

# Why Legal Education Is Failing Women

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**ABSTRACT.** In this Article, Ms. Bashi and Ms. Iskander report and analyze the results of a comprehensive study of the way Yale Law School educates female and male students. This research is distinctive for its attention to faculty observations and its robust use of quantitative and qualitative data to map women's experiences throughout law school. The authors use in-depth interviews with faculty members, narrative and quantitative responses from a student survey, and class participation data to show that, despite similar entering credentials, female students at Yale Law School are underrepresented among participants in class discussions and among students who form professionally beneficial relationships with faculty members. The authors broaden the study beyond Yale to argue that (primarily male) law professors treat women differently from men and reward behaviors that are more likely to be displayed by men. The Article concludes with a series of recommendations and argues that, if law schools reconsider what values they cultivate and reward, they will provide a better education for women and men alike.

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## I. INTRODUCTION

In 2001, for the first time in the history of the legal profession, American law schools admitted a J.D. class that was roughly equally divided between men and women.<sup>1</sup> After centuries of explicit exclusion, women now enjoy the same rights as men to enter the legal profession, and the two sexes are exercising this opportunity in equal numbers. Perhaps it is to be expected that the upper ranks of the legal profession—populated as they are by graduates of male-dominated law school classes—have made only limited progress in integrating women.<sup>2</sup> Is it merely a question of time before a new and fully integrated-by-sex generation of lawyers rises to the top of the profession, bringing gender equality to law firm partnerships, judicial chambers, law school faculties, and other jobs where legally-trained professionals cluster?

In this Article, we argue that the results of our intensive case study of the experience of women at Yale Law School indicate that it is *not* simply a question of time. Despite gender parity in entering J.D. classes, law schools are not adequately preparing female law students for success, particularly in the upper ranks. In order for women to integrate the top, as well as the bottom, rungs of the profession, law schools must make fundamental changes in the ways they teach students. As individuals, law school professors treat women differently from men, and as institutions, law schools cultivate and reward patterns of behavior that are more likely to be found among men than among

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1. Jonathan D. Glater, *Women Are Close to Being Majority of Law Students*, N.Y. TIMES, Mar. 26, 2001, at A1. Women currently constitute about 48% of U.S. law students. ABA COMM'N ON WOMEN IN THE PROFESSION, CURRENT GLANCE OF WOMEN IN THE LAW (2002), available at <http://www.abanet.org/women/glance.pdf>.

2. See *infra* Part II.A. See also Richard K. Neumann, Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEGAL EDUC. 313, 322 (2000) (noting underrepresentation of women on law school faculties).

women, even though these behaviors do not necessarily reflect the skills students need to be good lawyers, judges, and legal academics.

We make no accusation of intentional discrimination. Law schools and the legal profession were built by men and for men; it would be remarkable, indeed, if they did not reflect preferences and tendencies associated with men. Factors beyond law school—pre-law school socialization, structural barriers within the legal profession, unequal distributions of domestic responsibilities, potentially “different” preferences and proclivities<sup>3</sup>—may exert disparate pressures on men and women and make it more difficult for women to achieve positions of power in law. The ways that law schools educate men and women, however, actively perpetuate and exacerbate the challenges women face prior and subsequent to their induction into the legal profession as law students. This Article focuses on how law schools are structured, evaluating the behaviors they cultivate and reward, and questions the desirability of that reward structure. Transforming law schools alone will not bring full integration to the legal profession, but absent such transformation, full integration is unlikely to take place.

Any inquiry into women’s success in law and law school must grapple with the continued significance accorded to standards of success that were created when women were excluded from the profession. An integrated profession would likely define success in ways that account for groups currently underrepresented, including women and members of ethnic and racial minority groups. We focus on the representation of women in traditional positions of power because women must attain those positions to change the profession and redefine its measures of success. While disproportionate representation in some areas of law<sup>4</sup> may reflect women’s unfettered choices, persistent evidence of exclusion prevents us from accepting those choices as unconstrained. The reforms we suggest aim to remove obstacles to women’s success (as the legal profession currently defines success) while enabling women to alter the achievements that the profession values. Reforming legal pedagogy will not simply remove some of the barriers that women face in their first encounters with law—it will improve legal education for men and women alike.

Most of the data cited in this Article were collected as part of a study (“the Yale Study”) sponsored by the student group Yale Law Women (YLW) and coordinated by the authors, in which eighty students interviewed faculty

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3. Some feminist theories postulate that men and women are “different,” either because they are socialized differently or because of biological essentialism. See *infra* text accompanying note 88. Our data show observed differences in the way men and women behave in law school. Some of these differences in behavior originate outside law school, but we take no position on their source. That discussion is beyond the scope of this Article, which focuses on how law schools respond to and cultivate those differences.

4. For example, women are twice as likely as men to enter public interest jobs upon graduation. See NALP, EMPLOYMENT PATTERNS—20-YEAR TRENDS—1982-2002, <http://www.nalp.org/content/index.php?pid=169> (last visited Nov. 14, 2006).

members, collected student responses to questions in an online survey, and recorded classroom participation by gender.<sup>5</sup> We express our gratitude to the men and women, faculty and students, of Yale Law School who candidly and thoughtfully participated in this examination of the role of gender in legal education and faculty-student relations. Their observations and insights inform our arguments and the recommendations we offer to improve legal education.

Part II of this Article assesses women's performance in the American legal profession and then focuses on students at Yale Law School, the site of our in-depth institutional study. Part II shows that women and men enter Yale Law School with similar credentials, thereby locating subsequent performance differences in their experience of law school. This Part also explains why aspects of women's experiences at Yale Law School can be generalized to other law schools and to women's success in the profession. The findings reported from the Yale Study are consistent with the literature describing women's diminished experiences at a range of other law schools.<sup>6</sup> Yale's particular emphasis on informal mentoring and networking also makes the Yale Law School experience especially useful in understanding workplace dynamics that may exclude female lawyers from informal networks. Part II concludes with an explanation of our methodology, including its strengths and shortcomings.

Part III reports our findings about men's and women's experiences of and performance in Yale Law School's classrooms. It demonstrates that women participate in class in disproportionately low numbers and experience stronger feelings of alienation from class and classroom discussions than do men. We argue that professors treat female students differently from male students in ways that impair women's engagement in classroom learning, and that professors are responsive to certain kinds of student behavior that are more likely to be displayed by men than women but that do not necessarily enhance learning or adequately reflect the skills that students need to become good lawyers. We analyze these skills in the context of a legal profession being transformed from one of adversarial competition to one in which negotiation,

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5. We are particularly grateful to Willow Crystal for compiling the classroom participation data and to the following former students for their work interviewing faculty members, recording participation in class discussions, designing the student survey, and compiling the data into a report: Leslie Abrams, Kate Andrias, Aditi Bagchi, Evelyn Baltodano, Mark Barnett, Koren Bell, Jen Bird, Jeff Bowen, Kimberly Brayton, Liora Brener, Stephanie Brennan, Maura Carney, Jenny Chou, Joshua Civin, Naeemah Clark, Willow Crystal, Haninder Dhesi, Deborah Dinner, Derek Dorn, Rachel Farbiarz, Kathryn Goldberg, Aimee Hector, Alana Hoffman, Allison Hoffman, Angela Hooton, Jennifer Hunter, Michael Johnston, Sarah Jurgensen, Elizabeth Kendall, Cassidy Kesler, Kevin Kish, Sam Krasnow, Trevor Lain, Anna Levine, Heather Lewis, Susan Lin, Sarhana Livingston, Lisa Mahle, Tara Malloy, Meron Makonnen, Ashley McDonald, Anya McMurray, Avani Mehta, Ramit Mizrahi, Melissa Murray, Rajesh Nayak, Jamie O'Connell, Kimberley Pattillo, Heather Perry, Laura Provinzino, Fadia Rafeedie, Gowri Ramachandran, Daniel Reich, Daphna Renan, Anna Rich, Rebecca Richards, Nathalia Rivarola, Lisa Rubin, Sarah Russell, Reshma Saujani, Vanessa Schlueter, Amy Sepinwall, Sara Spalding, Elisabeth Steele, Julie Suk, Damali Taylor, and Shirley Udekwu.

6. See *infra* notes 14-19 and accompanying text.

collaboration, and mediation are necessary to make deals, settle cases, and resolve disputes, and we question whether law schools adequately value and reward the latter category of skills.

Part IV shows how female students' disproportionately low class participation feeds into attenuated out-of-class interactions with professors. We demonstrate that male students experience greater ease and success in developing professionally beneficial relationships with faculty members. At least some male faculty members, because of discomfort, inadequate mentoring models, and/or fear of impropriety, create distance from female students in ways that inhibit the transmission of professionally useful information and guidance. Lack of transparency about what is required to achieve high levels of success exacerbates the situation; such information is transmitted in informal interactions from which women are more likely to be excluded. Unsurprisingly, women pay the price for this distance through underrepresentation in areas where faculty advocacy, mentoring, and guidance are particularly important: legal publications and academia.

Part V urges law schools to reconsider what it is they value. We advocate structural changes, including investments in pedagogy, the promotion of transparency, and increases in faculty diversity, which will improve the law school experience for all students. The recommendations aim to help law schools realize their function as key institutions for moving the legal profession beyond numerical parity and toward real integration.

## II. AMERICAN LEGAL EDUCATION AND YALE LAW SCHOOL

### A. *Women's Performance: A National Perspective*

To provide context for the performance of male and female students at Yale Law School, we briefly survey women's performance nationally in various fields of law and law-related professions. The data show that men continue to dominate the upper levels of the legal profession. Women represent 19.8% of federal judges<sup>7</sup> and 17.3% of law firm partners.<sup>8</sup> They comprise one-third of law school faculty members, where they are concentrated in non-

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7. Stephanie Goldberg & Jessica DuLong, *Federal Judgeships and the Gender vs. Ideology Debate*, PERSPECTIVES (ABA Comm'n on Women in the Profession, Chicago, Ill.), Summer 2002, at 10; see also ABA COMM'N ON WOMEN IN THE PROFESSION, *supra* note 1 (reporting that 26.3% of judges on state courts of last resort are women). The paucity of women on the bench makes it difficult to combat harmful stereotypes about women as lawyers and litigants, and even female judges experience gender-based discrimination. See Judith Resnik, *Asking About Gender in Courts*, 21 SIGNS 952, 957-58 (1996).

8. NALP, *Women and Attorneys of Color at Law Firms—2005*, <http://www.nalp.org/content/index.php?pid=387> (last visited Oct. 10, 2006). Women serve as general counsel for 13.7% of Fortune 500 companies. CATALYST, *WOMEN IN LAW: MAKING THE CASE* 7 (2001).

tenured positions,<sup>9</sup> and one-third of candidates for law teaching jobs.<sup>10</sup> They represent 15.1% of U.S. Senators and Congresspersons, groups dominated by law school graduates, and 22.8% of state legislators.<sup>11</sup>

As women move up the ranks of the legal profession, their representation plummets. Most of the men and women currently leading the profession graduated from law school over the last three decades, when women's representation among American law students rose from 20% (1974-1975) to 40% (1985-1986) to 48% (2001-2002).<sup>12</sup> Yet, cohort by cohort, women's representation as judges, law firm partners, law school deans, and general counsels at Fortune 500 companies remains far below that of their graduating law school classes.<sup>13</sup> The disparities begin early in the careers of men and women and persist beyond what law school enrollment would predict.

### B. Locating the Problem in Law School

A significant body of literature has documented women's law school experiences and performance, emphasizing their participation in class and the grades they receive. A small but growing number of single-institution studies have used surveys of law students, qualitative interviews, and/or analyses of grades by gender to document how women experience and perform in law school.<sup>14</sup> Following the completion of the Yale Study, Harvard Law School undertook a similarly designed study which included data about grades.<sup>15</sup> Other studies have taken a broad, statistical look at women's experiences in law

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9. ASS'N OF AM. LAW SCH., STATISTICAL REPORT ON LAW SCHOOL FACULTY AND CANDIDATES FOR LAW FACULTY POSITIONS 2 (2003) (reporting that, during the 2002-2003 academic year, 34.2% of all law school faculty were women, 25.2% of tenured professors were women, 15.5% of law school deans were women, and 46.9% of associate professors were women).

10. *Id.* at 10 (noting that, in 2002-2003, 32.7% of job candidates listed in the Faculty Appointments Register were women).

11. Rutgers Univ., Ctr. for Am. Women & Pol., Facts on Women Candidates and Elected Officials, <http://www.cawp.rutgers.edu/Facts.html> (last visited Oct. 10, 2006).

12. Neumann, *supra* note 2, at 314; ABA COMM'N ON WOMEN IN THE PROFESSION, *supra* note 1.

13. *See supra* notes 8 and 9.

14. *See generally* WORKING GROUP ON STUDENT EXPERIENCES, HARVARD LAW SCH., STUDY ON WOMEN'S EXPERIENCES AT HARVARD LAW SCHOOL (Feb. 2004), available at [www.law.harvard.edu/students/experiences](http://www.law.harvard.edu/students/experiences); Taunya Lovell Banks, *Gender Bias in the Classroom*, 38 J. LEGAL EDUC. 137 (1988); Allison L. Bowers, *Women at the University of Texas School of Law: A Call for Action*, 9 TEX. J. WOMEN & L. 117 (2000); Celestial S.D. Cassman & Lisa R. Pruitt, *A Kinder, Gentler Law School? Race, Ethnicity, Gender, and Legal Education at King Hall*, 38 U.C. DAVIS L. REV. 1209 (2005); Paula Gaber, "Just Trying to Be Human in This Place": *The Legal Education of Twenty Women*, 10 YALE J.L. & FEMINISM 165 (1998); Marsha Garrison et al., *Succeeding in Law School: A Comparison of Women's Experiences at Brooklyn Law School and the University of Pennsylvania*, 3 MICH. J. GENDER & L. 515 (1996); Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1 (1994); Joan M. Krauskopf, *Touching the Elephant: Perceptions of Gender Issues in Nine Law Schools*, 44 J. LEGAL EDUC. 311, 314 (1994); Catherine Weiss & Louise Melling, *The Legal Education of Twenty Women*, 40 STAN. L. REV. 1299, 1310 (1988).

15. WORKING GROUP ON STUDENT EXPERIENCES, HARVARD LAW SCH., *supra* note 14.

school.<sup>16</sup> Three findings form a background to our own empirical research: (1) female students participate in law school class discussions less than male students;<sup>17</sup> (2) female students appear to earn lower grades than male students, at least at highly selective law schools;<sup>18</sup> and (3) female students respond to law school by experiencing greater feelings of alienation and loss of confidence than male students.<sup>19</sup>

The locus of our study was Yale Law School, a small, highly selective institution that prides itself on collegiality and its role as a leader in the legal academy. The following sketch of the institution provides context for our findings.

Yale Law School has consistently been listed first in *U.S. News and World Report's* popular ranking of law schools.<sup>20</sup> From 2004 to 2006, Yale Law School (YLS) accepted 6.9% of J.D. applicants.<sup>21</sup> The J.D. Class of 2004, whose members were first-year students at the time of the study, had a mean LSAT score of 171 out of 180 and a mean grade point average (GPA) of 3.85.<sup>22</sup> The YLS faculty is small and homogeneous. In 2001-2002, 80% of the 63 full-time tenured faculty members were male and 89% were white.<sup>23</sup> The student-

16. ABA COMM'N ON WOMEN IN THE PROFESSION, DON'T JUST HEAR IT THROUGH THE GRAPEVINE: STUDYING GENDER QUESTIONS AT YOUR LAW SCHOOL 28-34 (1998); ABA COMM'N ON WOMEN IN THE PROFESSION, ELUSIVE EQUALITY: THE EXPERIENCES OF WOMEN IN LEGAL EDUCATION (1996) (describing surveys of students and grade analysis); LINDA F. WIGHTMAN, WOMEN IN LEGAL EDUCATION: A COMPARISON OF THE LAW SCHOOL PERFORMANCE AND LAW SCHOOL EXPERIENCES OF WOMEN AND MEN 11 (1996); Neumann, *supra* note 2, at 322.

17. Banks, *supra* note 14; Bowers, *supra* note 14; Guinier et al., *supra* note 14; Krauskopf, *supra* note 14, at 314; Janet Taber et al., *Gender, Legal Education, and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates*, 40 STAN. L. REV. 1209, 1239-40 (1988); Weiss & Melling, *supra* note 14.

18. WORKING GROUP ON STUDENT EXPERIENCES, HARVARD LAW SCH., *supra* note 14; Cassman & Pruitt, *supra* note 14 (noting that women under-perform slightly); Guinier et al., *supra* note 14; Neumann, *supra* note 2, at 313; *cf.* Garrison, *supra* note 14 (finding no discrepancy in grades earned by male and female students at Brooklyn Law School).

19. ABA COMM'N ON WOMEN IN THE PROFESSION, ELUSIVE EQUALITY, *supra* note 16; Gaber, *supra* note 14; Guinier et al., *supra* note 14; Krauskopf, *supra* note 14, at 326; Weiss & Melling, *supra* note 14, at 1313.

