

## MUSINGS ON DISRUPTING HIERARCHIES IN LEGAL EDUCATION

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As far back as I can remember, my deepest instincts have been anti-hierarchical. Yet I struggled to find a way to contribute to this symposium. The call for papers, while prompting writers to address important hierarchies, is so focused on the schooling of lawyers that it overlooks the legal education of future CEOs (undergraduate and MBA business law classes), police and probation officers (criminal justice programs), social workers (family law) and the press (communications), not to mention the constitutional law courses taught in most political science departments around the country. It is this narrow view of legal education, perhaps attributable to the lower status of undergraduate teaching, that motivated me to write what is a rather personal essay. In it, I locate myself on a map of hierarchies—class, race, gender, ethnicity, academic ability—in an attempt to tease hierarchy apart from separation and marginalization. Does separation *always* mean hierarchy? Or should we, and can we, create conditions that allow for separation without hierarchy? And, what do we mean by hierarchies in legal education?

### **Childhood and Hierarchy**

I grew up in West Brighton, as middle class a town as one could find in America—although only one of many on Staten Island at the middle of the twentieth century. I lived in a two-block long “neighborhood” stuffed with young children. I am white, like all of my neighborhood, and demographically like most of it: Catholic, Irish-Italian, the daughter of a stay-at-home mom and a blue-collar city worker—my dad worked for NYPD; neighbors included a fireman, a building inspector, a “sanitary engineer.”

There were a few outliers. No one knew for sure what, if anything, one man did for a living, (Why was he home all the time? Was he on welfare?) but most described his brood of nine as unruly, with at least one son who had been labelled a juvenile delinquent. Another owned a small clothing store. One wife, having emigrated from Ireland as a teenager, still worked outside her home as a domestic while raising two children. One childless couple included the composing room foreman of the local newspaper, the *Staten Island Advance*. The adults rarely socialized with each other but the children of the shop-owner and those of the unemployed played together in the streets. If economic class had meaning for our parents, it had little for the young.

The same is not quite true for race and religion. Crossing one of the “boundaries” of my neighborhood—literally crossing a not-too-busy street—was a huge no-no. Why? I could see that the faces were darker and parents warned of unspecified dangers. No one ever said it was better to be white, but early on the message about race was clear: there was something scary about black people, better to stay with people who were white like me. Separation.

In an odd way, religion presented me with my first consciousness of hierarchies.

My parents chose not to send their three children to the Catholic school a few blocks from our home. Instead we were walked, later bused, then again walked, to the local public school. I am not sure why they made that choice, although my mother always said that there

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were a lot of Jewish people in the school catchment area and that “Jews value education” so ours was a very good public school. And it was.

But for this girl, living in a neighborhood where most of my playmates went to the local parish school, public school was a lesson in hierarchy and humiliation. Seating for the Sunday “Children’s Mass” was hierarchical: Catholic school first graders sat in the front rows, followed by second graders, etc. with the back rows filled willy-nilly by those known collectively as “public school kids.” My religious instruction was limited to what was then called “released time,” Wednesday afternoons spent with the nuns instead of in my regular public-school classroom. I was ashamed to learn from friends, not The Sisters, the secret “rules” of my religion: evening prayers were not sufficient, good Catholics also prayed when they awake in the morning (a sin I didn’t know about—but one to be confessed!); “Holy Communion” is the whole point of The Mass, so no reason to attend without taking Communion. Clearly all Catholics were not equal: those who went to Catholic school were “Real Catholics.” The rest of us were not.

My experience in a public school that was mostly white but religiously diverse, ingrained in me the value of integration. I didn’t have to learn, as did most in the narrowly Catholic world of my neighborhood, that Protestants do not have horns, that Jewish homes were not unlike my own. I understood that from my lived experience—even if it was one without exposure to Islam, Hinduism or Buddhism.

Gender was complicated. Within my family, I never felt unequal. My parents didn’t seem to favor my brother or give him privileges withheld from me and my sister. If anything, I, as first-born, believed myself the favorite. Yet I was raised in a seriously role-gendered household. My father was the wage-earner; during my lifetime, my mother never worked outside the home. Only mom cooked; dad was the fixer. Years later, as an adult, I came to regret that my dad never invited me into his basement workshop as he did my younger brother. He never barred me—he just didn’t invite me in and so I didn’t go and never learned to use carpentry tools or feel competent to change a showerhead. I learned to bake brownies instead. <sup>1</sup>

Some of our neighborhood games—hopscotch, jump-rope, paper-dolls— were single-sex. Others—hide-and-peek, giant steps—included everyone. A few created a space to reinforce gender-differentiated roles. I remember, for example, playing “war” wherein the boys fought as soldiers while the girls stayed behind battle lines to serve as nurses.

At school, girls took classes in cooking and sewing; boys had wood-shop. Everything else the genders studied together.

