senior woman.¹⁹⁹ She made it, and she is enjoying the perks of being "the only" or "the most senior" woman on the faculty. She does not want competition from other women. As long as women are in the lower, untenured ranks, they merely reaffirm her position. Male faculty members often look to this woman for assurance that what they are doing is right, that they are not discriminating against women. To some degree she serves the same purpose as a supportive traditional spouse of a male faculty member. Too often over the years when I've discussed sex discrimination within law schools with male faculty members they have come to me the next day and said, "I've discussed it with my wife and she says I'm right," or "she doesn't think it's discrimination."

In a 1974 *Psychology Today* article entitled "The Queen Bee Syndrome," Staines, Tavis, and Jayaratne stated,

[T]he Queen Bee wants to protect her uniqueness in a man's world, the traditional woman wants to protect her comfortable conventionality in the woman's world.

The irony of it all is that the Queen Bee, because of her access to power and male favor, is in the best position to advance the cause of women, but is the least inclined to do so. Instead she aligns herself with the establishment and proselytizes for the status quo. Those in power apply the classic divide-and-conquer rule with women as with other out-groups; they accept certain antifeminists as spokeswomen for their sex, and point to female "disunity" and the movement's "fragmentation."²⁰⁰

Having represented professional employees in employment discrimination cases in my practice as a labor lawyer, I know that employment discrimination is most difficult to prove at the professional level.²⁰¹ Standards are extremely amorphous and the courts tend to defer to systems of "peer review." For the

199. See Staines, Tavis, & Jayaratne, *The Queen Bee Syndrome*, *PSYCHOLOGY TODAY*, Jan. 1974, at 55; see also Wald, *supra* note 2, at 49.

200. Staines, Tavis, & Jayaratne, *supra* note 199, at 60.

201. Cooper, *supra* note 195, at 982-84. "This Article deals with sex discrimination by academic employers against academic women as the paradigm of both sex discrimination and upper level job discrimination." *Id.* at 978.

promotion and tenure of university professors, even the formal criteria of teaching, research, and service can be almost non-existent.²⁰²

2. Teaching

What is good teaching? One tenure panel report at Temple Law School actually put in writing, "To many, acceptable teaching is in the eyes of the beholder, and to some extent that is true. This panel, by happenstance, is the beholder."

I was told in my early days of teaching, by a friend whom I considered unduly cynical, that student evaluations are meaningless. I have now reached the same level of cynicism. If the student evaluations are good and "they" (the tenured faculty) like the faculty member being evaluated, the student evaluations are valid. If the student evaluations are good and "they" don't like the faculty member, the evaluations show that the students are being spoon-fed and are not being intellectually stimulated. If the student evaluations are bad and "they" like the faculty member, the evaluations reflect that the teacher is being "tough on the little bastards," an attitude which some of us find abominable. If the student evaluations are bad and "they" don't like the faculty member, the evaluations just prove how awful the faculty member truly is.

When senior faculty members go into a classroom to watch a more junior faculty member, they want to see someone like themselves. Since "they" are usually white males, others automatically are put at a disadvantage.²⁰³ According to the sociological literature, women's styles of teaching are not as hierarchical, aggressive, or assertive as men's.²⁰⁴ Women do not think that they are "God = Socrates," probably because both were men (although there is some question about God). This leads to dissatisfaction when men view women's classrooms. What to a man may look like the lack of a clear game plan, to a woman is the opportunity to allow students to explore all facets of an issue. What to a man looks like lack of knowledge or security with the subject matter, to a woman may simply be a reflection that the law is based on differing value judgments. What to a man looks like a lack of willingness to "hammer home a point," to a woman is the realization that destroying a student accomplishes nothing positive.²⁰⁵

Because there are so few women in front of large law school classes, student reaction to women teachers can be negative.²⁰⁶ Students come into law school

202. Although these criteria are near-universal, their ambiguity is obvious. One commentator has asked whether scholarship 'entails publication and if so what successful publication requires. Does teaching refer to breadth of fields covered or popularity with students or student achievement; or some combination? Does collegueship mean fitting in? Is conformity a measure of job success?'

Cooper, *supra* note 195, at 981 n.29 (quoting Divine, *Women in the Academy: Sex Discrimination in University Faculty Hiring and Promotion*, 5 J.L. & EDUC. 429, 436 (1976)).

203. See *supra* note 197 and accompanying text.

204. B. SANDLER, *supra* note 4, at 12; Moss, *supra* note 180, at 54.

205. See B. SANDLER, *supra* note 4, at 5.

206. Cf. *id.* at 15; Zenoff & Lorio, *supra* note 2, at 879.

expecting to see Kingsfield or "God = Socrates," and expecting to learn "the law." When they see someone who does not look like Kingsfield or "God = Socrates," and who is willing to explore different approaches and different values, they often react in a negative manner. It is a sad fact of human nature that we do not attack those whom we perceive as stronger than us; we attack those whom we perceive as weaker. Law students are a self-selected group with a more aggressive nature than the general population. Most of them have had enough of being in the subservient status of student. They have been students through grade school, high school and college. They are now ready to start asserting themselves, and law school training is partially aimed at teaching them to do just that. Unfortunately they too often go after those perceived to be weaker—women and minority faculty members.

