Confronting Expectations:
Women in the Legal Academy

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INTRODUCTION

Women constitute only sixteen percent of full professors, while they constitute almost fifty percent of law school students nationwide. Even those women who do secure tenure-track positions on law faculties receive less pay, are denied tenure at higher rates, and are disproportionately concentrated in lower-ranked schools. Beyond these tangible discrepancies, many women faculty members feel like tokens who are in the uncomfortable position of breaking their way into a male domain. Hence, women law professors still experience some of the types of problems that their foremothers did three

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1. Deborah L. Rhode, Gender and Professional Roles, 63 FORDHAM L. REV. 39, 59 (1994); Richard A. White, The Gender and Minority Composition of New Law Teachers and AALS Faculty Appointments Register Candidates, 44 J. LEGAL EDUC. 424 (1994). Only 2% of tenure-track law faculty are women of color. Id.

2. See AMERICAN BAR ASSOCIATION COMMISSION ON WOMEN IN THE PROFESSION, ELUSIVE EQUALITY: THE EXPERIENCES OF WOMEN IN LEGAL EDUCATION (Jan. 1996) [hereinafter ELUSIVE EQUALITY].


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decades ago. In spite of all the progress that we have made, how is it that these problems persist?

A seemingly insurmountable barrier to women's success in legal academia is the way they are perceived. Numerous studies have shown that women are perceived as less competent than men and that the same work is evaluated more critically when it is thought to have been done by a woman than by a man. This problem exists in all aspects of life, but it is especially acute for women in professional roles, such as academics. Legal academia, however, seems to be particularly resistant to viewing women as equally competent. Research shows that student evaluations of women faculty tend to be more hostile than those of male faculty. Comments on their appearance, pieces of "advice," and vicious personal attacks are not uncommon. When women law professors do receive positive comments, they are much different in nature from the comments received by male professors. Whereas men are most often praised for their "mastery of the subject matter," women are usually praised for being enthusiastic and approachable. Furthermore, the same negative attributes in men and women may be interpreted differently by students. For example, what may pass as theoretical musings from men often is interpreted as confusion when it comes from women. Because women lack the presumption of competence, they are continuously being challenged, resulting in a hostile "prove it" atmosphere.

Why is it that women law faculty cannot overcome the lingering skepticism about women's competence? Is the problem merely that women cannot seem to shake stereotypes that are produced elsewhere? Attempts simply to deny these stereotypes, with the expectation that they will disappear as more women enter the academy, will be unsuccessful because they fail to recognize the crux of the problem. The presumption that women lack authority is not simply replicated in legal academia, but is actively produced there as well. That is, legal academia constructs a social reality rather than mirroring one constructed elsewhere. The question then becomes, how does legal education reinforce this patriarchal organization?

This paper will first identify common manifestations of gender bias that women law faculty experience. Next, the paper will explore two practices that play a key role in defining the position of women: the construction of law as

5. Women were almost completely excluded from all law schools and from membership in the profession until fairly recently. The percentage of women attending law school was less than 10% until 1971. See Cynthia Fuchs Epstein, Women in Law 53 (2d ed. 1993). In 1967, women constituted only 1.7% of all tenure-track law professors. Id. at 219. In the 1970s, when women were admitted to law school in relatively large numbers for the first time, the legal profession encountered something new: competition for opportunities of all kinds from women, and, in lesser numbers, from persons of color. White males had not encountered this degree of competition with women and people of color prior to this fairly recent era.

6. See infra notes 59-60 and accompanying text.

7. See infra note 18 and accompanying text.

8. See infra notes 39-40 and accompanying text.

9. See infra notes 48-53 and accompanying text.
male and the devaluation and feminization of Legal Research and Writing courses. The first problem is the way we are taught to think about law. Law is constructed as having all the attributes opposite to those commonly associated with women. Law is rational, logical, dispassionate, objective, professional, intimidating, and demanding. Women are defined as lacking all of these qualities. In this way, the presence of women is used to establish what law is not. When the qualities attributed to law are masculinized, women seem ill-suited to the field. In order to be successful in deconstructing the perception of women as unfit for law, it will also be necessary to deconstruct our perception of law itself.

Another practice that reinforces women's role in legal academia is the gendered hierarchy of legal education. It comes as no surprise that at the same time women are pushing their way into the academy, we are also witnessing the feminization of certain skills training. These positions are the most recent additions to the curriculum, and are accorded less prestige, and are—more open to women applicants. Women are currently over-represented in Legal Research and Writing instructor positions, the lower-paid, lower-status jobs. Legal Research and Writing instructors are the archetypical female teachers because they are encouraged to demonstrate traditionally female characteristics: they should be accessible and nurturing to their students, and deferential to other faculty. Thus, the current teaching paradigm reinforces gender stereotypes.

I. THE PRESUMPTION OF COMPETENCE

Although it has been approximately seventy-five years since the first woman was permitted to join a law faculty as a tenure-track professor, women are still affected by their status as tokens, and full participation in the academy remains elusive. In many ways women faculty receive unfair treatment. But what is more problematic are the subtle, and perhaps more
damaging, vestiges of sexism that persist in law schools today. One major issue for women law faculty is the presumption of competence. A recent study reveals that forty-eight percent of all women students and seventy-three percent of minority women students believe that female professors, more than male professors, must prove their competence to their students. Almost fifty-six percent of women faculty in this study believe that students do not assume that all female professors are competent.

A. Student Course Evaluations

Perhaps the one place where this different treatment is most evident is in student course evaluations. Generally, students do not evaluate female professors as positively as they evaluate male professors. Furthermore, the content of these evaluations is different for men and women. These evaluations reveal that women, regardless of any other traits they may possess, are seen as "women" first and foremost, and as such, not well suited to law teaching.

A great deal of anecdotal evidence suggests that women on the whole receive worse student evaluations than men. I confirmed this proposition

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16. Krauskopf, supra note 15, at 313. Minority women faculty face an even greater challenge to their authority. The same study revealed that 81% of female students of color believe that professors of color, regardless of their gender, face a greater burden to prove themselves to their students. Id. at 327. See also Donna Fossum, Women Law Professors, 1980 AM. B. FOUND. RES. J. 903; Elyce H. Zenoff & Kathryn V. Lorio, What We Know, What We Think We Know, and What We Don't Know About Women Law Professors, 25 ARIZ. L. REV. 869, 879 (1983).

17. Overall, women law faculty receive worse evaluations than men from students in their teaching evaluations. Women have spoken and written about this phenomenon recently and there have been a few studies that support this conclusion. See infra note 18. My own study supports this conclusion. Let me be clear that what I am saying is that evaluations of women professors are less positive than those of male professors, not that evaluations of women professors are on the whole negative. They may be quite positive overall, they are just not as positive as men's.

18. See ELUSIVE EQUALITY, supra note 2, at 5 ("Often, students rate women and men differently as teachers because of gender stereotypes and related problems."); id. at 22 ("In assessing the testimony of women law faculty members, the Commission was struck by the frequency of concerns about . . . challenges to women faculty's authority or intellect by hostile students . . . on teacher evaluations"); see also Angel, supra note 13, at 832-33 ("Because there are so few women [law] professors, student reactions to women teachers can be negative."); Banks, supra note 14, at 145 (commenting that students often react negatively to female professors, who may be more likely than male professors to explore nontraditional approaches); Kathleen S. Bean, The Gender Gap in the Law School Classroom—Beyond Survival, 14 VT. L. REV. 23, 35 (1989) (noting that sex bias surfaces in student evaluations); Anita Bernstein, A Letter to a Female Colleague, 68 CHI.-KENT L. REV. 317, 324-25 (1992) (noting that evidence tends to support the claim that students discriminate against women in evaluation questionnaires); Okianer Christian Dark, Just My 'Magination, 10 HARV. BLACKLETTER J. 21, 23-24 (1993) (recalling sexist student evaluations from author's career); Ellen K. Solender, Creative Writing: The Story of a Self-Effacing Feminist Law Professor, 4 AM. U. J. GENDER & L. 249, 254 (1995) (revealing that she received poor student evaluations for her inability to control the classroom); Carl Tobias, Engendering Law Faculties, 44 U. MIAMI L. REV. 1143, 1149 (1990) (students challenge "women faculty's substantive interests, teaching techniques, and credentials"); Zenoff & Lorio, supra note 16, at 879-81 (discussing a study that showed that women law professors at the beginning of their careers at New York University scored noticeably lower on student
by conducting a study of the course evaluations at one law school. I examined all the course evaluations from first year courses from the Spring 1993 semester through the Fall 1995 semester, a total of 40 courses; 32 were taught by men, and 8 were taught by women. I read 2,270 evaluations in all; 1,730 for men, and 540 for women. I have drawn my conclusions from my own findings, conversations with other women professors, and evidence in the literature.

I realize that some people believe that student evaluations are either innocuous or so unhelpful that they are hardly worth reading. Although these evaluations generally do not count for much in terms of tenure decisions, I suspect that the consequences of a set of negative evaluations can be devastating for a new, unsuspecting female faculty member. Furthermore, these evaluations can be used against women in promotion decisions because negative evaluations can be used to affirm preconceived assessments of women faculty. But most importantly, student evaluations, in their candor, can be particularly revealing of how gender bias pervades the law school.