The sex-role differentiation so prevalent in my youth did not particularly bother me. I was lucky, a girly-girl who slipped easily into my designated gender, never suffering the pain

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<sup>1</sup> What to make of my parents: Mom had been salutatorian of her class, she who had the highest grades in her school, because they wanted a male to be the valedictorian. I don’t know why she never warmed to any form of feminism, except that she must have viewed the women’s movement as a rebuke to the life she had chosen. Nor did either of my parents see any reason for structural changes to correct class injustice, despite strong evidence of its impact on their lives. Surely Mom would have gone to college if she could have afforded it. Why, when she applied for a job at Macy’s, did she accept—without bitterness or fight— the judgement that she was unfit for a position dealing with the public because she couldn’t afford nice enough clothes? My dad became an officer in the NYPD, not because it was something he wanted to do, but because it was the first civil service exam he passed. His own father, a tailor by trade, had impressed on him that only civil servants found work during The Great Depression. Still, both he and my mother always insisted that class was not an issue for them—because “everyone was poor” when they were young. My mother, the youngest of nine, was conflicted about her older brother—the one who helped her write her graduation speech. Was it because he was a union organizer and a card-carrying member of the Communist Party of America, called to testify before HUAC? Did she actually *believe* the anti-Red hysteria of the 1950s—or was she simply looking out for her own survival?

such rigidity must have imposed on more gender-fluid or gender-challenged peers. In my 1950s world there was not only no sensitivity to transgenderism, there was no acknowledgement that it existed.

All of my K-6 teachers were female; the principal a male. I didn't think about that at all at the time. It just seemed normal. Later, in junior high and high school, female role models included a ninth-grade science teacher and a high school social studies teacher. Years would pass before I would wonder why a woman with a Ph.D. in history was teaching high school in a public school. Later, my college professors would skew white and male, but even then, it took me a while to understand why that was a problem.

Gender did not dictate my educational pathways so much as class did. In my large and close extended family only one cousin had gone to college. Family friends were decidedly blue-collar. When I began to think about higher education my parents tried to support me, taking me to visit tuition-free Brooklyn College and allowing me to apply to state universities. But they had little money to pay for college. Loans, a scholarship, part time and summer work made it possible for me to go to SUNY at Stony Brook. There, inspired by my ninth-grade teacher, I declared myself a Biology major despite having no idea what a person with such a degree might do other than teach high school or become a doctor (I didn't think I wanted to teach, and my vision of myself as a doctor was vague at best.) Within days, I dropped my frosh chemistry class when I learned what it would cost if I broke any equipment. I knew I was klutzy and there was no room in my severe budget to pay for replacement anything. That was the end of a life in science.

Importantly, I don't remember experiencing gendered roles as hierarchical until I landed a summer job on Wall Street. In 1967 the stockbroker for whom my aunt worked as a secretary hired extra help to finish work related to an IBM stock split: folding new stock certificates and stuffing them into envelopes. I had just finished my freshman year and the job was mine. Someone soon recognized that I was smart, reliable and a good typist and I was allowed to take on additional duties for the same pay. The next summer there was another stock split and I was re-hired as a clerk. I asked about applying for the firm's "management trainee" program. I was not a Business major (in those days, SUNY at Stony Brook didn't even offer a degree in business) and I wasn't particularly interested in a career in the financial world. But no one at the firm knew that about me. And I knew that management trainees earned more money than the summer clerical help. The response to my inquiry: Don't bother applying. Trainees must be male. *Why was that?* Trainees worked into the evening and it wasn't safe for a young woman to travel alone, in the dark, from Wall Street to the Staten Island ferry! My first awakening to sex discrimination and I didn't like it.

I began to question what was still the dominant worldview, one in which each gender has its proper, but different, place (ye old "separate spheres" philosophy that kept Myra Bradwell from becoming a lawyer in the late 19<sup>th</sup> century). Knit into the fabric of my life growing up, it was being challenged during my college years. After I graduated in 1970, I read Betty Friedan's *The Feminist Mystique* and joined the Women's International League for Peace and Freedom. By 1972, I was part of a consciousness-raising group. The world was changing.

Or was it? I remember the man sitting next to me at law school orientation in 1974. He looked at me and said, without humor or irony, that he was fine with what was then a radically female class—some 40% of One-L's at Hofstra Law School—so long as no woman took "his" job. I knew by then where being female still put one on the grid of hierarchies.

## Academic Hierarchy: A Special Case?

There was one hierarchical marker that benefitted me throughout my life: academic ability.

In the 1950s and 1960s, NYC public school children were “tracked”—and I was lucky enough to be placed in the highest achieving classes. We were the top of the hierarchy and we knew it. Only our class was allowed to watch a “learning Spanish” class on TV. Only those of us in the “4-1” class got free copies of the daily *New York Herald Tribune* to digest and report on in class. We alone were given time each day to work on our “novels.” In 5<sup>th</sup> and 6<sup>th</sup> grade the IGC (“intellectually gifted children”) classroom held a row of museum cases. Periodically, our class would choose an in-school project to fill those cases, e.g., “Old New York” or “Staten Island’s natural world.” When the “show” opened, teachers would bring students from lower grades—and lower ranked 5<sup>th</sup> and 6<sup>th</sup> grade classes—to visit The Museum, where I and my classmates explained our exhibits to them. We knew we were the childhood equivalent of ‘masters of the universe.’