20. *See, e.g., America's Best Graduate Schools 2007: Top Law Schools*, U.S. NEWS & WORLD REP., [http://www.usnews.com/usnews/edu/grad/rankings/law/brief/lawrank\\_brief.php](http://www.usnews.com/usnews/edu/grad/rankings/law/brief/lawrank_brief.php) (last visited Nov. 6, 2006); *see also* George L. Priest, *Reexamining the Market for Judicial Clerks and Other Assortative Matching Markets*, 22 YALE J. ON REG. 123, 179 & n.252 (2005) (noting that Yale was ranked first in 2000 and that the *U.S. News & World Report* ranking of law schools has been "quite stable over the past decade"); Note, *Making Docile Lawyers: An Essay on the Pacification of Law Students*, 111 HARV. L. REV. 2027, 2027 (1998).

21. *Summary of Yale Law School Applicants in 2004, 2005, and 2006*, YALE LAW SCHOOL J.D. PROGRAM 2006-2007 (Yale Law School, New Haven, Conn.), 2006, at 12.

22. Memorandum from the Yale Law School Admissions Office (on file with the authors).

23. *See*, YALE LAW SCH., YALE LAW SCHOOL FACEBOOK, 2001-2002 (2001). Minority faculty members included three African-American men, two Asian-American men, and two Asian-American women. Five junior tenure-track faculty members who taught that year included three white men, one white woman, and one Asian-American man.



faculty ratio is now 7.8 to 1.<sup>24</sup> As of October 1, 2001, 634 students were enrolled, of whom 47% were women and 53% were men.<sup>25</sup>

As a general matter, graduates of YLS enjoy substantial professional opportunities. Upon graduation, 97% of the Class of 2001 reported having a job.<sup>26</sup> Of these students, 44% obtained judicial clerkships immediately upon graduation, 33% worked for law firms, and the remainder found employment in the private, non-profit, governmental, or academic sectors.<sup>27</sup>

Yale Law School de-emphasizes traditional benchmarks by using a non-traditional grading system. All classes are credit/fail during the first term.<sup>28</sup> In subsequent terms, students receive grades of honors, pass, low pass, or fail, with credit/fail options available or required for some classes.<sup>29</sup> Class rank is not computed.<sup>30</sup> Thus, Yale Law School shares key characteristics with post-law school work environments, in which interpersonal relationships, informal evaluations, and networking are important tools for advancement.

At least on paper, men and women enter Yale Law School on equal footing, displaying no meaningful difference in performance as measured by five pre-law school credentials: (1) undergraduate GPA and average LSAT score; (2) selectivity of undergraduate institution; (3) undergraduate major; (4) time between undergraduate degree and law school; and (5) graduate degrees.

We analyzed average LSAT scores and average undergraduate GPAs for men and women in the graduating class of 2004. Among this group, which accounts for approximately 37% of the student respondents in the YLW survey, the average undergraduate GPA among men was 3.87 (with a range of 3.27 to 4.22) and the average LSAT was 171.<sup>31</sup> Female students had slightly lower but similar numbers: the average undergraduate GPA for women was 3.82 (with a range of 3.12 to 4.11) and the average LSAT score was 170. While we were unable to access LSAT scores and undergraduate GPAs for the YLS classes of 2002 and 2003, national statistics show no significant difference between the undergraduate GPA and LSAT scores of male and female law school applicants.<sup>32</sup>

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24. ABA, OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS, 2007 EDITION 828 (2006).

25. YALE LAW SCH., *supra* note 23. Of those, 588 were J.D. candidates, including 187 1L's (48% women, 52% men), 205 2L's (52% women, 48% men), and 196 3L's (44% women, 56% men).

26. *First Job After Yale Law School Graduation*, INTRODUCTION TO CAREER DEVELOPMENT (Career Dev. Office, Yale Law Sch., New Haven, Conn.), July 17, 2002, at 39.

27. *Id.*

28. YALE UNIV., BULLETIN, SER. 102, NO. 8, YALE LAW SCHOOL, 2006-2007, at 85 (2006), available at <http://www.yale.edu/bulletin/pdffiles/law.pdf>.

29. *Id.*

30. *Id.*

31. LSAT scores are scaled between 120 and 180.

32. For the law school admissions cycle 2000-2001, women had an average undergraduate GPA of 3.21, compared to an average of 3.12 for men. Women had an average LSAT score of 150.7, compared to an average score of 152.2 for men. Kenneth Kleinrock, Trustee, Law Sch. Admission Council, Presentation at the New York University Conference Paths to Success: The Diversification of Voice and Style in Law School and the Legal Profession (Feb. 27, 2003).

Nationally, it has been shown that the similarity in undergraduate GPAs among female and male law students reflects similar performance in similar majors.<sup>33</sup> The data on Yale Law School students show that similar undergraduate GPAs are earned in similar majors.<sup>34</sup>

Female and male students also appear to come from similarly selective undergraduate institutions. We found that 42% of male students and 42% of female students attended the same eight highly selective undergraduate institutions,<sup>35</sup> and we were not able to discern gender-related differences in the selectivity of the undergraduate institutions that accounted for the rest of the student body.

Male and female students also do not differ significantly in the amount of time they took between completing college and starting law school. A majority of Yale Law School students enter law school within five years of their graduation from college. Of these students, women wait 1.48 years on average, while men wait 1.38 years on average. Men are more likely to be in the small minority of students who begin law school more than five years after graduating from college.<sup>36</sup>

Approximately 15% of students (86 J.D. candidates in the classes of 2002, 2003, and 2004) reported obtaining at least one graduate degree prior to their law school matriculation.<sup>37</sup> Nearly equal numbers of male and female students obtained graduate degrees as a percentage of overall students, though men were more likely to have doctoral degrees. Eleven percent of women and 12% of men report obtaining a master's degree, while 2% of women and 4% of men report obtaining a doctoral degree prior to law school.<sup>38</sup>

To the extent that minor differences exist in the pre-law school credentials of male and female law students, we conclude that they are insufficient to account for the performance disparities observed by the study. Indeed, some

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33. WIGHTMAN, *supra* note 16, at 17. Wightman found that, nationally, female law students outscored male law students in every undergraduate major except for engineering, in which the scores were a virtual tie. She also found that female students had somewhat higher undergraduate GPAs than men, a finding not replicated in our analysis of Yale Law School's Class of 2004.

34. The five most popular undergraduate majors for male and female students at Yale Law School are identical—political science or politics, history, English, philosophy, and economics—and they account for 54% of all majors for women and 57% of all majors for men. See Appendix A for a table summarizing the data.

35. See Appendix A. Our discussion of selectivity is based upon *U.S. News and World Report's* college rankings. *America's Best Colleges 2007: National Universities: Top Schools*, U.S. NEWS & WORLD REP., [http://www.usnews.com/usnews/edu/college/rankings/brief/t1natudoc\\_brief.php](http://www.usnews.com/usnews/edu/college/rankings/brief/t1natudoc_brief.php) (last visited Nov. 5, 2006). The rankings are just one (controverted) measure of a school's selectivity and rigor. We requested from the Law School Admission Council the three-year average LSAT/GPA for law school applicants from each undergraduate institution but were denied access to this non-public information.

36. See Appendix A.

37. YALE LAW SCH., *supra* note 23.

38. *Id.* A doctoral degree is a useful credential for students who wish to enter legal academia, and there may be a correlation between interest in legal academia and having obtained a doctoral degree in another field.

female student survey respondents used their narrative answers to report that their experience of disappointment and frustration was specific to law school and had not been part of their undergraduate experience.<sup>39</sup>

C. *The Relevance of Women's Experiences at Yale Law School*

The findings we report are a specific incarnation of a general, widely reported phenomenon, in which women withdraw from and under-perform in law school—and subsequently in their legal careers. Of course, in-class and out-of-class dynamics vary in each law school, and we will address the limitations of our methodology in Part II.D. Our findings about women at Yale Law School, however—lower levels of class participation, reports of increased dissatisfaction with law school, underrepresentation in *The Yale Law Journal*, exclusion from informal networks—have been observed nationally, in both law schools and in legal workplaces.<sup>40</sup> Like women at other law schools, women at Yale Law School report less engagement when they speak up in class, visit a professor's office, or seek out a faculty mentor than their male peers. This is true irrespective of the achievement metrics—grades, law review membership, clerkships, or offers from law firms—valued at a particular law school. Keeping in mind the peculiarities of any single institution, we use the detailed analysis of a single institution, together with the findings of other researchers, to arrive at broad-based conclusions and recommendations for improving legal education beyond Yale.

The Yale Study also holds lessons for understanding the trajectory of women's success in the profession after law school. Yale's informal, relationship-driven networks replicate the informal mentoring networks so crucial to workplace success.<sup>41</sup> Yale's small size offers opportunities for informal instruction, collaborative work, professional development, and mentoring. These activities often grow from personal relationships that students build with faculty members. Analyzing these dynamics at Yale Law School, with attention to the differential success women experience in informal relationship-building, networking, and mentoring, provides useful insights into similar dynamics that exist at law firms and other legal work environments.

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39. To preserve confidentiality and anonymity, student and faculty responses gathered as part of the Yale Study have not been individually cited. See *infra* note 44.

40. See sources cited *supra* note 14 (describing law school studies) and *infra* note 104 and accompanying text (describing a study of legal workplaces).

41. See *infra* note 104 and accompanying text for a description of women's exclusion from informal professional networks.

#### D. Methodology

Our method combines qualitative and quantitative analyses with a focus on faculty attitudes and perceptions. During the 2001-2002 academic year, we directed a study sponsored by Yale Law Women that examined the role of gender in faculty-student relations at Yale Law School. The study included three components: (1) open-ended interviews of forty-six faculty members conducted by students;<sup>42</sup> (2) classroom participation assessments in which student-observers recorded the gender of students who spoke in class; and (3) an online survey in which students responded to multiple-choice and open-ended questions about their interactions with faculty members inside and outside the classroom.<sup>43</sup> A report, available online, presents the study's empirical findings.<sup>44</sup>

The methodology offers thorough quantitative and qualitative data about women's experience of and performance at Yale Law School. We have effectively tracked female students' experiences in a small law school, including their entering credentials; their participation in class discussions; their interactions with faculty members outside class; their leadership and writing for *The Yale Law Journal*; and the type of professional opportunities they secure, compared to their male classmates. Insights from faculty and student respondents provide a window into what is going on—and why—at each step of women's navigation of their law school education.

Our methodology also has shortcomings. First, we were unable to obtain access to an important performance measure: grades.<sup>45</sup> Other researchers have

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42. At the time of the study, there were fifty-six full-time, tenured faculty members with teaching responsibilities. Most of the senior faculty members not interviewed were on leaves of absence during the study. Yale Law School also employed five junior faculty members with teaching responsibilities, two of whom were also interviewed.

43. For a more detailed explanation of each component of our methodology, see Sari Bashi & Maryana Iskander, Essay, *Methodology Matters*, 53 J. LEGAL EDUC. 505 (2003).

44. YALE LAW WOMEN, YALE LAW SCHOOL FACULTY AND STUDENTS SPEAK ABOUT GENDER (2002), available at <http://www.yale.edu/ylw>. In our capacity as board members of Yale Law Women, we recruited students to help design and implement the study. The resulting report was written by a committee of students who compiled the empirical findings but did not express opinions about the data. The opinions, analysis, and supplemental data collection in this Article, including any errors therein, are solely the responsibility of the authors. The results of the faculty interviews, classroom participation assessments, and student surveys in the Yale Study are on file with the authors. Unless otherwise noted, all quotations and statistics cited in this Article were generated from these interviews, assessments, and surveys. In order to preserve confidentiality and anonymity, individual responses have not been cited.

45. We requested and were denied access to aggregate student grades by gender. In 2003, we were informed that the faculty would undertake an internal audit to investigate any potential disparities in men's and women's grades, and that such audit may or may not be made public. No such information has been released to date. Grades are significantly less important at Yale Law School than at other institutions, because of its non-traditional grading system and the absence of class ranking. We found circumstantial, anecdotal evidence that women may be underrepresented among the students receiving the highest grades at Yale, based on self-reported information on the resumes of teaching candidates who graduated from Yale Law School. Of the 38 men who received a J.D. from Yale Law School and competed for teaching jobs in the fall of 2000, 13 candidates either listed a high percentage of "honors" grades on their teaching resumes or reported receiving writing prizes for work done in their Yale classes.

shown that while women generally enter law school with higher undergraduate GPAs and slightly lower LSAT scores, they appear to receive lower grades than their male counterparts, at least at “elite” law schools.<sup>46</sup> These studies found the greatest discrepancies at the upper range of performance.<sup>47</sup>

Second, Yale Law School has a distinctive mix of pedagogical techniques and markers of student achievement not common to other law schools. The Socratic method—calling on students who have not volunteered to speak—is being questioned at many law schools,<sup>48</sup> but its use is particularly limited at Yale Law School,<sup>49</sup> meaning that Yale’s classroom dynamics may have unique features not generalizable to other schools. Yale’s emphasis on clerkships and academic jobs,<sup>50</sup> positions for which faculty advocacy is especially important,

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None of their 12 female counterparts also on the teaching job market reported receiving either high grades or a writing prize. Of course, it is possible that female teaching candidates received equally high accolades but did not report them or that the highest-performing female students did not enter academia.

46. Guinier et al., *supra* note 14, at 23, found that despite entering law school with comparable credentials, men receive higher grades, higher class rankings, and more honors than women. A study at the University of Texas found that men consistently outperformed women in grade achievement, particularly in the first year of law school. Bowers, *supra* note 14, at 135-36. A nationwide Law School Admission Council study found that despite superior entering credentials, women earned slightly lower grades than men during their first year of law school. WIGHTMAN, *supra* note 16, at 11. The Harvard study found that men were more likely than women to receive top grades. WORKING GROUP ON STUDENT EXPERIENCES, HARVARD LAW SCH., *supra* note 14, at 6. See also Neumann, *supra* note 2, at 322 (“The larger grade differentials . . . and the lower law review participation at the producer schools [that train large numbers of future law professors] both hint that the pedagogical environment may be worse for women at the top-ranked schools than in legal education generally. No school has an excuse for failing to do a gender/grades study now.”). But see Garrison et al., *supra* note 14, at 523 (finding that women and men attained similar grades and academic honors); see also ABA COMM’N ON WOMEN IN THE PROFESSION, DON’T JUST HEAR IT THROUGH THE GRAPEVINE, *supra* note 16, at 31-33 (finding no significant performance disparities at the University of Illinois, University of Iowa, and Chapman University).

47. The Harvard study found that 14% of male graduates, and only 8% of female graduates, received *magna cum laude* honors, and that 55% of men received some form of Latin honors, compared with 47% of women. WORKING GROUP ON STUDENT EXPERIENCES, HARVARD LAW SCH., *supra* note 14, at 6. The University of Pennsylvania study found that men were more than twice as likely as women to be in the top 10% of their class. Guinier et al., *supra* note 14, at 26. The University of Texas study similarly found that the gender disparity between men and women increased in the top 10% of law school classes, at least in the first year of law school. Bowers, *supra* note 14, at 144-47. The U.C. Davis study, which analyzed gender disparity in grades for three separate class years, found women to be slightly underperforming, with more significant disparities in the top 5% of the class, although that data appeared to be inconclusive (for one year analyzed, women significantly outperformed men in the top 5% of the class; for the other two, men outperformed women). Cassman & Pruitt, *supra* note 14, at 1255-58. The nationwide LSAC study, however, found that the discrepancy between men and women diminished at the top 2% of grade earners. WIGHTMAN, *supra* note 16, at 12.

48. See *infra* notes 150 and 158 and sources cited therein.

49. Across the 23 classes monitored, only 28% of student comments originated from the Socratic method; 72% of comments came from students who volunteered to speak. This figure does, however, understate the extent to which faculty members use the Socratic method. The Socratic method at Yale is most commonly used in first-term classes, which were underrepresented among the classes monitored.

50. See *supra* Part II.B (discussing the popularity of academia, clerkships, and Yale’s role as a “producer” of legal academics); Priest, *supra* note 20, at 179 (“[I]n the year 2000, Yale Law School placed a far higher percentage of its graduating students in appellate clerkships than any other law school. Column 4 shows that 23.44% of the Yale graduating class secured appellate clerkships. In comparison, Stanford . . . placed 8.79%; Harvard . . . placed 10.14%, less than half of Yale’s; and Chicago . . . placed 13.83% . . . less than two-thirds of Yale’s placement.”); INTRODUCTION TO CAREER

is also atypical, making faculty-student relations a particularly useful “currency.” In other law schools, grades or other traditional benchmarks are likely of greater importance.