What are women professors criticized for? Women professors face essentially two criticisms. First, they are accused of not being "man" enough, and second, they are accused of not being "woman" enough. Basically, when a woman stands before a classroom in law school she is violating two sets of expectations. Namely, law professors are men, and women do not act in the way law professors are supposed to act. It is dangerous to deviate from either standard too much. In order to succeed, therefore, a woman must walk an impossibly fine line. She must be masculine, but not too masculine. She also must be feminine, but not too feminine. On the one hand, women frequently are criticized for not exerting the proper amount of control over the evaluations than male law professors, and citing social-science research indicating that students in large classes prefer male teachers). It should be noted that negative evaluations come both from male and female students.

Although some research has been done on this topic, the overwhelming evidence comes from women's personal experiences. I see no reason, however, why this anecdotal evidence should not carry the same weight as "cold hard data." Deborah Rhode has suggested that it does. See Rhode, supra note 1, at 58.

The relevant characteristics of this law school are that it is an average-sized, "top-ten" school with an urban campus and a day-time only program. Significantly, at this school, women constitute 44% of the student body, but only 15% of the faculty (excluding clinicians, visiting faculty, and Research and Writing instructors). I doubt that my findings are unique to this school, although they may correspond more closely with schools that have an underrepresentation of women faculty. It would be useful to conduct similar studies at other law schools with similar and different characteristics for the purpose of comparison.

The course evaluations at this school are fairly standard. Students are asked to comment on the strengths and weaknesses of the course and the quality of instruction.

I deliberately chose not to look at evaluations from seminars, clinics, Legal Research and Writing courses, courses taught by adjuncts, or co-taught courses. Although I was aware of the gender of the professor, I was not aware of the identity or even the gender of the student authors.

A colleague informs me that in at least one law school, senior women faculty members have formed a support group to help new women faculty read through their course evaluations.

Where the evaluations differ from faculty opinion they are useless, but where they support these notions they are used as evidence. Angel, supra note 13, at 832. In this way student evaluations can make or break a marginal candidate for tenure.
classroom. Specifically, students complain that women professors let other students speak too much and let the discussion get off track. Women professors are also criticized for being unprepared and disorganized. Sometimes they are criticized as being unclear and confusing, or even confused. In addition, students are dissatisfied with women professors' ability to be tough, demanding, and challenging. They are seen as lacking objectivity and being too political or having a strong agenda. The harshest

24. In my sample, this comment appeared often on the evaluations of women professors, but once only on the evaluations of male professors. For a comparison of the number of times various comments appeared on evaluations of male and female professors, see the following table.

Comparison of the Frequency of Particular Comments on the Evaluations of Male and Female Law Professors

The data on which this paper was in part based consists of student course evaluations from first-year courses over a three-year period at a particular law school. My review of these evaluations revealed that certain words and comments were significantly more likely to appear on men’s evaluations of male professors than on evaluations of female professors, and vice versa. Simple comparisons of absolute numbers of words are, however, misleading because there are far more male professors teaching in the first year. In an attempt to give readers a realistic sense of how many times more particular comments were likely to appear on evaluations of male and female professors, I prepared the following table in which I multiplied the numbers in the women’s column by 3.2, a multiple that corresponds to the disparity in the number of male and female professors, and consequently, the number of evaluations for each.

<table>
<thead>
<tr>
<th>Comments Over-represented on the Evaluations of Female Professors:</th>
<th>9 Profs</th>
<th>6 Profs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not suited to large class/lacks control</td>
<td>71</td>
<td>1</td>
</tr>
<tr>
<td>Not knowledgeable/unprepared</td>
<td>20</td>
<td>2</td>
</tr>
<tr>
<td>Unprofessional</td>
<td>13</td>
<td>0</td>
</tr>
<tr>
<td>Defensive</td>
<td>16</td>
<td>0</td>
</tr>
<tr>
<td>Biased/has agenda</td>
<td>16</td>
<td>0</td>
</tr>
<tr>
<td>Patient/supportive</td>
<td>36</td>
<td>18</td>
</tr>
<tr>
<td>Approachable/accessible/available</td>
<td>87</td>
<td>54</td>
</tr>
<tr>
<td>Congenial/caring</td>
<td>103</td>
<td>74</td>
</tr>
<tr>
<td>Enthusiastic</td>
<td>39</td>
<td>17</td>
</tr>
<tr>
<td>Referred to by first name</td>
<td>7</td>
<td>0</td>
</tr>
<tr>
<td>Hostile atmosphere</td>
<td>13</td>
<td>6</td>
</tr>
<tr>
<td>Harsh/acerbic/rude</td>
<td>26</td>
<td>12</td>
</tr>
<tr>
<td>Disrespectful of students/not empathetic/not encouraging</td>
<td>39</td>
<td>9</td>
</tr>
<tr>
<td>Lacks a sense of humor</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Too tough/strict/stern</td>
<td>10</td>
<td>0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Comments Over-represented on the Evaluations of Male Professors:</th>
<th>9 Profs</th>
<th>6 Profs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Knowledgeable</td>
<td>96</td>
<td>157</td>
</tr>
<tr>
<td>Demanding/challenging/rigorous</td>
<td>32</td>
<td>42</td>
</tr>
<tr>
<td>Logical/analytical</td>
<td>0</td>
<td>9</td>
</tr>
<tr>
<td>Animated, dynamic lecturer/entertaining/good stories</td>
<td>19</td>
<td>129</td>
</tr>
<tr>
<td>Good sense of humor</td>
<td>28</td>
<td>133</td>
</tr>
<tr>
<td>Professional</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Respectful of students</td>
<td>19</td>
<td>35</td>
</tr>
</tbody>
</table>

25. One student wrote on an evaluation of a woman professor: “The students took control of the class.”
26. This comment appeared ten times more often on evaluations of female professors.
27. Male professors were praised twice as often for being challenging.
28. This comment appeared often on evaluations of female professors, but not once on an evaluation of a male professor.
criticisms women professors receive are that they are “inappropriate” or “unprofessional.” 29

Yet on the other hand, women professors are criticized for being too harsh, curt, or condescending to students. 30 They are criticized for not being empathetic or supportive enough. 31 Women are also criticized for being inflexible and lacking a sense of humor. 32 And they are criticized for being too strict or for being “task-masters.” 33 Although any of these criticisms could turn up on a man’s evaluation, they were over-represented on women’s evaluations. 34

One could react to these comments by assuming that they must be true. And in a sense they are true—students are truly perceiving these flaws. But instead these comments elucidate the fact that a woman can be criticized both for being too powerless as a woman, and for being too forceful for a woman. For instance, what is seen as assertive in a man is seen as aggressive in a woman. And even aggressiveness, which may be admired in men, is penalized in women. 35 Rather, women should be deferential and they should smile. They should not tell people what they know. And they should never make a student look stupid. Women are expected to be nurturing and are criticized when they are not. 36 They should be attractive but not too pretty, agreeable but not too accommodating, assertive but not too aggressive, and knowledgeable but not too erudite. Women, in order to succeed, have to figure out a way around the mismatch between the ideal law professor and the ideal woman.

This is not to say that women law professors are uniformly criticized in student evaluations. In fact, most evaluations of women faculty are positive. 37 They are just not as positive as male faculty evaluations on the whole. But perhaps it is most interesting that, even when they are positive, women’s evaluations look different from men’s evaluations. 38 First, women are praised for entirely different attributes. Women professors are most often praised for being approachable, accessible, helpful, interested, concerned/committed,
enthusiastic, and creating a congenial atmosphere. Men, in contrast, are most often praised for being knowledgeable and "masters of their subject matter." So even when women are successful with students, they are not seen as authorities on their subject, but are seen as "nice." In addition, unlike women, men are praised for being demanding, rigorous, and objective.

Moreover, some patterns of comments on evaluations of women professors appear on evaluations of male professors rarely, if at all. For example, women receive comments about their appearance in course evaluations. They also receive advice from students which is personally directed to them. Women, unlike their male counter-parts, are often referred to by their first name or as "Mrs. X."

Many believe that students may hold women professors to a higher standard than male professors. For instance, I saw the same factual comment on evaluations of both a male and female professor, followed by entirely different editorial gloss. On the man's evaluation a student commented: "He speaks too fast—it's hard for him to come down to our level." Compare that with what I read on a woman's evaluation: "She speaks too quickly. She must be nervous." What may pass as complex thoughts for men may be regarded as confusion when a woman is being evaluated.

Many women are not shocked at the end of the semester when they read these kinds of comments because the students' conduct in class is indicative

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39. Women professors were two times more likely to receive these types of comments. Male professors were less likely to be praised for being accessible, but when they were, the word used was "approachable." Whereas when women were praised they were praised for being "accessible." For instance, one student wrote, "She's a professor who you feel very comfortable in approaching her [sic]. I feel I could go to her for advice about almost anything."