3. Research and Writing

Women faculty members have often not fared well when senior faculty judge their research and writing. Women's writing on women's subjects is often considered insubstantial and unworthy. Women writing in the traditional areas for women, such as family law and juvenile law, are dealing in "soft areas" which are thought to be unworthy of serious consideration. Family law, however, is possibly the most explosive, changing, and important area of the law today. No other institution has undergone the changes that "the family" has undergone in the last thirty years.

Even when writing a "traditional" piece, women faculty members may not know how to play the game. One should consult widely with senior faculty about an appropriate topic and for suggestions on a late draft; circulation of an early draft is not a good idea, since any weakness may later be held against the writer. This helps assure that a group of defenders will exist when the finished article comes up for discussion at a tenure or promotion meeting. Since the senior faculty set and apply the standards, presumably the topic is "appropriate." When faculty have had input on a draft of the article, they will be more prone to support it. Somehow, most of the men coming up for tenure and promotion know how to play this game, and many of the women do not.

4. Service

Women's contributions are often denigrated in terms of service within the law school, the university, the local and national legal community, and "the world." Little consideration is given to such activities as advising women law students, serving on a university task force on the status of women, holding a position with the AALS Section on Women and Legal Education, or taking part in any community or national women's organizations. Because there are so few women on the faculty and so many women in the student body, faculty women too often are expected to play the role of advisor. The number of hours female faculty members spend in their offices acting as advisors to female students regarding their personal lives, their professional lives, and their academic careers,

are irrelevant when it comes to tenure.²⁰⁷ And it is not only the female students who seek out the female faculty but also the male students who often find women more accessible than most male faculty members. Because there are so few women, they seem to be placed, as tokens, on every visible law school, university, and external committee.²⁰⁸ To show a liberal attitude toward women, most law schools have at least one woman on their admissions committee, a heavy committee assignment. They have one woman on their faculty selection committee, again normally a heavy assignment. They put women on university committees dealing with discrimination and women's issues. They send their women faculty into the community to speak on both women's issues and unrelated issues. All of this seems to count for little or nothing in the tenure process.

IV. HIRING

A justification for not hiring female faculty members has always been "there aren't any qualified ones out there." This is not true nor has it ever been true. The percentage of women faculty members has never matched, nor come close to matching, the percentage of women lawyers in America,²⁰⁹ even though studies indicate that the academic records of the women are at least as good as, if not better than, those of the men.²¹⁰ In 1967, approximately 4% of all lawyers were women, but only thirty-nine, or 1.7% of the approximately 2,341 tenure track teachers of the nation's law schools, were women.²¹¹ It has been estimated that the relevant applicant pool for the position of law school professor consists of those who have been out of law school for five years.²¹² The class of 1975 graduated 15.2% women, yet according to the ABA's statistics in 1980 only 12.2% of faculty members were women.²¹³ The class of 1981 graduated 32.6% women, yet according to the ABA's statistics only 20.4% of faculty members in 1986 were women.²¹⁴ Every study more detailed than the ABA's

207. See Moran, *supra* note 36, at 508-09; B. SANDLER, *supra* note 4, at 15; Rothstein, Book Review, J. HIGHER EDUC. (scheduled for publication in 1989) (reviewing G. LANOUE & B. LEE, *ACADEMICS IN COURT* (1987)); Zenoff & Lorio, *supra* note 2, at 880-81; Comment, *The Ineffectiveness of Title VII in Tenure Denial Decisions*, 36 DEPAUL L. REV. 237, 237 n.3 (1987).

208. "In part because of their small numbers, minority women are even more likely than white women to be overburdened, especially with advising minority students and with myriad committee assignments, thus limiting their time available for research and publishing." B. SANDLER, *supra* note 4, at 13; see Moran, *supra* note 36, at 508, 512-13.

209. See *supra* notes 9-12 and accompanying text.

210. See *supra* note 50 and accompanying text.

211. Fossum, *Women Law Professors*, *supra* note 2, at 905-06.

212. See Fossum, *supra* note 50, at 534; Zenoff & Lorio, *supra* note 2, at 874; Developments, *supra* note 50, at 425 n.10.

213. See A.B.A. SECTION ON LEGAL EDUCATION, *supra* note 2, Fall 1980, at 52 (1981) (of 4,225 full-time teachers in ABA-approved law schools in 1980, 517 were women); A.B.A. SECTION ON LEGAL EDUCATION, *supra* note 2, Fall 1975, at 43 (1976) (of 29,961 J.D. graduates from ABA-approved law schools in 1975, 4,546 were women).

214. See A.B.A. SECTION ON LEGAL EDUCATION, *supra* note 2, Fall 1986, at 66 (1987) (of 4,915 full-time teachers in ABA-approved law schools in 1986, 1,004 were women); A.B.A. SECTION ON LEGAL EDUCATION, *supra* note 2, Fall 1981, at 52 (1982) (of 35,521 J.D. graduates from ABA-approved law schools in 1981, 11,587 were women).

shows a substantially lower percentage of female faculty members.²¹⁵ Instead of, "there aren't any qualified ones,"²¹⁶ the justification should be, "we don't think any of them are qualified."

Traditionally, there have been a limited number of elite law schools that have been considered "feeder schools" for the law teaching profession.²¹⁷ The statistics have consistently shown that those feeder schools have a smaller percentage of women in their student bodies and a smaller number of women on their faculties than the national percentages.²¹⁸ Additionally, the "feeder schools" still operate on the traditional "old boys network"²¹⁹ which is of limited utility to women.