Third, we did not ask students about their career goals, and we acknowledge that underrepresentation in competitive clerkships and among writers and board members of *The Yale Law Journal* is of significantly less concern to female students uninterested in academia or clerkships.<sup>51</sup>

Fourth, we did not explicitly address the role of race in legal education, although we did ask student respondents to identify their racial/ethnic background in addition to their gender.<sup>52</sup> We note where trends emerged reflecting differences in the experiences of white and non-white students. Similarly, where a student’s observations reflect a trend among non-white students, the student is identified by gender and racial/ethnic category.<sup>53</sup> While we did not ask students to identify their sexual orientation, some respondents did so in the narrative answers. Constraints on our data-gathering resources prevented us from fully exploring the nexus between gender, race, and sexual orientation. We recognize the importance of race, ethnicity, and sexual orientation in shaping students’ law school experiences and note that these dynamics merit further study.<sup>54</sup>

Fifth, we did not study other aspects of the legal profession—the legal curriculum, job prospects for students after graduation, pressures from student-peers—that might have influenced the way male and female students behave inside and outside the classroom. We observe and analyze differences in the ways professors interact with male and female students and show the relationship between these differences and the ways in which men and women experience law school and perform in law school. Our work should be read in the context of studies concerning law school curricula and other factors that affect women’s experience of law school.

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DEVELOPMENT (Career Dev. Office, Yale Law Sch., New Haven, Conn.), 2006, at 14, 51 (noting that from 39% to 53.5% of the law school’s graduates clerk and that, five years after graduation, 10% of graduates are teaching).

51. Because employment data are most reliably available for the first year following graduation, Yale’s clerkship trends homogenize the beginning of most students’ legal careers. Data on “first jobs” from Yale Law School’s Career Development Office show that, of the graduates of the J.D. classes of 1998, 1999, and 2000, 51% clerked as their first job, 34% worked in a law firm, 7% worked in the public interest, 5% worked for a corporation, and 3% worked in academia. *First Job After Yale Law School Graduation*, *supra* note 26, at 39.

52. Categories included: Asian/Asian-American/Pacific Islander/South Asian; Black (non-Hispanic)/African-American/African-Caribbean; Hispanic/Latino; White (non-Hispanic); and Other.

53. Because the number of non-white respondents was small (reflecting their representation in the student body), where we include quotes from minority students we do not identify them by class year, in order to maintain confidentiality.

54. Following publication of the Yale Law Women study, a committee of YLS students and faculty published a report on racial dynamics at Yale Law School. See COMM. ON RACIAL DYNAMICS, YALE LAW SCH., REPORT (2003), available at <http://islandia.law.yale.edu/rd/>.

In Parts III and IV, we evaluate the empirical information generated by our study and incorporate supplemental data on performance and credentials as a basis for analyzing the experiences of women in law schools.

### III. FEWER WOMEN'S VOICES IN THE CLASSROOM<sup>55</sup>

The classroom is a law student's first, most frequent, and potentially exclusive point of contact with faculty. In the first year of law school, it is a locus of intense socialization into the legal profession. It provides an opportunity for students to engage legal material and to practice verbal agility in discussing it.<sup>56</sup> It is also, we found, an arena that men and women experience differently and where men and women are treated differently by faculty members.

Despite increased classroom participation by an expanding pool of female law students, men continue to dominate class discussions and to use their classroom experiences as a springboard for building academically and professionally rewarding relationships with faculty members. Students and faculty first size each other up in the classroom and may seek one another out based on their interactions in class. Diminished or less effective classroom participation by women feeds into diminished or less effective out-of-class interactions between faculty members and female students. It is also likely to feed into feelings of alienation that deflate female students' enthusiasm and impair performance in law school. Understanding the gendered aspects of classroom dynamics is crucial to designing interventions that will remove the barriers female students currently face in engaging class materials fully, building relationships with faculty members, and realizing the opportunities that law school presents.

This Part shows that some faculty members (1) treat female students differently from male students in ways that inhibit women's engagement in classroom discussions; and (2) reward behaviors more likely to be found among male students, even though those behaviors reflect only a narrow subset of the skills needed for success in today's practice of law.

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55. All classroom participation, faculty interview, and student survey data cited herein were generated from data collected as part of the Yale Study.

56. Stephanie M. Wildman, *The Question of Silence: Techniques to Ensure Full Class Participation*, 38 J. LEGAL EDUC. 147, 150 (1988).

## A. Law School Classes for Men and Women

### 1. Men and Women Cluster in Different Classes

Before we discuss what takes place inside classrooms, we examine the classes in which students choose to enroll. Data from a single semester, Spring 2002, suggest some sorting by gender in students' choice of classes.<sup>57</sup>

First, female students clustered in classes taught by women.<sup>58</sup> Second, male and female students clustered by subject matter, with men choosing business law courses and women choosing courses addressing discrimination or gender.<sup>59</sup> Among non-clinical courses, women were very slightly over-represented, relative to their proportion of the student body, in large classes.<sup>60</sup> Third, women were more likely to choose clinical courses<sup>61</sup> and clinical independent study programs.<sup>62</sup> Clinics offer an alternative classroom environment, including sessions with supervising attorneys, client contact, and

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57. J.D. students chose among twelve clinical courses and seventy-three non-clinical courses. Eleven female professors taught seventeen classes, including two clinical courses, and forty-eight male professors taught sixty-eight courses, including ten clinical courses. J.D. students have no course requirements after their first semester, but they must take Criminal Law at some point before they graduate. Criminal Law, taught by a variety of faculty members, is offered at least once each semester. We do not include information on two courses open only to L.L.M. and J.S.D. students. We also do not include information about the limited number of classes outside the law school that J.D. candidates may take. Students must carry an average of at least 13 credit hours after their first semester, generally between three and five courses.

58. While women constituted 47% of the J.D. student population, they represented 58% of the students enrolled in classes or independent study opportunities taught by female professors. Women represented 44% of the students enrolled in classes or independent study opportunities taught by male professors.

59. Women represented 37% of the students enrolled in the eleven business law courses offered. Female professors taught four of those classes, and male professors taught the remaining seven. The business classes included: Business Crime; Securities Fraud; Law, Economics, and Organizations; Secured Transactions; the Economic History of Law and Business; Antitrust; International Commercial Arbitration; the Law and Economics of Corporate Control; Securities Regulation; and two sections of Business Organizations, the basic corporate law class. The only business class in which women outnumbered men was the section of Business Organizations taught by a female professor, in which 61% of the law school students enrolled were female. In contrast, women represented 63% of the students enrolled in four courses addressing gender or discrimination, two of which were taught by men and two of which were taught by women. It is interesting to note that male and female professors also cluster by subject matter. See Marjorie E. Kornhauser, *Rooms of Their Own: An Empirical Study of Occupational Segregation by Gender Among Law Professors*, 73 UMKC L. REV. 293 (2005).

60. Women constituted 49% of classes with more than fifty students, compared with their representation as 47% of the student body. Women were very slightly underrepresented in classes with fewer than fifty students, constituting 44% of those students. Fifteen non-clinical classes had an enrollment of more than fifty students each (for an aggregate enrollment of 1106), including two courses taught by female professors; fifty-eight non-clinical classes contained fifty or fewer students each (for an aggregate enrollment of 1152).

61. Thirty-six percent of all female students, compared to 29% of male students, enrolled in clinics in the Spring of 2002. See also *supra* note 4 (discussing women's increased tendency to take public interest jobs).

62. Fifty-eight percent of the students enrolled in clinical independent study programs were female, although just 47% of the J.D. class was female.



work assignments. These selections are interesting in light of the fact that women participate less than men in traditional lecture-class environments, particularly in classes taught by male professors, as discussed below.

## 2. *Women Participate Less in Law School Classes*

Consistent with the findings of earlier studies, we found that women participate in class discussions less than men. Fewer overall classroom comments, questions, and responses come from women, and fewer individual women participate in each class. Women's participation increases in classes taught by female professors. Women's participation decreases, however, in large classes and in classes where there is more student discussion overall. We arrived at these findings from three sources: data from observers who recorded the participation levels of men and women in law school classes, interviews with faculty members regarding their observations about class participation by male and female students, and survey responses in which students reported their feelings and observations about classroom participation. We begin by presenting the participation data as an objective inquiry into participation levels and then explore responses from faculty and students to shed light on the dynamics behind the data.

### a. Class Participation Data

After undergoing a training session, students monitored class participation during a two-week period in twenty-five classes in which they were enrolled. Most classes had two monitors, and where discrepancies existed in their reports, they were minor, suggesting that observer bias did not play a major role in determining the results.<sup>63</sup> Thirty-one of thirty-eight observers were female.<sup>64</sup> The gender discrepancies we report are statistically significant.<sup>65</sup>

Observations show that male students dominate classroom discussions, particularly in large classes, in loud classes, and in classes taught by men. During the period in which student observers recorded data about classroom

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63. Where discrepancies occurred, the figures were averaged.

64. Where a male and female student monitored the same class, we did not notice a larger discrepancy in the two reports, compared with discrepancies in reports by same-sex monitoring pairs.

65. Measures of statistical significance are reported in parentheses following each cited measure of participation. The percentage by which we measured women's comments to be underrepresented in classroom discussions (38%) is less than the percentage that Weiss and Melling measured a decade and a half earlier (63%). Weiss & Melling, *supra* note 14, app. b at 1363. A table providing measures of statistical significance for the classroom monitoring data is available on the *Yale Journal of Law and Feminism* website at <http://www.yale.edu/lawnfem/>. See YALE LAW WOMEN, *supra* note 44, app. b, for the raw data on classroom participation. For details about our methodology and survey instruments, see Bashi & Iskander, *supra* note 43; and YALE LAW WOMEN, *supra* note 44, app. b at 90-100. We are grateful to Nasser Zakariya, Fellow, Yale Center for the Study of Corporate Law, and Ian Ayres, William K. Townsend Professor of Law, Yale Law School, for their calculations and regression analyses.

participation, the student body at YLS was 47% female and 53% male.<sup>66</sup> The average number of times that a male student spoke in class was 38% higher than the average number of times that a female student spoke in class (Z statistic=12.4).<sup>67</sup> That disparity was reduced by 24% (that is, the ratio of male to female participation was reduced to 1.14) in classes taught by female professors (T statistic=2.768; P value=0.007). In loud classes—classes with greater overall class participation—the gender disparity increased by 52% (T statistic=2.664; P value=0.009). In large classes—classes with more than fifty students—the disparity increased by thirty-one percentage points (T statistic=2.287; P value=0.024).<sup>68</sup> In the three (out of twenty-five) classes in which women “dominated”<sup>69</sup>—that is, their overall participation outstripped that of men—they dominated to a lesser degree.<sup>70</sup>

Men are also more likely to volunteer to participate. On average, male students volunteered to speak 40% more than female students (Z statistic=13.17).<sup>71</sup> Because 72% of classroom interactions originate with students volunteering to speak,<sup>72</sup> the difference in the rates at which students volunteer—and/or the rates at which professors call on those who do volunteer—accounts for much of the disparity in overall participation.

The above data refer to average participation rates, but the student-observers also recorded how many individual men and women spoke in a given class. Their records show that for a given class, the average female student is 29% more likely not to speak at all, compared to the average male student (Z statistic=12.48). Within the pool of students who spoke in class at least once, however, there was no significant difference between the average number of

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66. See YALE LAW WOMEN, *supra* note 44, app. b at 90-98, for overall enrollment information by gender and class year and enrollment information for each course monitored by gender. The monitoring forms reflect attempts to gather more information than we report here. Student observers were asked to record more detailed information about the nature of classroom interactions (whether students asked questions or made comments, how professors responded), but inconsistencies in characterizing the interactions make the data unreliable.

67. In other words, the ratio of male to female participation was 1.38.

68. The effect of larger class size on the disparity in participation rates is particularly dramatic because the “larger” classes are not that large. All classes monitored contained fewer than 100 students, and the average class size of the twelve “large classes” monitored—classes with more than fifty students—was sixty-seven. The average class size of the eleven “small classes” monitored was thirty-two, including three first-year seminar courses with seventeen to eighteen students.

69. Those three courses included a first-year small group led by a male professor with 46% female enrollment, a first-year lecture course led by a male professor with 47% female enrollment, and an upper level lecture course led by a female professor with 47% female enrollment.

70. In thirteen courses, men spoke more than women to a statistically significant degree (ranging from 20% more than women to 921% more than women), and in three courses, women spoke more than men to a statistically significant degree (ranging from 20% more than men to 90% more than men).

71. In fourteen courses, men volunteered more than women to a statistically significant degree (ranging from 18% more than women to 787% more than women), and in three courses, women volunteered more than men to a statistically significant degree (ranging from 20% more than men to 56% more than men).

72. See *supra* note 49.

times that men and women spoke. In other words, women who speak at least once, on average, speak about as often as their male counterparts.

The data show that faculty members are more likely to “compel” men than women to speak in class by calling on those who do not volunteer. The average number of times that a male student is asked to speak without volunteering (“cold calling”) is 17% higher than the average number of times that a female student is asked to speak without volunteering ( $Z$  statistic=4.51).

We offer the following table as a summary:

Ratio of male to female total comments in class:	1.38
Ratio of male to female volunteered comments in class:	1.40
Factor that increases female student participation:	Female professor
Factors that decrease female student participation:	Large classes (50+ students) Loud classes (classes in which there is more overall student participation)
Silence Factor:	Women are 29% more likely to remain silent in class. Women who speak at least once, however, on average, speak as often as men who speak at least once.

#### b. Faculty Observations

Faculty interviewees observed differences in the levels and styles of participation by gender. Many reported that women’s participation has improved significantly as women have enrolled in Yale Law School in greater numbers and that their own awareness of gender dynamics in the classroom has spurred them to take steps to improve women’s participation. Faculty members’ descriptions of classroom behavior are useful not only in understanding how faculty perceive the problem, but also, coupled with the observational data, in providing insight into the male “dominance” of classroom discussions.

While reporting steady improvement in classroom participation, faculty members reported that male students tend to speak more often, more quickly, and in a more aggressive manner than female students, and that male students tend to speak for a longer period of time. They reported that women are more likely to ask discrete questions or offer discrete answers, rather than engage in extensive commentary. They characterize “female” styles of participation—

styles they see more frequently among women than among men—as deferential, apologetic, polite, self-effacing, non-assertive, and non-argumentative. One male professor observed that men are more likely to “jump in and interrupt in lectures.” A female professor observed a tendency among female students to preface their questions with self-deprecating caveats such as, “I’m sorry, I didn’t get this . . .” She recalled one student who would preface her questions with, “I’m really stupid, but . . .” even though that student wrote an outstanding exam in the class.

Faculty interviewees, who were not shown the class participation data prior to or during their interviews, made observations consistent with the data: in larger classes, men are more likely to dominate class discussions and more likely to volunteer. Many faculty members cited the above observations as a reason they instituted managed forms of classroom participation and other measures to increase women’s participation in class. One male professor started “cold-calling” after noticing that few women and few students of color were volunteering to speak. He said that although fewer women and students of color raised their hands, there were a significant number who, “by the looks on their faces, I could tell they knew what I was asking, but they didn’t volunteer.” Some professors reported trying to spend more time on a female student who raises her hand or trying to spend more time with hesitant students of either gender. A male professor observed that women tend to put their hands down more quickly after initially raising them. Faculty members did not report that women students are less prepared for class; one female professor noted that while volunteers in her class are disproportionately men, male and female students demonstrate the same level of preparation, confidence, and intelligence when she calls on them without warning.

Consistently, and with varying levels of diplomacy, faculty members reported that, to the extent that a small group of students dominates classroom discussions, that group tends to be male. Faculty members said that women tend to take on leadership roles later in the class and are less likely to dominate conversations. Using the ubiquitous colloquial term for students who dominate conversations, faculty members reported that “gunners” tend to be male. A male professor made the blunt estimation that, “[T]hree-fourths of the most dominating, ‘space-consuming’ students are male—they seem to be less likely to notice when they’re dominating.” Interviewees observed an inverse relationship between class size and heterogeneity among discussion participants and noted that men are more likely than women to “rush the podium”—to approach the professor immediately after class to follow up on ideas or questions.<sup>73</sup>

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73. This observation is shared by student respondents and has been documented in the literature. Kathleen A. Sullivan, *Self-Disclosure in Clinical Relationships*, 27 *IND. L. REV.* 115, 145 (1993) (noting

### c. Student Survey Responses

Student responses to survey questions about levels and styles of classroom participation mirrored perceptions offered by faculty and recorded by student observers. Of the 263 students surveyed, 64% believed that men participate more than women in class, 33% believed that men and women participate equally in class, and 2% believed that women participate more. Women reported more of a difference than men.<sup>74</sup> Students reiterated concerns voiced by faculty that women and minorities seem to hold back their comments, while men, particularly white men, are more likely to volunteer to participate, whether or not they have something interesting or insightful to say.