At the time, I never questioned the tracking from which I benefitted enormously. Today, I see it as presenting an almost impossible conundrum: Tracking provided me with what was undoubtedly a rich and engaging educational environment. Those in my classes were all on-task, there were no behavioral problems to be addressed. Our teachers could race through the standard curriculum to create space for “extra” activities because they never needed to spend time with students struggling with the basics. Of course, this approach cannot but have deprived other, equally deserving children from maximizing their potential. Certainly, not all of the future writers and creative students were in the IGC class. Shouldn’t *all* New Yorkers learn to read a good daily newspaper? Wouldn’t *everyone* have benefitted from learning Spanish? But if no one can figure out how to provide that enriched experience for everyone, is it so wrong to deny it to some? (Why *can’t* we figure out how to provide it to all? If it costs too much, maybe we need to save money on walls?)

As 6<sup>th</sup> grade drew to a close, I was invited to choose whether to finish 7<sup>th</sup> and 8<sup>th</sup> grade at P.S. 45 or to transfer to a newly-built junior high school. I opted for junior high, where entry into the Special Progress (“SP”) path meant I would study 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> grades in two years. The program was, not surprisingly, created in response to a shortage of resources. In this case, it was the lack of space in junior high schools, a relatively new concept in NYC in 1961. Again, an entire group of students—those of us in the IGC classes—were privileged over other classmates. Those who chose the SP programs were exposed to a whole range of special activities from performing in school operettas to early morning creative writing classes. Self-confidence and self-esteem soared, despite a lone, defiant African-American music teacher who repeatedly told our class that “SP stands for Stupid People.” At the time I was baffled. Years later, I thought she must have been expressing justified anger at the privileges extended to those in the all-white SP program, separated from the rest of the students in an otherwise racially-mixed school.

I was, in short, the beneficiary of a public-school policy that created hierarchies based on IQ tests—one that, at worst, harmed others and at best, deprived them of a potential benefit.

It wasn’t until my senior year in high school, when I was invited to join the local “honor society,” *Arista*, that I began to rebel against academic hierarchies. I turned down the invitation—something no one had done before. In part it was probably sour grapes, for not having been invited in my junior year. But I also believed, at the time, that there was just something wrong, something that grated, about singling out select people for honors.

Later, when invited to join the *Hofstra Law Review* (via a letter that indicated it would have to be my “highest priority”), I declined. I knew Law Review could not come first in my life. I was newly married to a man studying for his Ph.D., commuting a healthy distance, and knew I had to keep working to pay for school, even with loans. Besides, I loved my work-study job at Nassau County Legal Aid Society, preparation I hoped for a career as a public defender. And, as with *Arista*, there was something about the invitation to join the elite at my law school that didn’t sit right with me. I couldn’t imagine myself ever wanting the kind of job that would care whether or not I had been on law review (No major law firm in *my* future: I wanted to change the world.)

My parents urged me to consider whether I should accept the invitation to join the Law Review. But they weren’t offering to help pay my tuition (they couldn’t, really, and in my family being married meant being financially independent of your parents). And I didn’t value their advice about education.<sup>2</sup>

I should have known better. Almost immediately after the Law Review invitation, I was called into the office of the head of Legal Aid and asked if I wanted to move from the trial bureau to the appeals bureau. I was confused. *Why me?* Answer: because you were invited onto Law Review. Obviously, that makes some sense; it was at least one measure of competence I supposed. But I didn’t see it that way; instead it seemed a form of elitism and I didn’t like it.

Later, when I thought I might want to clerk for a judge or, later still, teach in a law school, I regretted not at least having tried to figure out if I could balance law review, commuting, school, work and family. Apparently, having served on law review was more than an honor as it was recognized as valuable experience for prestigious legal positions. A life lesson: it is one thing to oppose a societal norm that reinforces hierarchies, another to presume there will be no serious consequences from flaunting those norms.

### **A Non-Hierarchical Workplace: Legal Services in the Late 1970s**

My first legal job could not have been better suited for me. In the late 1970s, Onondaga Neighborhood Legal Services (ONLS) was populated entirely by lawyers, paralegals, and support staff who shared my vision of a society of equals. There was no oppressor we didn’t challenge. My colleagues were all hardworking, fully engaged, committed to mentoring new lawyers and to supporting our clients and each other.

Our staff was relatively diverse for Syracuse, New York. Two of the seven senior attorneys were women, and one was outwardly lesbian. Two of the three most recent hires were women. While there were no African American attorneys, there were several black paralegals—at least one of whom had learned his craft in Attica, the state prison best known for its 1971 riot and massacre. Another paralegal was a former nun. The egalitarian ethos was so strong that the three new attorneys sometimes felt like conservatives. Union dues depended on one’s title—the attorneys paid more than the secretarial staff—although we three newbies had among the lowest salaries at the agency and the highest debt. Was that really fair? Yeah—it was. Our financial futures were inherently more secure, and my salary eventually came closer to reflecting my title. But honestly, we groused about it among ourselves. Indeed, it caused some self-doubt about my commitment to egalitarianism.