Great care must be taken with the criteria applied in the hiring process. Today, we are in a buyer's market. Law schools are no longer experiencing great expansions of their student bodies and faculties are more heavily tenured today than they were ten years ago.²²⁰ At Temple Law School, a new hiring criterion was added this year; the law school is looking for "senior professors with luster." This criterion substantially diminished the available pool of women applicants. Even based on the ABA statistics, women didn't make up over 10% of the faculty members nationwide until 1977, and reached only 20.4% in 1986. I am one of the most senior women in legal education at age forty-four.²²¹ In normal terms, I certainly do not qualify as a senior law professor.

Added to the problems noted above is women's lack of group knowledge as to "how to play the game," since they so recently started playing. This is aggravated by the small number of senior women available to them as mentors and the seeming reluctance or inadequacy of male faculty members to act as mentors for women. Some schools hire because they have "heard of" someone good and decide to go after them. But faculty members only hear about others through their own network, which is still primarily the "old boys network."²²² The two other hiring methods are the AALS Faculty Recruiting Convention²²³ and individual applications sent directly to the law schools. Having served on hiring committees over the last ten years, I've noted that women more often than men fail to send their resumes directly to the law schools in which they are interested,

215. See Faight, *supra* note 2; Zenoff & Lorio, *supra* note 2.

216. See *supra* note 15 for an example of the perception that there are not enough women with the potential to be law professors.

217. See *supra* note 130 and accompanying text.

218. Chused, *supra* note 22, at 16-20. See *supra* note 117 and accompanying text for a discussion of the poor record of "elite" schools on women faculty and students.

219. See *supra* notes 129-30 and accompanying text.

220. Kay, *supra* note 117, at 137; Lawrence, *supra* note 22, at 436; White, *Law School Enrollment Continues to Level*, 66 A.B.A. J. 724 (June 1980). However, law school applications have risen dramatically in 1988. N.Y. Times, Apr. 1, 1988, § B, at 7, col. 1. According to the Law School Admission Council/Law School Admission Services, applications for fall 1988 law school admission are up 19% over last year. *Applications Up*, LAW SERVICES REP., Apr.-May 1988, at 1.

221. See *supra* notes 40-41 and accompanying text regarding women and the age of law school faculty.

222. See B. SANDLER, *supra* note 4, at 8; Moran, *supra* note 36, at 509; *supra* note 40.

223. See Zillman, Angel, Laitos, Pring, & Tomain, *supra* note 131, at —.

relying instead solely on the AALS faculty recruiting convention. Women, more than men, exhibit naivete with regard to the hiring convention. The one page AALS form includes a preference for location. If such a preference is checked, most schools in other areas will not consider the applicant.²²⁴ The form also indicates a preference for subjects taught. The applicant is ignored if a limited, specialized list is enumerated.²²⁵ Women seem to make these mistakes in far larger numbers than men. Women, more often than men, fail to contact their former law school teachers for advice and references.

V. CLASSROOM CLIMATE

Although the overt sexism that I experienced at Columbia in 1965 may be unusual today,²²⁶ Taunya Banks recently noted that, "the more subtle and—arguably—more damaging vestiges of sexism are alive and well."²²⁷ Her study indicates that women students become increasingly alienated and silent as they proceed through law school.²²⁸ Their perceptions and beliefs seem to be devalued in the classroom; they are still treated to demeaning remarks by professors.²²⁹

Male dominated beliefs and attitudes prevail in both the substantive law

224. *Id.* at —.

225. *Id.* at —.

226. *But see ABA Commission Summary, supra* note 1, at 2-3, which states,

The barriers women face consist of overt discriminatory behavior, subtle attitudes and institutional structures. Although several witnesses indicated that many blatant forms of discrimination have been eradicated, other individuals presented a significant amount of testimony about continued instances of overt discrimination:

- * National Association of Law Placement witnesses chronicled "horror" stories from the current placement season.
- * Representatives from various state gender bias task forces told of demeaning comments made to women attorneys by male judges and male lawyers.
- * One witness recalled being physically ejected from a private club by a guard. She had arrived for a meeting with a male colleague and was told that her presence in the club "would cause a chemical imbalance for the membership."
- * One witness, a litigation partner, reiterated an incident in court where the judge stopped the proceedings, asked the attorney to turn around and then offered his compliments to her tailor.
- * Law school faculty told of the increased instances of hostility toward women faculty and students, such as gender-based verbal challenges in the classroom and graffiti in the washrooms.

Id. See *Report of the New York Task Force on Women in the Courts*, 15 FORDHAM URB. L.J. 11, 126-53 (1986).

227. Banks, *supra* note 2, at 137.

228. According to Professor Banks,

More female respondents (60%) than male respondents (43%) said they seldom or never voluntarily participated in class. If one looks only at the responses for the second- and third-year students, the finding is even stronger: 75% of the women compared to 40% of the men said they seldom or never volunteered in class; 17% of all women compared to 9% of all men said they were not called on three or more times when they volunteered in class.

Id. at 139-40.