40. Male professors were two times more likely to receive this type of comment. I never saw the phrase "master of the subject matter" on a woman professor's evaluation. Whereas one student wrote: "Professor X clearly knows his stuff to say the least. I always felt complete confidence in his command of the material." A woman was more like to get this type of comment: "She understands the material." Nevertheless, each of us may draw our own conclusions about which of these is a higher compliment, being described as helpful and interested, or being described as knowledgeable. I note here only that the comments are different in men's and women's evaluations.

41. Male professors were twice as likely to be praised for being challenging. The word "rigorous" only showed up once in 540 evaluations of women. Significantly, the other adjectives that regularly appeared on evaluations of male professors were "stern," "rational," and "logical."

42. The only comments of this type that I found were: "bring back the red jacket" and "wear soft-soled shoes because your prancing is distracting." But I did not find a single reference made to men's looks or attire. Comments about women's appearance, however, can be much more demeaning, sometimes referring to women's bodies or "rating" how they look. For instance, one woman received this comment: "I enjoyed watching her jiggle when she wrote on the chalkboard." ELUSIVE EQUALITY, supra note 2, at 4.

43. This comment is representative: "[first name], you are an extremely nice person, but your teaching style tends to allow too many superfluous comments to drain class time—be more aggressive." See also Dark, supra note 18, at 23 (quoting similar student comments).

44. In the 1,730 evaluations that I examined, men were never referred to by their first name.

45. Rhode, supra note 4, at 6.

46. Id. Other examples of students applying a lower standard to men include: "I think any problems I have with Torts come from the lack of coherence in the subject itself, not from class," or "I can tell he'd be better in courses more suited to his interests."
of their attitude towards having a woman professor. Many women report that the classroom atmosphere is often hostile and students are disrespectful. Some have called it a “prove-it” class dynamic where women are required to prove that they are qualified to teach law. Women are constantly being challenged, mostly by male students. Male colleagues who have observed women in the classroom have been most struck by this atmosphere. Still, many men and women deny the fact that women professors face a more challenging classroom audience; those who complain may even be accused of having a vivid imagination. But the reality is that some students are hostile to having a woman in front of the classroom.

One woman professor has referred to this class dynamic as the “gender gap,” meaning that there is a divide between what students expect a woman professor to be, and what she is. This gender gap makes it more difficult for women to be effective as teachers because students are too distracted by their own gender bias to learn. The irony is that students who are aware that

47. Women faculty often receive gratuitous oral evaluations during the course of the semester. For example, in a recent article, one woman professor recounts an incident in which she was informed that one of her students considered her teaching “pretty good, [considering that] she probably wasn’t qualified” to teach. Cheryl I. Harris, Law Professors and the Academy: Of Poets and Kings, 68 CHI.-KENT L. REV. 331, 346 (1992). See also Dark, supra note 18, at 25-26.

48. See, e.g., ELUSIVE EQUALITY, supra note 2, at 2-26; Banks, supra note 14, at 145; Bean, supra note 18, at 29; Krauskopf, supra note 15, at 315, 330 (finding that in study of Ohio law schools 38% of women faculty reported experiencing student hostility, while only 20% of male faculty experienced student hostility); see also Ken Myers, Bias Against Women Lives On, Hearings and ABA Study Show, NAT’L L.J., Mar. 4, 1996, at A16.

49. ELUSIVE EQUALITY, supra note 2, at 3.

50. Sylvia A. Law, professor of law at New York University, concluded that “[t]he young men who don’t like the idea of a female authority figure and do what they can to undermine that authority. . . . They sit in the back and create that little ‘cackle’ section. Almost every female teacher has experienced that. It doesn’t take that many to poison the atmosphere in a large class.” Myers, supra note 48, at A16.

51. See Bean, supra note 18, at 31 (describing a male colleague’s shocked reaction to the level of hostility in a class that he observed); Bevier, As Law Professor: The Practically Perfect Job, in WOMEN LAWYERS: PERSPECTIVES ON SUCCESS 217, 223 (E. Couric ed., 1984). See also ELIZABETH ASHBURN & ELENA COHEN, THE INTEGRATION OF WOMEN INTO LAW FACULTIES 137 (1980). Because class observations are normally part of tenure review, this class dynamic may count against women if male observers are struck by it and do not know how to account for it.

52. See Dark, supra note 18, passim. Many women would also obviously not want to confide in male colleagues that they were having any kind of difficulty in the classroom.

53. In addition to poor course evaluations and classroom challenges, hostility toward women faculty is often expressed through vicious, often anonymous personal attacks. The most notorious example is the incident at Harvard Law School where members of the law review parodied Professor Mary Joe Frug’s posthumously published article after she was brutally murdered. The article, “A Postmodern Feminist Legal Manifesto,” was parodied as “A Manifesto of Post-Mortem Legal Feminism” by the Law “Revue.” See Linda Matchan, Harvard Law Students’ Parody of Slain Professor’s Text Decried, BOSTON GLOBE, Apr. 13, 1992, at 18. The point of their joke was that her article was published because of her death, not her scholarship. More recently, the Federalist Society at Rutgers-Newark Law School parodied a Women’s Day symposium with sexist and racist stereotypes. For example, a discussion of Latin American women’s literature was referred to as the “Who has time to read when you’re always pregnant?” lecture. See Daniel Wise, Symposium Program Parody Spurs Protest at Rutgers Law School: Dean Claims First Amendment Bars Disciplinary Action Against Students, N.Y. L.J., Apr. 30, 1993, at 1. Sometimes course evaluations contain hate speech. One woman professor told me that she was called a “femi-nazi” in one of her evaluations.

54. Bean, supra note 18, at 27. This may be what one student was experiencing when he or she wrote “better than I expected” on a woman professor’s course evaluation.
they are not learning as effectively as they should may then blame the woman professor. In order to deal with this dynamic, women professors must expend extraordinary time and energy in and out of class. A woman professor can *never* make a mistake. For instance, often women will spend much more time than men on class preparation in order to anticipate every possible line of attack they may face in class.55

Furthermore, this gender gap may cause students to be hypersensitive to any mention of gender in the course. To illustrate, on one woman professor's course evaluation, in response to the question of what prerequisites were needed, one student wrote, "sex change (if you're a man)." Another woman professor told me that in a course in which she assigned the same amount of feminist readings as law and economics readings, she was criticized in her course evaluations for over-emphasizing feminist issues. These comments reveal that students are preoccupied with the gender of their professor and that they see everything through this filter.56

If students are having this much trouble seeing women as law professors, it is safe to assume that some male faculty members will also have difficulty.57 Male professors may harbor the same skepticism over women's ability to manage a classroom and they also may impose the same high level of scrutiny on their women colleagues' performance. These prejudices can carry over into hiring and promotion decisions.58 This gender bias has been documented in other university departments. One experiment, by the Modern Languages Association (MLA), revealed that proposals for conference papers were much more likely to be accepted if the author was male.59 Another study at a psychology department found that resumes indicating that the applicant was male were much more likely to be highly rated for hiring purposes than identical resumes indicating that the applicant was female.60 “Conscious,

55. See Bean, *supra* note 18, at 45 n.62. Women on the whole spend more time than men on class preparation. Zenoff & Lorio, *supra* note 16, at 884. See also Ashburn & Cohen, *supra* note 50, at 160. This is time taken away from their scholarship; hence the need to compensate for gender may hurt women in the long run in terms of tenure.

56. Syracuse Law Professor Leslie Bender wonders, “Why does my teaching get labeled political and biased when I discuss issues of particular concern to women, while my male colleagues are perceived as objective or neutral, particularly on gender issues . . . .” DORRAINE DUSKY, *STILL UNEQUAL: THE SHAMEFUL TRUTH ABOUT WOMEN AND JUSTICE IN AMERICA* 113 (1996) (quoting Professor Leslie Bender). Likewise, professors of color are often criticized for too much of an emphasis on race.

57. It may even be more likely because there were hardly any women law students, let alone women law faculty, when many of the current law professors were students. See *supra* note 51.


unconscious, vicious or benign,” \(^{61}\) these decisions are affected by negative stereotypes of women.

B. How Do Women Appear?

What do you think of when you think of a law professor? What is the image that your mind conjures up? Is it a white male? As recently as 1973, a study of law professors revealed that ninety-eight percent of law professors were white and ninety-five percent were male. \(^{62}\) Not much has changed. The most recent study indicates that, in non-minority operated schools, ninety-six percent of law professors are white and eighty percent are male. \(^{63}\) More specifically, the prevalent image of a law professor is of a white-haired, bespectacled man wearing a gray flannel suit. He stands at the podium equipped with only a casebook and a seating chart. He is stern, never smiling, and he is generally dissatisfied with the students’ intellectual ability. The paradigmatic law professor is still Professor Kingsfield from *The Paper Chase*. \(^{64}\) Everyone knows Kingsfield, even students entering law school today who may not even have been born when the movie was released. \(^{65}\) But the book, movie, and its spin-off television series are not the only source of this image. Scott Turow’s *One L*, whose law professor characters reproduce these stodgy traits, is also quite nearly required reading for law school-bound persons. \(^{66}\) More importantly, these characters were not drawn from a creative genius, but from life. \(^{67}\) Many law schools today are draped in portraits of imposing white male figures in serious suits who are former students and professors. And many law professors continue in that style today. But most significantly, there is a lore of Kingsfield that still pervades the law school experience.