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<sup>2</sup> Both my parents had gone to the same vocational high school—my mother to study “domestic science,” my father, auto repairs. My dad never finished, although he later got a GED and took college courses in police science. My mother earned no degrees beyond her high school diploma.

As did some of my casework. I remember a client who owed more money on a living room couch than we had spent on furniture for our entire apartment. When he couldn't pay, the seller/lender threatened to repo. Another life lesson learned when I drove to his home for him to sign some papers. One look at how he lived—including the sofa that I had been so jealous of—convinced me he was genuinely poor, not a middle-class person scamming the system. Why, then, was he the owner of such costly furniture? Easy: he had purchased it from the only dealer in town who would sell on credit to welfare recipients.

I wanted my clients to feel like my equal, to call me 'Elaine.' It was hard for me to separate what I viewed as a democratic gesture (no titles for any of us) from what my clients saw as disrespect for my position. In the end, I had no choice but to answer to "Attorney Elaine." Later, when I taught college, that name-conundrum would re-surface. At my first teaching job—at Temple—calling one's prof by her first name was somewhat unusual; at Stockton University, where I spent most of my career, it was the norm. Still, even at Stockton there were many first-generation college students who were never comfortable with dropping titles, and so avoided calling me anything at all. (I, on the other hand, never felt any qualms about addressing the college president as "Vera.")

During my nearly three years at Legal Services any one who disrespected another—employee, client, visitor—because of his or her race, gender, position, was called out by others. One attorney—a Brown University, Harvard Law School graduate whose wife was a Ph.D. Professor of Literature at Columbia University—did not take offense when someone suggested we should have a "bias against Harvard" standard for new hires. He understood—and approved—the democratic instinct from which that derived.

The work itself—representing people too poor to pay attorneys to vindicate their rights—was inherently about class. While I tried to do my best for every client, it was discouraging to come to believe many of them were likely "clients for life." It was not that they were intrinsically bad people. Their problem was, simply, that they were poor. One poverty-created crisis tumbled into another. Legal struggles wouldn't end until their poverty did.

In the late 1970s, state court judges in Syracuse were all white and all male. One judge had difficulty understanding that I was not "Mrs." Ingulli because Ingulli is my father's name, not my husband's. "But what should I call you?" *Counselor would be fine*. He was so perturbed that I was required to write a brief defending my wholly-lawful decision to retain my maiden name when I married. Another judge could not seem to "tell us apart" when any of the female lawyers from ONLS appeared before him. No, we didn't physically resemble each other, or share a similar accent. It was difficult to tell if this was sex-based bias or if it had something to do with our clients. Perhaps, just as public-school children were not quite Real Catholics, lawyers who represented poor people were not Real Lawyers?

### **Hierarchy in Legal Education: Temple Law School in the 1980s**

When my husband finally landed a tenure-track teaching job on the East Coast—to wit, Assistant Professor of Psychology at the University of Delaware—I readied myself for a move to Philadelphia. Neither of the two places on the top of my wish-list (Community Legal Services or the Philadelphia Public Defender) were at all interested in hiring me. I had graduated 8<sup>th</sup> in a class of 400 from what was then a reasonably good law school. ONLS had given me impeccable references. But clearly, I didn't fit the needs of Philadelphia's public interest law firms, not

having graduated from an Ivy League school, not having been on law review, and having no Philadelphia connections.

Or next to none. Somehow, I found my way to the Temple faculty office of Marina Angel, with whom I had taken two courses at Hofstra. I brought with me a copy of my resume and a paper that had earned me an A in her seminar in Juvenile Justice. *Of course, I don't expect you to remember me*, I offered, *but you also gave me an A in Criminal Procedure Law*. She looked at my c.v., at her comments on my paper, listened to my regrets that I had not been better prepared for my interview at the Public Defender's office<sup>3</sup> and marched me down to Temple's own Legal Aid Office. Within days, I was hired as an Associate Counsel.

This should have been as good a fit as the job I had held in Syracuse, but it never was. At first, I was simply overwhelmed by change. Anyone who has practiced in more than one state understands how much procedures vary from jurisdiction to jurisdiction. In New York, there were standard deadlines for responsive pleadings. In Pennsylvania, filing a complaint didn't automatically demand an answer be filed. In New York, notaries took their jobs seriously; no one at ONLS would notarize something unless they watched you sign it. Not so in Philadelphia, where the Prothonotary seemed most interested in the fee. ONLS did not accept Family Court cases. I had malpractice nightmares when Temple's Associate General Counsel handed over to me a long-open case that was particularly heartbreaking. I was to represent a woman who had starved to death one of her children, locking him in a closet for months on end. Now, she sought to regain custody of two of her children who had been in foster care since that tragedy. In Family Court.