229. See *supra* note 65 and accompanying text.

and the classroom experience.²³⁰ Law students are still trained in the concept of "the reasonable man" and jokes are still being made about "the reasonable woman being unknown to the common law."²³¹ In criminal law, the notion of the reasonable man has done incalculable harm to women. One example should suffice; the doctrine of equal force in self-defense. If attacked by someone without a weapon, the victim must respond without a weapon. When the attacker is a large male and the person being attacked is a smaller female not trained in self-defense, this rule is absurd. Students in Temple Law School's first-year legal process course still deal with "Workmen's Compensation Acts" even though most state legislatures amended the titles to "Worker Compensation Acts" ten to twenty years ago. Women scholars are attempting to deal with these problems. Professor Mary Joe Frug of the New England School of Law has written a critique of a contracts book for sex and gender bias in concepts and language.²³² A group of seven women law teachers worked for four years on a project reviewing gender bias and discrimination in both substantive criminal law doctrines and criminal law casebooks.²³³

VI. CHILDREN

Most people want children²³⁴ but most male lawyers have them and most female lawyers don't.²³⁵ Ours is not a society that is supportive of working women with children.²³⁶ Early studies showed that women lawyers did not have children,²³⁷ or, if they did, they left the workplace²³⁸ or gravitated to jobs with less stringent work hours.²³⁹ Women lawyers still "choose government jobs where pressures are less and schedules are more predictable,"²⁴⁰ and are advised to "[c]onsider a change in specialty to accommodate the demands of

230. See Erickson, *Sex Bias in Law School Courses*, *supra* note 2.

231. See *supra* note 63 and accompanying text regarding "the reasonable man."

232. Frug, *Re-Reading Contracts: A Feminist Analysis of a Contracts Casebook*, 34 AM. U.L. REV. 1065 (1985).

233. Nancy S. Erickson (Ohio State) was the principal investigator of the project. Nadine Taub (Rutgers-Newark) was the primary consultant. The project's panel consisted of Marina Angel (Temple), Maria Marcus (Fordham), Vanessa Merton (C.U.N.Y. Law School), Elizabeth Schneider (Brooklyn), and Barbara Underwood (formerly a professor at Yale Law School, now special counsel to Elizabeth Holtzman, District Attorney, Kings County, New York). See Erickson, *Sex Bias in Law School Courses*, *supra* note 2, at 102 n.3.

234. A recent study of Stanford law students found, "Students of both sexes expect to have both career and family; almost all women (59/60; 98%) expect to have children, as do 91% of men (117/129)." Project, *Law Firms and Lawyers With Children: An Empirical Analysis of Family/Work Conflict*, 34 STAN. L. REV. 1263, 1278-79 (1982). However, "both sexes expect childcare to remain primarily a woman's responsibility." *Id.* at 1280. "On average, women expect to devote twice as much time to [childcare and related tasks] as men. . . ." *Id.*

235. See *supra* note 44 and accompanying text.

236. "In fact, the United States stands virtually alone among industrialized nations in having no national pregnancy or child care leave policy." Comment, *Childbearing and Childrearing: Feminists and Reform*, 73 VA. L. REV. 1145, 1145 (1987).

237. White, *supra* note 2, at 1065-68.

238. *Id.*

239. *Id.*

240. Handler, "Diapers and Depositions," 71 A.B.A. J., Apr. 1985, at 66, 68-69.

parenthood."²⁴¹ The ABA Commission on Women in the Profession found that "[t]he most common theme to emerge from the hearings was the need to develop formal policies for parental leave, part-time employment and child care."²⁴²

The rewards of law school teaching as a career are not primarily monetary²⁴³ but are those involving life style; the hours required in the law school are relatively short and flexible.²⁴⁴ Society accepts women as teachers of its young²⁴⁵ and as teachers at the elementary and high school levels.²⁴⁶ Teaching may be a good career for women and one to which the numbers indicate they are attracted. But as the teaching jobs get more prestigious and the titles more imposing—professor instead of teacher—it is clear that women are closed out.

Schools can attract more women students with part-time day programs like Temple Law School's.²⁴⁷ They can attract and keep more women teachers by providing child care facilities and leaves of absence and/or reduced teaching loads for child care responsibilities. Very few law schools make such concerted efforts.²⁴⁸

241. *Id.* at 69. One study found:

[M]en and women expect to have families and careers, but the two sexes see the family/work conflict in very different lights. Women would like to devote substantial time to raising their children. Family/work conflict is a major issue in the choice of employer for 57% of the women surveyed, and an employer's especially generous maternity, paternity, and childcare policies would have a significant favorable effect on that choice for 79% of them.

Project, *supra* note 234, at 1292.

242. *ABA Commission Summary*, *supra* note 1, at 5.

While testimony concerning the need to formalize parental leave, part-time work and day-care policies dominated the hearings, a number of witnesses spoke about the difficulty of combining family life with professional demands. The result, for many women, is a decision to postpone marriage and/or childbearing until the career is well established.

The conflict between family life and career is, generally, not a dilemma that young male lawyers face. Many women who delay marriage and/or childbearing find that it is too late to have a family life and many remain single or childless while not being entirely happy about the way their lives have turned out.

Id. at 6.

243. Zillman, Angel, Laitos, Pring, & Tomain, *supra* note 131, at —.

244. At most schools teaching consists of 6 hours a week during the school year and scheduling is negotiable with the dean. Law school and university committee service obligations need not be unduly burdensome. Research, in the age of computer tie-ins, can be done at home.

245. *See* D'Amato, *supra* note 61, at 462-63.

246. In 1986, 86.2% of elementary school teachers, 67.6% of junior high school teachers, and 56% of senior high school teachers were women. U.S. Bureau of the Census, Statistical Abstract of the United States: 1987, 125, Table No. 206 (107th ed. 1986) (figures for public school teachers).