Women, it is safe to say, do not resemble Professor Kingsfield.

A young woman who was newly hired onto the faculty when I was a law student was forever getting the same comment: “You don’t look like a law

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\(^{61}\) Bean, *supra* note 18, at 29.


\(^{63}\) Chused, *supra* note 3, at 538. One woman law professor I spoke with found this lack of change in twenty years “not surprising.” She said that “women had a standing start—no momentum whatsoever—25 years ago. The inertia of any institution is a force to be reckoned with.”


\(^{65}\) *THE PAPER CHASE* (Twentieth Century Fox 1972), based on the novel, was released in 1972. Today’s entering law students were born as late as 1974.


\(^{67}\) It is rumored that the character of Professor Kingsfield is based on Harvard Professor W. Barton Leach. Jeffrey Stempel, *All Stressed Up But Not Sure Where To Go*, 55 BROOKLYN L. REV. 165, 171 n.19 (1989) (book review).
professor.\textsuperscript{68} She always responded in the same way. With a deadpan face she would say, "Why not?" I think this tended to tip off the speaker to the fact that she was not flattered because invariably he or she would squirm and say, "uh, maybe, uh, because you look so young?"\textsuperscript{69}—thinking that there must be a compliment in there somewhere. I could not quite tell what annoyed her so much about this comment—that is, until I started teaching.

Now I know that this comment is one of the most subtle ways of undermining my credibility. It lets me know that the way I appear cancels out all the authority I had been working so hard to cultivate, and that, no matter what I present, I may be perceived as something else.

In my first semester teaching, a senior male colleague came to me to inform me about a problem I had. It seems a student of mine had just received back from me his first graded paper in law school and his grade was lower than he had expected. He approached this professor, as a reasonable man, and asked him to look at a clean copy of the paper and then look at my comments to see if they were "justified." Unfortunately, this colleague agreed to review my evaluation of my assignment. In the end he told the student that he would have made the same comments that I had made. The student responded that, in that case, he would not be upset because he would have expected such comments from this professor, but that this type of criticism was unexpected from me because I appeared to be so nice. So the professor let me know that I had a problem. As he saw it, I either needed to in fact be nice, or, alternatively, appear not to be nice. I explained to him that I had already decided that it was not my goal to be nice, and I wondered why students would draw the contrary conclusion when my actions had not betrayed my intentions. Then he commented on my appearance. Noting that I was wearing a sweater, he told me that as a young woman I could not afford to wear anything "soft." He suggested instead that I wear dark, "severe-looking" suit jackets.

What troubled me most about this incident was that it made clear that as a woman I had to operate under a more constricting set of rules.\textsuperscript{70} I had to compensate for the fact that I was a woman. It confirmed what I suspected to be true: that how I looked affected how I was evaluated. Far from being annoyed at this male colleague, I was impressed that he understood this.

Sometimes, when you think you have been careful, these comments take you by surprise. Sometimes, when you have been trying to walk that treacherous tightrope, just when you think you have made it, you get a comment that totally diminishes you. Recently, on a day when I was wearing grey flannel pants and a black suit jacket, one of my male students passed me in the hallway and said, "Hey, nice little outfit!" The effect of this type of

\textsuperscript{68} Another frequent comment that new women faculty receive is, "Whose office do you work in?" This suggests that they look more like clerical staff than faculty.

\textsuperscript{69} There were in fact younger men on the faculty, but I doubt they ever got this comment.

\textsuperscript{70} Compare this to the automatic deference granted to male faculty. As one woman law professor analyzed it: "You can relax when people are already treating you like God."
comment is that you realize that people cannot get over your appearance to see your capabilities.\textsuperscript{71}

Women litigators report similar experiences. For instance, while interviewing a jury after a mock trial exercise to get some feedback on her approach, one woman litigator received this comment from one of the female "jurors": "I have just one thing to tell you: I love your shoes."\textsuperscript{72} Even a male law professor admitted that, in the law school hiring process, "[t]he number one comment here when male faculty members review the file is 'What does she look like?'"\textsuperscript{73}

Is it wrong to consider the importance placed on appearance? Is it just silliness? I think not.\textsuperscript{74} It is an undeniable fact that women still live under constricting rules governing how they should appear, and it is a repressive regime. As a society we place unusual emphasis on appearance. Research has shown that appearance is important, especially in a profession where one performs in front of an audience.\textsuperscript{75} Behavioral scientists have shown that the impressions people make on one another are based sixty percent on how one looks, thirty-three percent on how one speaks, and only seven percent on the content of what one actually says.\textsuperscript{76} Furthermore, these assessments are made as soon as a woman enters the classroom, or courtroom, for the first time. When the person who enters is a man, a certain authority is immediately granted. When it is a woman, this authority may be reserved.\textsuperscript{77} It is difficult to shake these first impressions. For these reasons many female litigators are often concerned about the femininity and masculinity of their appearance.\textsuperscript{78}

\textsuperscript{71} It may also be that the effect of these types of comments is to reverse the student faculty hierarchy to reflect gender and race hierarchies. See Donna E. Young, Two Steps Removed: The Paradox of Diversity Discourse for Women of Color in Law Teaching, 11 BERKELEY WOMEN'S L.J. 270, 276 (1996).

\textsuperscript{72} Andrea Higbie, There Will Be a Brief Recess While We Check Our Wardrobes, N.Y. TIMES, Nov. 25, 1994, at B16. Another example is when a judge said to another woman litigator: "How can I deny your motion when you have such a pretty smile?" Nancy Blodgett, "I Don't Think That Ladies Should Be Lawyers," A.B.A. J., Dec. 1, 1986, at 48, 52. Moot court judges commenting on women students' appearance is a common occurrence. Students are left feeling like the judges were so distracted by their womanly appearance that they could not fairly evaluate them. Mairi N. Morrison, May It Please Whose Court?: How Moot Court Perpetuates Gender Bias in the "Real World" of Practice, 6 UCLA WOMEN'S L.J. 49 (1995); Worden, supra note 14, at 1148. That anyone would be "distracted" by a woman's appearance suggests strongly that women are being judged against a male norm. Men's appearance is seen as neutral while women's appearance is seen as inappropriate. We might ask ourselves, to whose image are we being asked to conform? What does dressing "professionally" really mean?

\textsuperscript{73} EPSTEIN, supra note 5, at 231.

\textsuperscript{74} "Hair seems to be such a little thing. Yet it is the little things, the small everyday realities of life, that reveal the deepest meanings and values of a culture, give legal theory its grounding, and test its legitimacy." Paulette M. Caldwell, A Hair Piece: Perspectives on the Intersection of Race and Gender, 1991 DUKE L.J. 365, 370.

\textsuperscript{75} This is the case for both lawyers and academics.

\textsuperscript{76} Higbie, supra note 72. Other studies have shown that audiences remember more of what a man says than what a woman says. Merritt & Reskin, supra note 3, at 2357. This suggests that increased attention to a woman's appearance detracts from the attention given to her.

\textsuperscript{77} See, e.g., Merritt & Reskin, supra note 3, at 2357 (discussing studies that show that discussion groups are more likely to accept proposals proffered by men than identically worded suggestions made by women).

\textsuperscript{78} See DUSKY, supra note 56, at 283; Blodgett, supra note 72, at 52; Higbie, supra note 72, at B16. Recall the numerous discussions about District Attorney Marcia Clark's hair style during the O.J. Simpson
Because for women there is a relationship between how we appear and how we are treated, the elusive dualism of "professional yet feminine" is still pursued.79

These rules become further complicated for professional women entering a male-dominated institution. In this endeavor, women are in a double bind.80 The first rule is that the image of a woman is inconsistent with the image of professional authority.81 The second rule is that women who are not feminine enough will be regarded as women who are trying (unsuccessfully) to be men.82 The question is, which approach emphasizes your difference less—trying to be the ideal woman, or trying to be the ideal professional? It is a no-win situation because the standard against which we are being compared is a male norm.

The articulated requirements for tenure are scholarship, teaching, and service, but the unarticulated requirement may be just as important. That

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murder trial. Like women litigators, many women law professors agonize over their appearance. One woman law professor revealed: "I am conscious of being watched intensely—a woman in front of the law classroom is rare and I sense (or project) that my most salient characteristic to the observer is not that I am a teacher but a woman. . . . I become conscious of what I am wearing, my personal preference for casual, comfortable clothes in which I think and feel better and my need for legitimacy—to appear as a 'teacher,' distinguishing myself from students by suits and dresses." Carrie Menkel-Meadow, Women as Law Teachers: Toward the "Feminization of Legal Education, in HUMANISTIC EDUCATION IN LAW: ESSAYS ON THE APPLICATION OF A HUMANISTIC PERSPECTIVE TO LAW TEACHING 16, 21-22 (1981). The self-conscious way we conduct ourselves goes beyond being only self-conscious about how we dress. Other considerations include how to address people, how to be addressed, what language to use.