At ONLS I would have turned for advice to any—or all—of my colleagues, other lawyers who were well-educated, energetic and shared my commitment to social justice. At Temple, our caseload was so high, and the atmosphere so non-collegial, that I felt alone. I was uncertain that either of the two male lawyers with whom I worked cared about either their jobs or their clients. Neither had much interest in mentoring me as I adjusted to what was clearly an alien jurisdiction. It didn't help that the white Associate Counsel's language included an excess of sexual and racial slurs; that the African American General Counsel excused it as “just (his) way of joking,” suggesting I was being overly sensitive. I could avoid these uncomfortable interactions by staying in my office, a floor below the official Legal Aid Office. Rarely did either man stop by to see how I was doing. It was up to me to walk upstairs and seek help if I really needed it. I seldom felt comfortable doing that.

Instead, however, help found me. Grad Fellows in the Clinical Education program worked in offices on the same floor as mine. Here were people who were as smart and hard-working and dedicated as the friends I had left behind in Syracuse. None of them wanted to work in a Legal Aid Clinic—they all wanted to be law professors. And all of them were incredibly busy. But they were willing to talk to me, to help me think through complex cases, and to ease my isolation.

In truth, were it not for meeting and befriending Grad Fellows, I don't know what direction my life would have taken. Encouraged by them to talk to Joe Harbaugh, then head of the program, I soon found myself applying to become a Freedman Fellow. Perfect: the very purpose of the program was to challenge the kind of elitism I had opposed for so long.

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<sup>3</sup> I was an out of townner who had been practicing civil law at my first job as a lawyer. No wonder I botched the mock-client interview and quiz on Constitutional criminal law that formed the basis for interviews at the PD office. To this day, I am convinced that Temple grads and other locals had an advantage, knowing what to expect. But I'm sure those hierarchical markers were also relevant.

What I had learned in my short time in the Temple Legal Aid Office was that clinical education was theoretically important, but in fact undervalued—even by a law school in the forefront of providing such experience. Temple prided itself on its multi-faceted approach to experiential learning. In the 1980's, Temple offered courses in Civil Trial Advocacy and in Interviewing, Negotiating and Counseling; faculty and grad fellows went to—and taught in—the NITA (National Institute of Trial Advocacy) program; there were student interns in the Legal Aid Office, many supervised by the Grad Fellows.

But, from my perspective, the Legal Aid Office was the worst of all possible worlds. No one had figured out how to get a handle on an enormously high and varied caseload; there was no specialization that would enable lawyers to gain and share real expertise in any particular area. The community was being served—but not at the high standards set by Philadelphia's Community Legal Services or ONLS in Syracuse.

Students were experiencing the “real world” but without the guidance they really needed. There seemed to be only a limited commitment to hiring and retaining experienced and committed attorneys to serve as role models and supervisors for student-lawyers. Clinical Grad Fellows were torn in too many directions (learning to teach, research and writing, supervising students in the Legal Aid Office). The academic rhythm (semesters begin and end on time) conflicted with the unpredictable nature of litigation.

Where was the respect for poor people who needed legal services that permeated good Legal Services offices? What was it about poor people that our students were actually learning? That they should be grateful for any legal assistance, no matter how inadequate it might be? And what were our clients learning about us, as turnover among student interns and their supervisors was baked into the very structure of the clinical program?

I might have turned these concerns into a career in clinical law education but for a few things. I had struggled to begin to learn to teach and I was hooked on the classroom. Beyond that, I envied my husband's summer-long “free time,” never understanding that “free” was a relative term, that summers are the time academics can dig seriously into a research/writing project. As I chose my own career path, I admit I placed heavy emphasis on “lifestyle” (a shorthand for time to travel.) I understood that clinical law teachers rarely get an academic's “free” summer for good reasons: the needs of real clients don't automatically end when the semester does.

And my years as a Grad Fellow had taught me something about one hierarchy within law school education: lawyers in clinics like Temple Legal Aid were not Real Faculty. In the 1980s at Temple they didn't have faculty status, and they certainly didn't receive faculty salaries. I shared the lack of respect much of the academic faculty had for the particular men who occupied the positions of General Counsel and Associate General Counsel at the time. But I never believed that there was anything inherently less important, or deserving of less respect, in the positions themselves. I knew that it was possible to seriously represent poor people—it just took excellent lawyers dedicated to the work. And I could think of no aspect of legal education more important than modelling that behavior for the next generation of lawyers. What was required, of course, was a vision and the resources to work towards it. I was not convinced that most law schools were willing, or thought themselves able, to make that commitment. A position at a law school clinic was far less attractive than the idea of returning to the practice of law.

Things seem to have improved in law schools generally, and at Temple in particular.

A new General Counsel hired by the Legal Aid Office—and her successor—were serious about providing quality representation to poor people. Although the number of fulltime lawyers



working in the clinic appears to be unchanged since I worked there, today they are called “Clinical Faculty”—a title shared with the director of the Elderly Law Project (a specialized clinic first opened in the 1980s) and those who work in the Social Justice Clinic. They participate in faculty meetings and are more integrated into the law school faculty. The current Temple Legal Aid website suggests that the scope of cases handled has narrowed. From the outside, the Stephen and Sandra Sheller Center for Social Justice seems designed to help move us toward the kind of structural changes that are needed for poor people to avoid becoming “clients for life.” Importantly, Freedman Fellows are no longer responsible for supervising student interns.