247. *See supra* notes 163-64 and accompanying text for a discussion of Temple's experience with these programs.

248. One author stated that his study reveals that a few schools have given much thought to the handling of parenthood, that most schools handle the problem on an *ad hoc* basis, and that there is considerable variety in the ways law schools respond to new parents. More specifically, the data indicate that most schools do not provide day care services, that obtaining a leave of absence or a reduction in teaching load for child care is more difficult than obtaining a leave or reduction for other reasons, and that women may be leaving law teaching for family reasons more frequently than men.

VII. THE AALS SECTION ON WOMEN IN LEGAL EDUCATION

In 1972, I attended my first AALS annual convention. The Women's Committee, as it was then known, consisted of twelve women meeting in a backroom. Today, the Women's Section is one of the largest sections of the American Association of Law Schools. In 1987 there was a total of only 1,004 full time women law teachers and 468 teachers were members of the Section. The high membership is a result of the Section's provision of a desperately needed network and support system for women faculty members. Too many women are still the only woman, or one of two or three, at their schools. Many schools are in isolated regions of the country. To preserve sanity it helps to know that one is not alone, and that the perceptions of others may not match the perceptions of the overwhelming majority of male professors.

Over the years, the Section has tried to meet the needs of women in legal education. In fact, the list of the Chairs of the Section reads like a "Who's Who" of women in legal education.²⁴⁹ Much of the research and writing on women in legal education, on feminist jurisprudence, and on feminist reviews of various subject matters, have been done by those active in the Section.²⁵⁰ Periodically, workshops for women in legal education have been sponsored by the AALS and they have been among the best attended. The women's workshops have tried to deal with issues of concern to women coming into legal education, such as: "Teaching and Publishing: Helping Each Other, Helping Ourselves,"²⁵¹ "Dealing with Special Demands on Women Law Teachers,"²⁵² "Feminist Jurisprudence,"²⁵³ "Double Binds: Managing Your Several Roles,"²⁵⁴ "Academic Styles: Differences for Women?"²⁵⁵ Lists of women spe-

Chused, *Faculty Parenthood: Law School Treatment of Pregnancy and Child Care*, 35 J. LEGAL EDUC. 568, 570 (1985).

249. Daniel Collins (1970, N.Y.U.); Frederica Lombard (1971, Wayne State); Ruth Bader Ginsburg (1972, Rutgers-Newark); Shirley Raissi Bysiewicz (1973, U. of Connecticut) and Ruth Bader Ginsburg (1973, Columbia); Shirley Raissi Bysiewicz (1974, U. of Connecticut) and Mary Moers Wenig (1974, U. of Bridgeport); Mary Moers Wenig (1975, U. of Bridgeport); Elizabeth Defeis (1976, Seton Hall); Jane Picker (1977, Cleveland-Marshall); Nancy Erickson (1978, Ohio State); Rhonda Rivera (1979, Ohio State); Marilyn Ireland (1980, California Western); Carrie Menkel-Meadow (1981, U.C.L.A.); Myrna Raeder (1982, Southwestern); Jean Love (1983, U.C. Davis); Sally Burnett Sharp (1984, U. of North Carolina); Dolores Donovan (1985, U. of San Francisco); Marina Angel (1986, Temple); Patricia Cain (1987, U. of Texas); and Elizabeth Schneider (1988, Brooklyn).

250. See, e.g., E. DEFEIS, *WOMEN'S LEGAL RIGHTS* (1987) (with M. Halberstam); R.B. GINSBURG, *CASES AND MATERIALS ON SEX-BASED DISCRIMINATION* (1974) (with K.M. Davidson and H.H. Kay); Bysiewicz, *supra* note 2; Erickson, *Legal Education*, *supra* note 2; Erickson, *Sex Bias in Law School Courses*, *supra* note 2; Schneider, *The Dialectic of Rights and Politics: Perspectives from the Women's Movement*, 61 N.Y.U. L. REV. 589 (1986); Schneider, *Equal Rights to Trial for Women: Sex Bias in the Law of Self-Defense*, 15 HARV. C.R.-C.L. L. REV. 623 (1980); Zenoff & Lorio, *supra* note 2.

251. Association of American Law Schools, Workshop on the Professional Development for Women in Law Teaching 4 (Oct. 11-13, 1984).

252. *Id.*

253. Association of American Law Schools, Workshop for Women in Legal Education 2 (Oct. 22-24, 1987).

254. *Id.* at 3.

cialists in different substantive areas have been circulated, and younger women have been encouraged to send their work to them for suggestions and review. In an attempt to broaden consciousness of discrimination against women in both legal education and in substantive legal doctrines, the Women's Section has sponsored joint panels with the Criminal Law Section, the Torts Section, and the Jurisprudence Section at the last three annual AALS conventions.

CONCLUSION

The millennium has not yet arrived for women in law schools and does not appear to be close. According to the ABA's statistics, in 1986 40.7% of the students in the 175 ABA accredited law schools were women, but women comprised only 20.4% of the full-time faculty of these same schools.