79. John Berger explored the relationship between how women appear and their designated position in society:

According to usage and conventions which are at last being questioned but have by no means been overcome, the social presence of a woman is different in kind from that of a man. A man's presence is dependent upon the promise of power which he embodies. . . . A man's presence suggests what he is capable of . . . . By contrast, a woman's presence expresses her own attitude to herself, and defines what can and cannot be done to her. Her presence is manifest in her gestures, voice, opinions, expressions, clothes, [and] chosen surroundings . . . . [M]en act and women appear. Men look at women. Women watch themselves being looked at. This determines not only most relations between men and women but also the relation of women to themselves. The surveyor of woman in herself is male; the surveyed is female. Thus she turns herself into an object—and most particularly an object of vision: a sight.

JOHN BERGER, WAYS OF SEEING 45-47 (1972) (emphasis omitted).

80. Naomi Wolf observed that, because employment discrimination cases give women divergent, contradictory messages, women need a lawyer just to get dressed in the morning. "Legally," she jokes, "women don't have a thing to wear." NAOMI WOLF, THE BEAUTY MYTH: HOW IMAGES OF BEAUTY ARE USED AGAINST WOMEN 42 (1991) (emphasis omitted). For example, Policewoman Nancy Fahdl was fired because she looked too much like a lady. Id. at 39. Likewise, in Andre v. Bendix Corp., 841 F.2d 172 (7th Cir. 1988), a woman was fired because she was told it was inappropriate for a supervisor to dress like a woman. Wolf claims: "working women are tense to the point of insanity about their appearance." WOLF, supra, at 42.

81. See Caldwell, supra note 74, at 390-93 (arguing that image of black woman is incompatible with image of conservative professionalism).

82. For example, in Price Waterhouse v. Hopkins, 490 U.S. 228 (1989), a professional woman, an accountant up for partnership, was told by her superiors that she should "walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, . . . wear jewelry" and go to "charm school." Id. at 235 (quoting evaluations of partners).
requirement is the ability to fit in. For a woman in a male dominated environment, this is tough. The fact that women are seen as women first and foremost is just one of the consequences of being a token. Tokens are more visible and are constantly being reminded of their difference from the dominant group. Tokens may therefore be less comfortable acting like themselves and be more inclined to imitate the norm. My hope is that when women constitute 50% of the academy, we can wear what we want and teach how we want, and it will not be an issue. We need to present a myriad of models of women faculty. With more women faculty we will necessarily have a plethora of styles. Studies show that the vestiges of sexism appear to be less pronounced at law schools with more women faculty.

II. THE PRODUCTION OF GENDER DIFFERENCE IN LAW SCHOOL

Generally, women are the subject of negative stereotypes—in law practice, law teaching, other branches of the academy, and in the “real world.” The question is, does the law school present a more biased environment, or is gender bias no different here than anywhere else? More practically, how can

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83. See Angel, supra note 13, at 830; Solender, supra note 18, at 253.
84. “Homosocial reproduction” is a selection process in which managers select individuals who are socially similar to themselves for hiring and promotion. See Paula Dressel et al., The Dynamics of Homosocial Reproduction in Academic Institutions, 2 J. GENDER & L. 37, 41 n.25 (1994); see also ROSABETH MOSS KANTER, MEN AND WOMEN OF THE CORPORATION 48 (1977).
85. I have often heard women lawyers and women professors say something to the effect of: I am just a lawyer/professor who happens to be a woman; my gender is not an issue. See Kay, supra note 12, at 14. I admire their optimism, but I fear that not all audiences so perceive them. Their clients/colleagues/students may see them instead as women who just happen to be trying to be lawyers/professors.
86. The term “token” is used to describe groups that comprise 20% or less of the total population. Zenoff & Lorio, supra note 16, at 882; see also Rosabeth Moss Kanter, Reflections on Women and the Legal Profession: A Sociological Perspective, 1 HARV. WOMEN’S L.J. 1, 10 (1978).
87. For instance, I have noticed that women faculty are less likely to speak up at faculty colloquia. As a result of their small numbers, speaking up may be seen as speaking for the minority group that they represent, something that many women are not willing to do.
88. When I ask women students how they selected a law firm for employment, often they tell me about what they saw when they visited the firms. When they saw more than a few women, and when those women were wearing different types of dress, they felt welcome or comfortable there. When they saw only few women and when those women were all wearing navy blue suits with skirts and “soft bow ties,” they felt unwelcome. See Worden, supra note 14, at 1148-49 (demonstrating that soft bow tie is feminine professional uniform).
89. As one woman faculty member told me, although having exemplary women in front of the classroom may be crucial in order to prove that women are capable of succeeding in that role, having mediocre women in front of the classroom may be a better objective. It is important to visibly demonstrate that women have the right to claim that role as well as men. Women tokens face the dilemma that their failures become generalized, but their successes are regarded as exceptions.
90. David Lauter, Gender Gap Gets Wider on Law Faculties; Barriers Remain for Women, NAT'L L.J., Jan. 9, 1984, at 1; see also Chused, supra note 3, at 550 (finding that law schools with a low proportion of women on their tenured faculty grant tenure to women at lower rates than to men, whereas law schools with higher percentages of women on their faculties grant tenure to women at higher rates than to men).
we eradicate negative stereotypes of women in law school when the world is full of them?

First of all, I think that most women in law school would say that the bias that they experience is more pronounced than in many other places. We need to explore why this is the case. I argue that the problem is not simply that a negative idea of "woman" is carried over into the law school. Instead, the problem is that a negative construction of "woman" is actively being produced here, so that law school is not a neutral environment which merely reflects meaning produced elsewhere, but is itself a system that produces meaning. Law school plays an important role in producing a definition of "woman." The challenge to women in law schools, then, is not to deny the representation of women reflected in law school, but to identify how those definitions of woman are produced.

In legal education, as in other signifying systems, difference is created and turned into a disadvantage. Law school is not a neutral site. In law school women are positioned and portrayed with a particular conception of what "woman" means, and this designation is devalued. Some have sought to explore how law school secures patriarchal organization. I want to take this project one step further. I think that we need to look at law school as constructing a social reality, not just mirroring one constructed elsewhere. We need to determine how these images of women develop and why they persist. This is the first step in changing negative stereotypes.

Although this analysis could entail an examination of teaching materials, curricula, etc., I will examine just two practices that I believe play a major role in the production of "woman" in law school. The first is the promotion of the idea that the law is male. The second is the gendering of the hierarchy of instruction and teaching methods that has accompanied the feminization of Legal Research and Writing instruction. These two practices enhance gender difference in law school and convert it into a disadvantage.

A. Law is Male?

Professor Frances Olsen has written that "[j]ustice may be depicted as a woman, but, according to the dominant ideology, law is male, not female."
We think of law as rational, objective, abstract, logical/analytical, and rigorous. These are the characteristics more often attributed to men than to women. Women are often seen as the mirror opposite: irrational, subjective, contextual, intuitive, flexible, and compassionate. A case in which Myra Bradwell tried unsuccessfully to become the first woman admitted to the bar, declared that women, because they are delicate and timid biologically, are unfit for the rude world of law practice. Women are delicate and law is rude. Thus the dichotomies of law/not law and male/not male yield an opposition between law and female. We need one to tell us what the other is not. Although we might like to believe that the reasoning in Bradwell is a relic of the past, the truth is that this logic is alive and well in students' course evaluations.

To illustrate this point in the classroom, I divided a class of doctoral students enrolled in a seminar on legal education into two groups and gave each group written instructions so that one group would not know what the other was doing. The first group was asked to develop a list of adjectives that describe the characteristics generally attributed to the law. The second group was asked to develop a list of adjectives that describe the characteristics generally attributed to women. The groups came up with the following lists which I put on the chalkboard: Women are “nurturing,” “patient,” “helpful,” “sensitive,” “lenient,” “emotional,” “irrational,” “aesthetically pleasing,” “gossipy,” and “approachable.” Law is “logical,” “hierarchical,” “result-oriented,” “professional,” “impartial,” “judgmental,” “prestigious,” “normative,” and “dispassionate.” I then compared these lists of words to the lists of recurring words I found in the course evaluations describing men and women professors. There was a remarkable agreement between the list of words describing the law and the words students used in evaluating male law

95. Bradwell v. Illinois, 96 a case in which Myra Bradwell tried unsuccessfully to become the first woman admitted to the bar, declared that women, because they are delicate and timid biologically, are unfit for the rude world of law practice. Women are delicate and law is rude. Thus the dichotomies of law/not law and male/not male yield an opposition between law and female. We need one to tell us what the other is not. 97 Although we might like to believe that the reasoning in Bradwell is a relic of the past, the truth is that this logic is alive and well in students' course evaluations.