But I wonder if the gist of the clinician’s dilemma has been fully confronted or resolved. At least since the 1992 MacCrate Report, law schools have been encouraged to expand their clinical offerings<sup>4</sup> and “teaching social justice” has been a bit of a buzzword for the past decade or so. Since it first appeared in 1994, the *Clinical Law Review* has provided both a publishing outlet and a national forum for discussing issues impacting those who teach and practice in law school clinics. Yet a quick perusal of the publications by Temple’s clinical faculty, for example revealed none in the *Clinical Law Review*, making me wonder if that journal has achieved sufficient prestige to satisfy those deciding on tenure and promotion. More importantly, clinical faculty still need to be responsible for their caseloads over the holiday season, semester breaks, and the summer. So long as they are expected to publish, they are handicapped by their relative lack of free time. I have a respectable publishing record—law review and other articles, book chapters, co-author of a textbook that went to 9 editions—but there is no way I ever could have done that without the expanse of thinking-research-writing-time that semester breaks and summer vacations made possible. Presumably the contradictory rhythms of academic and clinical practice that made it so hard for Grad Fellows to serve as excellent clinic-supervisors haunts clinical faculty in other ways. Academic faculty have enormous autonomy when it comes to their time. Classes and office hours are scheduled. Beyond that, there is a good deal of flexibility to decide how and when to prepare for class, grade, research, write, meet university committee responsibilities. But when attorneys are responsible for the legal problems of real people, the demands on their time come not only from office hours and scheduled meetings, but from clients, judges and adversaries.

It seems to me that the effort to turn clinical faculty into the equals of traditional academic faculty brings us back to the separation/hierarchy question. Is it possible to envision clinical faculty in a law school as separate but not unequal? For example, might they be *invited* to faculty meetings—instead of excluded as outsiders—without necessarily being *expected* to attend? This approach would recognize the outside pulls on clinicians that academic faculty don’t necessarily experience. How might there be separate standards for tenure and promotion of clinicians and academic faculty, without the former being viewed as inferior? Research universities that are increasingly hiring long-term “teaching” faculty are beginning to face this same issue. Faculty unions at Research-1 universities are working to find ways to evaluate the worthiness of teaching faculty by standards that differ from those applied to their research

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<sup>4</sup> Among its other recommendations, this report of the American Bar Association Section of Legal Education and Admissions to the Bar recommended that law schools provide students with an opportunity to “perform lawyering tasks with appropriate feedback and self-evaluation.” *Legal Education and Professional Development: An Educational Continuum*, Report of the Task Force on Law Schools and the Legal Profession: Closing the Gap (1992).

faculty. Their experience could be useful to law schools. One can see from the Beasley School of Law website that there are different types of faculty—Professor of Law, Clinical Professor of Law, Practice Professor of Law,<sup>5</sup> even Visiting Professor of Practice in Law, perhaps a step toward addressing this issue.

Surely the voices of those who are serving as clinicians need to be heard and their proposals respected by law schools that want to end their marginalization. It is not easy—there will be pulls and second-guessing—but I believe it is essential.

### **Still Up Against Hierarchies: Business School Teaching in the 1980s**

For a variety of reasons—including my failure to have finished a law review article and my newly-tenured husband’s inability/unwillingness to leave the Delaware Valley—I never found a tenure-track job teaching in a law school. Instead, once again local connections saved me from unemployment. This time it was then Grad Fellow director Tony Bocchino who recommended me to the chair of the Legal and Real Estate Studies department in Temple’s Business School.

Tony promised me a package deal: if I took the job, Temple would support a second trip to the annual meat-market, I could team-teach the Grad Fellow Civil Trial Advocacy (CTA) course with a first-year grad fellow, and collaborate in Tony’s Interviewing, Negotiating, and Counselling class. I grabbed the opportunity.

Little did I realize that I would be joining what might be the most hierarchical school in the university and that I would fail at negotiating its pitfalls. Indeed, “failure” is a key word: I taught in Temple’s business school for three years and must have felt like a failure every day. Business schools are notoriously hierarchical. Who knew? I’d never been near a B-school before. The only “business” course I had taken in college was Macro-economics, and that was taught by an avowed Marxist. Sure, I’d taken the obligatory law school courses in Corporations, Commercial Paper, Secured Transactions and Bankruptcy and had collaborated in teaching the UCC as a Grad Fellow. But, as I would later tell my B-law students, my only legal experience related to business was defending clients who had been sued by companies or landlords, like the poor man whose sofa was repossessed and in advising those considering bankruptcy.