According to my study of five schools, in 1987 45% of the students were women (Columbia Law School, 42.5%; Hofstra Law School, 46.1%; University of Pennsylvania Law School, 39.9%; Rutgers-Camden Law School, 45.1%; and Temple Law School 48.8%). Women made up only 16.3% of the total faculty and 10.7% of the tenured faculty.²⁵⁶ Thirty-five percent of the untenured faculty consisted of women in 1987.²⁵⁷ Although this last figure would seem to give some hope for the future, the great discrepancy between the average rate at which women were tenured between 1970 and 1987, 31% (Columbia Law School, 33.3%; Hofstra Law School, 35.7%; University of Pennsylvania Law School, 37.5%; Rutgers-Camden Law School, 13.3%; and Temple Law School, 35.3%), and the average rate at which men were tenured during the same period, 60.5% (Columbia Law School, 56.9%; Hofstra Law School, 48.8%; University of Pennsylvania Law School, 72.5%; Rutgers-Camden Law School, 50%; and Temple Law School, 74.5%),²⁵⁸ does not bode well for the future.

To attract more women to law schools as students, schools must develop part-time day programs for women with primary child care responsibilities, and must adjust their admissions criteria and procedures to accommodate women seeking admission to law school after breaks in their education, often attributable to marital and child care responsibilities.

To adequately address the problem of the small number of women in law teaching, schools must hire more women initially at the assistant professor, associate professor, and professor ranks. As long as clinicians and legal writing instructors are considered a lower caste, women must not be relegated to these positions. Great care must attend both the definitions of the traditional criteria of research, teaching, and service for tenure and promotion, and the application of these criteria to women faculty members.

255. *Id.* at 4.

256. *See infra* appendix, table 5 (Current total faculty 1987; Current tenured faculty 1987).

257. *See id.* (Current untenured faculty 1987).

258. *See infra* appendix, table 2 (Total faculty tenured of those hired and eligible for tenure between 1970 and 1987).

APPENDIX

TABLE 1
ALL LAW SCHOOL FACULTY MEMBERS* BY SCHOOL, SEX, AND YEAR, 1970-1987**

	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87
<u>Columbia</u>																		
Women	0	0	1	1	2	2	2	2	1	2	2	3	5	4	5	3	9	6
			2.1%	2.0%	4.2%	4.2%	4.0%	4.2%	2.4%	5.1%	4.8%	7.9%	11.4%	8.5%	11.4%	8.6%	20.9%	11.8%
Men	49	49	47	48	46	46	48	45	41	37	40	35	37	43	39	32	34	45
<u>Hofstra</u>																		
Women	2	3	5	4	4	5	6	4	4	4	3	2	2	3	4	4	3	4
	25%	27.3%	27.8%	21%	16%	20%	23.1%	17.4%	15.4%	14.3%	10.7%	7.4%	8%	12%	15.4%	16%	11.5%	14.3%
Men	6	8	13	15	21	20	20	19	22	24	25	25	23	22	22	21	23	24
<u>Pennsylvania</u>																		
Women	1	1	1	2	2	1	1	2	1	1	2	2	4	4	5	3	5	5
	3.1%	3.1%	3.1%	6.7%	6.4%	3.3%	3.2%	6.9%	3.8%	4.2%	8%	7.4%	14.8%	16%	18.5%	11.5%	18.5%	16.1%
Men	31	31	31	28	29	29	30	27	25	23	23	25	23	21	22	23	22	26
<u>Rutgers-Camden</u>																		
Women	1	1	2	4	4	5	6	6	5	5	4	3	5	4	4	5	7	8
	5.6%	5.3%	8.7%	16%	15.4%	16.1%	18.2%	17.6%	16.7%	14.3%	10.8%	8.8%	13.5%	11.4%	10.5%	15.1%	21.9%	22.2%
Men	17	18	21	21	22	26	27	28	25	30	33	31	32	31	34	28	25	28
<u>Temple</u>																		
Women	0	0	3	3	6	5	4	3	3	5	5	4	5	4	6	7	8	7
			10.3%	9.4%	15.8%	13.1%	10.2%	8.3%	9.7%	13.5%	14.3%	10.5%	14.7%	11.8%	15.8%	18.4%	20.5%	17.1%
Men	19	22	26	29	32	33	35	33	28	32	30	34	29	30	32	31	31	34

* Includes those with the rank of Assistant Professor, Associate Professor, or Professor. Does not include those on leave of absence, in non-tenure track, or with clinical rank.

** Includes those hired prior to 1970.

Note: The AALS Directory of Law Teachers, 1968-69 to 1987-88, was the main source of information for this chart. Two schools confirmed the exact hire and departure dates for each faculty member and two partially confirmed. See *supra* note 25 and accompanying text.

TABLE 2
THE TENURE STATUS OF FACULTY* BETWEEN 1970 AND 1987 BY SCHOOL AND SEX, AND AS A PERCENTAGE OF THE
TOTAL NUMBER OF THE SAME SEX HIRED AND ELIGIBLE FOR TENURE BETWEEN 1970 AND 1987**