### B. *Why Do Women Speak Less in Class?*

We offer two explanations to account for the different behaviors of male and female students in law school classes. First, faculty members treat comments by female students differently from comments by male students in ways that inhibit female participation in class. Much of this treatment stems from hesitation on the part of some faculty members to challenge women or to engage their ideas. Second, faculty members run their classes in ways that give more attention to students who speak more quickly and unequivocally—behaviors that are more often displayed by men than by women. Students who display what we call “self-regulation”—who monitor their own comments out of awareness of others in the class—are less likely to be given the opportunity to speak, and women are more likely to self-regulate.

#### 1. *Professors Engage Female Students Less Than Male Students*

Within the classroom, male faculty members are less likely to push or challenge women’s ideas, to joke with them, or otherwise to integrate them into class discussions. The strongest indications of disparate treatment come from student responses to the question, “Do you notice a difference in the way your professors address men’s versus women’s comments or questions?” Seventy-two percent of student respondents said yes. Sixty-eight percent of male students and 76% of female students observed a difference. These figures underestimate the percentage of students who believe that at least some faculty members treat women’s comments differently from men’s comments, because an additional 8% of respondents selected “no” when asked if they observed

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that white, heterosexual, male students are much more likely than students of color, gay students, and women to approach mostly white, male, heterosexual faculty members).

74. Asked to rank participation on a scale of 1 to 5, with 1 indicating that men speak more than women, and 5 indicating that women speak more than men, female students give an average answer of 2.16, while male students give an average answer of 2.50 (i.e. closer to the “neutral” number of 3).

different treatment, but then went on to describe different treatment by at least some faculty members in an open-ended follow-up question.<sup>75</sup>

Seventy-seven students chose to respond to the open-ended question, “If yes, what are the differences you notice?” Although students were not given a list of responses from which to select, four types of responses appeared repeatedly: (1) faculty members are less likely to press, challenge, or “fight” with female students;<sup>76</sup> (2) professors pay less attention to or are more dismissive of women’s comments;<sup>77</sup> (3) different treatment occurred only sometimes and/or was applied only by some faculty members;<sup>78</sup> and (4) in treating male and female students differently, professors were responding to differences in the demeanor of male and female students.<sup>79</sup>

Students characterized faculty members’ treatment of women as gentler or more patronizing, more dismissive or more considerate, less serious or less harsh, but a common thread was the observation that *faculty members spend less time on women’s comments*. For example, a female 2L (second-year student) selected “no” to the question of whether she observes a difference between the way professors treat comments by men and women, but adds the following observation: “Often, female students’ comments seem to just hang there, the woman speaks, the professor either just nods or moves on to the next student. On the other hand, these same professors tend to engage more with men, attribute more to men, and name men more.” A male 1L (first-year student) reported, “Some professors seem to either patronize women more often or are outwardly tougher on the men—will hang them out to dry quicker and keep them there.” A female 2L complained about a professor who pressed male students on their comments “but is a total pussycat with the women.” She added, “It’s as if he thinks we couldn’t handle it. It’s really insulting.”

Other students suggested that where professors “play favorites,”—single out a few students for increased scrutiny, attention, or questioning—those students tend to be male. A female 1L observed, “[C]ertain professors cultivate an expectation in a select few that they can speak regularly and without interruption. Often, these students are male.” Another common observation was that faculty members are less likely to single out female students or incorporate them into their classroom routines, particularly in joking or teasing ways. As a male 2L noted, “Some professors like to make certain students

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75. If we recalibrate the numbers to reflect these twenty responses, the result is that 79% of student respondents, 72% of men and 87% of women, observe some difference in the way at least some faculty members treat men versus women.

76. Forty-three percent of students supplying narrative answers gave this response, and some characterized faculty treatment of women as patronizing.

77. Twenty-seven percent of students supplying narrative answers gave this response, and six of these respondents, all female students, expressed the lack of attention as faculty members being less likely to use or remember women’s names.

78. Forty-eight percent of students supplying narrative answers gave this response.

79. Ten percent of students supplying narrative answers gave this response.

semester-long ‘characters’ married to particular (usually under-voiced and/or conservative) views. I have never seen a woman become such a ‘character.’” A female 2L suggested that female students’ diminished out-of-class relationships with faculty members lead faculty members to pay less attention to women in class: “In most of my classes, male students have relationships with the professors outside of class, and as a result, their views are given more play than those of other students.”

Students’ observations are consistent with disclosures by some male faculty members that they take care not to offend or “tease” female students by treating them the way they treat male students, such as referring to students by name and using them as part of factual examples in class.<sup>80</sup>

Student respondents suggested an additional explanation for the diminished volunteer participation by women: some students reported that faculty members are less likely to call on women who raise their hands.<sup>81</sup>

The participation data are instructive, too, in light of reports from faculty interviewees and student respondents. Observers recorded data showing that professors are 17% less likely to “compel” a female student to speak than to call on a male student who has not raised his hand. The classes monitored include those in which professors used a strict “Socratic” method of cold-calling, classes in which professors gave students advance notice that they would be “on call” for a particular day or topic, classes in which professors only called on students who volunteered to participate, and classes employing a mix of the above methods.<sup>82</sup> Reduced volunteer participation may contribute to reduced compelled participation, if professors are less likely to call socratically on students who have not already volunteered to speak, because they do not know whether those students can “handle” the challenge.<sup>83</sup> These data from

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80. Interestingly, after the findings of the study were presented to faculty and students, one male professor decided to experiment with “playfully insulting” female students, too. The professor had a practice of singling out students in his lecture class to feature prominently in hypothetical fact patterns illustrating legal principles. The professor would make up examples in which the “starring” student engaged in various kinds of illegal or irresponsible behavior which would then be analyzed under the relevant law. He would use only white male students as examples (generally students he knew but had not necessarily consulted in advance), privately expressing concern that female students or students of color might take offense if he used their names. In the semester following the publication of the YLW report, he obtained permission from a female student to cite her as an example, and he mentioned her name, too, as the protagonist in classroom examples illustrating behavior that would have adverse legal consequences. The female student reported to the authors her feeling of recognition in having other students come up to her after class, congratulate her on her “starring” role in the classroom cast, and remark that it was the first time a woman played such a role. Interview with male professor, Yale Law School, in New Haven, Conn. (Spring 2002).

81. Observers of classroom participation did not record how many students raised their hands but were not recognized.

82. While some “Socratic” interactions originate in professors calling student names from a prepared class list, other instances of compelled speech are spontaneous, as when professors aim questions at repeat players who have not volunteered to speak.

83. Indeed, if male faculty members are hesitant to challenge female students, they may be particularly hesitant to compel silent female students to speak. On the other hand, not being called on makes students less likely to volunteer. Some professors report that they reinstated cold-calling in

various sources constitute strong evidence of disparate treatment—regardless of how well-meaning professors may be.

Much of this different treatment apparently stems from a desire among faculty members to be sensitive to what they perceive female students can or want to endure. A male professor said that he is more ready to “fight” with male students than with female students in class discussions. He attributed this difference to his own socialization (as someone from an older generation) and also to the fact that men make more contentious comments than women. Another faculty member said he is more comfortable teasing or joking with male students, because he assumes that women are vulnerable to feeling insulted by such interactions unless their behavior signals otherwise. He acknowledged that the net result is that he challenges women less and engages their comments less, out of concern not to offend.

These pedagogical practices help explain women’s decreased participation in class, both in terms of frequency and observed length of comments. Such treatment may also affect their levels of confidence and engagement with the material.<sup>84</sup> When professors fail to follow up on women’s comments, hesitate to press female students, and otherwise spend less time on women’s comments in the classroom, women are less visible, less prominent, and less integrated into the classroom environment. They establish less of a rapport with faculty members, reflected in the fact that, in contrast to male students, most female students do not consider classroom interactions to be a basis for developing mentoring relationships.<sup>85</sup>

Whether it stems from male faculty members’ discomfort, deprecation, politeness, or any other source, engaging women’s comments less vigorously than men’s comments under-engages women. It makes them less prominent in the class; it distances them from the material under discussion; it hinders their development of out-of-class relationships with faculty members; and it deprives the class of their comments and thoughts.

## 2. *Law School Professors Reward Behaviors More Commonly Displayed by Men*

A second factor in suppressing women’s participation is the manner in which faculty members allocate attention and class “air time” to the students who demand it most loudly and most often. Faculty members appear to be more responsive to a style of speaking that is more often found among men than among women, even though it does not necessarily reflect the oral skills most useful to lawyers. Faculty and students overwhelmingly observed that

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response to the silence of female students and students of color. According to these faculty members, once students were compelled to speak, they began to volunteer.

84. Wildman, *supra* note 56, at 150.

85. *See infra* Part IV.



women tend to be slower to raise their hands and less likely to dominate classroom discussions. Some respondents interpreted these behaviors as a lack of confidence among female students. We suggest an alternative interpretation: women are more likely to be aware of their classroom environment and to regulate their own participation in order to listen and to give others an opportunity to speak.

Respondents expressed agreement with the notion that men and women behave differently, although they differ about how to characterize those differences. Some believed that men are generally more confident. Eighty-nine percent of female student respondents, compared with 40% of male student respondents, expressed agreement with a quotation by a faculty member that included the statement: “Male students tend to have more confidence in themselves as public speakers and feel more comfortable speaking in large classes, even when the point they are making is minor.”<sup>86</sup> A male 2L perceived that “men are more arrogant and feel their comments deserve public reception,” while another male 2L observed that “women do seem less interested in hearing themselves speak.” Some student respondents attributed the difference to gender socialization, while other students and some faculty members greeted with skepticism the claim that female law students are less confident or aggressive, noting that women have had to demonstrate their assertiveness and ambition in order to be accepted to Yale Law School. A male professor observed that, in class, “[s]ome women will show a sense of deference, apology. It isn’t a lack of self confidence, but it is an over-politeness. They are quite able to hold their own, but they will be tentative.” A female 1L complained that law school rewards authoritative, unequivocal assertions, irrespective of their accuracy: “Women students are encouraged to make statements as if they were completely isolated bits of truth, rather than being allowed the space and time to bring a cluster of meanings to the table.”

Other behaviors, sometimes attributed to diminished confidence or aggression, may be a function of heightened awareness of the perceived needs of others. For example, the tendency of women, as observed by a male faculty member, to preface their comments with “so and so already made this point but . . .” may be an attempt to include and relate to other participants in the discussion. A similar dynamic may be behind the commonly-observed phenomenon that women are less likely than men to interrupt classroom discussions.

Narrative responses suggest that women tend to regulate their comments, particularly in large classes or in classes where air time is scarce and where

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86. The quotation also included the claim that women experience “performance anxiety” in large classes. See *YALE LAW WOMEN*, *supra* note 44, app. c, at 105. Due to a design flaw in the survey, the quotation included multiple pieces of information, such that it is not clear which parts of the statement survey respondents ratified. Respondents were not given an opportunity to suggest or endorse alternative explanations for disproportionately low class participation by women.

others wish to participate. Professors appear to reward “space-grabbing” speakers in a way that women (and some men) find distasteful. A female 3L wrote, “The annoying students most often tend to be male—but this isn’t something I’d be keen to emulate, so it doesn’t bother me that women are more aware of the people around them and the reactions of their peers to over-zealousness.”<sup>87</sup> A female 1L recognized that professors respond positively to authoritative assertions by male students but said she has no desire to mimic them:

[I]t’s acceptable to walk up and show off your smarts, but not to engage. Why professors would want to hear undeveloped pet theories from self-aggrandizing students rather than taking a few moments to engage with students is beyond me. Additionally, that difference definitely favors men who are more likely to try to aggressively prove their intelligence.

Faculty members may not really enjoy hearing from “self-aggrandizing” students, but they run their classes in ways that allow a small group of students to dominate, thus rewarding those students with more of the class’s time. Because faculty members tolerate (primarily male) students who speak frequently and disproportionately in class discussions, students perceive that faculty members welcome such behavior.

Feminist scholars disagree as to why male students are more likely than female students to exhibit “space-grabbing” behavior. Some scholars argue that women are raised with a sense of self more oriented to relation and affiliation and thus temper their individualism with regard for others.<sup>88</sup> Indeed, feminist scholars have interpreted patterns of behavior more commonly observed among women than men—qualifications of statements and rising inflections at the end of sentences, for example—as an expression of contextual reasoning<sup>89</sup> or a desire to include others in the discussion by leaving room for differences of opinion.<sup>90</sup> Other feminist scholars argue that institutions create gender by cultivating different kinds of behaviors for men and women.<sup>91</sup> We express no

87. Of course, students of either gender may experience pressure from peers not to appear over-eager. Previous studies have suggested that women who speak out in class and aggressively pursue opportunities are singled out for ridicule in a way that male students are not. *See, e.g.*, Guinier et al., *supra* note 14, at 52. The “anti-gunner” norm is not, however, limited to women.

88. *See, e.g.*, CAROL GILLIGAN, *IN A DIFFERENT VOICE* (1982); Carrie Menkel-Meadow, *Portia in a Different Voice: Speculations on a Women’s Lawyering Process*, 1 BERKELEY WOMEN’S L.J. 39, 40 (1985). Robin West attributes the difference to women’s connectedness through biological functions like pregnancy and nursing. Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1 (1988). These findings have been vigorously contested. *See, e.g.*, CATHARINE MACKINNON, *Difference and Dominance: On Sex Discrimination*, in *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 32 (1987).

89. *See* GILLIGAN, *supra* note 88, at 16-17; Sullivan, *supra* note 73, at 150-51 (applying Gilligan’s theory to legal education and criticizing law schools for focusing too narrowly on de-contextualized, abstract analysis).

90. *See, e.g.*, KATHY E. FERGUSON, *THE FEMINIST CASE AGAINST BUREAUCRACY* 96 (1984).

91. ROSABETH MOSS KANTER, *MEN AND WOMEN OF THE CORPORATION* (2d ed. 1993).

opinion on the source of the difference but, instead, ask why professors value some behaviors and not others. We claim that the current practice of rewarding loud, emphatic classroom participation not only has an adverse impact on female students, but is also a poor pedagogical practice for all students.

Encouraging and rewarding repeated, emphatically-phrased comments from a small group of students ensures that men will dominate class discussions and reap benefits in the form of increased engagement with law as a subject matter and increased attention from faculty members as teachers and mentors. A volunteer regime exacerbates this dynamic. Of course, not all women self-regulate, and not all men vie for air-time, but the differences are significant enough to lead to the male domination of class discussions observed by the Yale Study and by its predecessors and successors at other law schools. Many professors disavow a connection between “gunners”—(primarily male) students who tend to dominate a discussion—and academic excellence. As one male professor delicately puts it, “[S]ometimes, in class, when there is a small group of very vocal students, those students are more often male than female. And that small group of vocal students does not necessarily represent the strongest students in the class.” Practices that tolerate, cultivate, and/or reward domination of class discussion tend to favor male students over female students, reflecting too narrow a view of desirable oral presentation skills. Of course, some lawyerly tasks, particularly court appearances, call for quick responses and vigorous, unequivocal argumentation. But lawyers spend far more time negotiating, mediating, and working collaboratively<sup>92</sup>—practices that require listening, attention to nuance, and considered responses, which should be encouraged as well.

### *C. Consequences of Diminished Classroom Participation*

Silence or diminished participation for women in the classroom has consequences that are difficult to measure. We focus on two observed results of women’s diminished participation in the classroom, both of which hinder women’s professional development: (1) Diminished participation in the classroom impairs the ability of female students to build valuable relationships with faculty members; and (2) diminished participation in the classroom deprives women of opportunities to engage and debate ideas, to practice legal arguments, and to develop confidence in their abilities.

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92. See *infra* notes 150-153 and accompanying text.

1. *Classroom Performance Is a Springboard to Relationships with Faculty*

Yale Law School may be unusual for its pronounced emphasis on faculty-student interactions, but in any law school, relationships with faculty members provide students with information, guidance, encouragement, mentoring, and professional credentials and contacts. Yale Law School's small size (about 190 students per J.D. class), aspirations toward collegiality, emphasis on academia, and lack of formal benchmarks make faculty-student interactions a particularly significant part of students' legal education and a particularly important factor in enhancing professional opportunities.<sup>93</sup> Relationships begin in the classroom, where students first encounter faculty members, and faculty members develop impressions of their students' abilities. Exams come only at the end of the semester,<sup>94</sup> and in the eyes of some faculty members, performance in classroom discussions rivals exam quality as a measure of achievement.<sup>95</sup>

Male students are more likely to use classroom participation as the foundation for relationships with members of the faculty. As Part IV will demonstrate, men form closer relationships with faculty outside the classroom. The difference begins in the classroom, where, on average, men participate more than women. It continues in the moments after class, when male students are more likely than female students to approach professors with questions and comments.<sup>96</sup>

Responses from female students indicate that they are insecure about their ability to build rapport with faculty members and hesitant to approach them for fear that faculty members will not know who they are. Compared to male students, female students are less able to leverage the opportunities that class discussion creates for building professionally valuable relationships with faculty members. Indeed, some faculty interviewees observed that women are less persistent or less interested in pursuing projects and relationships with them. We hypothesize that faculty members may interpret women's silence in class—and the distance it creates from the professor leading the class—as lack of interest in other kinds of interactions with the professor.