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95. See Bean, supra note 18, at 23-24; Menkel-Meadow, supra note 78, at 17-18; Worden, supra note 14, at 1146.
96. 83 U.S. 130 (1872).
97. According to feminist film theory, the image of ‘woman’ stands in patriarchal culture as the signifier of the male other. Women are the bearers and not the makers of meaning. Laura Mulvey, Visual Pleasure and Narrative Cinema, in ART AFTER MODERNISM: RETHINKING REPRESENTATION 361, 362 (Brian Wallis ed., 1984).
98. This exercise is an elaboration of an exercise done by Professor Carrie Menkel-Meadow. She asked her students to make a list of characteristics attributed to each of the genders and to legal education. She concluded that legal education was marked by stereotypic notions of masculinity. Menkel-Meadow, supra note 78, at 39. My group of students was evenly divided among genders.
99. The Bem Sex-Role Inventory (BSRI), the most frequently used measure in sex-role research, lists the following as qualities coded as feminine: affectionate, cheerful, childlike, compassionate, flatterable, gentle, gullible, loyal, sensitive, shy, soft spoken, sympathetic, tender, understanding, warm, and yielding. See Sandra Lipsitz Bem, The Measurement of Psychological Androgyny, 42 J. CONSULTING & CLINICAL PSYCHOL. 155, 156-57 (1974).
professors. Likewise, the lists of words describing "women" closely resembled the words students used in evaluating women law professors.\footnote{100}

Thus, the men seemed better suited to the position of law professor. In their evaluations, male law professors were described as "rational," "logical," "stern," "demanding," "arrogant," "condescending," "intimidating," "bad listener," "master of the subject matter," and "knowledgeable." In contrast, the evaluations of female law professors described them as "lacking in objectivity," "unprofessional," "approachable," "helpful," "unqualified," "inappropriate," "not tough," "interested," "concerned," "created a congenial atmosphere," "enthusiastic," and "unprepared." Perhaps the more important observation, therefore, is that the words that students used to describe women professors are the antonyms of the words they used to describe law. Likewise, the words that they used to describe male professors are antonyms of the words they used to describe women generally.

In another classroom exercise, I asked the same group of students to make two lists of adjectives: one describing the law professor from whom they learned the most, and another describing the law professor for whom they worked the hardest. The adjectives chosen to describe the professor for whom they learned the most closely resembled the adjectives used to describe women faculty. The recurring words used were: "committed," "accessible," "enthusiastic," "caring," "unpretentious," "respectful of students," "energetic," "warm," "a good listener," and "offered a new perspective." In contrast, the words describing the professor for whom students worked the hardest tracked the words describing male faculty. Here the recurring words were: "earnest," "theatrical," "good stories," "learned," "rigorous," "brilliant," "demanding," "an expert," and "tough." Although we do not know the gender of the individuals described, we see that the "female" attributes are not inconsistent with good teaching.

Nevertheless, it seems clear that students expect a law professor to be male. They come to law school expecting to get Professor Kingsfield.\footnote{101} When they get a woman instead, they feel cheated. Law and male have become so firmly linked in their minds that being male is seen as a functionally relevant criterion for being a law professor.\footnote{102} Therefore students find women to be necessarily inferior.

It is vital that we not allow our analysis of this problem to slip into essentialist reasoning. It is not that only men have the characteristics appropriate for law. Instead, it is that men have infused the law with the traits

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\cite{100} Thus women law professors are seen as women first and foremost. They are therefore expected to behave in particular ways. This is the "ease of gender typing." Frug, supra note 93, at 1066.
\cite{101} Numerous comments from first year law students lead me to believe that students come to law school expecting a traditional hazing experience—they expect the "male" law.
\cite{102} See Bean, supra note 18, at 27-28. See also Mary Anne C. Case, Disaggregating Gender from Sex and Sexual Orientation: The Effeminate Man in the Law and Feminist Jurisprudence, 105 YALE L.J. 1 (1995) (explaining how institutions become gender-typed and how we devalue whatever is associated with feminine). \end{flushright}
that they have privileged. It is not that males are most like law, but that law is most like them.\(^{103}\)

Surely the work done by Legal Realists and Critical Legal Studies theorists (if not the Feminist Legal Theorists and Critical Race Theorists) has demonstrated that law does not have an immutable essence.\(^{104}\) Instead law is a social construction that can be manipulated by the dominant group. Law and the law school are institutions that have been created by and for men. As law has been framed by men, it necessarily reflects their experiences. The value system embodied in law—such as objectivity over subjectivity, abstraction over contextualization, analytic reasoning over intuitive reasoning—are not natural or inherent in law, but are instead a system of preferences—the preferences of the dominant group. Furthermore, law favors precedent—it stabilizes and reflects the status quo.\(^{105}\)

What are the strategies available to women who enter male-dominated institutions? Generally, there are only two: they can assimilate or change the institution.

To assimilate in this case would mean to adopt those characteristics that are privileged and seen as male.\(^{106}\) It would seem that this could be a successful approach.\(^{107}\) But, as I have demonstrated, this approach is necessarily flawed. In course evaluations women are vilified when they do not conform to gender expectations. When a woman tries on those characteristics that make a male professor admired, she is seen as a "bitch."\(^{108}\)

\(^{103}\) And again, I am not inclined to think that there is anything essentially male about law, except those who have controlled access to it.


\(^{105}\) Finley, supra note 92, at 890.

\(^{106}\) Professor Lani Guinier’s study of women law students found that in order to succeed many women have of necessity become “bicultural”; they learn to function as ‘social males’ and on some level they become ‘gentlemen’. Lani Guinier et al., Becoming Gentlemen: Women’s Experiences at One Ivy League Law School, 143 U. PA. L. REV. 1, 83 (1994). See also Worden, supra note 14, at 1145 (quoting an address by Sheila McIntyre, 8th Annual Conference on Critical Legal Studies, Georgetown University Law Center, Washington, D.C. (Mar. 16-18, 1984)) (“[g]oing to law school is learning to speak male as a second language, and learning it fluently”); see also Adrienne Stone, Women, Law School and Student Commitment to the Public Interest, in SOCIAL VALUES FROM LAW SCHOOL TO PRACTICE (J. Cooper & L. Trubek, eds., 1996) (forthcoming) (arguing that failure to respond to “female” characteristics results in undervaluing their qualities associated with commitment to public interest work.).

\(^{107}\) This was definitely the approach of the “second wave” of feminists. They needed to prove that they could do the job (a man’s job) as well as a man. This necessarily translated into doing it the same as men. See generally Ruth Bader Ginsburg, The Progression of Women in the Law, 28 VAL. U. L. REV. 161 (1994); Ruth Bader Ginsburg & Barbara Flagg, Some Reflections on the Feminist Legal Thought of the 1970s, 1989 U. CHI. LEGAL F. 9. Many of the ground-breaking women faculty tried to be “one of the boys.” They encouraged their female students to do the same both explicitly and by example. One woman was so successful that she was described as “the best man on the LSU law school faculty.” Kay, supra note 12, at 13. Similarly, the first women to rise to the top of the big New York City law firms were described as “men in women’s suits.” Amy Bach, New York’s Top Firms are Losing Some of Their Best Women Lawyers, NEW YORK, Dec. 11, 1995, at 48. We often hear of women who are more male than the men, see, e.g., Worden, supra note 14, at 1154, but I doubt this to be true. I suspect that because we are so uncomfortable with a woman having male traits, these traits may become exaggerated in our minds.

\(^{108}\) This may be the most common hallway evaluation. For this I am harking back to my student days, but the memory is crystal clear because this type of comment sends a strong message to women
The problem here is that the standard to which these women aspire is not neutral, but gendered. The standard for what makes a good law professor, like the definition of law, is based on one group's perspective. Thus, the question is not, who best matches this neutral and universal norm? Instead it is, who comes closest to being like a man? In this pursuit women have a distinct disadvantage. Although women who take on these characteristics might be seen more as law professors than as women, they will always be second-rate (male) law professors.

The second strategy is to change the institution. I admit that this strategy may seem a bit ambitious, especially for untenured faculty members. But, short of a revolution, what is absolutely required is the recognition that the legal system, the legal reasoning structure, and the law school are gendered institutions. We need therefore to confront and reappraise the paradigms of legal education. We need to question ourselves, our colleagues, and our students about our assumptions about what law is and how law should be taught. Basically, we need to demonstrate that the norm is male, not neutral. Thus the solution is not to change women to be more like men, but to change law to be less like men.

B. The Gendering of Legal Research and Writing

Another practice that may contribute to gender stereotyping in law school is the gendered hierarchy of instruction. Specifically, I am referring to the "pink ghetto" of Legal Research and Writing instruction. Just as law is seen as being male, Legal Research and Writing may be in danger of being seen as being female.

In the 1980s when there was a great deal of talk about increasing the number of women on law school faculties, Legal Research and Writing instructor positions doubled. Not coincidentally, 68% of these jobs were filled by women. So the number of women on the law school faculties was students as well: you'll never be able to compete in our game.

109. Male is seen not as the different gender, but the original gender—the norm. But we need to remember that each gender is equally different from the other. See CATHARINE A. MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW (1987). See also SIMONE DE BEAUVIOR, THE SECOND SEX (H. M. Parshley trans., Vintage Books ed. 1989). Therefore, no matter how impartially the standard is applied—it is still a male standard.