	Total faculty hired and eligible for tenure between 1970 and 1987	Total faculty tenured of those hired and eligible for tenure between 1970 and 1987	Total faculty who left without tenure of those who were hired and eligible for tenure between 1970 and 1987	Total faculty currently untenured of those who were hired and eligible for tenure between 1970 and 1987
<u>Columbia</u>				
Women	15 100%	5 (33.3%) 5/15	7 (46.7%) 7/15	3 (20%) 3/15
Men	51 100%	29 (56.9%) 29/51	13 (25.5%) 13/51	9 (17.6%) 9/51
<u>Hofstra</u>				
Women	14 100%	5 (35.7%) 5/14	7 (50%) 7/14	2 (14.3%) 2/14
Men	41 100%	20 (48.8%) 20/41	15 (36.6%) 15/41	6 (14.6%) 6/41
<u>Pennsylvania</u>				
Women	8 100%	3 (37.5%) 3/8	3 (37.5%) 3/8	2 (25%) 2/8
Men	40 100%	29 (72.5%) 29/40	6 (15%) 6/40	5 (12.5%) 5/40
<u>Rutgers-Camden</u>				
Women	15 100%	2 (13.3%) 2/15	8 (53.3%) 8/15	5 (33.3%) 5/15
Men	50 100%	25 (50%) 25/50	22 (44%) 22/50	3 (6%) 3/50
<u>Temple</u>				
Women	17 100%	6 (35.3%) 6/17	8 (47.1%) 8/17	3 (17.6%) 3/17
Men	47 100%	35 (74.5%) 35/47	7 (14.9%) 7/47	5 (10.6%) 5/47

* Includes those with the rank of Assistant Professor, Associate Professor, or Professor. Does not include those on leave of absence, in non-tenure track, or with clinical rank.

** Includes only those hired in 1970 or later.

Note: Four deans were able to confirm the data used for this chart. For the fifth school, senior, tenured faculty confirmed the data. See *supra* note 25 and accompanying text.

TABLE 3
THE TENURE STATUS OF FACULTY* SERVING BETWEEN 1970 AND 1987 BY SCHOOL AND SEX, AND AS A
PERCENTAGE OF THE TOTAL NUMBER OF THE SAME SEX SERVING BETWEEN 1970 AND 1987**

	Total faculty serving between 1970 and 1987, tenured and untenured	Total faculty tenured between 1970 and 1987, including those hired before 1970	Faculty who left without tenure between 1970- 1987, including those hired before 1970	Total tenured faculty serving 1970-1987, including those hired before 1970 and tenured as of 1970, who remained after 1970	Untenured faculty in 1987, including those hired before 1970	Tenured faculty in 1987, including those hired before 1970
Columbia						
Women	15 100%	5 (33.3%) 5/15	7 (46.7%) 7/15	5 (33.3%) 5/15	3 (20%) 3/15	3 (20%) 3/15
Men	97 100%	32 (33%) 32/97	16 (16.5%) 16/97	72 (74.2%) 72/97	9 (9.3%) 9/97	36 (37.1%) 36/97
Hofstra						
Women	14 100%	5 (35.7%) 5/14	7 (50%) 7/14	5 (35.7%) 5/14	2 (14.3%) 2/14	2 (14.3%) 2/14
Men	45 100%	21 (46.7%) 21/45	16 (35.6%) 16/45	23 (51.1%) 23/45	6 (13.3%) 6/45	18 (40%) 18/45
Pennsylvania						
Women	9 100%	4 (44.4%) 4/9	3 (33.3%) 3/9	4 (44.4%) 4/9	2 (22.2%) 2/9	3 (33.3%) 3/9
Men	66 100%	33 (50%) 33/66	8 (12.1%) 8/66	52 (78.8%) 52/66	6 (9.1%) 6/66	20 (30.3%) 20/66
Rutgers-Camden						
Women	16 100%	3 (18.7%) 3/16	8 (50.0%) 8/16	3 (18.7%) 3/16	5 (31.3%) 5/16	3 (18.8%) 3/16
Men	63 100%	31 (49.2%) 31/63	25 (39.7%) 25/63	35 (55.5%) 35/63	3 (4.8%) 3/63	25 (39.7%) 25/63
Temple						
Women	17 100%	6 (35.3%) 6/17	8 (47.1%) 8/17	6 (35.3%) 6/17	3 (17.6%) 3/17	4 (23.5%) 4/17
Men	65 100%	38 (58.5%) 38/65	8 (12.3%) 8/65	52 (80%) 52/65	5 (7.7%) 5/65	29 (44.6%) 29/65

* Includes those with the rank of Assistant Professor, Associate Professor, or Professor. Does not include those on leave of absence, in non-tenure track or with clinical rank.

** Includes those hired prior to 1970.

Note: Four deans were able to confirm the data used for this chart. For the fifth school, senior, tenured faculty confirmed the data. See *supra* note 25 and accompanying text.

TABLE 4
THE TENURE STATUS OF FACULTY* SERVING BETWEEN 1970 AND 1987 BY SCHOOL AND SEX, AND AS A
PERCENTAGE OF THE TOTAL NUMBER OF FACULTY IN EACH TENURE STATUS**