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93. See *supra* Part II.B.

94. The grading system, described in Part II.B, *supra*, tends to homogenize most students' evaluations—a failing grade or even a “low pass” is very unusual, and grades of “pass” are awarded as a matter of course.

95. In classes for which students write papers, faculty members view paper quality as an important measure of achievement. However, most large classes—the classes where women's participation is the lowest—require exams, not papers.

96. Of seven possible answers, male students listed class participation as their third-most effective way of building mentoring relationships with faculty members, while female students listed it as one of the least effective ways. See Appendix B; see also *infra* Part IV.A.

## 2. *Silence in Class Reflects Lost Opportunities and Alienation*

A second consequence of women's diminished classroom participation is the effect it has on women's attitudes toward law school, the law, and their abilities to succeed professionally. At best, women's disproportionately low classroom participation deprives them of an opportunity to develop confidence in their verbal skills and to engage the subject matter.<sup>97</sup> At worst, it fosters and is a product of alienation from and even hostility toward law and law school. Krauskopf found that 25% of women, compared to 15% of men, experienced a loss of confidence as a result of their classroom experiences.<sup>98</sup> Guinier et al.<sup>99</sup> and Weiss and Melling<sup>100</sup> provide qualitative demonstrations of the humiliation and damage to self-esteem that results from women's experiences in the classroom. Garrison et al., who found no significant difference between the grades that men and women received at Brooklyn Law School, found a connection between female law students' lower rates of voluntary classroom participation, their lower rates of satisfaction with their voluntary classroom participation, and their higher rates of reported anxiety, depression, and related behaviors.<sup>101</sup>

If class discussion is a game, women are more likely to remain on the bench. Past studies suggest that their silence is far from neutral. It may reflect alienation, insecurity, and/or hostility. Law School Admission Council (LSAC) survey data suggest that female law students are more likely to be insecure about their public speaking skills than male law students,<sup>102</sup> creating a chicken-and-egg problem—where women do not participate in class, they lose an opportunity to gain confidence in those skills.

In the next Part, we discuss how women's diminished classroom participation feeds into diminished ability to create professionally rewarding relationships and opportunities outside the classroom. We observed these interactions among students and faculty at Yale Law School, but understanding them is also useful in understanding how women and men interact in the workplace, where, in law as in other fields, professional success is linked to networking, mentoring, and other kinds of relationships with (mostly male) superiors and colleagues.

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97. Susan L. Brody, *Teaching Skills and Values During the Law School Years*, in THE MACCRATE REPORT: BUILDING THE EDUCATIONAL CONTINUUM 22, 22 (Joan S. Howland & William H. Lindberg eds., 1993); Wildman, *supra* note 56, at 150.

98. Krauskopf, *supra* note 14, at 326.

99. Guinier, *supra* note 14, at 43-44.

100. Weiss & Melling, *supra* note 14, at 1333-34.

101. Garrison et al., *supra* note 14, at 531-32.

102. WIGHTMAN, *supra* note 16, at 56 tbl.27.

IV. FEWER WOMEN FIND FACULTY MENTORS AND ADVOCATES<sup>103</sup>

We examine interactions outside the classroom at Yale Law School as a locus of informal instruction, collaborative work, professional development, and mentoring. Faculty-student relations outside the classroom form an important part of legal education in any law school, but their influence is particularly prominent in small schools. A student's educational experience and sense of herself as a lawyer is enhanced by the encouragement and affirmation of a faculty mentor or advocate. Students also benefit from concrete advice from faculty members about how to succeed in law school and in their subsequent legal careers. Developing relationships with law professors is part of a student's socialization into the legal profession.

Exploring the formation and nature of these relationships—and the role that gender plays in shaping them—has implications beyond the law school context, because these relationships mimic interactions that are important to legal jobs of all kinds. In particular, Yale Law School's informal atmosphere and lack of institutionalized benchmarks replicate key aspects of the legal profession that male and female students will join upon graduating from law school. In a recent study of alumnae from elite law schools, a majority of female lawyers cited lack of mentoring opportunities and exclusion from informal networks within their organizations as significant barriers to the advancement of women lawyers.<sup>104</sup> Women's status as outsiders is not unique to law school, but understanding and changing those dynamics early will socialize the next generation of lawyers into a more egalitarian work world.

In this Part, we describe differences in the way male and female students relate to faculty members outside class, from the first approach to the development of mentoring relationships. We show that female students are less likely than male students to build close, professionally and educationally beneficial relationships with faculty members. We offer a number of explanations to account for the differences between the way male and female students interact with faculty.

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103. All classroom participation, faculty interview, and student survey data cited herein was generated from data collected as part of the Yale Study.

104. CATALYST, *supra* note 8, at 18. The report shows that 53% of women, compared with 21% of men, cite exclusion from informal networks within their organizations as a barrier to the advancement of women lawyers. Fifty-two percent of women, compared with 29% of men, cite the lack of mentoring opportunities as a barrier to the advancement of women lawyers. *Id.* The lawyers sampled received their law degrees from Berkeley, Columbia, Harvard, Michigan, and Yale between 1970 and 1999. *Id.* at 9-10.

*A. Approaching Professors Outside the Classroom*

We examined a spectrum of interactions between faculty and students, from the most casual to the most intense. At some point in their law school careers, most students have occasion to approach faculty members outside class. Faculty members may choose to advocate for a small number of students through letters of recommendation, phone calls, and other assistance in finding jobs, particularly clerkships and academic posts. Other students work closely with professors through research and teaching assistance or through writing projects. In any of these contexts, some students form mentoring relationships with faculty that may include professional guidance, role-modeling, encouragement, and friendship.

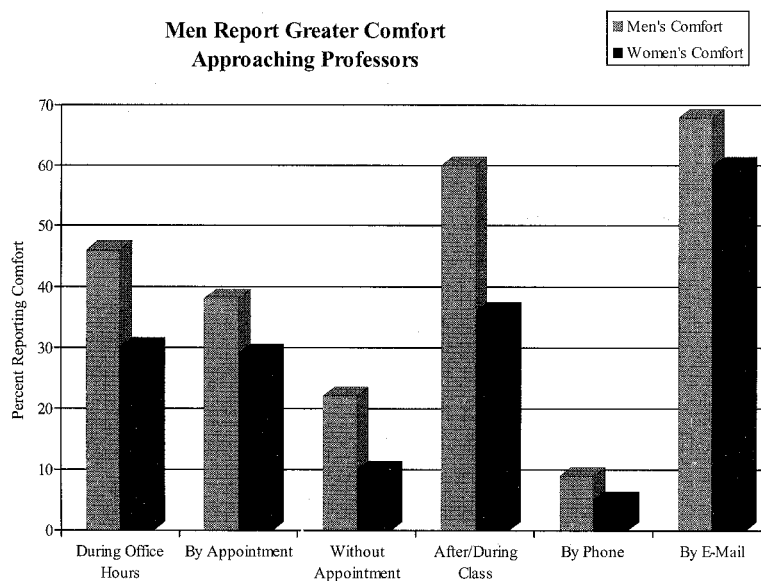
Empirical data gathered from both faculty interviews and student responses demonstrate that women find it more difficult than men to approach faculty members outside of class. Student perceptions on this issue vary by gender: 63% of women, but only 28% of men, observed differences in the way men and women interact with faculty outside the classroom. Several female students suggested that male students feel “entitled” to professors’ time outside the classroom. A female 2L said that not only do men appear more comfortable talking to professors, but that, “more discouragingly, professors seem much more comfortable talking to male students.” Differences in out-of-class interactions are expressed in (1) men’s greater levels of comfort in approaching faculty members outside class and (2) men’s and women’s different ways of responding to pressures to “perform” in their interactions with faculty members.

*1. Women Are Less Comfortable Approaching Faculty Members*

Students were asked to gauge their discomfort level on a scale of 1 to 5 (“1” signifying “very comfortable” and “5” signifying “very uncomfortable”) in approaching faculty members in six different ways outside the classroom: (1) attending posted office hours; (2) scheduling an appointment outside posted office hours; (3) stopping by a professor’s office without an appointment; (4) approaching a professor after class or during breaks; (5) telephoning a professor; and (6) e-mailing a professor. Male students reported a higher level of comfort with each of the six methods,<sup>105</sup> as the chart below shows:

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105. Although students were not asked to report which methods they actually use, their narrative responses suggest they most often used the approaches with which they felt most comfortable. We asked faculty members to monitor and report the numbers of male and female students who visited their offices, but the reporting was sporadic.



Men are also much more likely than women to feel “very comfortable” approaching faculty members, while women are more likely to feel “very uncomfortable” doing so.<sup>106</sup>

Minority students expressed greater discomfort than white students with visiting faculty members in their offices.<sup>107</sup> An African-American female student said race is a barrier: “In person, I think some professors are hypersensitive to minority students . . . and have felt often that they were stiff with me as a minority . . . .” An African-American male explained that, “professors seem pretty busy, and I hate to interrupt.”

Free response answers of (white) male students suggested that they feel entitled to a professor’s time during office hours. A male student commented that “during designated class or office hour times, I feel as though the professor is essentially on my time.” Female students, however, rarely expressed a preference for face-to-face contact during office hours and found it more

106. Of the students who felt comfortable using posted office hours, 18% of men and 10% of women reported being “very comfortable” doing so. Of the students who felt comfortable approaching a professor to schedule an appointment, 15% of men and 18% of women reported being “very comfortable.” Of the students who felt comfortable approaching faculty after class or during class breaks, 34% of men and 9% of women reported being “very comfortable” doing so. Conversely, of the students who are uncomfortable visiting a faculty member without an appointment, 40% of women are “very uncomfortable,” compared with 25% of men, and of the students who are uncomfortable telephoning a professor, 63% of women and 43% of men are very uncomfortable doing so.

107. None of the twenty-five African-American or Latina women reported being “very comfortable” attending posted office hours; none of the forty African-American or Latino respondents, male or female, reported being “very comfortable” approaching professors to schedule an appointment; and none of the seven Latina respondents reported being more comfortable than uncomfortable doing so. Fewer than ten percent of Latino and African-American students reported feeling comfortable stopping by without an appointment.



challenging to maintain an easy flow of conversation when visiting with a professor in person. “[I] think they expect a level of academic rigor in the question that to me prohibits an easy and cooperative discussion of ideas. I almost think the only questions that quite a few professors would find worth hearing would be ones I already had thought out the correct answer to,” observed a female 1L. Female students said they feel pressured to have a specific question in mind and to prepare in advance for meetings with faculty members.

The starkest difference in perception is evident in how women and men view approaching professors after class and during class breaks. In their narrative answers, men described these interactions as low-key and convenient, while women describe them as competitive and even combative. These findings are consistent with faculty and student observations that men are more likely to “rush the podium” after class and during breaks. Male students described these time periods as efficient, convenient, and “informal” opportunities to engage professors, characterizing them as “minimally intrusive.” Female students, on the other hand, said that they were not comfortable having to “beat several other classmates to the front” and would avoid doing so, even if they had a question or wanted to discuss something. More than one woman expressed additional discomfort with getting to the front of the crowd and “then [being] subject to everyone else listening to my reaction/questions/thoughts.” Some male students shared this reaction; two men expressed similar distaste in their free response answers, and 19% of men reported being uncomfortable approaching professors after class or during breaks.

## 2. *Faculty Observe Differences in Styles of Approach*

Observations by faculty members support the finding that men and women approach them in different ways. Some faculty members reported that (at least slightly) more men than women approach them outside class. Faculty members confirmed that male students are more likely than female students to approach them right as class ends, generally in order to follow up on a question or comment from the class discussion. In addition, some faculty members reported differences between men’s and women’s styles of approach. A male professor suggested that male students are more “autobiographical” and “will just sit down and start talking about their lives, themselves.” A female professor noted that more male students will come “just to talk” whereas women are more likely to stop by with specific, substantive questions. One male professor reported that women appear to need a firm reason to request his time.

*B. On Finding Advocates and Mentors*

Perhaps unsurprisingly, given their diminished overall engagement with faculty members, women tend to forge more attenuated mentoring relationships. Women experience greater discomfort in asking for letters of recommendation, and anecdotal evidence suggests they are less likely to do so. They also are less likely than men to have a faculty mentor, and they are less satisfied with mentoring opportunities. Women are more likely than men to report a mismatch between their expectations of mentoring and those of faculty members, particularly regarding how performance-driven the relationship should be or how holistic the guidance provided should be.

*1. Women May Be More Hesitant to Request Letters of Recommendation*

Reponses provided by faculty interviewees suggest that women are less likely to request letters of recommendation, particularly for highly competitive positions. Of the faculty members who noticed a disparity between the numbers of men and women requesting letters of recommendation,<sup>108</sup> eleven professors, including two female professors, reported writing more letters for men, while five faculty members, including three female professors, reported writing more letters for women. Many faculty respondents observed that even men whom they do not know very well appear comfortable asking for recommendations, while highly successful female students hesitate. One female professor noted that, in particular, more men seem to be willing to ask for letters without having formed a personal relationship with her, while women seem less comfortable asking for letters in similar circumstances. A female professor made a similar observation about collaborative projects, reporting that women tend to work with her as research assistants and then ask her to work with them on their own projects, while men more often appear and say “I want to write about X, will you supervise me?” She said that men tend to display a greater sense of entitlement and confidence in their own capacities. Male and female faculty members reported a gender gap in students who request letters of recommendation for “top” clerkship positions, despite the fact that in recent years, men and women have obtained these positions in almost proportional numbers.<sup>109</sup> One possible explanation is that women self-sort—fewer apply, but those who do enjoy higher success rates.<sup>110</sup>

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108. Five faculty members report writing similar numbers of letters for men and women.

109. See Appendix D.

110. The 1995-1996 Dean's Ad Hoc Committee on the Status of Women at Yale Law School found that women applied for clerkships in disproportionately low numbers, but that they enjoyed higher success rates than their male counterparts, presumably because they self-selected to a greater degree. DEAN'S AD HOC COMM. ON THE STATUS OF WOMEN AT YALE LAW SCH., YALE LAW SCH., REPORT 1996.

A small number of women reported that they did not seek certain opportunities because they were unsure that they could secure a recommendation letter. A minority female noted, "I didn't apply for clerkships because I only believed that I knew one professor . . . regardless of an H [honors grade] in the class . . . I didn't feel comfortable asking professors who hardly knew me." According to another female 3L:

Once I began applying for teaching jobs, I felt like it would be a burden for them to write a recommendation for me. Even in classes where I participated, got to know the professor well, and got an [honors grade], it felt like it would be too much to ask of them, or they would not have anything substantial to say.

## 2. *Women Are Less Likely to Have a Mentor*

While the number of students reporting that they have "a particularly close, mentor-like relationship" with a faculty member increases with seniority of class year, women in each year are less likely than men to have a faculty mentor.<sup>111</sup> Some groups of nonwhite students were less likely than their white counterparts to have a faculty mentor.<sup>112</sup> Of the students who said they have a faculty mentor, 64% said that their mentor is a male faculty member. More women (40%) than men (32%) reported that their mentor is a female faculty member. Because women compose 20% of the faculty, these data suggest that female faculty members take on a disproportionate share of student mentoring.<sup>113</sup> Most students, including many students who said they have a faculty mentor, reported dissatisfaction with mentoring opportunities at Yale Law School, although women are more likely than men to report dissatisfaction.<sup>114</sup>

Male and female students reported that they form mentoring relationships in generally similar ways—they become close to faculty members by serving as a research or teaching assistant, by writing a paper with the faculty member, or by maintaining a relationship formed from their first year "small group" experience in which faculty members teach a seminar of sixteen students. Nearly twice as many women as men found mentors by working for a professor

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111. Among 3Ls, 51% of male students and 45% of female students reported that they had a faculty mentor, compared to 45% of male 2Ls and 38% of female 2Ls. Among 1Ls, 25% of men and 18% of women reported having a mentoring relationship with a faculty member.

112. Among non-white males in the second year class, 30% report that they have a mentor, while 50% of their white male counterparts report the same. Only 11% of minority females in the first-year class report that they have a faculty mentor, while first-year white females report double that number (22%). In other groups sharing the same gender and class year, minority students and white students report few differences.

113. Some of the difference, however, likely reflects the fact that women were over-represented among clinical faculty—29% of all students report that their faculty mentor is a clinical professor.