Despite its long and deeply held commitment to being a “people’s university,” Temple’s attempt to break down hierarchical barriers for students spread unevenly to those who taught there. The faculty governance structure included a Faculty Senate and the ubiquitous department chairs who answered to various deans. Although I sometimes went to meetings of the School of Business Administration faculty senate, I never found an opportunity to raise my hand—and, of course, I held no position that would give me a vote. My teaching schedule—five days a week, two on the Ambler campus, three on main campus—was handed to me by my department chair, a man who held that position for twenty plus years. If he asked the male faculty what and when they preferred to teach, he didn’t ask me, and he didn’t ask the woman who would become my co-author, Terry Halbert. I was not tenure-track so I shared a desk—not an office—on main campus and another in Ambler.

Although it should have been clear to me that there was a chain of command, somehow it wasn’t. That is the only way I can explain why I went directly to the Dean to see if I couldn’t manage to acquire my own office—something the part time/fulltime B-law faculty who scurried

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<sup>5</sup> What does that mean? Are there different standards for promotion or tenure? Or does it simply apply to those who teach skills and/or procedural law?

off to their law offices after early morning classes didn't need. But that inadvertent violation of protocol irked my department chair who felt challenged by an act that I viewed as merely efficient.

Relatively quickly I learned that—once again—I was at the bottom of a hierarchy. Despite the “D” in its name, few management or finance faculty considered a JD the equivalent of their PhDs. Within most B-schools, law is not considered a “real” business subject and lawyers were not “real” business faculty. This marginalization has had an interesting impact on the careers of many business law faculty. Generally, legally-trained professors are good administrators: they write well, have problem-solving skills, and understand organizations. They learn to embrace their marginal status by working across disciplines with colleagues from around their institution and in doing so, to make themselves indispensable. It is not uncommon for B-law professors around the country to become faculty leaders and B-school deans. Some have gone on to become provosts and college presidents.

At Temple, many of the long-tenured legal studies faculty I met in 1984 had taken a different route: they kept private law practices on the side. Not surprisingly, they didn't publish as did their more academic brethren in finance, accounting, marketing and management.<sup>6</sup>

Perhaps just as importantly, early on it was clear to me—from my salary, if nothing else—that teaching business law was not as prestigious as teaching in a law school. I quickly learned that it was in some ways harder. Teaching loads were heavier and the teaching itself involved significantly more grading responsibilities. Undergrads and law students are not members of the same species. Many, if not most, business students enroll in legal studies courses because they are required to take them. Professors need to motivate them to read, attend class and participate in discussions that may not seem immediately relevant to their planned futures. No AALS or Bar Association equivalent requires class attendance or limits the hours that full-time students can work. It is common for B-schools to require their faculty to actively maintain a license to practice law. In the 1980s, law school teaching jobs were harder to get, hence more prestigious, but B-school jobs were harder to keep because the requirements for tenure were often more rigorous than in law schools.

Nationally, business law faculty face a prestige conundrum regarding their scholarship. It is never easy to compare publication outlets, but most law faculty are likely to agree that an article published in the *Harvard Law Review* carries more weight than one in a lesser law school's review. But, do either of those two outlets meet the gold standard of scholarship in virtually every academic discipline other than law schools: peer reviewed articles? Meaning manuscripts that have been double-blind reviewed by “peers” in one's field. Submissions to the *American Business Law Journal (ABLJ)* are blind-reviewed by business law faculty—not the second- and third-year law students who decide what finds its way into print in a typical law review. So, the *ABLJ* qualifies as a “peer reviewed journal” in the eyes of finance or management faculty when they evaluate candidates for tenure. Those same colleagues are often not so sure that the *Harvard Law Review* should so count—despite the obvious prestige that lawyers, law schools, and judges bestow on the best student-run publications. That there are only a handful of peer-reviewed journals other than the *ABLJ* that publish papers on business law creates a challenge for B-law faculty seeking tenure in Research 1 Universities

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<sup>6</sup> Terry Halbert, my colleague and co-author, was the exception in our department at the time: Temple was her full-time job. She published, took her teaching seriously, and reached out to the wider university community, becoming the head of a newly-created Honors Program and later spear-heading a sweeping General Education reform of the curriculum, then directing General Education.

I did not, at first, challenge that status hierarchy. Instead, it was my inability to achieve the tenure-track law school position I had worked for that accounted for my persistent feeling that I was a failure. As my career progressed, I would come to appreciate B-law faculty in ways that evaded me when I was new. While still affiliated with Temple Law, I went to the Association of American Law Schools conference. I was awed by some of the presenters. I looked down on the less polished papers at what was then the American Business Law Association (ABLA)<sup>7</sup> conference. Later, I would value the organization's openness to works in progress that permitted faculty to seek feedback and the less theoretical—but often more useful for teaching—focus of most papers presented by B-law faculty. More importantly, I would value the way members of ABLA/ALSB embraced new members. At my first annual conference, I felt empowered to criticize some proposed rule change at the general business meeting. Not only were my remarks taken seriously, but officers came up to me afterwards to see who I was and what I thought about other matters, to invite me to engage in with the organization in other ways. A few years later, when the *American Business Law Journal* published my article on race, class and gender in the business law curriculum, the president of the organization invited me to join a panel on the future of the ABLA/ALSB. Over the years I found within the ALSB the collegiality missing from the Legal Studies faculty at Temple.