110. We need to change law to be less like men not because male traits are bad and female traits are good, but simply because half the world is not male.

111. Often these courses have other titles such as Legal Writing, Legal Method, Legal Practice, Trial Advocacy, Lawyering Skills, etc. This course is required in all ABA-accredited law schools. See J. Christopher Rideout & Jill J. Ramsfield, Legal Writing: A Revised View, 69 WASH. L. REV. 35, 36 n.2 (1994).

112. In some schools Legal Research and Writing faculty have titles such as lecturer or adjunct, but generally they have titles that distinguish them from regular faculty.

113. Chused, supra note 3, at 556 tbl.2. In fact, a case could be made that women otherwise qualified and desirous of "real" faculty jobs are being tracked into these Legal Research and Writing positions. Id. at 553. It also may be that women, more than men, may be in a position to "settle for less" in the way of compensation, or that women generally have fewer choices than men so that this type of position is more
increasing, but only in the bottom tier of a tiered workforce. I believe the effect of this hierarchy reinforces the message that women are not suited for “real” law school teaching.

Today more than two-thirds of Legal Research and Writing positions are filled by women. Thus, teaching Legal Research and Writing is seen as “women’s work.” Interesting, and I think telling, is one study’s finding that the law schools with the worst record for hiring women into faculty positions (the law schools with the lowest percentage of tenure-track women) have the best record for hiring women into Legal Research and Writing positions (the highest percentage of women in Legal Research and Writing positions). Could this indicate that those faculties see women as being more suited to skills training and less suited to other kinds of law teaching? Professors Merritt and Reskin’s study indicates that being a woman is predictive of whether one will teach a skills course.

The hierarchical segregation of faculty positions is not a new phenomenon in law school. The first women faculty members were not hired as tenure-track professors, although they were clearly qualified. Instead, they were hired for secondary roles such as “research associates.” It seems to be a women’s job pattern in law school to start at a lower level than men.

Like law libraries and clinics, Legal Research and Writing programs are a place where women are welcome. And like these analogues, it is a separate sphere. Whereas we say “law professor” and “female law professor,” “nurse” and “male nurse,” the field has become so feminized that we are close to the point of saying “Legal Research and Writing instructor” and “male Legal Research and Writing instructor.”

At some schools, women Legal Research and Writing instructors equal or outnumber all other women professors. And even at schools that have more women professors than Legal Research and Writing instructors, the Legal

attractive to them.

114. For this reason, it has been referred to as a “caste” system. Angel, supra note 13, at 804. The ABA and AALS data show the percentage of women faculty to be 20%, but they include non-tenure track positions such as Legal Research and Writing instructors and (non-tenure track) clinicians. See White, supra note 1. As a research and writing instructor, I am usually trying to be “counted in.” I do not, however, want to be used to inflate the statistics on women.

115. Chused, supra note 3, at 552. See also Jill J. Ramsfield, 1994 Survey of Legal Research and Writing (1995) (unpublished manuscript on file with author) (finding that in 1994, out of 115 schools that responded, 75% had legal research and writing programs in which women were over-represented; 40% had programs in which women constituted more than 75% of the staff).

116. Pamela Edwards, Teaching Legal Writing: On the Fringe of the Academy (1996) (unpublished manuscript on file with the Yale Journal of Law and Feminism). Interestingly, though, directing Legal Research and Writing programs is not seen as women’s work. The majority of directors are male, and many of them do not teach Legal Research and Writing. See ELUSIVE EQUALITY, supra note 2, at 33.

117. Chused, supra note 3, at 554.

118. Merritt & Reskin, supra note 3, at 2347. After doing a multiple regression analysis and controlling for other variables, they found that gender, more than any other credential, is the single most important predictor of hiring decisions. Id.

119. Kay, supra note 12, at 9. Women were also tracked into law librarian positions. Id.; see also Epstein, supra note 5, at 227.

120. Chused, supra note 3, at 553-54.
Research and Writing instructor still may be the only woman professor that a student ever encounters in law school. More often than not, a woman Legal Research and Writing instructor is the first woman professor a student has in law school. It is their first chance to evaluate a woman law professor. What conclusions can they draw from this exposure? I argue that this gendered structure reinforces negative stereotypes. It sends the message that this group, which is dominated by women, is not as competent as that group, which is dominated by men, because as I will show, this group has low status and uses a devalued feminine teaching style.

In Leaving Las Vegas, the alcoholic played by Nicholas Cage remarks that he has forgotten whether his wife left him because he drinks, or he drinks because his wife left him. Likewise, it is not clear whether women are steered into Legal Research and Writing because it is low status, or it is low status because it is done by women. Now, as a Legal Research and Writing instructor, I can (as I desperately try to do with my students) make a strong argument that Legal Research and Writing is the most important course in law school. However, the reality is that, as my students discover all too soon, Legal Research and Writing has the least prestige in law school.

121. This has been the case for most of my students and it is true of my own law school experience. Anecdotal evidence suggests that students show more pronounced bias toward the first woman faculty member that they encounter in law school. For this reason, I believe that women need to teach in every section in the first semester of the first year of law school. At the University of Chicago Law School, for example, non-legal writing female professors taught only 5% of the first-year class last year. AMERICAN BAR ASSOCIATION COMMISSION ON WOMEN IN THE PROFESSION, UNFINISHED BUSINESS: OVERCOMING THE SISYPHUS FACTOR (Jan. 8, 1996).

122. The status differential is beyond dispute. Even to perform these lowly functions may impair the status of the professor. One professor was so bold as to publish this statement: "Commitment of the full-time faculty to instruction in elementary legal writing should be reduced and not enlarged. Investing a very substantial segment of faculty time and energy in a legal-writing instruction program is unwise. First there is the matter of the self-image the law teacher holds as respects his proper functions. This self-image is characterized by a vision of the law teacher before a relatively large class teaching in some version of the Socratic method, à la Professor Kingsfield, having an accompanying function of legal research (commonly in the law library) and spending many hours in writing for consequent publication in the law journals. That self-image is reinforced by the generally accepted criteria for promotion and tenure ... Under the circumstances, it is not surprising that the young law teacher sees assignment to legal writing instruction as a kind of second-level assignment and one that represents a real threat to success in achieving genuine legitimacy as a law teacher in the accepted image. The disinclination of older and established teachers to take on legal writing ... confirms the judgment that this is not really the kind of thing that a law professor is properly expected to do."


123. LEAVING LAS VEGAS (United Artists 1996).

124. In fact, one author has gone so far as to identify an "institutionalized contempt for legal writing as a law school course." Mary Ellen Gale, Legal Writing: The Impossible Takes a Little Longer, 44 ALB. L. REV. 298, 320 (1980); see also Maureen Arrigo-Ward, How to Please Most of the People Most of the Time: Directing (or Teaching in) A First-Year Legal Writing Program, 29 VAL. U. L. REV. 557, 573 (1995). Another author concludes that Legal Research and Writing faculty are likely to experience "explicit or implicit faculty disdain or disparagement." Jan M. Levine, "You Can't Please Everyone, So You'd Better Please Yourself": Directing (or Teaching in) a First-Year Legal Writing Program, 29 VAL. U. L. REV. 611, 616 n.17 (1995). More often, however, Legal Research and Writing's low status is evident from more subtle statements made by the law school. For example, Legal Research and Writing instructors are usually given different titles and smaller offices, excluded from catalogues promoting the law school, and referred
hardly any resources are devoted to it.\textsuperscript{125} Second, students usually receive few credits (usually only one or two) for course completion.\textsuperscript{126} Third, it is very often a pass-fail course.\textsuperscript{127} But most importantly, it is nearly universally regarded as less intellectually challenging and therefore less prestigious.\textsuperscript{128}

As a job it holds second class status. Whereas tenure-track faculty enjoy starting salaries of $60-80,000,\textsuperscript{129} Legal Research and Writing faculty typically receive $25-35,000.\textsuperscript{130} Of course these are women's wages—women work cheap!\textsuperscript{131} The position also has very little power because Legal Research and Writing instructors are not enfranchised, do not serve on committees, and are excluded from certain meetings and functions. It is not uncommon, therefore, for Legal Research and Writing instructors to learn important pieces of information about the law school through student rather than faculty channels. Because their positions are not tenure-track, they have no job security. In fact, most schools have a policy of not renewing Legal Research and Writing instructors' contracts beyond three years.\textsuperscript{132} Furthermore, there are no opportunities for advancement. Few Legal Research and Writing instructors ever obtain regular teaching positions, and there is a disparity between the percentage of male and female Legal Research and Writing professors who obtain tenure track positions: twenty percent of male instructors eventually enter tenure-track positions while only about six percent of female instructors to as "staff" on student course schedules. See Levine, supra, at 637 n.84.


\textsuperscript{126} See, e.g., Gale, supra note 124, at 322-23.

\textsuperscript{127} Helen S. Shapo, \textit{The Frontiers of Legal Writing: Challenges for Teaching Research}, 78 LAW LII 719, 721 (1986).