114. Dissatisfaction among female students was 77%, while 64% of male students reported dissatisfaction.

as a research assistant, while nearly twice as many men as women found mentors through their own writing projects. This finding is consistent with comments by women that they feel they must “earn” a mentoring relationship and with observations by some professors that men tend to display a sense of entitlement for faculty input in their own projects.<sup>115</sup>

Perhaps the most surprising difference is the extent to which male students rely on casual contacts as the basis for forming a mentoring relationship. Twice as many men as women listed class participation as the basis on which they found a faculty mentor.<sup>116</sup> Men were more likely to use robust, in-class engagement with faculty members to develop out-of-class relationships.<sup>117</sup>

### 3. *Women Are Underrepresented in Areas Where Faculty Mentoring Matters*

The dynamics described above, in which female students experience more attenuated relationships with faculty members, have consequences for women’s professional and intellectual development. Students at Yale Law School graduate to enjoy substantial professional opportunities.<sup>118</sup> However, women’s relative underperformance appears starkly in the fields in which faculty advising, role-modeling, and mentoring are most important: publishing and academia.

Membership on *The Yale Law Journal* and publishing work while in law school are important credentials for students wishing to enter the academic job market.<sup>119</sup> Disparities in men’s and women’s membership on *The Yale Law Journal* board and in publication of student notes are predictive of disparities in men’s and women’s entrance into the academic job market.

Over the past decade, women have served as editors or board members of *The Yale Law Journal* in somewhat disproportionately low numbers, despite their equal representation in the journal’s top position, editor-in-chief.<sup>120</sup> At least some of the disproportionately low representation stems from the fact that

115. Some studies claim that women undervalue their efforts compared to men and display less of a sense of entitlement to being rewarded for their work. See, e.g., Denise D. Bielby & William T. Bielby, *She Works Hard for the Money: Household Responsibilities and the Allocation of Work Effort*, 93 AM. J. SOC. 1031, 1034 (1988).

116. Another interpretation is that for men, class participation is not just a casual basis of contact with faculty members—it is an opportunity for substantial communication.

117. See Appendix B for a table summarizing how men and women form mentoring relationships.

118. See, e.g., *infra* note 134.

119. Of course, students interested in academia may also choose to edit and publish in subject-specific legal journals, but working on *The Yale Law Journal* remains a traditional and important credential for students interested in academia.

120. In five of the last ten years, women have held the journal’s most senior post. In contrast, for volumes 106-112 (1996-2003)—of which four volumes were headed by a female editor-in-chief—women represented 29% of *The Yale Law Journal*’s officers (including the editor-in-chief, managing editor, and executive editor positions) and 39% of board members overall. They represented 42% of “junior” editors, generally second-year students, for that time period.

women are applying for *Journal* and board membership in lower numbers.<sup>121</sup> In 1995, *The Yale Law Journal* undertook a large-scale initiative to recruit women and students of color.<sup>122</sup> The initiative appears to have borne fruit in the academic year 1996-1997, immediately following the study, but women's proportional participation declined in subsequent years.<sup>123</sup>

The disparity between men's and women's publication in *The Yale Law Journal* is more striking. Between 1996 and 2003, women produced only 36% of student-published work, even though, on average, they comprised 45% of the 3L J.D. class in those years.<sup>124</sup> Because the *Journal* promptly destroys identifying information about unsuccessful student submissions, information about acceptance rates for student publications was not available. However, board members did collect such data for the academic year 1994-1995, as part of their study of women's representation on *The Yale Law Journal*.<sup>125</sup> That inquiry shows that women submitted notes at a slightly low rate (39% of submissions were female-authored, compared to women's representation as 42% of the 2L and 3L classes<sup>126</sup>), but women experienced a dramatically low acceptance rate—8%, compared with 35% for men.<sup>127</sup> The low acceptance rate appears to be in large part due to the fact that women did not re-submit after experiencing initial rejection. Sixty-three percent of the notes eventually published were rejected the first time and accepted only after resubmission.<sup>128</sup> Thirty-seven percent of initially-rejected male-authored notes were re-submitted, in contrast to 12% of initially-rejected female-authored notes.<sup>129</sup> In

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121. Journal membership is determined by the results of a "Bluebooking" test in which students must correct citations and an editing test in which students assess the merits of sample article submission. The test is generally considered to be a straightforward application of the principles of legal citation—in other words, for the years studied, journal membership was considered within the capacity of most students who wanted it badly enough to study the Bluebook hard enough. In the academic year 1995-1996, as part of an initiative to recruit more women and students of color, *The Yale Law Journal* recorded acceptance rates by gender for the Spring 1994 competition. Only thirty-three women, compared to seventy-five men, completed the application process, but women had a higher acceptance rate: 48.5% compared to 34.7%. Memorandum from Tricia Small to Jonathan Cedarbaum (Dec. 7, 1995) (on file with the authors).

122. In the years preceding the initiative, the *Journal* came under fire for being elitist and unrepresentative. *Journal* editors undertook an extensive year-long study, including consultation with minority student groups and alumni, and they changed the selection process to try to diversify membership. Background and a description of the initiative are on file with *The Yale Law Journal*.

123. In 1996-1997, women were slightly *overrepresented*, comprising 48% of editors but only 46% of the 2L J.D. class. The following year, their representation dropped to 31%, compared with their representation as 39% of 2L J.D. students.

124. Students submit notes anonymously, and a special committee of board members, including one executive editor and the editor-in-chief, considers them for publication. See Appendix C for a table showing student note publication by gender.

125. Memorandum from Elena to Jonathan (Dec. 18, 1995) (on file with the authors).

126. *Id.*; YALE LAW SCH., YALE LAW SCHOOL DIRECTORY 1994-1995 (1994).

127. Forty male-authored notes and twenty-six female-authored notes were submitted, while fourteen male-authored notes and only two female-authored notes were accepted. Memorandum from Elena to Jonathan, *supra* note 125.

128. *Id.* Notes editors include substantive feedback and suggestions for revision in their letters rejecting student-authored submissions.

129. *Id.*

other words, most published notes were published only after multiple submissions, but few women re-submitted after initial rejection. This phenomenon is impressionistic, because it covers only one year of notes submissions, but it is consistent with comments by faculty members that they believe women exhibit less “tenacity” in pursuing academia-related goals.<sup>130</sup>

Student publications generally begin as papers written under the supervision of faculty members, who encourage aspiring legal academics to publish student notes. To some extent, women’s disproportionately low student note publication rate predicts their underrepresentation as legal academics, another area in which faculty advocacy is important and a matter of particular pride for Yale Law School. By one calculation, YLS is the second highest overall “producer” of law teachers,<sup>131</sup> second only to Harvard Law School, whose student body nearly triples that of Yale. In the academic year 2002-2003, 10.1% of U.S. law school teachers were YLS graduates, even though YLS graduates account for fewer than 1% of U.S. law school graduates.<sup>132</sup> However, the number of female YLS graduates entering legal academia remains low, even as women’s enrollment in law school continues to grow. Of the YLS graduates who went on the legal academic job market between 1996 and 2002, only 29% were women.<sup>133</sup>

The comparison of male and female performance in academic jobs is interesting for two reasons. First, academia is a highly competitive career path in which Yale Law School graduates are differentiated.<sup>134</sup> Academic jobs are considered desirable by students, and they are difficult to obtain. Second, academia is a career path in which relationships with faculty members are particularly important for law students. Professors serve directly as mentors, role models, recommenders, and writing coaches for students wishing to enter the job market. More than other performance measures, the relatively lower numbers of female students entering academia reflect their more attenuated relationships with faculty members.<sup>135</sup>

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130. See *infra* Part IV.C for a discussion of this issue.

131. Neumann, *supra* note 2, at 319.

132. The 2002-2003 American Association of Law Schools Directory of Law Teachers lists 852 Yale Law School graduates out of a total of 8404 law teachers. ASS’N OF AM. LAW SCH., THE AMERICAN ASSOCIATION OF LAW SCHOOLS DIRECTORY OF LAW TEACHERS, 2002-2003 (2002). This data was provided by Marilyn Drees and Barbara Safriet, Yale Law School, and is on file with the authors. In addition, Yale Law School graduates produce some of the most commonly-cited scholarship. Fred Shapiro, *The Most-Cited Law Review Articles Revisited*, 71 CHI.-KENT L. REV. 751, 765 (1996) (noting that Harvard, Chicago, and Yale train over 70% of the authors of the most-cited legal articles and that on a per-capita basis, Yale “would probably rank first”).

133. See Appendix C for tables describing Yale Law School graduates who enter academia.

134. In contrast, in part because of the small size of Yale Law School classes and relatively large recruiting needs of selective law firms, first-year associate positions at selective firms are considered to be within reach of most Yale Law School graduates.

135. Judicial clerkships are also positions for which faculty advocacy is important, and they will be discussed separately in Part IV.C.

Of course, most law students do not seek to become legal academics, but it is an area in which informal networking, as opposed to formal benchmarks such as grades, is key. The importance of these networks only increases as students graduate and enter workplace settings.

*C. Lack of Transparency Exacerbates Harm Caused by Distance*

The lack of transparency about student performance and opportunities within law school and the legal profession means that students who cannot access faculty members are disadvantaged in obtaining information about themselves and the opportunities they seek. Faculty members communicate the “rules” for succeeding in law school through informal interactions with the students who have developed relationships with them. As we have shown, those students are more likely to be male than female. Opacity about what is needed to succeed, particularly in academia—the importance of grades, whether one must publish while in law school, when and how to enter the job market—disadvantages those who are likely to be excluded from informal networks.<sup>136</sup> The lack of clarity ranges from how to find a professor outside of class—fifteen of the thirty-four faculty respondents who addressed the issue say they do not post regular office hours—to how to become a research assistant, in light of the fact that most positions are not advertised. Female students expressed frustration at their exclusion from these networks. According to a female 1L:

YLS operates by a set of unarticulated rules about how to find a paper advisor, how to get a prime R.A. [research assistant] job, how to obtain a clerkship recommendation, etc. For whatever reason, men tend to learn these rules differently than do women, perhaps because professors transmit them to very verbal male students.

A female faculty member offered a more measured perspective on Yale Law School’s “lack of rules”: “[H]istorically, women have differentially paid a penalty (though not all women, and lots of men) due to the anarchic atmosphere. Male or female, students who miss out on the hallway communication of norms and expectations are disadvantaged . . . .” Female students expressed uncertainty over when and how it is appropriate to approach a professor, particularly those who do not hold regular office hours or otherwise make clear how to reach them. A male 1L said that “the old-school idea of law being a boys’ club” still has a powerful effect on faculty-student relationships.

The lack of transparency extends beyond informal interactions. Because students receive little feedback on their academic work, students are particularly dependent on faculty responses to gauge their performance. Both

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136. CATALYST, *supra* note 8.

male and female students expressed strong dissatisfaction with the amount of feedback they received from faculty members on their written exams and papers, which are notoriously graded late and given little, if any, feedback.<sup>137</sup> A regime of no feedback may particularly disadvantage women, who are newcomers to a male-dominated profession.<sup>138</sup> Faculty respondents overwhelmingly reported that female students are less likely to be aware of their strengths, and that, in particular, stellar female students are less likely than their male counterparts to request letters of recommendation for highly competitive circuit court clerkships and Supreme Court clerkships. One male professor attributed the fact that many top-performing women hesitate to apply for top clerkships to lack of information about their own (strong) qualifications: "In a school with grades, it's easier to know if you're at the top of your class; it's easier to have that confidence." In a study of alumni who graduated over the last three decades, female graduates of Yale Law School perceived themselves to be ranked lower in their classes than male graduates of Yale, although no actual class placement is computed.<sup>139</sup> If women are less likely to develop mentoring relationships with faculty members, those who excel may have fewer avenues to obtain feedback about their performance and qualifications.<sup>140</sup>

We acknowledge the importance of informal networks, and do not suggest trying to eradicate them in law school. It is natural that information is transmitted through relationships that develop, and those networks are replicated in the workplace.<sup>141</sup> Law schools, however, can implement structural changes that will transform and diversify these networks. At the same time, however, they should make relevant information available to everyone.

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137. YALE LAW WOMEN, *supra* note 44, at 73.

138. Nancy E. Betz, *Implications of the Null Environment Hypothesis for Women's Career Development and for Counseling Psychology*, 17 COUNSELING PSYCHOLOGIST 136, 137 (1989); Krauskopf, *supra* note 14, at 317.

139. We do, however, know that the perceptions do not reflect reality, if only because of the numerical impossibility. One hundred twenty men and 192 women responded to the question, "To the best of your recollection, your law school grades would have given you a class rank in which segment of your class?" Twenty-two percent of men, compared with 10% of women, self-reported being in the top tenth of the class; 25% of men, compared to 11% of women, reported being in the second tenth of the class; and 15% of men, compared to 24% of women, reported being in the third tenth of the class. No men, and 2% of women, reported being in the bottom half of their classes. Presumably these "rankings" would refer to the number of "Honors" grades received. These Yale-specific responses were compiled as part of CATALYST, *supra* note 8, and are on file with the authors.

140. The issue is not necessarily whether a law school uses a formal or informal grading system. Conscientious feedback requires faculty members to engage with students' work and ideas, irrespective of the grading regime.

141. CATALYST, *supra* note 8.



*D. Explaining Different Experiences of Women and Men Outside the Classroom*

We have described differences in the ways male and female students interact with faculty, and we have shown a link between those differences and women's diminished participation in legal writing and academia. We suggest three reasons for these differences. First, faculty treat women differently from men in ways that create distance. Second, many members of Yale Law School's predominately male faculty employ what we call a "self-replication" model of mentoring that favors male students. Third, law schools recognize and reward a particular kind of demanding behavior that may be more commonly displayed by men than by women.

*1. Some Faculty Members Send Different Signals to Female and Male Students*

First, men and women experience law school differently, in part, because faculty members treat male students differently from female students. A consistent and recurrent theme emerges from the classroom participation data, the quantitative responses to the student survey, and the personal narratives of faculty and student respondents. In an attempt to avoid offending female students and to avoid the appearance of sexual impropriety, male faculty members interact less often and less closely with female students in ways that inhibit the growth of professionally valuable relationships and even distance women from the material that faculty members teach.

Just as professors are hesitant to challenge women in class, so, too, outside the classroom, deference leads to distance. Faculty members expressed concerns about the appearance of impropriety in interacting with students of the opposite sex<sup>142</sup>—concerns that they recognize make it more difficult for female students to form close relationships with a predominately male faculty. A male professor gave an example of his interactions with two students, one male and one female, with whom he separately co-authored articles. While he knew facts about the male student's personal life early on in their working relationship, he never asked the female student about her personal life, and she did not volunteer information. Describing the relationship as being at "arm's length," the professor expressed concern that he is so "careful not to sexualize teacher-student relationships, because so much damage has been done and continues to be done by sexualizing those relationships" that he forms closer relationships

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142. Of course, the dynamic changes depending on the gender and sexual orientation of the faculty member and student. We note, however, that, because the faculty is predominately male and predominately heterosexual, discomfort arising from sexual tension or concerns over sexual impropriety will disproportionately affect female students in their interactions with professors.

with male students. He also noted that he feels comfortable joking with men but worries that such behavior would offend women.

Another male professor said that, in interactions between female students and straight male professors, "I feel that there is often 'fear on both sides'—of harassment on the part of the student, and of an accusation of harassment on the part of the professor." Respondents were not asked directly whether they had experienced sexual harassment, although a few female students said that they were concerned about it.<sup>143</sup> A male professor reported being less comfortable having any physical contact with female students because he did not want "a gesture to be misconstrued or to make a student uncomfortable in any way."

Some female professors also reported being careful about their interactions with members of the opposite sex. One female professor said, however, that those concerns are heightened among her male colleagues:

I very rarely forget that a male student is a male. It is the same for male professors. They will never truly relax around a female student because they will never forget the gender of that student. It's worse with a male professor and a female student in that the sexual dynamics are more tense/sensitive with an older male professor and female student than with an older female professor and a male student.

Whether they themselves fear sexual impropriety, or whether they are responding to the discomfort of faculty members, male and female students reported that concerns about impropriety hinder the development of close relationships between male professors and female students. A male 2L observed that "female students seem less comfortable in one-on-one situations with male professors." Two male student respondents expressed the opinion that male faculty members form sexual relationships with female students. We found no corroboration of these observations from female students or faculty members, but some female students explained that, like faculty members, they worry about the appearance of impropriety. A female 2L indicated, "I've known more male students who can strike up 'buddy' relationships with professors—obviously this is due to the fact there are more male professors . . . as a woman, I would fear being perceived as improper/flirtatious if I were to speak to faculty members that way." Another female 2L said that male students have an easier time getting close to male professors in part because professors "seem a bit uncomfortable with female students outside of class."

This dynamic suggests that female students' increased discomfort in approaching faculty members and diminished ability to form mentoring relationships are, in part, a response to discomfort and distance that stems from faculty members. On this reading, the problem is not that women are more

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143. Approximately 4% of respondents, all of whom were female, report that in their contact with Yale Law School professors they are or have been concerned with sexual harassment. Some male professors report that they keep their doors open when female students are in their offices to alleviate their concerns about the appearance of impropriety. This is an area that merits further study.

hesitant than men to approach—the problem is that faculty members are sending different signals to men and women. Male faculty members' concerns over sexual harassment may be genuine,<sup>144</sup> but, in our opinion, the appropriate response is to maintain appropriate behavior with all students—not to avoid engaging women.