### **Finding a More Democratic Home: Thirty Years at Stockton University**

After two years as a visiting faculty member at Temple, I was resigned to my fate. I had finished—and published—my first law review article. My classes for the fall were prepared. I was looking forward to a long summer vacation when a male colleague told me he had seen a job-opening that “had my name on it.” Stockton State College (now Stockton University) was advertising a tenure-track position teaching Business Law. I applied, I was hired, and I spent the next three decades teaching at this New Jersey public college.

Stockton was the right fit for me for all the reasons that Temple Business School was not. Its founding faculty wanted to provide the kind of excellent liberal arts education available at elite private schools to the first-generation, working class students who were its target population. Here was an institution that was committed to creating community and, just as importantly, breaking down hierarchies.

Faculty administration was in the hands of Program Coordinators—rotating among faculty members who coordinated curriculum offerings based on the teaching schedules *that faculty requested* and fulfilled the myriad other responsibilities that fell to department chairs in most institutions of higher learning. There was more work than reward attached to these faculty-administrative positions and during my first decade or so at Stockton, Program Coordinators were frequently untenured. In lieu of a Faculty Senate there was a Faculty Assembly. From day one, every fulltime faculty member had an equal voice in faculty governance. And because it was clear that courage and contribution to debate were valued, I never had to follow the Joe Harbaugh rule for new faculty (“Keep your mouth shut until you get the lay of the land.”)

Whenever task forces or committees were formed, one expected not only demographic (race, gender, disciplinary) diversity but to see new, young faces appointed along with tenured faculty. At Temple, salaries varied with the prestige of the school or discipline (medical, law

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<sup>7</sup> In 1992, ABLA became the Academy of Legal Studies in Business—partly to recognize the broadening of our subject matter to include not only “business law” (contracts, the UCC) but the “legal and ethical environment of business” and partly to sound more like the higher-prestige Academy of Management!

school and finance faculty earned more than those who taught philosophy or art.) At Stockton, the AFT-affiliated union negotiated a collective bargaining agreement for NJ state colleges that set one salary scale for all. There were, of course, discrepancies—more white men seemed to be hired at the Associate Professor level than were women, for example—but the egalitarian aspiration was clear.

Every attempt was made to limit the hierarchical relationships among students, faculty and staff at Stockton, although some of the most egalitarian aspects eroded over time. When I first joined the Stockton faculty, tenure and promotion committees consisted of five faculty and five students. This was meant to empower students. It might have succeeded, but for the fact that it gave Deans, the Provost and President an easy excuse for ignoring their recommendations. By the time I retired, students were no longer on the faculty tenure and review committees. Their written evaluations of teaching, however, have always been critical to decisions about faculty futures.

For most of my years at Stockton, parking was open and free to all on a first-come first-served basis. Today, special rules have been created for residential students but commuters still share with faculty and staff. For decades there was a teensy faculty-and-staff eating room within a much larger cafeteria-for-all, students, faculty and staff. Most faculty ate in the larger, open area, where an unwritten rule invited any faculty member to join others sitting at one of the large tables. This, of course, cut two ways: it bolstered community-building among faculty, but tended to separate them from students eating at nearby tables. When a new food-hall replaced the old cafeteria, there was no segregated space for faculty or staff. Instead, the union bought a microwave, TV, and refrigerator for a little-used room in the main academic building and turned it into a space in which faculty—including adjuncts—could eat, lounge or prep for class.

Stockton was not utopia. There were faculty-administration struggles throughout my tenure. Allowing junior faculty to “coordinate” programs certainly broke down hierarchies, but created its own set of problems. When there were conflicts between faculty and administration, for example, untenured faculty coordinators faced more pressure than would a traditional department chair. Even under an African-American woman college president there were charges of race and sex discrimination. She was seen by some as valuing black men and white women more than she valued black women. Faculty were ambivalent about the easy access students had to upper level administrators (Were students more powerful than faculty? *Too much democracy!*) Over time, management won the contractual right to create special exceptions for hard-to-hire faculty, such as PhD’s in accounting, so that they could be offered more competitive salaries. When the university began to hire non-research teaching faculty, the faculty debated—and continues to debate—how to fairly evaluate those who research and those who don’t.

So: what does all this mean? I think of myself as having lived an incredibly privileged life. I am no longer working class, no longer any kind of Catholic, and comfortable with what was a challenging and rich career, due almost entirely to my experience as a Freedman Fellow and my less-than-satisfying experience as a Visiting Assistant Professor of Legal Studies at what is now the Fox School of Business. I have, at times, felt marginalized—but marginalized within broader identities of power. *Of course*, teaching business law is part of legal education. *Of course*, I have contributed to legal education in this country in what I hope were meaningful ways. And, *of course*, consistent with the ethos of the Abraham Freedman Fellows, I still seek a more just and equitable world.