\textsuperscript{128} Professors Rideout and Ramsfield conclude that many law faculty believe that the research and writing skills are remedial or best learned on the job, or that they are skills separate from and subservient to legal analysis and are therefore anti-intellectual. Rideout & Ramsfield, supra note 111, at 40-48; see also Gale, supra note 124, at 299-300.


\textsuperscript{130} Rideout & Ramsfield, supra note 111, at 37 n.5. The mean salary (not starting salary) for most Research and Writing faculty is less than $35,000 in 1994. Id.

\textsuperscript{131} A dean at one law school, enthusiastic about hiring Legal Research and Writing faculty, remarked "we can get education for cheap because we can hire people on the mommy track." \textit{ELUSIVE EQUALITY}, supra note 2, at 5. Perhaps not coincidentally, Legal Research and Writing holds the distinction of being the only first-year subject in which the cost of administering the course has been a factor in its design. See Ramsfield, \textit{Legal Writing}, supra note 10, at 125 ("Historically, the driving force in creating \textit{[Legal Research and Writing] programs has been to find the cheapest, not the best, structure and method."). See also Norman Brand, \textit{Legal Writing, Reasoning & Research: An Introduction}, 44 ALB. L. REV. 292, 294 (1980) (commenting on abundance of articles on costs involved in Legal Research and Writing programs: "I am not aware of any articles . . . on 'Cheap Contracts Courses' or 'Civil Procedure for Mere Pennies.'").

\textsuperscript{132} Of 71 schools that employ full-time non-tenure track legal writing professors, 57 give only one-year contracts, 7 offer two-year contracts, 4 offer three-year contracts, and only 3 offer contracts that are five years or over." Rideout & Ramsfield, supra note 111, at 38 n.8. As a result, most of these instructors are inexperienced. This may, in turn, lead to the perception that Legal Research and Writing professors are less competent than the rest of the faculty.
For all these reasons it is seen as the pink-collar ghetto of law schools. Legal Research and Writing instructors command little authority with students and Legal Research and Writing faculty are not respected by the larger institution.

In *Bradwell v. Illinois,* it was decided that Bradwell would not be allowed to practice law because, as a woman, she was better suited for the home than for the rigors of law. The sexes, it was believed, should maintain their separate spheres. This logic may have been carried over into law school where a woman’s disadvantage in teaching “real” law courses is exactly her advantage in teaching Legal Research and Writing. That is, the conventional wisdom is that Legal Research and Writing requires a nurturing figure, not an intimidating one.

In sharp contrast to the prevailing pedagogy of legal education, Legal Research and Writing has a distinct feel of domesticity. Law schools rely on Legal Research and Writing instructors to provide frequent and informal contact between students and faculty and to monitor students’ progress and stress levels. Legal Research and Writing instructors are on the ‘front lines’; they are there to listen to students. The Legal Research and Writing instructor plays the “mommy” role in the law school. Just as the family (indeed society) would not be able to function without relying on women to play their assigned roles, neither could the law school function as it currently does without Legal Research and Writing faculty playing the role that it does. Frequently students treat Legal Research and Writing instructors like their mothers. They come to expect herculean efforts, take them for granted, treat them with little respect, and save their best behavior for their “real” professors (like they behave when the father comes home).

I do not mean to disparage nurturing traits, but rather to criticize the assignment of a gender and a low value to these traits. The expectation, in fact the ideal for Legal Research and Writing faculty, is that they will conduct themselves as we expect women to conduct themselves. In addition to having teaching responsibilities, a good Legal Research and Writing instructor will have frequent contact with students, meeting with them outside of class to provide extra help with the course, to give career and academic advice, and

134. 83 U.S. 130, 141 (1872) (“The natural and proper timidity and delicacy which belongs to the female sex evidently unfit it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood.”).
135. Perhaps the closest legal education comes to presenting a model of law that is gender neutral can be found in the clinics. In the clinics, teachers both work side by side with students, and they present the image of competent litigators. There the genders enjoy equal representation on the faculty. However, even in clinics gender-neutral law is subservient to male law, since clinicians, like Legal Research and Writing faculty, face status problems in the law school.
137. In the eyes of many law professors, Legal Research and Writing is to Contracts, what changing the diapers is to witnessing baby’s first steps. It is fundamental, but mundane.
just to socialize. They will conduct class informally—in small groups, without
a podium, without lecturing, calling students by their first names, and working
side by side with students.

Again, I am not criticizing this teaching method. It is the method I use.
What troubles me is the fact that women are expected to teach like this by
nature. It is not revolutionary if I teach like this, but it is if Duncan Kennedy
does.138 Furthermore, this structure may lead to the assumption that, while this
teaching style may work in the women's sphere, it is not well-suited to the
men's sphere. It is because we teach like this that we are ill-suited for other
law teaching.139

Some feminists have called for law teaching in a "different voice."140 My
project is not to critique either the traditional law school teaching methods or
the different voice approach. My project is simply to call for the de-gendering
of the assignment of roles in legal education. Women are not uniquely qualified
to teach Legal Research and Writing and men are not uniquely qualified to
 teach the "real" law courses.

CONCLUSION

Surprisingly, women faculty are still often viewed with suspicion and
skepticism. Because women remain tokens in the legal academy, they face the

138. See generally KENNEDY, supra note 92. Syracuse Law Professor Leslie Bender asks, "'Why does
my conscious rejection of strict Socratic method get interpreted as a failing, lack of rigor, lack of control
or as being 'touchy-feely,' but my male colleagues' alternative methodologies are humane, courageous and
challenging?" DUSKY, supra note 56, at 113. Admittedly, it is possible that law professors maintain their
elevated status by specifically avoiding these techniques. Professor Mark Kelman admits that "[l]aw
professors are, in fact, a kiss away from panic at every serious, self-conscious moment in which they don't
have a bunch of overawed students to kick around." DUSKY, supra note 56, at 113. Mark G. Kelman,

139. Students remarked in their course evaluations that a woman professor's "style [was] not suited
for a large required course." Moreover, I am concerned that this teaching style can be taken to a negative
extreme. It is admirable to teach in a way that lets students know that they can relax, that you are going
to be informal, that you are going to help them, and that you are even going to respect them. But it is
crucial that students still respect you as the teacher. Because women are not granted any authority
(especially in the low status role of Legal Research and Writing instructor) and are not presumed competent,
they must demand authority, respect, and credibility for themselves. Unfortunately, sometimes this respect
can only be achieved by maintaining some of those barriers that separate teacher from student. For example,
my fellow faculty members often discuss how they can be more approachable and accessible to their
students. They share these techniques with me as a new teacher. But I am not at risk of intimidating my
students. In fact, I may have the opposite problem. Without ever employing any of those techniques,
students assume that they can talk with me at any time and about any topic. In fact, I have to take active
steps to let students know that I am not available to them 24 hours a day.

The counter-argument is that a professor does not garner her students' respect by keeping her office
door closed and insisting on being called "Professor Farley." Certainly, one can earn respect by being
competent, prepared, and knowledgeable. But this approach has been tried and the result is that the female
professor appears to have struck a deal with her class. She will do all the work and aim to please, and they
in turn will allow her to stand in front of the class. Bean, supra note 18, at 43. A typical piece of advice
for Legal Research and Writing instructors is, "Tell them how hard you are working." And if you must
criticize their work, do so with a smile.

140. See Catherine Hantzis, Kingsfield and Kennedy: Reappraising the Male Models of Law School
Teaching, 38 J. LEGAL EDUC. 155, 162-63 (1988); Menkel-Meadow, supra note 92, passim.
struggle of being outsiders in a male domain. One of the problems women face is that they are not presumed to have professional competence. This problem is evident in student course evaluations. These evaluations reveal that some students believe that women are ill-suited for teaching law. They show that women are noticed for their differences from the male model. This means both that women are perceived to be too weak and unqualified to be law professors and that they are perceived to be too strong and authoritarian to be women. Thus women are put in a double bind. They are criticized for being too woman-like for a law professor and too law professor-like for a woman. Women cannot live up to the expectations in the legal academy as long as the expectation is that only males are appropriate for law teaching.

Legal education is partly responsible for producing these gendered expectations of professional competence. First, the idea that law is male is actively constructed. Law is male, women are not and, no matter how hard they try, they will never be. But law is not male by nature, no matter how naturalized that construction has become. Second, women have been marginalized to the domestic sphere of the law school. In the Legal Research and Writing field, where women are over-represented, the expectation is that teachers will be nurturing. They are not expected to act like Professor Kingsfield, and for this they are devalued.

The problems that exist for women in academia today are perhaps more difficult to eradicate because they are subtle, not immediately identifiable, and difficult to understand. I feel confident that, when women are more than tokens, when we can claim the entire spectrum of teaching styles, attitudes, and appearances, we will be evaluated for how we perform and not how we look. This myriad of styles for women teachers should disprove any essentialist notions of how women should behave. At bottom, a diversity of effective teaching models, for both men and women, should demonstrate that the male paradigm of law needs to become, ultimately, non-gendered.