## *2. A Self-Replication Approach to Mentoring Disadvantages Female Students*

Second, an approach to mentoring based on self-replication by a predominately (white) male faculty exacerbates the different treatment, particularly in informal interactions. At least some faculty members acknowledged experiencing difficulty in mentoring members of the opposite sex, and others observed that same-sex mentoring relationships appear to be easier and more natural. A male professor suggested that men are drawn to work with him because they see themselves in him, while another believed that one of the reasons he may write fewer clerkship letters for women than for men is that female students feel more comfortable asking female faculty members for recommendations. According to a third male faculty member, “there is a pervasive sense among [female students] that [male students] are the ones to connect to faculty.” During one interview, a male faculty member confidently stated that he supervises equal numbers of male and female students. Upon being pressed by the interviewer, however, he realized that nine of the ten former students with whom he maintained close relationships were male—and that he had lost touch with the tenth, a woman. He admitted to being “struck” by the discrepancy.

Students, in turn, attributed at least some of the awkwardness to faculty members. A male 3L said that “male professors are able to interact with certain male students in a more natural way because they see themselves in these students.” A male 1L noted that this may result in “some male students try[ing] to connect to the professors in personal way[s] more beyond academics.” Female students shared the belief that male professors find it easier to interact with their male peers because of perceived common interests. The reason male students are more “comfortable, confident” with professors, according to a female 1L, is that “male professors may be more likely to see themselves in male students and thus more likely to make greater effort in mentoring them. Or they may simply feel more comfortable communicating with males in general.”

Male faculty members may also be less confident in their ability to mentor women, in part because of a perception that women have different goals for

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144. No faculty member reports having been accused of sexual harassment, although they were not necessarily asked that question directly.

mentoring relationships than men. A male professor worried that “I might be missing something [when I mentor women]. I’m not sure I can really put myself in their shoes . . . I’m more confident that I pick up on similar signals by men.” Another male professor reported that because women often seem more respectful, deferential, or diffident than men, it “changes the way I relate to them. I am perhaps more comfortable just chatting with men—not as concerned when asking them personal questions that I may be intruding.” A female faculty member said, “Just using gender doesn’t accurately capture the ways in which students and faculty interact with one another—race is very salient in the equation.”<sup>145</sup>

Affinities between similar people may be natural, but they disadvantage women in a system where most of the potential mentors are male. Self-replication is not the only paradigm for mentoring, but its prevalence makes a diverse faculty an important source of mentoring for a diverse student body. Although professors were not directly questioned about their views on faculty diversity, the issue arose in some interviews: Three female professors and five male professors recommended increasing the number of women and/or minority faculty members as a means of providing greater mentoring opportunities to women and students of color.

While we advocate diversifying law school faculties,<sup>146</sup> we also argue that self-replication is an inadequate way to conceptualize mentoring. Students seek all kinds of advice and guidance and could benefit from faculty perspectives. Mentoring should be about making the effort to find common areas of engagement rather than falling back into easy, comfortable forms of interaction that perpetuate homogeneity. Law schools should promote a mentoring paradigm suitable for a heterogeneous pool of new lawyers. Conceptualizing mentoring more broadly will benefit all students and, in particular, will help female students receive the information, guidance, and encouragement they seek from professors.

### 3. *Institutional Values Reflect a Male Bias*

Third, women are more likely to exhibit certain characteristics that are undervalued in law school. Law schools reward behaviors more commonly displayed by men and do not reward other behaviors more commonly displayed by women, even though both kinds of behaviors are helpful in the practice of law. We argue that a diversity of positive behaviors should be rewarded when displayed by any student, male or female. Our motivation may be to improve

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145. The Racial Dynamics survey found that minority students were less likely to have a mentor and more likely to be dissatisfied with mentoring opportunities. COMM. ON RACIAL DYNAMICS, YALE LAW SCH., *supra* note 54, at 25-29.

146. *See infra* Part V.C.

education for female students, but our method will improve law school for all students.

As institutions, law schools operate incentive systems that work to the disadvantage of students who regulate the demands they make of time and space. For example, faculty members respond to students who speak disproportionately often in class, “rush the podium” after class, and make repeated demands on professorial time. Certainly, persistence and assertiveness are useful tools for lawyers, and there is some merit in rewarding them. However, the self-regulation commonly displayed by women reflects other behaviors desirable for lawyers. Many women reported undergoing rather extensive preparation before approaching faculty members due to their belief that they must have specific, prepared, and intelligent questions in mind. This seems like an institutional value to encourage—students maximizing the efficiency of those interactions by preparing in advance. Yet the institution, in the form of its faculty, does not reward this behavior, which is more commonly displayed by women.<sup>147</sup> It is interesting to note that while many faculty members expressed frustration with class discussions dominated by a small number of students—and with the aggressive demands that (primarily male) students make on their time—they nevertheless reward those students with their time and attention.

In the next Part, we suggest concrete measures—such as allocating faculty time in more transparent and deliberate ways—that law schools can use to reassess the values they express and to implement changes that will improve the way they educate men and women. These reforms are timely in light of the increasing importance of collaboration, negotiation, problem-solving, and management to the work of lawyers. If law schools are going to produce lawyers with the skills necessary to succeed in the profession as it exists today, they must reassess their pedagogical approach and the signals they send to students about the value of certain skills.

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147. Perhaps female students experience pressure to overcome the distance they feel from faculty members as a result of their diminished class participation, signals from faculty members, and/or the lack of transparency about how to achieve the objectives they have for law school and their legal careers. Perhaps their perceived need to prepare is a reaction to the vertical sex-segregation of the faculty, as Kanter has addressed in her work on the effects of a hierarchy in which men dominate the top rungs. *See generally* KANTER, *supra* note 91.

## V. TRANSFORMING INSTITUTIONAL VALUES

*The law itself is an adversary system that is inherently gendered. The firms are gendered; the institution is gendered; law practice is gendered.*

– male professor

If there is any truth to the above statement, then law school, as the locus of an individual's initial and intense socialization into law, is the pressure point for changing the profession. Law schools have a responsibility to realize their function as key institutions for moving the legal profession beyond numerical parity, toward vertical and horizontal integration. The process of doing so will align the training that female and male students receive with the demands of a changing profession. It will also remove substantial obstacles to women's advancement in law. No less is required of a profession whose central tenets include fairness and equality of access.

Lawyers understand that, in any proceeding, rules and structures determine the fairness and legitimacy of the outcome. This Article has demonstrated how the current rules of engagement in law school favor a subset of students—male law students.<sup>148</sup> Law teachers would do well to consider how their views of procedural fairness apply to their most immediate spheres of influence—their classrooms. Pedagogy is a process, and like a legal proceeding, its rules should minimize irrelevant constraints on the ability of participants to succeed.

This Part urges law schools to invest in pedagogy, bringing what they teach students into conformity with what students need to be good lawyers. By changing their pedagogical practices to respond to changes in the practice of law, law schools will remove early obstacles to female students becoming leaders in the profession. By rewarding depth and thoughtful reflection, in addition to quickness, law school professors will promote the development of more of the skills that lawyers utilize. By promoting greater transparency in the informal transmission of information and guidance that takes place outside of the classroom, law schools will expand opportunities for students who are currently excluded from professionally beneficial relationships with faculty members. Finally, by hiring more female faculty members, law schools will help dismantle a system that reflects a bias in favor of men in ways that are demonstrated,<sup>149</sup> if not fully understood.

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148. To the extent we were able to record data on this issue, we noted that among male law students, non-white students faced many of the obstacles that female law students faced, particularly in interacting with faculty members outside of class. *See supra* Part IV.

149. *See supra* Part III (showing that female students speak more frequently in classes taught by female professors); *supra* Part IV (showing that female professors take on a disproportionate share of mentoring responsibilities).

*A. Invest in Pedagogy*

What happens in the classroom—how professors and students interact during class discussions—affects almost every other interaction between faculty and students and shapes the way students engage the law. The first step in improving the preparation law schools offer to students is to reclaim the importance of reflective pedagogy.

Legal education as it is currently constituted does not respond adequately to sea changes in the way lawyers practice their craft.<sup>150</sup> Law's adversarial system has evolved into an interdisciplinary field in which settlement, mediation, and negotiation are at least as important as trial preparation and practice.<sup>151</sup> The skills and behaviors necessary to succeed in this new legal regime include many skills and behaviors that are not rewarded in law school.<sup>152</sup> Instead, law schools reward conduct that, at best, reflects only a narrow subset of the skills needed for good lawyering—such as dominating discussions at the expense of hearing other perspectives.<sup>153</sup> In doing so, they neglect to reward other skills students need to learn. Current research about men and women in law school describes legal skills along a continuum, noting that many, but not all, women tend to disproportionately exhibit certain skill sets. Unsurprisingly, given the genesis and history of the legal profession, law schools neglect cognitive skills traditionally associated with women, including

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150. See, e.g., THE MACCRATE REPORT: BUILDING THE EDUCATIONAL CONTINUUM, *supra* note 97; Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33 (2001); Peggy Cooper Davis & Elizabeth Ehrenfest Steinglass, *A Dialogue About Socratic Teaching*, 23 N.Y.U. REV. L. & SOC. CHANGE 249 (1997); Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992).

151. Adversarial verbal arguments have come to represent just a small fraction of lawyerly work. See, e.g., Judith Resnik, *Changing Practices, Changing Rules: Judicial and Congressional Rulemaking on Civil Juries, Civil Justice, and Civil Judging*, 49 ALA. L. REV. 133, 181 n.177 (1997) (stating that fewer than four percent of cases on the civil docket conclude in the commencement of a trial, and many adjudicated motions are decided without oral arguments).

152. DEBORAH L. RHODE, *IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION 196-99* (2000) (law schools neglect key pedagogical areas including interviewing, counseling, negotiating, drafting, and problem solving, and law schools inadequately address the psychological aspects of lawyering and the social, political, and historical context of formal doctrines); Harry T. Edwards, *A New Vision for the Legal Profession*, 72 N.Y.U. L. REV. 567, 567-68 (1997) (arguing that law schools, particularly highly selective law schools, "emphasiz[e] abstract theory at the expense of practical scholarship"). Peggy Cooper Davis and Carol Gilligan seek to prepare students for the full range of lawyerly activities in their Workways program at New York University. The Workways website describes the program, observing that "the range of intellectual capacities and activities generally valued and developed in law schools is narrower than the range needed to do the work of lawyers." Workways Forum, <http://www.law.nyu.edu/workways/index.html> (last visited Oct. 10, 2006).

153. Certainly, there will be situations in which trial lawyers will want to dominate a courtroom, in order to push their arguments upon a judge or jury. However, lawyers need to know when to argue loudly and when to listen carefully, when to respond to counter-views and when to ignore them. Giving air time to the same few students who dominate class discussions gives students a distorted view of what it means to argue effectively. It also restricts the diversity of views and perspectives offered. Arguing in court is a very small part of the work done by lawyers, see *supra* note 151, and not all trial lawyers "dominate" in order to argue effectively.

contextual reasoning, relational skills, and narrative intelligence.<sup>154</sup> In failing to value or teach so many of the skills that lawyers actually need, law schools do a disservice to all students, but particularly to female students, whose strengths are more likely to be overlooked.

The test for what skills to emphasize is pragmatic. For example, questioning students in class discussion should be as combative as necessary to prepare students both for litigating and arguing, and for negotiating and settling. Because teamwork and regard for others have become so important to the successful practice of law,<sup>155</sup> classrooms should be run in ways that encourage students to engage each others' ideas and to allocate time among a diversity of speakers. One male faculty member speculated that women's disproportionately high participation in legal clinics stems from their attraction to its collaborative, non-hierarchical structure—a structure that mimics the constructive ways that lawyers work together on projects and cases. Yet clinical work is undervalued at Yale<sup>156</sup> and at many other law schools,<sup>157</sup> and non-clinical classes are often run in ways that disparage contextual reasoning and engagement of alternatives.<sup>158</sup>

A wealth of research inside and outside the legal academy provides theoretical and practical ideas for creating an open, inclusive, and effective classroom environment.<sup>159</sup> New York University Law School's lawyering

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154. Deborah L. Rhode, *Missing Questions: Feminist Perspectives on Legal Education*, 45 STAN. L. REV. 1547, 1554 (1993) (“[V]alues traditionally associated with women have been undervalued in legal education, and . . . their absence has impoverished the professional socialization of both sexes.”); Susan P. Sturm, *From Gladiators to Problem-Solvers: Connecting Conversations About Women, the Academy, and the Legal Profession*, 4 DUKE J. GENDER L. & POL’Y 119, 131 (1997) (discussing the relationship between a combative model of law and legal pedagogy and the undervaluation of women in law schools); Workways Forum, *supra* note 152 (follow “Theory” hyperlink; then follow “Background Paper” hyperlink under “Stereotype Vulnerability”) (“Women and people of color may be strong in cognitive domains that legal education tends most to neglect: interpersonal, intrapersonal, and narrative intelligence and interactive reasoning.”). Our research shows that women and men display different behaviors in law school. Again, we express no opinion on the source of those differences—a discussion of how men and women would behave if they were treated the same, prior to, during, and after law school, is beyond the scope of this Article. We merely argue that, so long as male and female students display different behaviors and are treated differently by law teachers, we should be wary of privileging behaviors that are more likely to be displayed by men.

155. RHODE, *supra* note 152, at 197.

156. For example, in contrast to tenured members of the “academic” faculty, tenured clinical faculty members cannot vote on faculty appointments and are excluded from other decisions made by the faculty. OFFICE OF THE PROVOST, YALE UNIV., YALE UNIVERSITY FACULTY HANDBOOK 48 (2002).

157. See John J. Costonis, *Of Loaves, Fishes, and the Future of American Legal Education*, in THE MACCRATE REPORT: BUILDING THE EDUCATIONAL CONTINUUM, *supra* note 97, at 28, 54 (criticizing law schools for undervaluing clinical teaching and failing to provide students with mentors); Rosalie Wahl, *Building the Educational Continuum*, in THE MACCRATE REPORT: BUILDING THE EDUCATIONAL CONTINUUM, *supra* note 97, at 79, 80 (criticizing law schools for treating clinical professors like “second-class citizens”); Sullivan, *supra* note 73, at 143 (noting that in law schools, clinical professors hold weaker positions than academic professors).

158. Some forms of Socratic questioning, for example, push students to articulate extreme views considered acontextually. See Davis & Ehrenfest Steinglass, *supra* note 150.

159. See, e.g., Catherine G. Krupnick, *Women and Men in the Classroom: Inequality and Its Remedies*, available at <http://bokcenter.harvard.edu/docs/krupnick.html> (last visited Oct. 31, 2006); Tips



program engages students in interactive role plays, under close faculty supervision, as a clinical component of the first year-curriculum. Lani Guinier and Susan Sturm have developed a website, RaceTalks, describing an interactive pedagogy designed both to facilitate discussions about race and gender and to enable more constructive learning in law school classes covering any subject.<sup>160</sup> Other scholars and teachers advocate using, rather than suppressing, political beliefs,<sup>161</sup> emotional responses,<sup>162</sup> and moral considerations<sup>163</sup> to deepen intellectual understanding of cases and doctrines. The goal of these pedagogical innovations is to integrate theory and practice and to recognize multiple forms of intelligence,<sup>164</sup> based upon what the profession demands.

We do not advocate a single-best teaching model. Our work demonstrates, however, that a volunteer-only regime, in which professors fail to solicit broad participation, will result in male-dominated class discussions and women who keep quiet, not because they have nothing to say, but because the type of speech solicited, accepted, and rewarded in class is limited and reflects a bias in favor of men. Professors should ensure that active learning occurs, whether they do so through non-coercive cold-calling, panel discussions, “on-call” systems, response papers, chat rooms, or other creative means. We do not suggest blithely instituting Socratic questioning in which professors play a game of “hide the ball,” sometimes by humiliating students.<sup>165</sup> Cold-calling can be effective, especially when combined with other methods, but it should not be an exercise in which faculty members coerce students into giving the answer that they seek and punish students who fail to comply. Professors should take

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for Teachers—Sensitivity to Women in the Contemporary Classroom, <http://bokcenter.harvard.edu/docs/TFTwomen.html> (last visited Oct. 31, 2006).

160. Their methods include sharing and rotating power, challenging students to approach material critically, and facilitating trust and balance in class discussions. For a description of the program, see Race Talks, <http://www.racetalks.org/about/index.html> (last visited Oct. 31, 2006).

161. Duncan Kennedy, *Politicizing the Classroom*, 4 S. CAL. REV. L. & WOMEN'S STUD. 88 (1994).

162. Angela P. Harris & Marjorie M. Schultz, “A(nother) Critique of Pure Reason”: Toward Civic Virtue in Legal Education, 45 STAN. L. REV. 1773 (1993).