	Total faculty serving between 1970-1987, tenured and untenured	Faculty hired before 1970 and tenured as of 1970	Faculty tenured between 1970-1987, including those hired before 1970	Faculty who left without tenure between 1970-1987, including those hired before 1970	All tenured faculty 1970-1987
<u>Columbia</u>					
Women	15 (13.4%) 15/112	0 (0%) 0/40	5 (13.5%) 5/37	7 (30.4%) 7/23	5 (6.5%) 5/77
Men	97 (86.6%) 97/112	40 (100%) 40/40	32 (86.5%) 32/37	16 (69.6%) 16/23	72 (93.5%) 72/77
<u>Hofstra</u>					
Women	14 (23.7%) 14/59	0 (0%) 0/2	5 (19.2%) 5/26	7 (30.4%) 7/23	5 (17.9%) 5/28
Men	45 (76.3%) 45/59	2 (100%) 2/2	21 (80.8%) 21/26	16 (69.6%) 16/23	23 (82.1%) 23/28
<u>Pennsylvania</u>					
Women	19 (12%) 9/75	0 (0%) 0/19	4 (10.8%) 4/37	3 (27.3%) 3/11	4 (7.1%) 4/56
Men	66 (88%) 66/75	19 (100%) 19/19	33 (89.2%) 33/37	8 (72.7%) 8/11	52 (92.9%) 52/56
<u>Rutgers-Camden</u>					
Women	16 (20.3%) 16/79	0 (0%) 0/4	3 (8.8%) 3/34	8 (24.2%) 8/33	3 (7.9%) 3/38
Men	63 (79.7%) 63/79	4 (100%) 4/4	31 (91.2%) 31/34	25 (75.8%) 25/33	35 (92.1%) 35/38
<u>Temple</u>					
Women	17 (20.7%) 17/82	0 (0%) 0/14	6 (13.6%) 6/44	8 (50%) 8/16	6 (10.3%) 6/58
Men	65 (79.3%) 65/82	14 (100%) 14/14	38 (86.4%) 38/44	8 (50%) 8/16	52 (89.7%) 52/58

* Includes those with the rank of Assistant Professor, Associate Professor, or Professor. Does not include those on leave of absence, in non-tenure track positions, or with clinical rank.

** Includes those hired prior to 1970.

Note: Four deans were able to confirm the data used for this chart. For the fifth school, senior, tenured faculty confirmed the data. See *supra* note 25 and accompanying text.

TABLE 5
TENURE STATUS OF CURRENT FACULTY* BY SCHOOL AND SEX, AND AS A PERCENTAGE OF THE TOTAL NUMBER
OF CURRENT FACULTY IN EACH TENURE STATUS—1987**

	Current total faculty 1987		Current untenured faculty 1987		Current tenured faculty 1987	
<u>Columbia</u>						
Women	6 (11.8%)	6/51	3 (25%)	3/12	3 (7.7%)	3/99
Men	45 (88.2%)	45/51	9 (75%)	9/12	36 (92.3%)	36/39
<u>Hofstra</u>						
Women	4 (14.3%)	4/28	2 (25%)	2/8	2 (10%)	2/20
Men	24 (85.7%)	24/28	6 (75%)	6/8	18 (90%)	18/20
<u>Pennsylvania</u>						
Women	5 (16.1%)	5/31	2 (25%)	2/8	3 (13%)	3/23
Men	26 (83.9%)	26/31	6 (75%)	6/8	20 (87%)	20/23
<u>Rutgers-Camden</u>						
Women	8 (22.2%)	8/36	5 (62.5%)	5/8	3 (10.7%)	3/28
Men	28 (77.8%)	28/36	3 (37.5%)	3/8	25 (89.3%)	25/28
<u>Temple</u>						
Women	7 (17.1%)	7/41	3 (37.5%)	3/8	4 (12.1%)	4/33
Men	34 (82.9%)	34/41	5 (62.5%)	5/8	29 (87.9%)	29/33

* Includes those with the rank of Assistant Professor, Associate Professor, or Professor. Does not include those on leaves of absence, in nontenure track positions, or with clinical rank.

** Includes those hired before 1970.

Note: Four deans were able to confirm the data used for this chart. For the fifth school, senior, tenured faculty confirmed the data. See *supra* note 25 and accompanying text.

TABLE 6
RANK AND TENURE STATUS OF CURRENT FACULTY* BY SCHOOL AND SEX, AND AS A PERCENTAGE OF THE
TOTAL NUMBER OF CURRENT FACULTY IN EACH RANK AND TENURE STATUS—1987**

	Total Faculty		Professor		Associate Professor		Assistant Professor	
	Tenured	Untenured	Tenured	Untenured	Tenured	Untenured	Tenured	Untenured
<u>Columbia</u>								
Women	3 (7.7%)	3 (25%)	3 (7.7%)	1 (25%)	0	2 (25%)	0	0
Men	36 (92.3%)	9 (75%)	36 (92.3%)	3 (75%)	0	6 (75%)	0	0
<u>Hofstra</u>								
Women	2 (10%)	2 (25%)	1 (5.6%)	0	1 (50%)	0	0	2 (40%)
Men	18 (90%)	6 (75%)	17 (94.4%)	0	1 (50%)	3	0	3 (60%)
<u>Pennsylvania</u>								
Women	3 (13%)	2 (25%)	1 (5.6%)	0	2 (40%)	0	0	2 (40%)
Men	20 (87%)	6 (75%)	17 (94.4%)	2	3 (60%)	1	0	3 (60%)
<u>Rutgers-Camden</u>								
Women	3 (10.7%)	5 (62.5%)	1 (4.3%)	1	2 (40%)	3 (50%)	0	1
Men	25 (89.3%)	3 (37.5%)	22 (95.6%)	0	3 (60%)	3 (50%)	0	0
<u>Temple</u>								
Women	4 (12.1%)	3 (37.5%)	3 (10.7%)	0	1 (20%)	0	0	3 (60%)
Men	29 (87.9%)	5 (62.5%)	25 (89.3%)	1	4 (80%)	2	0	2 (40%)

* Includes those with the rank of Assistant Professor, Associate Professor, or Professor. Does not include those on leaves of absence, in non-tenure track positions, or with clinical rank.

** Includes those hired prior to 1970.

Note: Four deans were able to confirm the data used for this chart. For the fifth school, senior, tenured faculty confirmed the data. See *supra* note 25 and accompanying text.