163. Guinier et al., *supra* note 14. Of course, many legal ethicists advocate integrating ethical considerations into discussions of cases and doctrine as a means of promoting professional responsibility. See, e.g., Jane B. Baron & Richard K. Greenstein, *Constructing the Field of Professional Responsibility*, 15 NOTRE DAME J.L. ETHICS & PUB. POL'Y 37, 90-98 (2001); David Luban & Michael Millemann, *Good Judgment: Ethics Teaching in Dark Times*, 9 GEO. J. LEGAL ETHICS 31 (1995); Deborah L. Rhode, *Essay: The Pro Bono Responsibilities of Lawyers and Law Students*, 27 WM. MITCHELL L. REV. 1201 (2000).

164. See, e.g., Multiple Intelligences—Background Paper, Workways Forum, *supra* note 152 (follow “Overview” hyperlink).

165. See, e.g., Davis & Ehrenfest Steinglass, *supra* note 150, at 249 (warning against coercive or humiliating use of Socratic questioning and its effects in a heterogeneous classroom environment); Rhode, *supra* note 154, at 1555 (arguing that the “Guess what I’m thinking” aspects of the Socratic method puts students into an “intellectual cage”); see also David Garner, *Socratic Misogyny? Analyzing Feminist Criticisms of Socratic Teaching in Legal Education*, 2000 BYU L. REV. 1597; Jennifer Rosato, *The Socratic Method and Women Law Students: Humanize, Don't Feminize*, 7 S. CAL. REV. L. & WOMEN'S STUD. 37 (1997).

responsibility for seriously engaging all students in the material being taught. Some Yale Law School faculty members acknowledge their reluctance to challenge female students or students of either gender who present themselves tentatively, because they fear that those students are less able to “take” rough treatment. But there need not be anything rough about robustly challenging ideas. The best lawyers argue vigorously—not hostilely. An important duty of teaching is to manage classroom discussions by inviting a diversity of voices.

Indeed, at Yale, many professors have successfully diversified class participation by requiring all students to speak in class.<sup>166</sup> A male professor describes an experience reported by several professors in his comment that, “I started calling on people again when I noticed that few women, and few minorities, were volunteering in class.” Faculty members say that they share students’ irritation with discussions that become hijacked by a small, vocal minority of the class. It is a professor’s responsibility to ensure this does not happen.

Even within traditional classroom environments, teachers should experiment with class size, technique, and organization. Faculty members might devote time at faculty meetings to sharing good teaching practices and improving their own pedagogical methods. They might also observe each other to get ideas and to provide feedback. Some YLS faculty members were surprised by the data for their own classes showing disproportionately low participation by female students and expressed appreciation for the information that the data provided about their own teaching methods. Institutionalizing such feedback will help faculty members reflect on the merits and drawbacks of their teaching methods. As members of the academy, scholarship will remain faculty members’ primary concern, but as members of the legal profession, faculty members must not be complicit in an educational system that disadvantages the next generation of female lawyers.

### *B. Promote Greater Transparency*

Teaching does not end at the classroom door. Where the rules for getting ahead are opaque, insiders will learn them more quickly than outsiders. Making information available to all students will allow them to compete based on their qualifications, not based on how well they have developed relationships with faculty members. Because women are less likely to be part of informal mentoring networks, de-mystifying the rules of engagement will help female students achieve the intellectual and professional objectives they seek.

Professors should make it clear how and how often students should approach them, how well students are doing, and what students need to

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<sup>166</sup> YALE LAW WOMEN, *supra* note 44, at 31-35, includes numerous suggestions from both students and professors for managing class discussions.

succeed. At a minimum, faculty members should make themselves available on a regular basis through office hours, but they should also make clear their level of availability for collaborative projects, writing supervision, and career advice. Students should not have to guess at how to approach their professors, nor fight with their classmates for faculty attention. Law schools should encourage students to respect that commodity so precious to clients—a lawyer's time. It would seem, then, that faculty members send the wrong message when they (perhaps inadvertently) penalize female students who approach meetings as a professional engagement, to be utilized efficiently—rather than as an opportunity to develop a “buddy” relationship. Law schools should continue to create, evaluate, and enhance mechanisms to facilitate mentoring and role-modeling, to make sure those mechanisms are inclusive.<sup>167</sup>

It is also important that faculty members provide quality feedback to all students. A male professor suggested that, “Everyone, but perhaps especially women and minorities, needs to be reassured.” Students without faculty mentors may be more reliant on traditional forms of feedback, including comments on their written class work. *Yale Law School Faculty and Students Speak About Gender* includes a list of teaching practices that faculty members recommend to their colleagues for improving feedback to students.<sup>168</sup> Such feedback should not just affirm student strengths but also identify areas in need of improvement and note when such improvement has occurred.

Finally, faculty should create more transparency about what students need to do to compete for positions in which faculty advocacy is most important, such as clerkships and academic jobs. Of course, faculty members will not give all students equal time and resources, but if they make clear which steps help students reach these positions, a more diverse pool of students will compete for them. Concrete suggestions for faculty include making themselves available periodically for lunches or talks and publicly expressing their willingness to discuss career planning in their fields of expertise.<sup>169</sup>

Interventions do make a difference. At Yale Law School, for example, in the 1995-1996 academic year, faculty members formed a committee to investigate why female students were clerking for judges in significantly lower numbers.<sup>170</sup> The committee surveyed students, examined grades, and found that qualified women were choosing not to apply for clerkships because they felt

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167. Yale Law School's “small group” system, for example, is an institutionalized opportunity for students to get to know a faculty member at the start of their legal education. The system should continue to be evaluated and re-worked.

168. *YALE LAW WOMEN*, *supra* note 44, at 78-79.

169. For example, one Yale Law School faculty member gives periodic talks during his classes on “how to be cool in law school”—how to compete for jobs, clerkships, and faculty mentoring.

170. *DEAN'S AD HOC COMM. ON THE STATUS OF WOMEN AT YALE LAW SCH.*, *supra* note 110. The Committee found that, from 1988 to 1996, just 34% of Yale graduates who clerked for federal appellate courts were women, and just 24% of Yale graduates who clerked on the U.S. Supreme Court were women.

they could not obtain letters of recommendation from the faculty. Faculty members implemented some of the committee recommendations, including offering to write letters of recommendation to outstanding female students who did not necessarily request them. The result was a dramatic rise in the number of women clerking, including for highly competitive courts such as the Supreme Court and certain federal appellate courts.<sup>171</sup> This experience suggests that institutional reforms can more effectively provide feedback and encouragement to students who may be unaware of their strengths.

Law schools should also facilitate mentoring by creating mechanisms to pair students with faculty members who can help them with particular goals. For example, in the wake of the Yale Study, Yale Law Women established a workshop in which female students present papers to faculty members and to their peers to obtain feedback in a forum that mimics the “job talks” that aspiring academics give as part of the interview process for faculty positions.<sup>172</sup> During the workshop, faculty members share their advice on how to find a job in legal academia. Another Yale Law Women faculty-student workshop offers tips to students about beginning the paper-writing process. These programs connect students to faculty members who can offer specific feedback and guidance in their fields of interest. They create a space for female students to present themselves frankly as being interested in academia by engaging with faculty members about their paper ideas. The workshops are examples of how to distribute scarce faculty resources through a transparent, fair, and dignified procedure.

### C. *Diversify Law School Faculties*

The Yale Study yielded literally hundreds of recommendations from faculty and students about how members of a law school community can improve gender dynamics. The dialogue itself was transformative—the process of making professors aware of how students view them and making students aware of professors’ expectations facilitated more tolerant and constructive interactions, including changes at the micro-level. Certainly, changes implemented by individuals are important, and to the extent that female students can recognize the (imperfect) gender dynamics at their own schools, they can make a concerted effort to overcome the obstacles discussed above.

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171. Women at Yale Law School secure clerkships, including highly competitive clerkships on the Second, Ninth, and D.C. Circuits, in slightly lower numbers than men. The improvement in competition for Supreme Court clerkships is particularly dramatic. Between 1996 and 2002, 32 Yale Law School graduates clerked for the Supreme Court of the United States. Over this seven year period, 41% of Yale clerks were female and 59% were male, compared to an average J.D. population of 46% women and 54% men. See Appendix D, tbl.1; *cf. supra* note 170.

172. The workshop has operated since 2003, and at least one of the papers presented there by a female legal scholar has been published. See Aditi Bagchi, *Deliberative Autonomy and Legitimate State Purpose under the First Amendment*, 68 ALBANY L. REV. 815 (2005).

Taking reform seriously, however, requires changing the composition, in addition to the attitudes, of law school faculties.

Faculty members and students at Yale Law School raised concerns about faculty diversity in almost every topic explored in the Yale Study.<sup>173</sup> Several student respondents observed that classes taught by women create different dynamics than classes taught by men. Hiring a more diverse faculty would create a wider variety of classroom environments and, as a result, foster a richer array of voices in discussions. Not all of these improvements can be pinpointed precisely. For example, we do not know all the reasons that female students are more likely to choose classes taught by women, or why female students speak more in classes taught by women. Are female professors less reluctant to challenge female students? Are they more aware of how inclusive the discussion is? Do they pay more attention to pedagogy? Does their presence as authority figures encourage female students to participate? The answer to one or all of these questions may be yes, or a different dynamic may be at work, but we think that the presence of women at the top of a variety of professions, including legal academia, positively affects lower-ranked women in known and unknown ways.

Some students and faculty reported that mentoring, which has a strong role-model component, is easier among faculty and students of the same gender and/or ethnic identity. We have shown that many female students and students of color feel more comfortable approaching or working with faculty members with whom they feel they can share gender-specific and race-specific concerns. Male and female students and professors acknowledge the reality of same-sex pairing that may occur in mentoring relationships. As long as this dynamic exists, female students are disadvantaged when the faculty is predominately male.

A female 2L observed that the large number of male professors emboldens men to interact more comfortably with male professors: "I think men feel smarter because they see that almost all of the smart people hired are male." Her comment is supported by psychological studies showing the powerful influence of role models on gender stereotypes, namely that seeing women in positions of power helps people visualize women as competent and authoritative.<sup>174</sup> The importance of role-modeling should not be

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173. The Yale Study did not explicitly solicit opinions about faculty diversity. It did, however, ask students how many female-taught courses they had taken. Considering women constitute just one-fifth of the faculty, the low numbers are not surprising: 67% of respondents had taken two or fewer non-clinical courses taught by a female professor, and nearly 20% of respondents (all of whom were 1Ls and 2Ls) had never been taught by a woman outside of clinic. Exposure to female professors jumps when clinical courses are considered: 49% of 1Ls who have taken a clinical course have been taught by a female clinical faculty member. YALE LAW WOMEN, *supra* note 44, at 81.

174. See Irene Blair, *The Malleability of Automatic Stereotypes and Prejudice*, 6 PERSONALITY & SOC. PSYCHOL. REV. 242-61 (2002) (building on Mahzarin Banaji's experiments on implicit biases). Beyond role modeling, the presence of women at the top of an institutional hierarchy signals to women that should they, too, try to reach the top of the hierarchy, their efforts will be fairly rewarded.

underestimated, particularly in a field that men have dominated since its inception.

The high percentage of all students—women and men—who reported having a female faculty mentor suggests that female faculty members are doing something right in mentoring both male and female students.<sup>175</sup> Students observed that female faculty members appear to be over-burdened with requests for guidance, collaborative work, and mentoring. Faculty respondents note the importance of female faculty members as mentors and role models. “In looking for mentors, students are looking for someone with life experience like their own,” observes a male faculty member, who ultimately recommends hiring more female academics. If a predominately male faculty is partly responsible for lower numbers of women successfully entering legal academia, the problem becomes circular, and there will always be a shortage of “qualified” female applicants to the nation’s most competitive law school faculties.

Certainly, many male faculty members can and do mentor and educate students of both sexes. We do not suggest relieving male faculty members of their responsibility to educate female students effectively. However, in order for law schools to dismantle structures designed for men, that favor men, they must diversify their faculties.

#### *D. An Essential Mandate*

Transforming institutional values is a broad and ambitious mandate. It asks law schools to identify the yardsticks they currently use to measure success. It then asks them to determine how those yardsticks relate to the skills students need to become successful thinkers and practitioners. Law schools are not merely vocational schools that teach skills. They socialize individuals into a practice that plays a prominent role in designing public and private institutions. They are pressure points for transforming the legal profession.

This Article has described significant differences in how men and women experience law school. We make no attempt to ascribe fixed characteristics to men and women. We cannot, however, ignore persistent evidence that men and women tend to behave differently in law school, and that the way men tend to behave is rewarded more than the way women tend to behave. Law schools have a responsibility to scrutinize rewarded behaviors and determine which of those reflect the skills students need to become good lawyers. If law schools use greater care in determining what behaviors to reward, they will provide fairer opportunities to female students while improving the way they educate all students. This mandate to reform legal education is no more ambitious than

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175. However, because clinical work may be more conducive to mentoring, some of the disparity may be explained by female professors’ relative concentration in clinics at the time of the study.

necessary to begin the process of integrating—not merely tolerating—women in the legal profession.

## Appendix A: Profile of Yale Law School Students

The tables in this Appendix were generated using the *Yale Law School Facebook* for the 2001-2002 academic year.<sup>176</sup>

**Top Ten Undergraduate Majors\* for Men and Women,  
Classes of 2002-2004**

<b>Top Female Majors</b>	<b>% of Female Students</b>	<b>Top Male Majors</b>	<b>% of Male Students</b>
Political Science & Politics	20	Political Science & Politics	17
History	16	History	14
English	10	Philosophy	10
Economics	4	Economics	8
Philosophy	4	English	8
Psychology	4	Mathematics	5
Biology	3	Government	4
Social Sciences & Studies	3	Humanities/Liberal Arts—Other	4
Government	2	Social Sciences & Studies	3
International Relations & Politics	2	Public Affairs & Administration	2
<b>Total</b>	<b>68</b>	<b>Total</b>	<b>74</b>

\*For students who listed a double major, the major listed first was coded.

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176. YALE LAW SCH., YALE LAW SCHOOL FACEBOOK, 2001-2002 (2001).



**Top Undergraduate Institutions, Classes of 2002-2004**

<b>College</b>	<b>% of Female Students</b>	<b>% of Male Students</b>
Columbia	2	4
Dartmouth	2	4
Duke	2	4
Harvard	16	10
U. Penn	1	1
Princeton	4	7
Stanford	2	2
Yale	12	10
<b>Total</b>	<b>42</b>	<b>42</b>

**Years Between College Graduation and Law School Enrollment,  
Classes of 2002-2004**

<b>Years Elapsed</b>	<b>% of Female Students</b>	<b>% of Male Students</b>
0	27	31
1	24	18
2	19	17
3	12	9
4	8	8
5	3	5
More than 5 years	7	11
Average for 0-5 years	1.48	1.38

## Appendix B: Mentoring at Yale Law School

**How Men and Women Report Forming Mentoring Relationships**

<b>Contact</b>	<b>Total (%)</b>	<b>Men (%)</b>	<b>Women (%)</b>
Clinic	29	27	32
Writing Papers	20	23	12
Research Assistant	16	11	21
Class Participation	13	18	7
Small Group	10	8	12
Out of Class Interactions	10	11	9
Teaching Assistant	2	1	2

## Appendix C: Yale Law School Students Entering Legal Academia

**Student Note Publication by Gender, *The Yale Law Journal*, 1996-2002**

<b>Year</b>	<b>% Female Student Notes</b>	<b>Women as % of 3L J.D. class</b>
1996-1997	32	46
1997-1998	32	46
1998-1999	48	39
1999-2000	44	43
2000-2001	31	46
2001-2002	25	44
2002-2003	35	52
<b>Average</b>	<b>36</b>	<b>45</b>

**Students Competing for Legal Academic Jobs**

<b>Year Entering Legal Job Market</b>	<b>% Female Candidates</b>	<b>% Male Candidates</b>
1996	32	68
1997	33	67
1998	21	79
1999	23	77
2000	24	76
2001	38	63
2002	35	65
<b>Average</b>	<b>29</b>	<b>71</b>

On average, women constituted 44% of the graduating J.D. classes in the years 1996-2002. Of course, many teaching candidates who went on the job market in those years graduated prior to 1996, when women constituted a smaller percentage of the J.D. classes. However, most, but not all, teaching candidates go on the job market within five years of graduating from law school, as demonstrated in the table below:

**Timelines for Entering Legal Academia, Fall 2002 Candidates**

<b>Years between J.D. and job application</b>	<b>% Female Candidates in 2000</b>	<b>% Male Candidates in 2000</b>
0-5 years	67	57
5-10 years	20	21
More than 10 years	13	21

## Appendix D: Yale Law School Student Clerkships

**Clerkships By Gender, 1996-2002**

<b>Clerkship Type</b>	<b>% of Female Students</b>	<b>% of Male Students</b>
All Judicial Clerkships	51	57
Federal Courts of Appeals	24	31
Second, Ninth, and D.C. Circuits	15	17
Federal District Courts	21	21
State Supreme Courts	4	2

